

**CALIFORNIA
BOARD OF BARBERING AND COSMETOLOGY**



**NOVEMBER 14, 2016
Board Meeting**

**Department of Consumer Affairs
1747 North Market Boulevard
HQ2 Hearing Room, 1st Floor
Sacramento, CA 95834**



P.O. Box 944226, Sacramento, CA 94244-2260
P (800) 952-5210 F (916) 575-7281 www.barbercosmo.ca.gov

MEMBERS OF THE BOARD

Joseph Federico, President
Dr. Kari Williams, Vice President
Mary Lou Amaro,
Bobbie Jean Anderson
Polly Codorniz
Andrew Drabkin
Richard Hedges
Coco LaChine
Lisa Thong

BOARD MEETING

November 14, 2016

Department of Consumer Affairs
1747 North Market Blvd
HQ2 Hearing Room 186, 1st Floor
Sacramento, CA 95834

*Action may be taken on any item
listed on the agenda.*



An additional meeting location, via teleconference, has been
established at:
22770 Mountain View Road, Moreno Valley, CA 92557

AGENDA

10:00 A. M.

UNTIL COMPLETION OF BUSINESS

OPEN SESSION:

1. Call to Order/ Roll Call/ Establishment of Quorum (**Joseph Federico**)
2. Board President's Opening Remarks (**Joseph Federico**)
3. Public Comment on Items Not on the Agenda
Note: The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 1125.7(a))
4. Executive Officer's Report (**Kristy Underwood**)
 - Licensing Statistics
 - Examination Statistics
 - Disciplinary Review Committee Statistics
 - Enforcement Statistics
 - Budget Updates
 - Outreach Updates
5. Approval of Board Meeting Minutes
 - April 11, 2016
 - July 17, 2016
 - July 18, 2016

6. Review and Approval of Proposed Board Created Educational Tutorial Series for Licensees, Establishment Owners, Unlicensed Individuals, and Apprentices. **(Kristy Underwood)**
7. Discussion and Possible Actions on the Proposed Amendments to the Board's Disciplinary Guidelines. (Title 16 CCR section 972)(**Kristy Underwood**)
8. Update on Bills that Could Impact BBC:
 - AB 1322 (Daly, Wilk) – Allowing Alcohol in Establishments
 - AB 2025 (Gonzalez) – Labor Law Education Requirements
 - AB 2125 (Chiu) – Healthy Nail Salon Recognition Program
 - AB 2437 (Ting) – Nail Establishments: Training, Wage Violations
 - SB 896 (Nguyen) – Credit/Debit Cards for Tips
 - SB 1044 (Nguyen) – Assessment of Fines to Individuals and Establishment Owners and Citation Fine Payment Plans
9. Proposed Regulations Updates (Possible Actions)
 - Update on “Demonstration of Products” for Purposes of BPC §7319 (e) Exemptions. Title 16 CCR section 965.1
 - Consider and Adopt Proposed Modified Text with Addition of Sample Health and Safety Poster and Initiate 15-day notice – Title 16 CCR sections 904 and 905
10. Discuss and Possible Action to Designate the *Decision and Order in the Matter of the Citation Against MBM Beauty LLC dba Lashes on Broadway* as Precedent Pursuant to Government Code § 11425.60.
11. Agenda Items for the Next Meeting
12. Public Comment

Note: The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 1125.7(a))
13. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. The Board plans to webcast this meeting on its website at www.barbercosmo.ca.gov. Webcast availability cannot, however, be guaranteed due to limited resources. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

*Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting may make a request by contacting: Marcene Melliza at (916) 575-7121, email: marcene.melliza@dca.ca.gov, or send a written request to the Board of Barbering and Cosmetology, PO Box 944226, Sacramento, CA 94244. Providing your request is a least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.

No Attachment

**Quarterly Barbering and Cosmetology
Licensing Statistics
Fiscal Year 16/17**

Applications Received

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-June	YTD
Establishment	1,767				1,767
Mobile Unit	1				1
Barber					
Pre-App	233				233
Initial Application	347				347
Re-Exam	537				537
Sub-Total	1,117	0	0	0	1,117
Reciprocity	40				40
Apprentice	177				177
Cosmetology					
Pre-App	1,339				1,339
Initial Application	1,018				1,018
Re-Exam	1,251				1,251
Sub-Total	3,608	0	0	0	3,608
Reciprocity	415				415
Apprentice	199				199
Electrology					
Pre-App	4				4
Initial Application	1				1
Re-Exam	3				3
Sub-Total	8	0	0	0	8
Reciprocity	1				1
Manicuring					
Pre-App	671				671
Initial Application	1,234				1,234
Re-Exam	908				908
Sub-Total	2,813	0	0	0	2,813
Reciprocity	137				137
Esthetician					
Pre-App	614				614
Initial Application	497				497
Re-Exam	442				442
Sub-Total	1,553	0	0	0	1,553
Reciprocity	109				109
Total	11,945	0	0	0	11,945

Licenses Issued

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-June	YTD
Establishment	1,667				1,667
Mobile Unit	2				2
Barber	586				586
Barber Apprentice	141				141
Cosmetology	2,381				2,381
Cosmetology Apprentice	218				218
Electrology	9				9
Electrology Apprentice	0				0
Manicuring	1,579				1,579
Esthetician	1,332				1,332
Total	7,915	0	0	0	7,915

APPLICATIONS RECEIVED

	FY 14/15	FY 15/16
Establishment	6,822	7,086
Mobile Unit	13	10
Barber		
Barber Apprentice	447	570
Reciprocity	157	178
Pre-App	1,105	1,271
Initial	1,239	1,513
Re-exam	1,123	1,909
Cosmetology		
Cosmetology Apprentice	626	704
Reciprocity	1,541	1,526
Pre-App	7,836	5,961
Initial	4,229	4,637
Re-exam	7,437	5,228
Electrology		
Electrology Apprentice	0	1
Reciprocity	4	8
Pre-App	25	27
Initial	13	19
Re-exam	18	12
Manicuring		
Reciprocity	561	508
Pre-App	2,530	2,569
Initial	3,724	4,069
Re-exam	4,111	3,492
Esthetician		
Reciprocity	449	471
Pre-App	3,115	2,888
Initial	2,200	2,067
Re-exam	1,895	1,542
Total	51,220	48,266

APPLICATIONS RECEIVED LAST 5 YEARS

FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16
49,525	49,117	52,572	51,220	48,266

LICENSES ISSUED LAST 5 YEARS

	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16
Establishment	6,665	6,176	6,512	6,594	6,823
Mobile Unit	4	4	4	9	8
Barber	1,163	1,515	1,854	2,052	1,929
Barber Apprentice	263	328	376	376	495
Cosmetology	11,290	12,306	11,354	12,989	10,488
Cosmetology Apprentice	506	388	467	527	604
Electrology	19	25	33	32	35
Electrology Apprentice	0	0	0	0	0
Manicuring	4,827	4,987	5,137	5,761	6,163
Esthetician	4,360	5,012	4,723	4,957	4,555
Total	29,097	30,741	30,460	33,297	31,100

Total Reciprocity Applications Approved & State Licensed

	13/14	14/15	15/16
AK	7	21	11
AL	6	22	18
AR	7	11	10
AZ	113	183	170
CA	0	0	0
CO	67	87	112
CT	17	16	25
DC	5	5	6
DE	2	7	1
FL	184	274	174
GA	44	50	54
GU	2	2	2
HI	24	33	17
IA	9	8	16
ID	22	24	17
IL	72	137	117
IN	28	27	38
KS	14	25	19
KY	9	6	12
LA	12	23	14
MA	48	86	65
MD	26	36	46
ME	6	12	3
MI	46	76	63
MN	43	45	36
MO	29	44	36
MS	3	7	7

	13/14	14/15	15/16
MT	7	5	5
NC	26	51	70
ND	5	2	1
NE	8	14	8
NH	6	13	11
NJ	32	62	52
NM	15	26	29
NV	97	107	121
NY	97	151	159
OH	45	72	59
OK	15	26	16
OR	67	99	59
PA	54	73	54
PR	22	34	
RI	4	7	10
SC	7	25	15
SD	3	3	6
TN	20	36	35
TX	139	201	173
UT	45	66	64
VA	46	57	61
VT		4	5
WA	84	176	172
WI	16	41	33
WV	3	5	7
WY	2	8	2
Grand Total	1,721	2,633	2,318

Total Certifications Processed

Agenda Item No. 4

FY 15/16

State	B	KK	L	Z	M	Total
AK	1	15		7	8	31
AL	1	34		10	100	145
AR	2	24		6	23	55
AZ	2	213		221	535	971
CA	17	112		52	119	300
CO	8	116		53	51	228
CT	1	11				12
DC	1	9		2	6	18
DE		3		2	7	12
FL	8	66	1	68	89	232
GA	7	90		32	38	167
GU				1		1
HI		5		2	3	10
IA		14		6	20	40
ID	4	48		25	39	116
IL	2	62		11	11	86
IN	3	30		33	84	150
KS		40		4	20	64
KY	3	10			12	25
LA		166		19	205	390
MA		8		9	14	31
MD	2	32	1	13	72	120
ME		6		5	7	18
MI		10		4	44	58
MN	1	31		10	56	98
MO	1	81		17	99	198
MP					1	1
MS		14		2	20	36
MT	5	45		20	59	129
NC	4	14	1	7	42	68
ND	1	15		6	95	117
NE	1	12		6	9	28
NH		9		7	19	35
NJ	3	22		7	29	61
NM	2	40		16	84	142
NV	4	222	1	118	168	513
NY	1	61	1	18	21	102
OH	2	23		5	48	78
OK	5	33		13	82	133
OR	3	97	1	31	16	148
PA	5	64		12	41	122
RI		6		3	2	11
SC	2	77		21	69	169
SD		5		4	38	47
TN	3	113		19	61	196
TX	24	364		151	359	898
UT	4	69	1	51	79	204
VA	3	66		30	57	156
VI		1				1
VT				2		2
WA	19	223		81	81	404
WI	2	14		10	50	76
WV		21		18	51	90
WY		10		4	30	44
Total	157	2,876	7	1,274	3,273	7,587

Examination Results

(July1, 2016-September 30, 2016)

Practical Examinations

Administered	Passed	Failed	Total	Pass Rate
Barber	573	89	662	87%
Cosmetologist	2,425	521	2,946	82%
Esthetician	1,285	53	1,338	96%
Electrologist	9	1	10	90%
Manicurist	1,480	384	1,864	79%
TOTAL	5,772	1,048	6,820	85%

Written Examinations

Barber	Passed	Failed	Total	Pass Rate
English	517	339	856	60%
Spanish	44	55	99	44%
Vietnamese	16	11	27	59%
Korean	0	1	1	0%
TOTAL	577	406	983	59%

Cosmetologist	Passed	Failed	Total	Pass Rate
English	1,841	482	2,323	79%
Spanish	148	316	464	32%
Vietnamese	227	55	282	80%
Korean	29	7	36	81%
TOTAL	2,245	860	3,105	72%

Manicurist	Passed	Failed	Total	Pass Rate
English	365	186	551	66%
Spanish	11	11	22	50%
Vietnamese	1,322	396	1,718	77%
Korean	9	4	13	69%
TOTAL	1,707	597	2,304	74%

Esthetician	Passed	Failed	Total	Pass Rate
English	931	249	1,180	79%
Spanish	8	2	10	80%
Vietnamese	307	91	398	77%
Korean	28	1	29	97%
TOTAL	1,274	343	1,617	79%

Electrologist	Passed	Failed	Total	Pass Rate
English	8	2	10	80%
Spanish	0	0	0	0%
Vietnamese	0	0	0	0%
Korean	0	0	0	0%
TOTAL	8	2	10	80%



Business, Consumer Services, and Housing Agency – Governor Edmund G. Brown Jr.
 BOARD OF BARBERING AND COSMETOLOGY
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QUARTERLY BARBERING AND COSMETOLOGY DISCIPLINARY REVIEW COMMITTEE STATISTICS

Fiscal Year 16-17

Report Date: September 30, 2016

	July - September	YTD
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NORTHERN

Heard	165	165
Received	155	155
Pending ¹	79	79 ²

SOUTHERN

Heard	330	330
Received	464	464
Pending ¹	602	602 ²

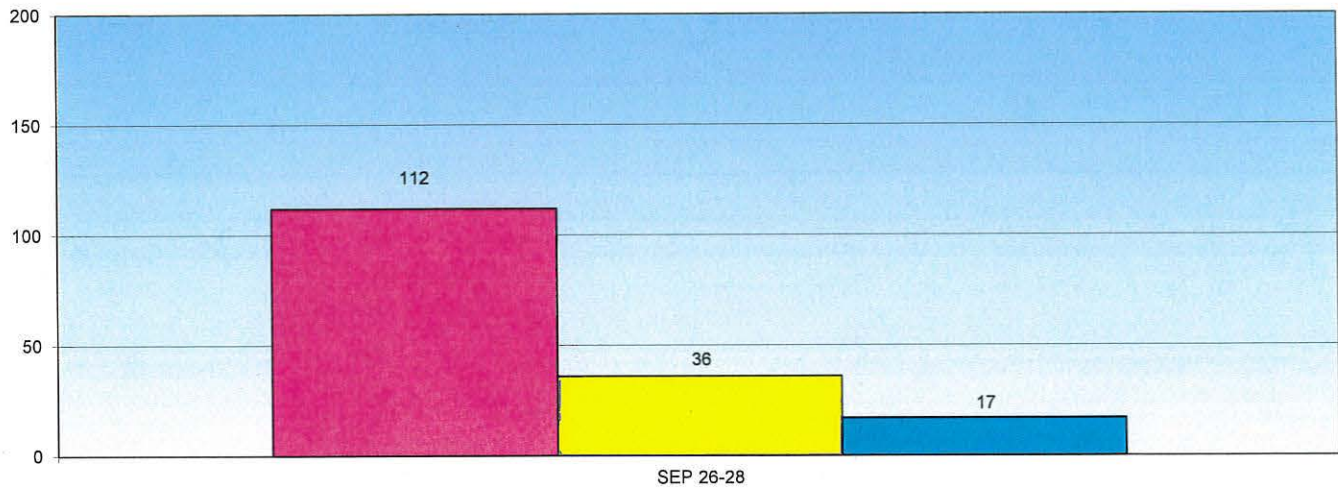
¹ Pending refers to the number of appeals received but not yet heard by DRC.

² Figure represents number of pending requests as of report date.

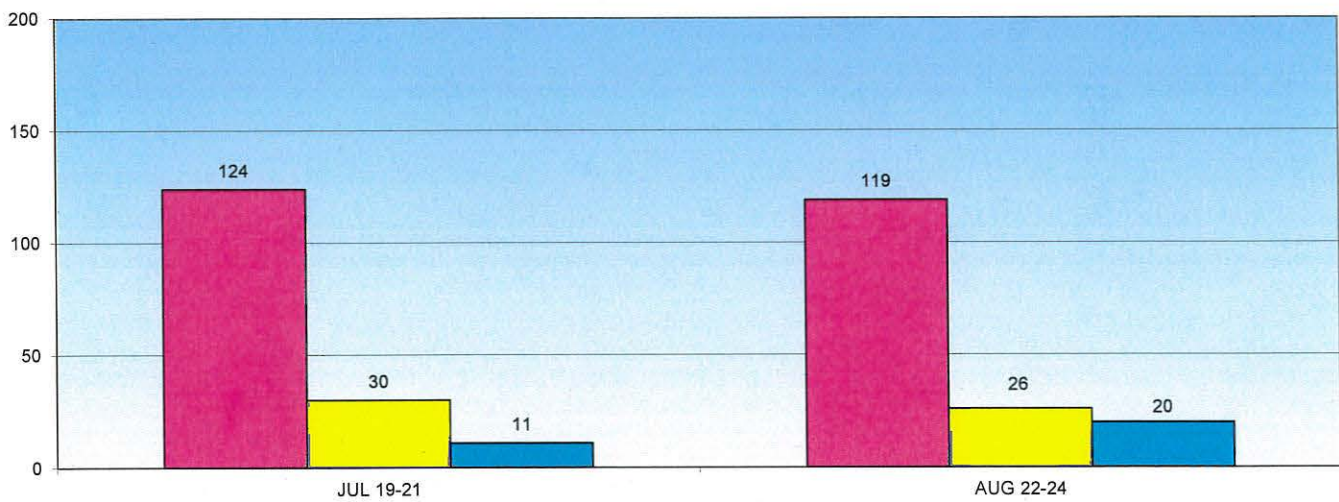
2016 / 2017 SCHEDULED HEARINGS

Area	Location	Date
Northern	Sacramento	November 15 & 16, 2016
Southern	Los Angeles	December 19-21, 2016
Southern	OC	January 24-26, 2017
Southern	San Diego	February 27, 28, March 01

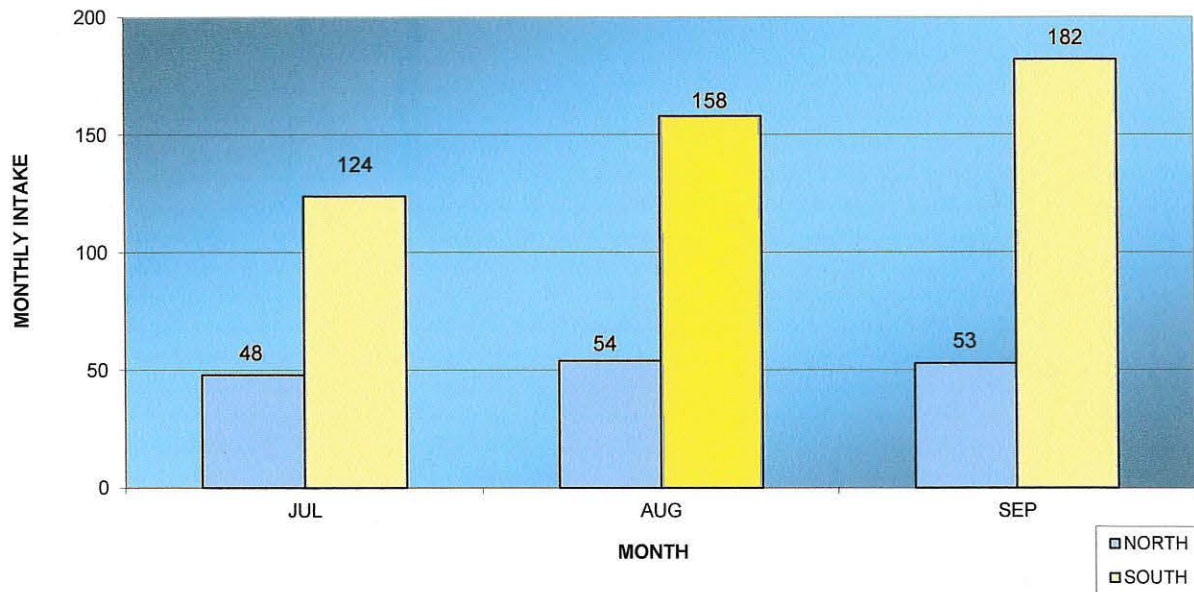
NORTHERN APPEALS HEARD (Fiscal Year 16-17)



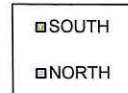
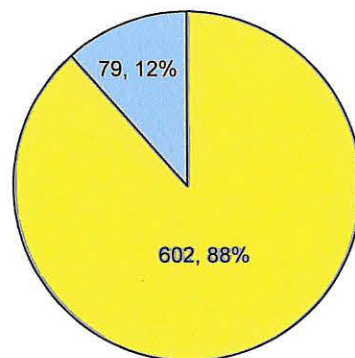
SOUTHERN APPEALS HEARD (Fiscal Year 16-17)



DRC MONTHLY INCOMING APPEALS (Fiscal Year 16-17)



**DRC APPEALS WAITING TO BE HEARD/SCHEDULED
(As of September 30, 2016)**



**QUARTERLY BARBERING AND COSMETOLOGY
ENFORCEMENT STATISTICS Fiscal Year 16-17**

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
COMPLAINTS					
Complaints Received	825				825
Referred to DOI	7				7
Complaints Closed	1116				1116
Total Complaints Pending	712				
APPLICATION INVESTIGATIONS*					
Received	1				1
Pending	1				0
Closed	0				0
ATTORNEY GENERAL					
Referred	23				23
Accusations Filed	30				30
Statement of Issues Filed	0				0
Total Pending	112				
DISCIPLINARY PROCESS					
Proposed Decisions	7				7
Default Decision	0				0
Stipulation	5				5
DISCIPLINARY OUTCOMES					
Revocation	6				6
Revoke, Stay, Probation	1				1
Revoke, Stay, Suspend/Prob	7				7
Revocation, Stay w/ Suspend	0				0
Probation Only	0				0
Suspension Only	0				0
Suspension & Probation	0				0
Suspension, Stay, Probation	7				7
Surrender of License	3				3
Public Reprimands	0				0
License Denied	0				0
Other	0				0
Total	24				24
PROBATION					
Active	145				131
	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
CITATIONS					
Establishments	2857				2857
Barber	218				218
Barber Apprentice	10				10
Cosmetologist	1157				1157
Cosmetologist Apprentice	13				13
Electrologist	1				1
Electrologist Apprentice	0				0
Manicurist	778				778
Esthetician	116				116
Unlicensed Est.	121				121
Unlicensed Individual	97				97
Total	5368				5368
INSPECTIONS					
Establishments w/ violations	2633				2633
Establishments w/o violations	911				911
Total	3544				3544



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR

BOARD OF BARBERING AND COSMETOLOGY

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Budget Updates

Constraints:

On April 26, 2011, the Governor issued Executive Order B-06-11 prohibiting in state or out-of-state travel unless it is mission critical or there is no cost to the state. The Board prepared a reduction plan for FY 2016-17. The plan included reducing the amount of staff who travel to Southern California to conduct disciplinary review hearings from three (3) staff to two (2) staff. All travel must be mission critical and pre-approved by the Boards' Executive Officer.

1. Budget 2016/17 Fiscal Year (July 2016 - June 2017):

Attachment 1 displays projected expenditures for end of the year.

Board of Barbering and Cosmetology
Fiscal Year 2016/2017
Projected Expenditures 09/30/16

Personnel Services	ALLOTMENT	BBC Projected Expenditures	Projected Year
Permanent	3,951,000	3,915,000	36,000
Expert Examiners	452,777	432,500	20,277
Temporary	134,223	109,000	25,223
BL 12-03 Blanket	0	154,000	(154,000)
Statutory-Exempt	104,000	111,576	(7,576)
Board Member Commission	0	19,000	(19,000)
Overtime	0	0	0
Total Salary & Wages	4,642,000	4,741,076	(99,076)
Net Salary & Wages	4,642,000	4,741,076	(99,076)
Staff Benefits	2,374,000	2,434,038	(60,038)
Total of Personnel Services	7,016,000	7,175,114	(159,114)
Operating Expenses & Equipment (OE&E)	Allotment	BBC Projected Expenditures	Projected Year End Balance
General Expense	418,800	200,000	218,800
Printing	168,000	344,800	(176,800)
Communication	41,000	58,000	(17,000)
Postage	283,000	100,300	182,700
Insurance	4,000	11,500	(7,500)
Travel In State	83,000	138,250	(55,250)
Travel, Out-of-State	0	0	0
Training	11,000	0	11,000
Facilities Operations	1,289,000	900,000	389,000
Utilities	0	0	0
Consultant & Professional Svs. - Interdept.	126,000	0	126,000
Consultant & Professional Svs. - External	474,000	172,000	302,000
Depart. and Central Admin. Services	8,733,000	8,733,000	0
Consolidated Data Center	68,000	15	67,985
DP Maintenance	38,000	85,500	(47,500)
Central Admin Pro Rata	1,052,000	1,052,000	0
Examinations	1,394,000	2,460,272	(1,066,272)
Major Equipment	38,500	108,234	(69,734)
Minor Equipment	17,700	37,100	(19,400)
Other Items of Expense	7,000	800	6,200
Vehicle Operations	38,000	49,586	(11,586)
Enforcement	1,613,000	739,700	873,300
Special Items of Expenses	0	0	0
Total Operating Expenses & Equipment	15,897,000	15,191,057	705,943
Total Personal Services Expenses	7,016,000	24,608,190	(159,114)
Total reimbursements	(57,000)		
Total	22,856,000	23,748,996	546,829

0069 - Barbering and Cosmetology Analysis of Fund Condition

9/29/2016

(Dollars in Thousands)

NOTE: \$10 Million General Fund Repayment Outstanding

2016 Budget Act

	Actual 2015-16	Budget Act CY 2016-17	BY 2017-18
BEGINNING BALANCE	\$ 19,123	\$ 18,719	\$ 31,772
Prior Year Adjustment	\$ 592	\$ -	\$ -
Adjusted Beginning Balance	\$ 19,715	\$ 18,719	\$ 31,772
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 6,355	\$ 6,696	\$ 6,696
125700 Other regulatory licenses and permits	\$ 4,473	\$ 4,944	\$ 4,944
125800 Renewal fees	\$ 11,018	\$ 12,155	\$ 12,155
125900 Delinquent fees	\$ 1,168	\$ 1,120	\$ 1,120
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 83	\$ 57	\$ 100
150500 Interest Income from Interfund Loans	\$ -	\$ -	\$ -
160100 Settlements and Judgements	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 17	\$ 17	\$ 17
161400 Miscellaneous revenues	\$ 15	\$ 15	\$ 15
Totals, Revenues	\$ 23,129	\$ 25,004	\$ 25,047
Transfers from Other Funds			
Proposed GF Loan Repayment		\$ 11,000	
Transfers to Other Funds			
GF Loan per item 1110-011-0069, Budget Act of 2011			
Totals, Revenues and Transfers	\$ 23,129	\$ 36,004	\$ 25,047
Totals, Resources	\$ 42,844	\$ 54,723	\$ 56,819
EXPENDITURES			
Disbursements:			
0840 State Controller (State Operations)	\$ -	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 24,087	\$ -	\$ -
1111 Program Expenditures (State Operations)	\$ -	\$ 22,920	\$ 23,378
8880 Financial Information System for California (State Ops)	\$ 38	\$ 31	\$ -
9670 Equity Claims / Board of Control (State Operations)	\$ -	\$ -	\$ -
Total Disbursements	\$ 24,125	\$ 22,951	\$ 23,378
FUND BALANCE			
Reserve for economic uncertainties	\$ 18,719	\$ 31,772	\$ 33,441
Months in Reserve	9.8	16.3	16.8

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.



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FY 16-17 Outreach/Industry Events

Participated:

- August 20 - 22, 2016 Face and Body Show (San Jose Convention Center)
Attendees: Marcene Melliza, Patricia Garcia and Tami Guess
- September 11, 2016 Nail Pro Show (Sacramento Convention Center)
Attendees: Marcene Melliza and Patricia Garcia
Speakers: Kristy Underwood and Tami Guess
- September 19-20, 2016 American Med Spa Association (AmSpa) (San Jose)
Attendees: Kristy Underwood and Tami Guess

Tentavily Scheduled:

- January 28 - 30, 2017 Internatiional Salon and Spa Expo (ISSE)
(Long Beach)
Attendees: TBA



DRAFT
CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY

MINUTES OF APRIL 11, 2016
Board of Barbering and Cosmetology
2420 Del Paso Road
Sequoia Room, 1st Floor
Sacramento, CA 95834

Additional Meeting locations Established via teleconference:

5450 W. Pico Blvd., #203
Los Angeles, CA 90019

1038 West 80th Street
Los Angeles, CA 90044

2112 Ashian Avenue
Clovis, CA 93611

BOARD MEMBERS PRESENT

Joseph Federico, President
Dr. Kari Williams, Vice President
(via teleconference)
Mary Lou Amaro (via teleconference)
Bobbie Jean Anderson (via teleconference)
Polly Codorniz
Andrew Drabkin
Richard Hedges
Lisa Thong (via teleconference)

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Rebecca Bon, Legal Counsel
Tami Guess, Board Analyst
Carrie Harris, Enforcement Manager
Marcene Melliza, Board Analyst

BOARD MEMBERS ABSENT

Coco LaChine

1. CALL TO ORDER/ROLL CALL/ESTABLISHMENT OF A QUORUM

Joseph Federico, the Board President, called the meeting to order at 10:00 a.m. and confirmed the presence of a quorum.

2. PROPOSED LEGISLATION – DISCUSSION AND POSSIBLE VOTE ON BOARD POSITION

Kristy Underwood, the Executive Officer, summarized the existing law, fiscal impact, and analysis of each bill as provided in the meeting packet.

- **AB 2025 (Gonzalez) – Labor Law Education Requirements**

Ms. Underwood stated much of the Board's information has been translated into multiple languages and staff is collecting demographic information for cost efficiency in disseminating these materials.

Mr. Hedges referenced Section 7396.1(c) (1) and stated adding labor law questions to the application might make the process more difficult for owners and for the Board. He stated the concern that incomplete application submittals may increase with additional questions, which will delay the licensing process.

Mr. Hedges made a motion to support this bill if amended to exclude Section 7396.1(c) (1), where the bill only requires a question on the application that is limited to the awareness of basic labor law requirements that pertain to their establishments.

It was suggested that the application include a box to check rather than a question.

Ms. Underwood stated the bill requires a signed acknowledgement of understanding.

Public Comment

Fred Jones, Legal Counsel for the Professional Beauty Federation of California (PBFC), spoke in support of the motion to strike Section 7396.1(c) (1) of the Business and Professions Code.

Catherine Porter, the Policy Director for the California Healthy Nail Salon Collaborative (CHNSC) the organizational sponsor of Assembly Bill (AB) 2025, spoke in opposition to the proposed motion. She stated a simple acknowledgment of labor laws is not effective in driving the point that complying with, understanding, and learning about labor laws is essential for small business owners. She noted that the five basic questions are on the renewal application but not on the initial application. She stated many labor law violations are not obvious during drive-by inspections, such as employee wages, breaks, and hours worked. She encouraged the Board to support the bill as written.

Mr. Hedges asked about the reference to five specific questions. Ms. Porter stated it is the author's intent to include five questions.

Ms. Underwood stated staff has not been informed about the five questions. It was suggested that the five questions should be included in the bill.

Mr. Drabkin asked how the author envisions handling partial answers. Ms. Porter agreed that more detail should be included but stated it could be rectified through the regulatory process. Legislators make laws with leeway to the implementing agency to use their own judgements.

MOTION: A motion was made by Mr. Hedges, seconded by Mr. Federico, to support the bill if amended by striking Business and Professions Code Section 7396.1(c) (1). Motion carried 7 yes and 0 no per roll call vote.

- **AB 2125 (Chiu) – Healthy Nail Salon Recognition Program**

Ms. Underwood stated it is interesting that the Department of Public Health is involved with this bill but was not sure how it would be enforced.

Mr. Hedges asked if establishments in counties that already have this recognition program have been inspected, if they are unlicensed, and if there have been violations. Ms. Underwood stated unlicensed activity and violations have been found in the past. She agreed that is a concern.

It was recommended that the salons recognized would also be in compliance with the Board's rules and regulations for health and safety.

Mr. Hedges asked for staff's recommendation on this bill. Ms. Underwood stated this bill currently does not impact the Board.

Mr. Drabkin disagreed. If another department's website recommends a salon as a healthy establishment with clean air but that establishment is out of compliance with the Board, customers will turn to the Board to file complaints. In that respect it does impact the Board. He moved to oppose AB 2125.

Public Comment

Catherine Porter stated the CHNSC is also the sponsor of AB 2125. She provided an overview of the background, demographics, process, and benefits of the program. She stated a critical component of the bill is consumers' lack of awareness of product ingredients and the importance of asking what chemicals are in the products and what is known about those chemicals. Consumers should be given an option to use products with fewer chemicals. She encouraged the Board to support AB 2125 as written.

Mr. Drabkin stated the Board cannot support a bill that allows another department to say this is a better salon than what the Board is offering.

Ms. Porter stated that already exists. Counties have programs that reward salons that do the right thing. This bill does not contain standards; instead, it contains voluntary practices for salons to take on. She offered a packet of information to Board Members.

Fred Jones stated the intent behind this effort is laudable but he was concerned about inviting another agency into the Board's licensed salons. This bill sets statewide standards in statute. He stated the concern about the lack of communication – as of last week, the author had not spoken to the Department of Public Health about their participation in this bill. The bill contains sweeping generalizations about scientific findings without any scientific background. He suggested that, before implementing a statewide program, the industry should be brought into this. Another concern is these bills presume to apply only to nail salons, but the Board only has one license – an establishment license.

Mr. Drabkin stated he is not opposed to the idea but is opposed to the bill as it stands and would like further discussion and evaluation.

Mr. Hedges stated the goal of the bill is good but can confuse consumers. He suggested watching the bill.

MOTION: A motion was made by Mr. Drabkin, seconded by Ms. Codorniz to oppose Assembly Bill 2125 as it is written. Motion carried 5 yes, 2 no, and 1 abstain per roll call vote as follows:

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Williams

The following Board Members voted "No": Federico and Hedges

The following Board Members abstained: Thong

- **SB 896 (Nguyen) – Credit / Debit Cards for Tips**

Mr. Hedges asked for staff's opinion. Ms. Underwood stated she questioned how the bill will be enforced.

Mr. Federico agreed that the enforcement of this bill is a concern. Inspectors will be required to look at financial records to ensure compliance, which is something the Board has not done before. Also, credit cards charge 3 percent, so business owners will now be required to pay their employees that additional 3 percent when tips are given via credit card.

Mr. Hedges agreed that looking at financial records steps over a line. The Board does not have police powers. He stated he was torn on this issue because tips put on credit cards are not always given to the employees. He suggested the Franchise Tax Board should be the enforcing arm on this bill, not the Board.

Ms. Underwood stated she had a conversation with the author and brought up the enforcement issue.

Mr. Hedges moved to oppose Senate Bill (SB) 896.

Public Comment

Fred Jones spoke in support of the motion to oppose. He stated California law is clear that tips do not belong to the salon, cannot count against the wage, and are 100 percent the employees' money. The PBFC encourages tips; however, many salons do not want the added paperwork or the extra fees of potentially several hundred dollars annually due to the 3 percent charged by credit cards. He spoke in support of the intent behind the bill, but opposed the level of micromanagement that could set a precedent for other things.

MOTION: Mr. Hedges made a motion, seconded by Ms. Codorniz to oppose Senate Bill 896 as it is written. Motion carried 7 yes and 1 no per roll call vote as follows:

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Federico, Hedges, Thong, and Williams

The following Board Members voted "No": Drabkin

- **SB 1044 (Nguyen) – Assessment of Fines to Individuals and Establishment Owners and Citation Fine Payment Plans**

Mr. Hedges made a motion to support and sponsor SB 1044 if amended as follows: change “an individual licensee” in the last line of Section 7407.1 to “licensees.”

Mr. Federico seconded.

Ms. Underwood stated the Board offers payment plans on an informal basis but has been unsuccessful in collecting fines even with the offered payment plan. This bill puts into statute something the Board does already.

A point was made that requiring fines to be paid by the renewal date is a built-in, informal payment plan. Setting up a formal system will require sending out bills and monitoring it.

Ms. Underwood stated she spoke with the author and suggested changing the “shall” to “may” do payment plans. Rebecca Bon, Legal Counsel, stated the bill also states that regulations will be put into place on how to implement it.

Public Comment

Fred Jones stated the first part of the bill is meant solely for booth renters operating within a separate establishment. The issue is that many establishment owners have indemnification clauses in their contracts with booth owners, which causes the booth owners to be double-fined. The intent of this bill is to encourage booth renters to identify themselves in an effort to raise the professionalism of this large sector of the industry. He encouraged the Board to encourage booth renters to acknowledge their independent relationship.

Mr. Jones agreed with offering a payment plan since salon owners are the last to get paid.

MOTION: Mr. Hedges made a motion to support and sponsor Senate Bill 1044 if amended as follows: change “an individual licensee” in the last line of Business and Professions Code Section 7407.1 to “licensees.”
Seconded by Mr. Federico. Motion carried 7 yes and 0 no per roll call vote

3. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Fred Jones stated there were other bills amended subsequent to this agenda being posted. There was a bill that was up this afternoon dealing with the extending of the Bureau of Private Post Secondary’s (BPPE) Sunset and establishing two new government bodies within the Department of Consumer Affairs: a monitor and an agency that will assist BPPE with the Student Tuition Recovery Fund and student relations. He stated the concern that the author did not include beauty schools in this bill.

Mr. Jones stated AB 2437 has extensive new issues dealing with labor laws and nail salons with more responsibilities for the Board.

4. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:53 a.m.



DRAFT
CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY

MINUTES OF JULY 17, 2016

Handlery Hotel
950 Hotel Circle North
San Diego, CA 92108

BOARD MEMBERS PRESENT

Joseph Federico, President
Dr. Kari Williams, Vice President
Mary Lou Amaro
Polly Codorniz
Andrew Drabkin
Richard Hedges
Coco LaChine
Lisa Thong

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Rebecca Bon, Legal Counsel, represented by
Laura Freedman
Tami Guess, Board Project Manager
Marcene Melliza, Board Analyst

BOARD MEMBERS ABSENT

Bobbie Jean Anderson

1. CALL TO ORDER / ROLL CALL / ESTABLISHMENT OF A QUORUM

Joseph Federico, the Board President, called the meeting to order at approximately 10:00 a.m. and confirmed the presence of a quorum. He noted that Laura Freedman is representing Rebecca Bon, the Board's legal counsel, who was unable to be in attendance. He reviewed the meeting protocols.

2. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Rochelle Freeman, from the American Electrology Association (AEA) and the Electrologists' Association of California (EAC), requested increased clarification on Business and Professions Code (BPC) sections such as section 7351, which mandates that restrooms not be used for storage. She stated concern that several electrologists have been cited for keeping toilet tissue or paper towels in their restrooms.

Joyce Maxwell, from the AEA and the EAC, brought a question from Yvette Becerra, the president of the EAC, about the new tweezer sterilization rules. Ms. Becerra asked if each bag or heat-sensitive label that changes color when it reaches the proper temperature must have "sterilized" written on it, or if all sterilized tweezers can be in a box that is labeled "sterilized tweezers." Richard Hedges, a Board Member, stated staff will speak with Ms. Maxwell offline.

3. BOARD PRESIDENT'S OPENING REMARKS

Mr. Federico stated his excitement for having a full Board again. He asked Board Members to consider which Committees they would like to be assigned to later today.

4. EXECUTIVE OFFICER REPORT

- **Licensing Statistics**
- **Disciplinary Review Committee Statistics**
- **Enforcement Statistics**
- **Budget Updates**
- **Outreach Updates**

Kristy Underwood, the Executive Officer, presented her report. She asked Board Members to review the statistics provided in the meeting packet and asked if there were any questions.

Mr. Hedges referred to the high number of pre-apps and stated he was pleased to see the process is moving quickly. Ms. Underwood stated it takes four to six weeks to receive a license.

Mr. Hedges stated the statistics show the number of applicants coming into the state. He asked how many California stylists are leaving the state and getting licenses in other states. Ms. Underwood stated stylists leaving the state ask the Board for a certification letter so they can be tracked by the state, but the Board will not know how many stylists were actually licensed in other states.

Mr. Federico asked about year-to-year trends on initial applications and if more or fewer individuals are currently applying. Ms. Underwood stated the Marinello closures have impacted numbers. Staff will send the trends for the past five years to the Board.

Coco LaChine, a Board Member, asked if other schools have picked up the Marinello students. Ms. Underwood stated staff would only see those students as they apply for exams. There has been a decline in individuals taking the exam due to the large number of Marinello schools, but the number is expected to increase as those students apply to other schools to continue their education.

Mr. Federico stated his college welcomed Marinello transfer students by accepting all their hours, but it was only just this week that the first student transferred. He stated Marinello students were given the option to transfer to another school and keep their student loan debt or to drop out and have their debt forgiven.

5. APPROVAL OF BOARD MEETING MINUTES

- **April 11, 2016**
- **April 26, 2016**

Ms. Underwood asked for the April 11th meeting minutes to be tabled to the next meeting.

MOTION: Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board approves the April 26, 2016, Meeting Minutes as presented. Motion carried 8 yes and 0 no per roll call vote.

6. APPOINTMENT OF COMMITTEE MEMBERS TO STANDING COMMITTEES FOR 2016-2017

Mr. Federico stated a description of the Committees is in the meeting packet. He asked that all Board Members participate in the Disciplinary Review Committee (DRC) as a Committee Member or an alternate.

Mr. Hedges stated Board Members are welcome to attend the DRC as a member of the audience to gain experience by listening to cases and watching the Board rule on them. Ms. Freedman agreed but cautioned against Board Members participating when they are not representing the Board.

Ms. Freedman stated Board Member policy mandates that one person cannot chair more than one Committee. She requested that that adjustment be made when the Committees reform.

The 2016-2017 Committees as are follows:

Licensing and Examination Committee

- Joseph Federico (Chairperson)
- Mary Lou Amaro
- Richard Hedges
- Dr. Kari Williams

Enforcement and Inspections Committee

- Richard Hedges (Chairperson)
- Joseph Federico
- Coco LaChine
- Lisa Thong

Legislative and Budget Committee

- Richard Hedges (Chairperson)
- Mary Lou Amaro
- Bobbie Anderson
- Andrew Drabkin

Education and Outreach Committee

- Mary Lou Amaro (Chairperson)
- Coco LaChine
- Dr. Kari Williams
- Polly Codorniz

MOTION: Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board approves the Standing Committee makeup for 2016-2017 as assigned. Motion carried 8 yes and 0 no per roll call vote.

7. PROPOSED BOARD MEETING DATES/LOCATIONS FOR 2017

Mr. LaChine asked how the locations for the Board meetings are selected.

Ms. Underwood said it is random and open for suggestions.

Ms. Freedman added there are general provisions in the BPC that mandate that Boards meet in all areas of California for increased opportunity for diverse public participation.

MOTION: Mr. Hedges made a motion, seconded by Dr. Williams, that the Board approves the proposed Board Meeting dates for 2017 as listed in the meeting packet. Motion carried 8 yes and 0 no per roll call vote.

8. STATUS UPDATE ON THE HEALTH AND SAFETY ADVISORY COMMITTEE (BPC SECTION 7314.3)

Ms. Underwood stated legislation that came out of the Sunset Review Hearing required the establishment of a Health and Safety Advisory Committee. The Advisory Committee held their first meeting in June. The topics that came out of the meeting are listed in the meeting packet. The next Advisory Committee meeting will be August 8th and will be publicly noticed.

9. REPORT ON THE PERSONAL SERVICE PERMIT (PSP) STAKEHOLDERS' MEETINGS AND POSSIBLE ACTIONS ON THE IMPLEMENTATION OF THE PSP (BPC SECTION 7402.5)

Ms. Underwood stated the Legislature mandated that the Board research the implementation of a PSP, where an individual can perform services outside of a licensed establishment. The Board held four stakeholder meetings, as required, and did an online survey. There was not a general consensus among stakeholders. She directed Board Members to the report in the meeting packet summarizing the information gathered.

Ms. Underwood stated legislative staff asked the Board to decide if and how the Board would implement a PSP based on stakeholder input. Staff has conferred with legal counsel about how the statute was written. Ms. Freedman stated BPC Section 7402.5(c) mandates the Board to issue regulations regarding a PSP.

Mr. Hedges stated the PSP must be tied to a brick-and-mortar establishment license because the Board cannot control it any other way. He encouraged the Board to do all it can to preserve brick-and-mortar establishments for public health and safety and for the community in general.

Mr. Federico stated there are benefits to the PSP - innovation should not be stifled. And yet, this Board's mission is client safety and protection, and that must be paramount. The question is how to reconcile the innovation with client safety and protection in locations that cannot be inspected and with licenses that cannot be ensured. He agreed with Mr. Hedges that tying the PSP to a brick-and-mortar establishment license is one of the few ways where there can be some modicum of control going by faith that, if an establishment follows the rules, then, by extension, the PSP holders tied to that establishment will continue to follow the rules and regulations while out in the field.

Dr. Kari Williams, the Board Vice President, stated the need to be diligent in how the PSP is regulated. She stated the importance of educating consumers to ask individuals providing service for their license and to be aware that there is recourse if they are injured. Independent contractors for establishments are not employees and are difficult to regulate once they leave the establishment. She stated the need to flesh out the

detail between establishments with employees where appointments are booked through the establishment, and independent contractors whose clients often contact them directly while the establishment owner is unaware unless a complaint is filed against the establishment.

Mr. LaChine agreed with Mr. Hedges that the survey results may not be an accurate reflection of the industry because they are not large enough for a scientific random sampling. He also agreed with Mr. Federico about not wanting to stifle individual entrepreneurship. He suggested making the membership in a professional industry organization a qualification of issuing the PSP rather than tying the PSP to an establishment.

Mr. Hedges stated many individuals in the industry are very astute. More progressive salons will have their own website and application program (app) for this, so a lot of it will be done through brick-and-mortar establishments anyway. The Board needs to look in that direction in order to have some control.

Ms. Underwood listed some suggestions given in the stakeholder meetings:

- A fingerprinting requirement because the PSP holder will be providing services in homes
- Limited services
- Length of experience to preclude new licensees from providing services in homes

Mr. Hedges suggested that the draft PSP licensing regulations be done through the Committee process.

Mr. Federico reiterated his position that the PSP should be issued through brick-and-mortar establishments, but, if the consensus of the Board is to issue PSPs to individuals, he suggested the following requirements:

- Furnish proof of liability insurance
- Complete an additional course, as suggested by a stakeholder
- An annual renewal of the PSP
- A charge for the PSP in addition to the baseline license

Lisa Thong, a Board Member, suggested including a citation history requirement. An individual with a history of health and safety violations should not be allowed a PSP. She agreed that there should be some type of limitation of services that can be provided in a home. She suggested a collection of data from consumers and PSP holders as a check to see how it is going and whether changes need to be made.

Dr. Williams agreed and suggested that the PSP holder keep a log to document where the service was performed and the client's name, address, and email address. She suggested being proactive, sending quarterly or annual surveys to clients who have received services outside of a traditional brick-and-mortar establishment to get feedback of their experience. She suggested requiring PSP holders to have business cards that

include their license number, similar to building contractors, so that the consumer can report the license number if they were unhappy with the service.

Mr. LaChine stated the concern about fingerprinting because, unlike a brick-and-mortar establishment where liabilities are the responsibility of the establishment, if the Board checks a PSP holder's background and then the PSP holder commits a crime, the liability may fall to the Board.

Ms. Freedman stated the Department has other agencies that regulate individuals who go into the home, such as electronic and appliance repair dealers. The Board's liability is to review the information and make a determination whether any criminal history is related. Criminal history does not necessarily disqualify an individual from being a PSP holder; the Board will evaluate to determine whether criminal history should prohibit the PSP applicant from having that license. There is no liability. It does not prevent someone from filing a lawsuit, but there is no reason that the Board should carry any liability for that.

Ms. Freedman stated there is nothing to prohibit the Board from requiring a similar Notice to Consumers for PSP holders who go into the home. She suggested that the Board determine what the contents of the notice would be.

Ms. Freedman stated the statute mandates that the PSP shall be valid for two years and renewed prior to expiration with an additional fee of no greater than \$50.00.

Mr. Hedges agreed with connecting the PSP to professional organizations because they can help the Board with education to ensure this is done properly. He stated Board Members should be aware of the opportunity for class action lawsuits that may come as a result of the PSP. He stated the Board may be doing PSP holders a favor by requiring liability insurance.

Ms. Thong suggested partnering with app creators to include Board regulations so, when clients sign up to use the app, they receive information about consumer protection. She also suggested asking the app creators to post the information required to be posted in establishments on their websites prior to consumers signing up for services.

Ms. Freedman stated the Board does not have jurisdiction over the app creators but does have control over the licensees. She suggested possibly requiring, as part of the regulations controlling the licensee, that if a licensee uses an app, it shall be an app that contains certain provisions.

Mr. Hedges asked, if the app creators are sending individuals out to do cosmetology services, why the Board could not require them to have an establishment license.

Andrew Drabkin, a Board Member, stated he understood the desire to tie it to brick-and-mortar establishments for public safety, but there are always entities that will look for ways to exploit the rules to gain an advantage over others.

Mr. Hedges stated, if the Board requires a license of apps, not just brick-and-mortar establishments, and it gets reports of a lot of consumer harm, the Board can shut the license down. Ms. Freedman stated the uncertainty that this Board has that authority.

Ms. Thong asked about how data is collected and how licenses can be made searchable. Mr. Federico stated consumers can check if the license is in good standing, but not citation history.

Mr. Federico called for a motion to move this agenda item to the Licensing and Examination Committee for further discussion.

Mr. Drabkin asked how long it will be before the PSPs are made available.
Ms. Underwood stated it will be two years.

Mr. Drabkin asked if the statute will allow limiting the PSP to a single service for a trial period of time so the Board can monitor its developments and make necessary corrections before broadening the scope. Several Board Members vocalized their agreement with Mr. Drabkin.

Ms. Freedman stated the Legislature granted the Board the authority to determine which licensing categories could apply for this permit.

Public Comment

Fred Jones, Legal Counsel for the Professional Beauty Federation of California (PBFC), spoke against the PSP. He stated he attended the two Northern California stakeholder meetings; summaries of his comments are in the meeting packet. He personally witnessed two salon owners who were in support of a PSP change their opinion after listening to the dialogue. Individuals who take a survey that asks if they would like to do something will almost always answer yes, but when they hear the facts and concerns, then they make a more enlightened decision. He stated the belief that that will largely be the case with the PSP.

Mr. Jones reminded the Board about the pressures of owners of brick-and-mortar establishments. He compared the pressures brought to bear on establishment owners who are employer-, commission-, and booth-rental-based, such as the requirement to nearly double the minimum wage for employees in the next three years. This is a serious issue; it is wise for this Board to walk cautiously in allowing individuals to perform beauty services on consumers for monetary amounts in places that cannot ever be inspected by Board inspectors.

Mr. Jones suggested taking an "all the above" approach, to look at the other states' requirements and include them, such as liability insurance being specific as to what the minimum should be, background checks, the services to be permitted, and tying it to a brick-and-mortar location with a limit on the number of PSP holders tied to each establishment.

Mr. Jones stated the business model that promoted all-disposable tools and equipment that came to the Legislature and got AB 181 amended to include the PSP is no longer in this state. He suggested looking at the darker impulses of human nature and planning for the worst when writing regulations.

Mr. Jones stated the statute is strange in that it begins with "may" and ends with "shall." His interpretation is that the "may" gives the Board the flexibility to determine if it is in the best interests of consumers to move forward with a PSP; the "shall" means, if the Board decides to move forward with a PSP, then this is

what is required to be included in the regulations. He maintained the position that, after the Board considers all stakeholder input and considers its primary mission of consumer protection, the Board has the authority to say it will not have the capability of protecting consumers if the PSP is authorized.

Ms. Maxwell stated some electrologists think it is legal to provide home services if there is a medical need and charge a high rate. She asked if that is legal. She also stated there are electrologists who rent a room in a doctor's office not associated with dermatology and believe they do not need an establishment or business license, or rent a room from an office suite by the day, week, or month.

Ms. Underwood stated they are required to have an establishment license.

Mr. Federico stated there is a carve-out for individuals who are home- or bed-bound with medical issues to get services.

Ms. Freedman suggested that Ms. Maxwell file a complaint if she is aware of a particular situation, which will go through the enforcement process.

Mr. Federico asked Ms. Maxwell if electrology services could be done with a PSP.

Ms. Maxwell stated she felt it could be part of PSP categories that could work successfully, if the tools are in properly-marked bags and products are properly labeled.

Ron Chamberlain, the owner of eleven Sport Clips establishments in the state of California, spoke against the PSP. He stated the mission the Board started out with is public health and safety; it is important to remember that. He suggested writing to the Legislature stating a PSP is impossible to regulate and inspect. He stated, if the Board chooses to move forward, the PSP holders need to have adequate insurance.

Mr. Chamberlain agreed with Mr. Drabkin about starting with a narrow scope to see any problems that need to be addressed in the future. They are mobile licenses - he suggested that PSP holders come to the Board once per year to do the inspections, which will deter many individuals from moving forward. When they do not show up for the appointment, the Board can revoke the license.

Wendy Jacobs, a licensed esthetician and makeup artist in California and founder of the Esthetician Facebook group, spoke in favor of the PSP. She suggested not tying estheticians to brick-and-mortar establishments because it is not practical. Due to AB 1513, many estheticians are being pushed out of salons because owners now must pay for sit time. She stated the PSP is an opportunity for estheticians to become an elite service member to prove that they care about consumer safety. Continuing education certifications would add to the credibility of estheticians as legitimate service providers. She offered her group's participation if the Board would like to put out a survey.

MOTION: Mr. Hedges made a motion, seconded by Mr. Federico, that this issue be sent to the Licensing and Examination Committee for vetting and establishing regulations to be brought back to the Board for discussion. Motion carried 8 yes and 0 no per roll call vote.

10. UPDATE AND DISCUSSIONS OF PROPOSED BILLS THAT COULD IMPACT BBC:

Mr. Federico stated the Board has already taken a position on many of these bills. He deferred to the Executive Officer to provide an update for Board reevaluation.

- **AB 1322 (Daly, Wilk) – Allowing Alcohol in Establishments**

Ms. Underwood stated the Board previously took a position to oppose this bill, which is in the Alcohol Beverage Control (ABC) section.

Mr. Hedges asked if the intent remains that Board inspectors will play a role in controlling this. Ms. Underwood stated they do not because the Board cannot enforce an ABC law. The bill states that the license of the establishment that provides beauty services is in good standing. She suggested asking the author to define "good standing."

Mr. Federico asked the Board if they wished to update their position on this bill.

Mr. Drabkin reiterated his position to support the bill because it already happens and the Board now has no part in the enforcement component of this bill, which was the main issue during the original discussion.

Mr. Hedges stated the enforcement change is key because he did not want Board inspectors involved in this. He no longer opposes this bill but also does not support it. He asked the Board to take a neutral position.

Public Comment

Mr. Jones stated the PBFC has taken a vigorously neutral position and continues to follow this bill closely. He stated the concern that this bill exempts the consumption of alcohol from the ABC's license requirements and therefore from the ABC's regulatory oversight, and that this Board will be left responsible to enforce this bill because the Board inspectors will be the only enforcement mechanism on-site. The conversation was clear in the Senate GO Committee last spring, where Senator Hernandez asked the author if the Board will be the only state agency in charge of monitoring alcohol in their 45,000 licensed establishments, and the answer was "yes" because the purpose of this bill is to exempt ABC oversight of alcohol consumption so long as it is complimentary as part of the beauty service in a state board licensed establishment.

Polly Codorniz, a Board Member, stated children will be present because the alcohol is allowed to be served during business hours. This bill is not good for consumer safety.

Mr. Hedges stated that is a good point that the ABC will not be there to monitor age limits.

Mr. Drabkin asked if salons can get a license from the ABC. Mr. Federico stated salons/bars get their license from the ABC.

Mr. Hedges asked Mr. Jones if the part of the industry that includes complimentary alcohol as a prominent part of their business is pushing this legislation. Mr. Jones stated Dry Bar is the official sponsor of the bill. Mr. Hedges withdrew his motion.

MOTION: Mr. Federico made a motion, seconded by Mr. LaChine, that the Board maintains its position to oppose this bill. Motion carried 7 yes and 1 no per roll call vote as follows:

The following Board Members voted "Yes": Amaro, Codorniz, Federico, Hedges, LaChine, Thong, and Williams

The following Board Members voted "No": Drabkin

- **AB 2025 (Gonzalez) – Labor Law Education Requirements**

Ms. Underwood stated the Board previously took a position to support if amended on this bill. This bill addresses labor concerns with the establishment application. The prior bill asked the Board to develop a list of questions to add to the application. The Board asked that that requirement be changed to an acknowledgement. The author made that change but included additional amendments that bring up other issues. Ms. Underwood reviewed those changes as provided in the meeting packet, such as that the applicant shall include a signed acknowledgement that they understand their rights as a licensee. She stated the Committee brought up the need to define the term "understand." She asked how to ensure that someone understands what they are reading.

Ms. Freedman stated the concern about an application that asks the applicant if they understand. She asked what would happen if they said "no." The Board would be put in the position of licensing someone who does not understand or, if the Board did not license applicants who checked the "no" box, would be forcing everyone to check the "yes" box. She suggested an acknowledgement that the applicant has received certain information. She stated the bill charges the Health and Safety Committee with creating an informational packet related to the five subsections in the bill. In order to complete the application, the applicant must state if they understand the material.

Ms. Thong asked if it is incumbent on other state agencies to provide this information and if the Health and Safety Committee is permanent. Ms. Underwood stated the Committee is permanent. Why this is happening goes back to the violations with nail salons in New York. The Legislature determined that the Board is the agency that more commonly reaches out to licensees on a daily basis.

Public Comment

Mr. Jones stated the prior version proposed giving a mini exam to applicants in consultation of the Department of Industrial Relations, which was untenable. The author would like this bill to be much stronger on the labor concerns but has compromised on this bill by complying to the Board's request to remove the exam questions and came to an acknowledgment signature only.

Mr. Hedges stated this bill will create a lot of work for the Board and, based on public comment, he suggested changing to a neutral stance. He asked if a license would be denied for someone who does not check the box. Ms. Underwood stated it would be considered an incomplete application and staff would send them a letter asking them to check the box.

Mr. Hedges stated the concern that individuals are fined because they continue to work when they mail their application, assuming they filled everything out satisfactorily, but then are fined because they forgot to check a box. This bill is one more step to find another reason to fine individuals, which is troubling.

Mr. Drabkin suggested sending additional material to individuals who check the box that they did not understand.

Dr. Williams stated to solve the issue with the term "understand," to just ask applicants to acknowledge receipt of the information.

Ms. Underwood stated she suggested to the author's office that the application be an agreement that the applicant will follow certain labor laws and those laws would be referenced but not explained.

Ms. Thong stated establishments would still be susceptible to labor commission fines or litigation. The Board needs to make it clear to applicants that they need to understand what they should be complying with.

Mr. Federico asked if it must be a "yes" or "no" question and not a checkbox and an initial. Ms. Freedman stated it could be a checkbox. The challenge is that the Board is requiring a complete application. It is essentially forcing individuals to check a box under penalty of perjury that they understand, even if they do not, in order to get a license. If honesty is an important quality, then lying on an application is significant. She stated she is uncomfortable advising the Board to make "understand" not mean something here.

Mr. Drabkin stated he tends to lean toward a support position because the author complied with the Board's request, although the additional amendments have flaws. He suggested maintaining the support with amendments position and sharing the Board's concerns with the new amendments with the author's office.

Mr. Hedges asked the executive officer for her opinion on this bill. Ms. Underwood stated the Board should ask the author's office to remove the word "understands" and have an acknowledgement only. The intent of this bill is to help them get the information out.

Mr. Hedges asked for the language to propose to the author's office. Ms. Friedman stated the Board will ask to amend Sections 3 and 4 of 7337 and 7347 to modify the language that requires that the applicant "understands" the rights as outlined and the information materials to say that they "have acknowledged receipt" of the information materials.

Mr. Hedges made a motion that the Board maintains its current position of support if amended with direct advisement to the author asking them to change "understand" to "have acknowledged receipt" and provide licensees with resources if need be.

Public Comment

Mr. Jones stated the Board's request may be met with resistance from the author because this bill could have been more onerous on the Board, establishment owners, and individuals. He stated his preference that the Board support the bill and authorize the executive officer to negotiate the last-minute wordsmithing.

Mr. Hedges asked Ms. Underwood if she was comfortable with the motion.

Ms. Underwood stated she would rather support it and speak with the author about the changes. Mr. Hedges removed his motion.

Mr. Drabkin agreed and made a motion to support the bill. Mr. Federico made a friendly amendment to authorize the Executive Officer to take the Board's concerns to the author. Mr. Drabkin accepted the friendly amendment.

MOTION: Mr. Drabkin made a motion, seconded by Dr. Williams, that the Board changes its position to support the bill and authorizes the Executive Officer to take the Board's concerns to the author. Motion carried 8 yes and 0 no per roll call vote.

- **AB 2125 (Chiu) – Healthy Nail Salon Recognition Program**

Ms. Underwood stated the Board previously took a position to oppose this bill. An amendment was made, but the name will not change because it is already branded in several counties. They added that the Board may notify the local jurisdiction if a recognized salon is found in violation of regulations and that a violation shall result in the removal of the Healthy Nail Salon Recognition Program.

Mr. Hedges made a motion, seconded by Ms. Thong, that the Board changes its position to support the bill.

Public Comment

Mr. Jones stated the PBFC is neutral on this bill, but has concerns that it lists the so-called toxic trio. All three substances in the toxic trio have been approved by the FDA under appropriate usage. The PBFC is not comfortable putting in statute something that is factually incorrect. The author maintains vigorous defense of that language.

Mr. Jones stated the PBFC has taken a neutral position because this is a voluntary program; however, it will largely be run by the Department of Public Health, not by the Board. The Board would have more influence, involvement, and leadership over this program. The author admits not yet speaking with the Department of Public Health.

Dr. Williams agreed that it should remain voluntary. It coincides with the issue of continuing education. It is fine if a nail salon chooses to register for this program to demonstrate to the public that they are going above and beyond, but the Board has already set minimum standards for health and safety and this does not need to be put in a regulation.

Mr. Hedges stated the Healthy Nail Collaborative is more about environmental health and safety, not public health and safety. It is unfortunate that the term "environmental" could not have been inserted into the bill rather than "healthy," because it leads the consumer to believe there is a stamp of approval and may stop them from checking the Board's websites to see if the establishment disinfects properly. Mr. Hedges stated he changed his opinion from oppose to support because the author made changes.

Mr. Drabkin stated Mr. Hedges' concerns are why he feels he must oppose this bill.

MOTION: Mr. Hedges made a motion, seconded by Ms. Thong, that the Board changes its position to support the bill. Motion failed with 3 yes and 5 no per roll call vote.

The following Board Members voted "Yes": Amaro, Hedges and Thong

The following Board Members voted "No": Codorniz, Drabkin, Federico, LaChine and Williams

MOTION: Dr. Williams made a motion, seconded by Ms. Codorniz, that the Board maintains its current position of opposing the bill. Motion carried 6 yes and 2 no per roll call vote.

The following Board Members voted "Yes": Amaro, Codorniz, Drabkin, Federico, LaChine, and Williams

The following Board Members voted "No": Hedges and Thong

- **AB 2437 (Ting) – Nail Establishments: Training, Wage Violations**

Ms. Underwood stated the Board previously took a position to support this bill, which has undergone minor changes with minimal impact on the Board.

Mr. Federico asked staff to verify that the labor information in the bill is the same information as was in AB 2125.

Mr. Drabkin suggested that the Board develop a guideline for minimum threshold languages for consistency among the bills.

Public Comment

Guadalupe Fernandez, the owner of the Beyond 21st Century Beauty Academy, stated all materials should be in English, including the testing.

MOTION: Mr. Federico made a motion, seconded by Mr. Drabkin, that the Board maintains its current position to support the bill. Motion carried 8 yes and 0 no per roll call vote.

- **AB 2502 (Mullin, Chiu) – Land Use: Zoning Regulations**

Ms. Underwood stated the bill is not moving so no action is needed today.

- **SB 896 (Nguyen) – Credit/Debit Cards for Tips**

Ms. Underwood stated the Board previously took a position to oppose this bill. It has only received technical clean-up language.

Public Comment

Ms. Freeman asked if the Board opposes the fact that some salons are saying they will charge extra when tips are put on credit cards.

Mr. Federico stated the bill creates a separation between nail salons and any other salons.

Mr. Drabkin stated the Board is in opposition to the bill because of enforcement issues.

Ms. Codorniz stated the problem is the charge on the credit card to the salon owner. If the salon owner has 15 stylists, they are being charged a fee, which makes it difficult.

Mr. Jones stated the PBFC opposes this bill. He suggested not patronizing a salon that does not treat their stylists with respect, but not to put in statute how they have to micromanage how they operate their business.

MOTION: Mr. Federico made a motion, seconded by Dr. Williams, that the Board maintains its current position to oppose the bill. Motion carried 7 yes and 1 no per roll call vote.

The following Board Members voted "Yes": Amaro, Codorniz, Federico, Hedges LaChine, Thong, and Williams

The following Board Members voted "No": Drabkin

- **SB 1044 (Nguyen) – Assessment of Fines to Individuals and Establishment Owners and Citation Fine Payment Plans**

Ms. Underwood stated the Board is sponsoring this bill. The bill has been amended to allow the Board to renew licenses of individuals on a payment plan.

MOTION: Mr. Drabkin made a motion, seconded by Mr. Federico, that the Board maintains its sponsorship and its position to support this bill. Motion carried 8 yes and 0 no per roll call vote.

- **SB 1125 (Nguyen) – Nail Care Salon's Acknowledgement of Labor Law Compliance**

Ms. Underwood stated the Board has not looked at this bill before.

MOTION: Mr. Federico made a motion, seconded by Mr. Drabkin, that the Board takes a position to support this bill if amended to apply to all establishment licenses, not just nail salons, as well as asking the author to change "understand" to "have acknowledged receipt" and provide licensees with resources if need be. Motion carried 8 yes and 0 no per roll call vote.

11. DISCUSSION AND STATUS ON THE REQUIRED REVIEWS OF COSMETOLOGY TRAINING AND EXAMINATION (BPC SECTION 7303.2)

- **1600-Hour Training Requirement for Cosmetologists**
 - **Establishing the Cosmetology Curriculum Review Advisory Task Force (Possible Actions)**
- **Cosmetology Occupational Analysis**
- **National Exam Review**

Mr. Federico deferred to Ms. Underwood to provide updates on the status of the required reviews.

Ms. Underwood stated, upon Board approval, the executive officer will put together a task force to review the 1600-hour cosmetology curriculum, as required by AB 181. The Board has contracted with the Department of Consumer Affairs to conduct a cosmetology occupational analysis and the five-year review of the national exam.

Mr. Federico and Mr. Hedges volunteered to participate on the Advisory Task Force.

Public Comment

Mr. Jones stated there is a national move to establish national standards, which will likely be much less than the 1600-hour cosmetology program. The PBFC believes that the Board, industry, and national players need to have a vigorous, open conversation with stakeholders before sweeping changes are made to one sector of the industry.

MOTION: Mr. Drabkin made a motion, seconded by Mr. Hedges, that the Board will create a 1600-Hour Cosmetology Curriculum Review Advisory Task Force, appoint Mr. Federico and Mr. Hedges to serve on the task force, and delegate the authority for the appointment of Committee Members to the Executive Officer. Motion carried 8 yes and 0 no per roll call vote.

12. PROPOSED REGULATIONS UPDATES (POSSIBLE ACTIONS)

Mr. Federico deferred to Ms. Underwood to provide updates on the following items:

- **Military Training – Title 16, section 910 of the California Code of Regulations (CCR)**

Ms. Underwood stated the military training went into effect on July 1, 2016.

- **Consider and Adopt Proposed Regulatory Language to Define (“Demonstrating” for Purposes of BPC Section 7319(e) Exemptions. Title 16 CCR section 965.1**

Ms. Underwood stated no comments were received during the 15-day public notice on the language changes made at the last Board meeting.

- **Consumer Notice - Title 16 CCR sections 904 and 905**

Ms. Underwood stated the consumer notice has been filed. The first public hearing will be held on August 9, 2016.

Public Comment

Ms. Jacobs asked how the consumer notice affects the lash industry and when the notice will be official.

Ms. Underwood stated the notice will go into effect by October 2016 and will be posted on the website.

MOTION: Mr. Federico made a motion, seconded by Mr. Hedges, that the Board adopts the proposed regulatory changes as modified and authorizes the Executive Officer to make any technical or non-substantive

changes that may be required in completing the rulemaking file. Motion carried 8 yes and 0 no per roll call vote.

Ms. Freedman suggested making another motion to modify the effective date of the notice.

MOTION: Mr. Federico made a motion, seconded by Ms. Amaro, that the Board authorizes the Executive Officer to request an earlier effective date. Motion carried 8 yes and 0 no per roll call vote.

13. REPORT AND DISCUSSION ON THE SPANISH-LANGUAGE EXAMINATION PASS/FAILURE RATES

Ms. Underwood stated the report in the meeting packet has been expanded to include information from other states. She summarized the work done to date and highlighted that the National-Interstate Council of State Boards of Cosmetology (NIC), the organization that provides the examination, is putting together a vocabulary list to be made available on their website by October of 2016.

Ms. Underwood stated the Spanish pass rate continues in the mid-30 percent range. There are no patterns to any of the failures seen. She suggested that the Board look at the schools to see how students are enrolled and study the quality of education and the Ability to Benefit examination, both of which are outside the Board's scope.

Mr. Federico asked if there is a possibility of asking demographic questions about past education when students apply. Ms. Friedman stated demographic questions would be voluntary without statutory authority. She recommended a conservative approach and cautioned against possible allegations that answers on voluntary demographic questions somehow impacted the Board's decision with regards to licensure.

Mr. Federico stated the Legislature asked the Board to research this issue and to report the findings. The problem is, after conducting the research, the Board still does not know the cause for the low pass rates.

Mr. Hedges suggested giving notice to schools that, two years from the date of the notice, they will be required to provide proof that their students have a high school education.

Ms. Underwood stated the Board only requires a tenth grade education.

Mr. LaChine asked what a tenth grade equivalent would be in another country.

Public Comment

Ms. Fernandez stated she is originally from Mexico City. She enrolled in a cosmetology school that only spoke English when she came to the United States. She memorized the book and passed the examination, although she did not understand all of it. She stated, a year after graduation, in order to be an instructor, she had to learn more because she would be teaching in English. She said if she can do it, anyone can. She restated her earlier comment that all materials should be in English.

Ms. Fernandez stated students must have a high school diploma to receive financial aid for accredited schools. The schools are responsible to prove that the high school diploma is legal. The unaccredited schools do not require a diploma, so the quality of education is not there and the students are not passing the examination.

Ms. Fernandez stated she works very hard to ensure that her students pass, but not everyone cares or does their homework. She stated the problem is the quality of teaching. She requires her teachers to go through a 600-hour training course because she has seen the results and sees what other schools are producing. She stated the problem with the low pass rates is the quality of instruction and students' resistance to learn English.

Mr. Drabkin asked about the total number of examinations given by the Board for cosmetology compared to the low numbers of examinations given in other states.

Ms. Underwood stated there were approximately 20,000 exams given in California in 2015.

Mr. Hedges stated the definition of grammar is the explanation of language; individuals cannot pass a written test without a basic understanding of grammar. This is a problem that must be solved.

Ms. Underwood stated there is nowhere else that staff can look for answers. She suggested seeing if the vocabulary list helps.

Mr. Hedges asked what the Spanish pass rate is for the practical exam. Ms. Underwood stated it is 82 percent.

Mr. Hedges suggested as a practical solution that proctors read the questions on the examination to the students.

Mr. Drabkin stated concern for students who have paid for school and do not pass the examination but still have student loans to pay off. He suggested, even though the Board does not have oversight authority for schools, meeting with schools, sharing the results of the research, letting them know it may be a problem with the education level, and asking them for their suggestions. He also suggested reaching out to Spanish community organizations and asking for their suggestions.

Ms. Amaro agreed and stated there are many possible organizations to reach out to, such as the Mexican Chamber of Commerce. She suggested asking these organizations for volunteers to help students pass these exams.

Ms. Underwood directed Board Members to the last page of this section of the meeting packet, which lists a recommended regulation change in red to include the vocabulary list produced by the NIC in the materials mandated to be made available for students in schools.

Mr. Federico made a motion to advise the Executive Officer to meet with the Director of the Department of Consumer Affairs to discuss enforcement procedures/options available to the BPPE regarding students who have been enrolled in school without meeting the educational requirements, as set forth in law, and to include the vocabulary

list produced by the NIC in the materials mandated to be printed in all languages and made available for students in schools.

Mr. Drabkin offered a friendly amendment to authorize the Executive Officer to provide a status report to the Legislature. Mr. Federico accepted the friendly amendment.

Public Comment

Adrien Brewers (phonetic), instructor and trainer, stated she wrote a book several years ago about how to pass the state board. She agreed that a vocabulary list is a must. She found that, in translating written English into Spanish, the words are read out in English and equivalent Spanish words are dubbed in, but the words are not in the correct sequence for the Spanish language, which can cause confusion. She suggested looking into how the exam is translated.

Ms. Underwood stated the NIC reviewed their translation and the Board sent a representative from a California school with a high number of Spanish speakers to assist them. The translations are done in the most universal form of translation. It is grammatically correct but does not take slang into account.

Mr. Jones stressed the sole oversight issue. Policy makers are putting heat on this Board for a problem (a) that is not of the Board's making, (b) the Board cannot figure out the origins of, and (c) even if it could, it lacks the authority to do anything about, because the BCCP is largely the sole authority for the Board's beauty schools. He strongly encouraged the Board in the report to the Legislature to squarely put the onus back on them. The Board has requested and industry has supported that the Board have sole regulatory oversight of the schools. Sole oversight would allow this Board to get to the questions and answers needed to answer this concern. The Board lacks the tools to get to those answers and to enforce the solutions.

MOTION: Mr. Federico made a motion, seconded by Mr. Drabkin, that the Board authorizes the Executive Officer to meet with the Director of the Department of Consumer Affairs to discuss enforcement procedures/options available to the BPPE regarding students who have been enrolled in school without meeting the educational requirements, as set forth in law, and to include a reference to the vocabulary list produced by the NIC in the materials mandated to be printed in all languages and made available for students in schools. Motion carried 8 yes and 0 no per roll call vote.

14. DISCUSSION AND POSSIBLE ACTIONS ON THE PROPOSED DRAFT OF THE INSPECTOR PROTOCOL FOR LIMITED-ENGLISH-SPEAKING ESTABLISHMENTS (B&P CODE SECTION 7313(d))

Ms. Underwood stated AB 181 requires the Board to approve a protocol for how inspectors will address non-English speaking individuals when they arrive to inspect a salon. She referred to the 2016 Inspector Language Access Protocol in the meeting packet and asked for Board approval.

Mr. LaChine asked how many inspectors the Board has and how many are bilingual. Ms. Underwood stated there are twenty-one inspectors in the field to inspect 45,000 establishments.

Mr. LaChine stated the need for additional inspectors. He suggested including a line in the establishment license application for applicants to fill out the language spoken so the Board can try to send an inspector who can speak that language. He stated it is an easy, standard way to stall an inspection and is time wasted. He stated the need to begin by increasing the number of inspectors. The number of inspectors impacts public health and safety.

Mr. Hedges stated he has been working to increase the number of inspectors since 2003, when there was a total of eleven inspectors statewide. He stated the need for a minimum of forty inspectors.

Ms. Underwood stated staff will again be putting forward a Budget Change Proposal (BCP) in the next budget cycle.

Mr. Federico stated Mr. LaChine's frustration is duly noted.

MOTION: Mr. Hedges made a motion, seconded by Dr. Williams, that the Board accepts the protocol listed in the meeting packet and authorizes the Executive Officer to make minor, technical changes. Motion carried 8 yes and 0 no per roll call vote.

15. AGENDA ITEMS FOR NEXT BOARD MEETING

Mr. Hedges stated staff will ask for a BCP to hire translators for the DRC. The Board uses the DRC as training. Individuals with violations receive instruction from the Board on how to comply with the regulations. The training does not work if the Board cannot speak to them in a language they can understand. Citations means there is a public health issue. The DRC is an opportunity to educate individuals on how to successfully comply with the regulations to avoid future citations. By the end of 2016, the Board may have paid translators for the DRC. He encouraged Board Members to attend the DRC meetings. He asked to include a discussion about this process on the next agenda.

Public Comment

Ms. Jacobs asked how many inspectors are supervisors and if they are working inspectors.

Ms. Underwood stated there are three supervising inspectors who are not in the field.

Ms. Jacobs stated there is inconsistency statewide with how citations are issued. She questioned the training and updating the inspectors receive. She stated her group has equipment from overseas and the inspectors are not current. She asked if there is a training program or a requirement statewide to get those twenty-four supervisors and inspectors in the same room to talk about the state of the industry so inspections are consistent statewide.

Ms. Underwood stated there are all-staff meetings and estheticians have been brought in to give trainings. The inspectors do not issue citations, the office does. If inspectors see a machine they are unfamiliar with, the office researches it. All citations have been

researched by staff and determined to be violations. Staff is looking at the inspections program and how to increase uniformity throughout the state. The Assistant Executive Officer is currently doing ride-alongs with every inspector to monitor how each inspects to find best practices, which will be shared with all inspectors.

Mr. Hedges asked to include discussions on how inspectors are trained and how complaints are issued on the next agenda.

Mr. Federico asked to include a review of the inspection report on the next agenda.

16. PUBLIC COMMENT

Alexander Irving, co-owner of Esche and Alexander Public Relations, commended Board Members on how seriously they take their job. He thanked the Board for their efforts.

17. ADJOURNMENT

There being no further business, the meeting was adjourned at approximately 2:15 p.m.



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DRAFT
CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY

MINUTES OF JULY 18, 2016
Handlery Hotel
950 Hotel Circle North
San Diego, CA 92108

BOARD MEMBERS PRESENT

Joseph Federico, President
Dr. Kari Williams, Vice President
Mary Lou Amaro
Polly Codorniz
Andrew Drabkin
Richard Hedges
Coco LaChine
Lisa Thong

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Rebecca Bon, Legal Counsel, represented by
Laura Freedman
Tami Guess, Board Project Manager
Marcene Melliza, Board Analyst

BOARD MEMBERS ABSENT

Bobbie Jean Anderson

1. CALL TO ORDER/ROLL CALL/ESTABLISHMENT OF QUORUM

Joseph Federico, the Board President, called the meeting to order at 9:00 a.m. and confirmed the presence of a quorum.

2. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

There were no questions or comments from the public.

3. FINDING OF NECESSITY FOR SPECIAL MEETING

Laura Freedman, Legal Counsel, explained to the Board that there was a request for the Board to meet regarding pending litigation. This request was received after the 10 day notice had been made for the July 17, 2016 Board meeting. The next Board meeting scheduled will be after the trial date.

MOTION: Joseph Federico, the Board President, made a motion that a special meeting held today is warranted due to the substantial hardship on the Board it would cause to have a meeting at a later date. The motion was seconded by Mr. Richard Hedges. Motion carried 8 yes, 0 no and 0 abstain per roll call vote.

A. CLOSED SESSION

The Board met in closed session Pursuant to Government Code section 11126 (e)(1), to receive advice from Counsel on pending litigation (*Hadnott v State et al.* – L.A. Superior Ct Case No. BC 536004)

B. Adjourn Closed Session

4. RECONVENE OPEN SESSION

5. ADJOURNMENT

With no further business, the meeting was adjourned.

August 2016

Proposal for

Board Created Educational Tutorial Series

Prepared for: Kristy Underwood, Executive Officer

Prepared by: Tami Guess, Board Project Manager

I. Introduction

The mission of the Board of Barbering and Cosmetology (BBC) is 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 in part accomplishes this task by overseeing the curriculum requirements used by students of cosmetology, barbering, esthetics, manicuring and electrology within the State. In addition, the California Business and Professions Code (BPC) § 7403.2 allows the BBC to require the licensee whose license has been suspended via an immediate suspension to undertake a BBC approved remedial training related to the health and safety laws and regulations applicable to the offending establishment. California Code of Regulations (CCR) §973.3 (d) requires a disciplined licensee placed on probation to complete an eight hour Board approved remedial training course. BPC §7334 (c) and (d) require an apprentice who has filed an application for apprenticeship complete a minimum of 39 hours of pre apprentice training in a facility approved by the BBC prior to serving the general public.

II. Needs/Problems

There are many locations throughout California which do not have a BBC approved school. Barbering and Beauty schools offering remedial training within California is even more limited. Offering remedial courses by a BBC approved school is often not financially advantageous to the providing school, which in part accounts for the lack of availability. The lack of availability and the costs involved in the training forces financial hardship on the disciplined licensee as the licensee may be forced to pay for transportation costs to the training location, find temporary housing/hotel, and pay daily travel expenditures for the length of the training course. Temporary housing and travel costs combined with the inability to work during the length of the training course (due to relocation) and incurring a fee for the education limits the licensee's ability to stay compliant with Board mandated discipline and may be a barrier to rehabilitation and gainful employment.

The apprentice candidate is required to complete 39 hours of training before he/she is able to serve the general public. Facilities offering this required training may charge anywhere from \$2,499.00 to \$ 5,000.00 for this training. This creates a financial hardship on the apprentice candidate and limits gainful employment opportunities. The BBC has received reports that technical training is not taking place when the apprentice candidate receives the pre-apprentice training. Examination pass/fail rates for apprentice candidates receiving their training

from a facility provider are widely varied depending on the educational provider. For example, it has been reported that an apprentice candidate may receive a study booklet, which is reviewed (independently) and then he or she will show up at the facility to take an examination. While this may not be the case with the majority of the pre-apprentice training providers, it is concerning to the BBC. The BBC reports that from July 31, 2014 through July 31, 2016 the combined totals of the failure exam rates from the 15 pre-apprentice training facilities that were reporting activity during that timeframe are as follows:

	Total Exams Given	Pass	Fail	Failure Rate Percentage
Cosmetologist Written Exam	771	345	426	55.25 %
Barber Written Exam	535	271	264	49.34 %
Cosmetologist Practical Exam	450	363	87	19.3 %
Barber Practical Exam	420	320	100	23.8 %

While the failure rate of the practical exam remains relatively low, attention should be given to additional education designed to assist apprentices in passing the written portion of the licensing examination. The Educational tutorial series may partially fulfill this need. In addition, without the tutorial program, the BBC does not have a way to ensure viable education or even if any pre-apprentice training is taking place.

III. Goals

- **Goal 1:** Produce an online, high quality, straightforward, easily accessible, instructional tutorial series designed to promote education in health and safety procedures and BBC law for the protection of California consumers.
- **Goal 2:** Reduce the economic hardship to apprentices, disciplined licensees, future licensees and current licensees desiring to gain additional education apart from the training received in their initial schooling.
- **Goal 3:** Provide the tutorial series in the English, Spanish, Vietnamese and Korean languages, thereby enhancing the Board's educational outreach and the promotion of language access.

IV. Procedures/Scope of Work

Staff recommends an Education Tutorial series which could be used to assist the following groups:

- licensees who want general health and safety education;
- establishment owners who are not personal licensees that would like an overview of the Board's laws and requirements;
- unlicensed individuals illegally performing Board regulated services;
- licensees on probation or receiving discipline who are required to complete remedial education as a probation requirement;
- licensees who are required to fulfill the remedial education requirements as set forth in BP&C §7403.2;
- licensees who need to provide mitigating evidence of rehabilitation when petitioning for the reinstatement of their revoked license;
- apprentices in fulfilling their pre apprentice educational requirements. (This tutorial series will meet the 39 hour pre apprentice training requirement as stated in the California Business and Professions Code (BP&C) §7334 (c)).

It is recommended that the Education Tutorial series contain 15 tutorials of varying length on the following subjects:

- **The Laws and Regulations of the Board**

This section is a general introduction to the Board, its mission, values and objectives. This tutorial may contain a general review of laws and regulations enforced by the Board as well as how to avoid receiving the top ten violations commonly cited in the shop/salon. The participant will receive an overview of the Board's website, which may include:

1. How to access the laws and regulations of the Board.
2. How to apply for a personal/establishment license.
3. How to renew a license online.
4. How to contact the Board and gain access the Boards publications, bulletins and videos.

- **Professionalism in the Salon**

This section will focus on the practical application of BP&C § 7313 (access to and inspection of establishments) and § 7404 (grounds for disciplinary action).

- **How to Avoid the Board's Most Commonly Cited Violations**

A series of do's and do not's will be visually presented in this tutorial with the focus on best practices to avoid violating the Board's top cited statutes and regulations.

- **Maintaining Healthy Sanitation and Disinfecting Procedures**

Focus will be on the principles of infection protection. This includes: Potential Infectious Microorganisms (Bacteria, Fungi, Viruses, Parasites), Types of Salon Disinfectants (Bactericide, Fungicidal, Virucidal), Blood Borne Pathogens, Principles of Prevention and Sanitation and Disinfecting procedures.

- **Unlicensed Activity and Establishment Owner Accountability**

This tutorial will offer a discussion on BP&C § 7317 7348 and § 7349. The individual licensing scopes of practice will be reviewed (BP&C § 7316). Participants will be shown how to fill out an establishment application, how to check the licensing status of potential employees and how to renew a license online. Laws applicable to establishment owners, such as BPC § 7350, 7351, 7352 and CCR 978 will be discussed. A general overview of Workers' Rights will be reviewed with a focus on providing contact information to the different agencies charged with the protection of these rights.

- **Ensuring Client Protection**

This tutorial will cover laws and regulations put in place that ensures client protection. This includes: BP&C 7317, 7318, 7351, 7352 and CCR § 979 (c), (d), 981, 983, 984, 985, 987 and 990. This tutorial will be presented from the consumer's viewpoint, showing how the service provider can make the consumer reassured that they are protected while receiving services. This includes everything from proper labeling of tools to posting the licenses of licensees in plain sight.

- **Foot Spa Safety**

This tutorial will provide a brief history into California's health and legal issues related to the improper disinfection of foot spas. It will identify the different types of foot spas and basins commonly used for pedicures within the industry. Sections 980.1 thru 980.4 of the CCR will be reviewed with the primary focus on consumer protection. The student will learn by video demonstration how to properly clean/disinfect a foot spa or basin. The participant will be shown how to properly log the cleaning procedures on a pedicure equipment cleaning log. Proper use of liners will be reviewed and demonstrated.

- **Manicuring and Pedicuring Safety**

The tutorial will briefly cover the most common consumer complaint issues the Board receives by the Enforcement unit resulting from improper

standards of practice. Infection protection will be addressed with a discussion of the consequences of improper protection. Licensee health and safety may be addressed with tips on limiting chemical exposure and proper ventilation. Proper set up of a Sanitary Maintenance Area will be demonstrated. The following regulations in the CCR will be reviewed: 978, 979, 981, 984, 986, 987, 988, 989, 991, 993, and 994.

- **Safely Performing Chemical Services**

Best practices in protecting the licensee's long term health with regard to harmful chemical exposure, proper ventilation and the use of less toxic products will be reviewed. Safety tips regarding specific services such as providing hair coloring, chemical waves and chemical blow outs will be considered. Basic categories of the Safety Data Sheet pertaining to chemical safety will be reviewed.

- **Safely Performing Exfoliation Services**

The tutorial will identify which scope(s) of practice may perform exfoliation services. Statutes 2052 and 7320 will be reviewed as pertaining to exfoliation. CCR §988, 989, 991 and 992 pertaining to exfoliation will be reviewed in depth.

- **Safely Performing Waxing Services**

The tutorial will identify which scope(s) of practice may perform waxing services. Best practices for providing waxing services will be reviewed and CCR §981, 988 and 990 will be considered.

- **Safely Performing Eyelash Extensions**

The tutorial will identify which scope(s) of practice may perform eyelash extension services. Focus of the tutorial will be on maintaining health and safety protocols. CCR §979, 981 and 990 will be reviewed.

- **Practice of Medicine**

Statutes 2052 and 7320 and CCR §991, 992 and 993 will be reviewed. There will be an introduction to the Skin Care Machines/Devices bulletin. Licensees will be encouraged to construct and maintain an Equipment Evaluation Binder for their personal use. Popular medical services out the scope of practice for our licensees will be identified (Cryo, botox, IPL's, Heat and Light devices, use of prescriptions – [topicals, dandruff shampoo], etc.).

- **Probation Orientation**

This tutorial will provide an overview of the probation process with a focus on remaining compliant with the BBC. This tutorial will not replace the orientation that is to be scheduled with the Board representative. The BBC realizes that the probationer may be nervous when participating in the initial orientation with the Board representative; this video will allow the probationer to review what may have been discussed in the initial orientation and receive answers to questions commonly asked by licensees participating in the probationary process.

- **Pre Apprenticeship Orientation**

This tutorial will provide an overview of the Apprenticeship program. It will cover in depth the roles and responsibilities of the apprentice, the sponsor and the trainer. In addition, the tutorial will outline which Board tutorials are needed to satisfy the 39 hour training requirement. It will address and answer the most commonly asked questions the Board receives from apprentices. The tutorial will cover suggested paths of resolution for possible issues that may present themselves over the course of the apprentice training.

The educational tutorial series may be made available free of charge on the Board's BarberCosmo website. The participant will be able to print a certificate of completion at the conclusion of the training. A copy of this certificate may be used by:

- Licensees who wish to provide proof to BBC Enforcement staff that they have educated themselves on subjects of concern raised by complaints provided to the BBC analyst;
- BBC probationers in fulfilling remedial training requirements;
- BBC reinstatement petitioners who wish to provide proof that they are continuing to educate themselves in current Board law and best practices and who are required to provide mitigating evidence of rehabilitation when petitioning for the reinstatement of their revoked license;
- Pre apprentice applicants providing proof of training prior to performing services to the public.
- Licensees without pending discipline, who want to stay current with the BBC's rules and regulations.

V. Timetable

Due to staffing limitations, work on the remedial education tutorials will commence upon the completion and adoption of the Board's Health and Safety Curriculum tutorials.

	Description of Work	Start and End Dates
Phase One	Assessment of needs	TBD
Phase Two	Program creation	TBD
Phase Three	Pilot testing / Finalization	TBD
Phase Four	Accessibility	TBD

IX. Next Steps

- Next Step 1 – Present proposal to the Board Education and Outreach Committee for adoption.
- Next Step 2 – Board adoption of a new Disciplinary Guideline (edit page 34 – completed in a Board approved school).
- Next Step 3 – Elicit Legislative assistance in changing BP &C §7334 (c) pertaining to pre apprentice training – “training in a facility.”



Board of Barbering and Cosmetology
P.O. Box 944226, Sacramento, CA 94244
P (800) 952-7574 F (916) 574-7574 | www.barbercosmo.ca.gov

MEMORANDUM

TO: Board Members, Board of Barbering and Cosmetology Date: October 3, 2016

FROM: Tami Guess, Board Project Manager
Board of Barbering and Cosmetology

SUBJECT: Disciplinary Guidelines

Contingent upon the adoption of the Educational Tutorial series by the Members, staff recommends the following edits be made to the current Board approved Disciplinary Guidelines to allow for the use of on line training within the remedial education courses.

Page 34, paragraph (1):

- (1) **Remedial Education Courses** – Respondent shall complete remedial education courses directly relevant to the violations(s) as specified by the Board of Barbering and Cosmetology within 180 days from the effective date of this Decision. ~~The education courses shall be completed in a Board approved school.~~ Respondent shall provide proof of attendance and satisfactory completion of the courses. Failure to satisfactorily complete the required courses as scheduled shall constitute a violation of probation. Respondent shall be responsible for all costs associated with such remedial education.



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MEMORANDUM

TO: Board Members, Board of Barbering and Cosmetology Date: October 10, 2016

FROM: Tami Guess, Board Project Manager
Board of Barbering and Cosmetology

SUBJECT: Legislative Update

The following update provides a brief synopsis and status update of the legislative bills being tracked by the Board in the 2016 legislative session.

AB 1322 (Daly, Wilk)

Allows for the serving of beer or wine in a Barber/Beauty shop without a license from the California Department of Alcoholic Beverage Control.

Status: 9/28/16 Chaptered by Secretary of State. Chapter 741, Statutes of 2016.

AB 2025 (Gonzalez, Nguyen, Chiu, Ting)

Requires the Board make available all written materials provided to licensees and applicants in English, Spanish, Korean and Vietnamese. Allows the Health and Safety Committee discuss basic labor law issues. Requires every exam/license/establishment application include a signed acknowledgment that the applicant understands his/her rights on basic labor laws. Requires the Board to collect demographic information on each applicant, including preferred language preference. Requires the Health and Safety course developed by the Board to include information on basic labor laws.

Status: 9/21/16 Chaptered by Secretary of State. Chapter 409, Statutes of 2016.

AB 2125 (Chu, Pan, Bonta, Chiu, Gonzalez, Hernandez, Low and Ting)

Requires the California Department of Toxic Substances to publish guidelines for cities, counties and cities and counties to implement a local Healthy Nail Salon Recognition program.

Status: 9/24/16 Chaptered by Secretary of State. Chapter 564, Statutes of 2016.

AB 2437 (Ting)

Requires the Labor Commissioner to create a model posting pertaining to workplace rights and wage and hour laws. Requires the Board to inspect for the posting and establish by regulation an administrative fine for non-compliance.

Status: 9/14/16 Chaptered by the Secretary of State. Chapter 257, Statutes of 2016.

SB 896 (Nguyen, Mendoza, Chiu and Gonzalez)

This bill required establishments offering nail services, if it accepts a debit or credit as payment for nail care services, to also accept a debit or credit card for payment of a tip.

Status: 8/29/16 Vetoed by the Governor

SB 1044 (Nguyen)

Allows the Board to determine by regulation when a fine is cited to the establishment owner and/or to the individual licensee. Authorizes the Board to enter into a payment plan for citations exceeding \$500.00.

Status: 8/29/16 Chaptered by Secretary of State. Chapter 233, Statutes of 2016.



California LEGISLATIVE INFORMATION

AB-1322 Alcoholic beverages: licenses: beauty salons and barber shops. (2015-2016)

Assembly Bill No. 1322

CHAPTER 741

An act to amend Section 23399.5 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1322, Daly. Alcoholic beverages: licenses: beauty salons and barber shops.

Existing law makes it unlawful for any person other than a licensee of the Department of Alcoholic Beverage Control to sell, manufacture, or import alcoholic beverages in this state. Existing law allows the serving of alcohol without a license or permit in a limousine or as part of a hot air balloon ride service, provided there is no extra charge or fee for the alcoholic beverages.

This bill would additionally allow the serving of beer or wine without a license as part of a beauty salon or barber shop service if specified requirements are met, including that there be no extra charge or fee for the beer or wine, the license of the establishment providing the service is in good standing, and the servings are limited to specified amounts.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 23399.5 of the Business and Professions Code is amended to read:

23399.5. (a) (1) A license or permit is not required for the serving of alcoholic beverages in a limousine by any person operating a limousine service regulated by the Public Utilities Commission, provided there is no extra charge or fee for the alcoholic beverages.

(2) For purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the limousine service is the same regardless of whether alcoholic beverages are served.

(b) (1) A license or permit is not required for the serving of alcoholic beverages as part of a hot air balloon ride service, provided there is no extra charge or fee for the alcoholic beverages.

(2) For purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the hot air balloon ride service is the same regardless of whether alcoholic beverages are served.

(c) A license or permit is not required for the serving of wine or beer as part of a beauty salon service or barber shop service if the following requirements are met:

(1) There is no extra charge or fee for the beer or wine. For purposes of this paragraph, there is no extra charge or fee for the beer or wine if the fee charged for the beauty salon service or barber shop service is the same regardless of whether beer or wine is served.

(2) The license of the establishment providing the beauty salon service or barber shop service is in good standing with the State Board of Barbering and Cosmetology.

(3) No more than 12 ounces of beer or six ounces of wine by the glass is offered to a client.

(4) The beer or wine is provided only during business hours and in no case later than 10 p.m.

(5) Nothing in this subdivision shall be construed to limit the authority of a city or city and county to restrict or limit the consumption of alcoholic beverages, as described in this subdivision, pursuant to Section 23791.



California

LEGISLATIVE INFORMATION

AB-2025 Barbering and cosmetology: labor law education requirements. (2015-2016)

Assembly Bill No. 2025

CHAPTER 409

An act to amend Sections 7312, 7314, 7314.3, 7337, 7347, and 7389 of the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 21, 2016. Filed with Secretary of State
September 21, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2025, Gonzalez. Barbering and cosmetology: labor law education requirements.

Existing law, the Barbering and Cosmetology Act, establishes the State Board of Barbering and Cosmetology for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices. Existing law requires the board to carry out a list of duties, including making rules and regulations, conducting and administering license examinations, issuing licenses to qualified applicants, and disciplining persons who violate the act.

This bill would require that the board offer and make available all written materials provided to licensees and applicants in English, Korean, Spanish, and Vietnamese.

Existing law requires the board to establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board.

This bill would specify that the health and safety issues are those that impact licensees, including how to ensure licensees are aware of basic labor laws, as specified.

Existing law requires every application for admission to examination and licensure to be verified by the oath of the applicant.

This bill would additionally require every application for admission to examination and licensure and every electronic application to renew a license to include a signed acknowledgment that the applicant understands his or her rights as a licensee as outlined in informational materials on basic labor laws that the applicant is provided by the board with the application or renewal application.

Existing law requires the licensure of any person, firm, or corporation operating an establishment engaged in a practice regulated by the board. Existing law requires a separate license for each location where the establishment operates. Existing law requires applicants to submit an application, accompanied by a prescribed fee. Existing law prohibits the board from issuing a license to any applicant who has committed specified acts or crimes which are grounds for denial of licensure in effect at the time the new application is submitted.

This bill would require, as part of a complete application for a license to operate an establishment, and an electronic application to renew a license to operate an establishment, a signed acknowledgment that the applicant understands the informational materials on basic labor laws the applicant is provided by the board

with the application or renewal application and that establishments are responsible for compliance with any applicable labor laws of the state.

Existing law requires the board to keep a registration record of each licensee containing the name, address, license number, date issued, and any facts that the applicant may have stated in the application for examination for licensure.

This bill would require the board to collect, through optional questions on a written application for a license and in an electronic application to renew a license, the language preference of the applicant.

Existing law requires the board to admit to a licensing examination an applicant who meets certain qualifications, including having completed one or more courses, as specified, offered by a school approved by the board. Existing law requires the board to develop or adopt a health and safety course on hazardous substances that is required to be taught in schools approved by the board. Existing law requires course development to include pilot testing of the course and training classes to prepare instructors to effectively use the course.

This bill would require the health and safety course that the board is required to develop or adopt to additionally cover basic labor laws, as specified.

This bill's provisions would become operative on July 1, 2017.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7312 of the Business and Professions Code is amended to read:

7312. (a) The board shall do all of the following:

- (1) Make rules and regulations in aid or furtherance of this chapter in accordance with the Administrative Procedure Act.
- (2) Conduct and administer examinations of applicants for licensure.
- (3) Issue licenses to those applicants that may be entitled thereto.
- (4) Discipline persons who have been determined to be in violation of this chapter or the regulations adopted pursuant to this chapter.
- (5) Adopt rules governing sanitary conditions and precautions to be employed as are reasonably necessary to protect the public health and safety in establishments, schools approved by the board, and in the practice of any profession provided for in this chapter. The rules shall be adopted in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Title 2 of the Government Code, and shall be submitted to the State Department of Public Health and approved by that department prior to filing with the Secretary of State. A written copy of all those rules shall be furnished to each licensee.
- (6) Offer and make available all written materials provided to licensees and applicants in English, Korean, Spanish, and Vietnamese.

(b) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2017.

SEC. 2. Section 7314 of the Business and Professions Code is amended to read:

7314. (a) The board shall keep a record of its proceedings relating to its public meetings, meetings of committees, and records relating to the issuance, refusal, renewal, suspension, and revocation of licenses.

(b) The board shall keep a registration record of each licensee containing the name, address, license number, and date issued. This record shall also contain any facts that the applicants may have stated in their application for examination for licensure. The board shall collect, through optional questions on a written application for a license and in an electronic application to renew a license issued pursuant to this chapter, the spoken and written language preference of each applicant.

(c) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2017.

SEC. 3. Section 7314.3 of the Business and Professions Code is amended to read:

7314.3. (a) The board shall establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board that impact licensees, including how to ensure licensees are aware of basic labor laws. Basic labor laws include, but are not limited to, all of the following:

- (1) Key differences between the legal rights, benefits, and obligations of an employee and an independent contractor.
- (2) Wage and hour rights for hourly employees.
- (3) Antidiscrimination laws relating to the use of a particular language in the workplace.
- (4) Antiretaliation laws relating to a worker's right to file complaints with the Department of Industrial Relations.
- (5) How to obtain more information about state and federal labor laws.

(b) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2017.

SEC. 4. Section 7337 of the Business and Professions Code is amended to read:

7337. (a) Every application for admission to examination and licensure shall be in writing, on forms prepared and furnished by the board.

(b) Each application shall be accompanied by the required fee, and shall contain proof of the qualifications of the applicant for examination and licensure. It shall be verified by the oath of the applicant and shall include a signed acknowledgment that the applicant understands his or her rights as a licensee as outlined in informational materials on basic labor laws, as specified in Section 7314.3, that the applicant is provided by the board with the application. Every applicant shall, as a condition of admittance to the examination facility, present satisfactory proof of identification. Satisfactory proof of identification shall be in the form of a valid, unexpired driver's license or identification card, containing the photograph of the person to whom it was issued, issued by any state, federal, or other government entity.

(c) Every electronic application to renew a license shall include a signed acknowledgment that the renewal applicant understands his or her rights as a licensee as outlined in informational materials on basic labor laws, as specified in Section 7314.3, that the renewal applicant is provided by the board with the renewal application.

(d) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2017.

SEC. 5. Section 7347 of the Business and Professions Code is amended to read:

7347. (a) Any person, firm, or corporation desiring to operate an establishment shall make an application to the bureau for a license accompanied by the fee prescribed by this chapter. The application shall be required whether the person, firm, or corporation is operating a new establishment or obtaining ownership of an existing establishment. The application shall include a signed acknowledgment that the applicant understands that establishments are responsible for compliance with any applicable labor laws of the state and that the applicant understands the informational materials on basic labor laws, as specified in Section 7314.3, that the applicant is provided by the board with the application. Every electronic application to renew a license shall include a signed acknowledgment that the renewal applicant understands that establishments are responsible for compliance with any applicable labor laws of the state and that the applicant understands the informational materials on basic labor laws, as specified in Section 7314.3, that the renewal applicant is provided by the board with the renewal application. If the applicant is obtaining ownership of an existing establishment, the board may establish the fee in an amount less than the fee prescribed by this chapter. The applicant, if an individual, or each officer, director, and partner, if the applicant is other than an individual, shall not have committed acts or crimes which are grounds for denial of licensure in effect at the time the new application is submitted pursuant to Section 480. A license issued pursuant to this section shall authorize the operation of the establishment only at the location for which the license is issued. Operation of the establishment at any other location shall be unlawful unless a license for the new location has been obtained upon compliance with this section, applicable to the issuance of a license in the first instance.

(b) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2017.

SEC. 6. Section 7389 of the Business and Professions Code is amended to read:

7389. (a) The board shall develop or adopt a health and safety course on hazardous substances and basic labor laws, as specified in Section 7314.3, which shall be taught in schools approved by the board. Course development shall include pilot testing of the course and training classes to prepare instructors to effectively use the course.

(b) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2017.



California

LEGISLATIVE INFORMATION

AB-2125 Healthy Nail Salon Recognition Program. (2015-2016)

Assembly Bill No. 2125

CHAPTER 564

An act to add Section 25257.2 to the Health and Safety Code, relating to nail salons.

[Approved by Governor September 24, 2016. Filed with Secretary of State
September 24, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2125, Chiu. Healthy Nail Salon Recognition Program.

Existing law regulates the existence and disclosure of specified chemicals and components in consumer products, including phthalates and bisphenol A. Existing law also provides for the licensing and regulation of nail salons and manicurists by the State Board of Barbering and Cosmetology within the Department of Consumer Affairs.

This bill would require the Department of Toxic Substances Control to publish guidelines for cities, counties, and cities and counties to voluntarily implement local healthy nail salon recognition (HNSR) programs. The bill would allow the guidelines to include, but not be limited to, specified criteria, such as the potential for exposure of nail salon workers and customers to chemicals. The bill would also require the department to develop a consumer education program, present the guidelines to local health officers, local environmental health departments, and other local agencies, and post specified information on its Internet Web site.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) Beauty care workers, including cosmetologists and manicurists, are highly exposed to the potential harm of carcinogens and reproductive toxins in cosmetics. Cosmetologists and manicurists are predominantly women and minorities.
- (b) Nail services are increasing in popularity among consumers. The money consumers spent in nail salons increased from \$7.3 billion in 2012 to \$8.54 billion in 2014.
- (c) Chemicals in professional cosmetics can be harmful to salon customers, who increasingly include prepubescent girls and young women.
- (d) Endocrine-disrupting chemicals can cause harm at very low levels. Some may enter the body through the skin or cuticle.
- (e) Dibutyl phthalate (DBP), included in nail polish to reduce brittleness and cracking, is a reproductive and developmental toxicant that is especially harmful to pregnant women.

(f) Developmental toxicants interfere with proper growth or health of a child, acting at any point from conception to puberty.

(g) Toluene, a solvent found in nail polish, is a developmental and neurological toxicant that causes headaches, dizziness, and nausea, among other symptoms.

(h) Formaldehyde, a chemical that acts as a disinfectant and as a preservative in nail polishes, is a known carcinogen. Exposure to formaldehyde in the short term can irritate the eyes, nose, throat, and skin, and in the long term exposure can cause asthma.

(i) A number of cosmetic product manufacturers, including both small domestic producers and large multinational corporations, have eliminated certain substances that cause cancer or reproductive harm from their products.

(j) Some local governments have already adopted successful Healthy Nail Salon Recognition Programs (HNSR programs), including the City and County of San Francisco, the Counties of Alameda, San Mateo, and Santa Clara, and the City of Santa Monica.

(k) These local HNSR programs support nail salons that use less toxic products and practices that are safer for workers and their customers.

(l) Given the recently enacted successful local HNSR programs, and the availability of safer alternative cosmetic products, it is in the interest of the people of the State of California to ensure that nail salons are given guidelines to operate safely for workers and consumers.

SEC. 2. Section 25257.2 is added to the Health and Safety Code, to read:

25257.2. (a) The department shall, by January 1, 2018, publish guidelines for healthy nail salon recognition (HNSR) programs voluntarily implemented by local cities and counties.

(b) The guidelines for an HNSR program adopted pursuant to subdivision (a) may include, but shall not be limited to, all of the following:

(1) A list of specific chemical ingredients that should not be used by a nail salon seeking recognition. In determining whether to include a chemical on the list, the department shall consider:

(A) Whether the chemical is identified as a candidate chemical pursuant to the regulations adopted pursuant to Section 25252.

(B) Whether an existing healthy nail salon program has restricted the use of the chemical.

(C) The potential for exposure of nail salon workers and customers to the chemical.

(D) The availability of existing, safer alternatives to the chemical in products available to nail salons in California.

(2) Specific best practices for minimizing exposure to hazardous chemicals, including:

(A) A list of specific personal protective equipment that should be used by personnel in a salon seeking recognition and guidance on when and how to use it.

(B) Engineering controls that should be adopted by salons seeking recognition, including specific ventilation practices and equipment.

(C) Prohibiting nail polishes that contain dibutyl phthalate, formaldehyde, or toluene.

(D) Prohibiting nail polish thinners that contain methyl ethyl ketone or toluene.

(E) Prohibiting nail polish removers that contain ethyl or butyl acetate.

(3) A list of specific training topics for salon owners and staff, whether on payroll or contract, on safer practices delineated in the HNSR program guidelines.

(4) Criteria for the use of outside products brought in by clients.

(5) Verification that a salon seeking recognition is in compliance with Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code, and all applicable regulations enforced by the State Board of Barbering and Cosmetology.

(6) Any other guidelines or best practices determined by the department to further the goals of an HNSR program.

(c) The guidelines adopted pursuant to subdivision (a) shall include criteria for cities and counties that adopt an HNSR program. These criteria may cover, but are not limited to:

(1) Coordination with other local HNSR programs to assist businesses in achieving and moving beyond regulatory compliance.

(2) Training and certification requirements for the salon owners and staff to ensure thorough knowledge of safe and environmentally friendly procedures.

(3) Issuance of an approved seal or certificate to salons that have met certification requirements.

(4) The process by which a salon can enroll in an HNSR program and be verified by the local entity.

(5) The frequency at which the local entity shall verify continued compliance by a salon that has previously met all specified requirements.

(d) In developing guidelines pursuant to subdivision (a), the department shall consult with the Division of Occupational Safety and Health, the State Department of Public Health, and the State Board of Barbering and Cosmetology.

(e) In collaboration with existing healthy nail salon programs, the department shall promote the HNSR guidelines developed pursuant to subdivision (a) by doing all of the following:

(1) Developing and implementing a consumer education program.

(2) Presenting the HNSR guidelines to local health officers, local environmental health departments, and other local agencies as appropriate.

(3) Developing and either distributing or posting on its Internet Web site information for local entities, including, but not limited to, suggestions for successful implementation of HNSR programs and resource lists that include names and contact information of vendors, consultants, or providers of financial assistance or loans for purchases of ventilation equipment.

(4) Developing an Internet Web site or a section on the department's Internet Web site that links to county HNSR Internet Web sites.

(f) The department may prioritize its outreach to those counties that have the greatest number of nail salons.

(g) The State Board of Barbering and Cosmetology may notify the city, county, or city and county if a recognized salon is found in violation of Article 12 of the State Board of Barbering and Cosmetology regulations. A violation shall result in the removal of healthy nail salon recognition from that salon.

(h) Nothing in this section shall prevent the adoption or enforcement of any local rules or ordinances.



California

LEGISLATIVE INFORMATION

AB-2437 Barbering and cosmetology: establishments: posting notice. (2015-2016)

Assembly Bill No. 2437

CHAPTER 357

An act to add Section 7353.4 to the Business and Professions Code, and to add Section 98.10 to the Labor Code, relating to barbering and cosmetology.

[Approved by Governor September 14, 2016. Filed with Secretary of State
September 14, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2437, Ting. Barbering and cosmetology: establishments: posting notice.

(1) The Barbering and Cosmetology Act provides for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices by the State Board of Barbering and Cosmetology. The act requires the licensure of any person, firm, or corporation operating an establishment engaged in a practice regulated by the board, as specified, and requires a licensed establishment to comply with various requirements. That act requires the board to inspect an establishment within 90 days after issuing the establishment a license and requires the board to maintain a program of random and targeted inspections of establishments, as specified. A violation of the Barbering and Cosmetology Act is a misdemeanor unless a specific penalty is otherwise provided.

This bill would require, on and after July 1, 2017, an establishment licensed by the board to post a notice in English, Spanish, Vietnamese, and Korean regarding workplace rights and wage and hour laws, as described in paragraph (2), in a conspicuous location in clear view of employees and where similar notices are customarily posted. The bill would require the board to inspect an establishment for compliance with that requirement when it conducts the above-mentioned inspection, and would provide that a violation of that posting requirement is punishable as an administrative fine.

(2) Existing law creates the Division of Labor Standards Enforcement within the Department of Industrial Relations, and vests the division with the general duty of enforcing labor laws, including those relating to wage claims and employer retaliation. Existing law provides that the Labor Commissioner is the Chief of the Division of Labor Standards Enforcement.

This bill would require the Labor Commissioner, on or before June 1, 2017, to create a model posting notice in English, Spanish, Vietnamese, and Korean pertaining to the workplace rights and wage and hour laws for employees of establishments licensed under the Barbering and Cosmetology Act. The bill would require the model posting notice to be developed using plain language and would require the commissioner to post the notice in all of the specified languages on the commissioner's Internet Web site, as specified. The bill would require the notice to contain, at a minimum, certain information, including laws regarding overtime compensation. The bill would require the model notice to be translated into specified languages.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7353.4 is added to the Business and Professions Code, to read:

7353.4. (a) On and after July 1, 2017, an establishment licensed by the board shall, upon availability of the posting notice developed by the Labor Commissioner pursuant to Section 98.10 of the Labor Code, post that notice in a manner that complies with the requirements of Section 98.10 of the Labor Code in a conspicuous location in clear view of employees and where similar notices are customarily posted. The notice shall be posted in English, Spanish, Vietnamese, and Korean.

(b) The board shall inspect for compliance with this posting requirement when it conducts an inspection pursuant to Section 7353.

(c) A violation of this section shall be punished by an administrative fine established pursuant to Section 7407 and shall not be punished as a misdemeanor under Section 7404.1.

SEC. 2. Section 98.10 is added to the Labor Code, immediately following Section 98.9, to read:

98.10. (a) On or before June 1, 2017, the Labor Commissioner shall develop a model notice pertaining to workplace rights and wage and hour laws for employees of establishments licensed under Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code. The model posting notice shall be developed using plain language, and in all languages listed in subdivision (c), and be accessible on the Labor Commissioner's Internet Web site so that it is reasonably accessible to an establishment that must comply with Section 7353.4 of the Business and Professions Code.

(b) The model notice shall include information, including, but not limited to, all of the following:

- (1) Misclassification of an employee as an independent contractor.
 - (2) Wage and hour laws, including, but not limited to, minimum wage, overtime compensation, meal periods, and rest periods.
 - (3) Tip or gratuity distribution.
 - (4) How to report violations of the law.
 - (5) Business expense reimbursement.
 - (6) Protection from retaliation.
- (c) The model notice shall include full text translations in Spanish, Vietnamese, and Korean.



California

LEGISLATIVE INFORMATION

SB-1044 Barbering and cosmetology. (2015-2016)

Senate Bill No. 1044

CHAPTER 233

An act to amend Section 7414 of, and to add Sections 7407.1 and 7408.1 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor August 29, 2016. Filed with Secretary of State August 29, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1044, Nguyen. Barbering and cosmetology.

Existing law, the Barbering and Cosmetology Act, provides for the licensure and regulation of the practices of barbering, cosmetology, and electrolysis by the State Board of Barbering and Cosmetology. Existing law also requires any person, firm, or corporation operating an establishment where any activity licensed under the act is practiced to apply to the board for a license. Existing law requires protection of the public to be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Under existing law, whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is required to be paramount.

Under existing law, the board is authorized to assess administrative fines for a violation of the act or a violation of any rules and regulations adopted by the board pursuant to the act. Existing law requires the board to establish by regulation a schedule of administrative fines for violations of the act.

This bill would require the board to determine by regulation when a fine is required to be assessed against both the holder of the establishment license and the individual licensee for the same violation. The bill would also require the board to determine by regulation when a fine shall be assessed to only the holder of the establishment license or to only an individual licensee for the same violation. In making these determinations, the bill would require the board to consider specified factors.

Existing law requires the board to issue a citation with respect to any violation for which an administrative fine is authorized to be assessed. Existing law requires these citations to be in writing and to describe with particularity the nature of the violation alleged to have occurred. Under existing law, the administrative fine, if any, is required to be attached at the time the citation is written.

The bill would authorize the board to enter into a payment plan for citations with administrative fines exceeding \$500. The bill would require the board to define by regulation the parameters of the payment plans, as specified.

Existing law prohibits issuing a license to, or renewing any issued licenses of, persons who fail to pay administrative fines that were not contested or were contested but the appeal has been adjudicated, until all fines are paid in addition to any application, renewal, or delinquency fees which are required.

The bill would instead authorize making the issuance of a license to, or the renewal of a license of, a person who fails to pay administrative fines that were not contested or that were contested but the appeal has been

adjudicated contingent upon all fines being paid in addition to any application, renewal, or delinquency fees which are required.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7407.1 is added to the Business and Professions Code, to read:

7407.1. The board shall determine by regulation when a fine shall be assessed to both the holder of the establishment license and the individual licensee for the same violation. The board shall also determine by regulation when a fine shall be assessed to only the holder of the establishment license or to only an individual licensee for the same violation. In making these determinations, the board shall consider the egregiousness of the violation of the health and safety regulations and whether the violation is a repeated violation by licensees within the same establishment.

SEC. 2. Section 7408.1 is added to the Business and Professions Code, to read:

7408.1. The board may enter into a payment plan for citations with administrative fines that exceed five hundred dollars (\$500). The board shall define by regulation the parameters of the payment plan, which shall include, but shall not be not limited to, the terms of the plan and grounds for cancellation of the plan.

SEC. 3. Section 7414 of the Business and Professions Code is amended to read:

7414. The issuance of a license to, or the renewal of a license of, a person who fails to pay administrative fines that were not contested or that were contested but the appeal has been adjudicated may be made contingent upon all fines being paid in addition to any application, renewal, or delinquency fees which are required.



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

Board of Barbering and Cosmetology-Department of Consumer Affairs
 PO Box 944226, Sacramento, CA 94244
 P (800) 952-5210 F (916) 574-7574 | www.barbercosmo.ca.gov



MEMORANDUM

DATE	November 14, 2016
TO	Members, Board of Barbering and Cosmetology
FROM	Kristy Underwood, Executive Officer
SUBJECT	Regulations Update

- **Demonstration of Products:** The Office of Administrative Law has approved this rulemaking. It goes into effect on January 1, 2017.

Action: None needed.

- **Health and Safety Poster:** The Department of Consumer Affairs' Legal Affairs Division has asked for revisions to the Board's Health & Safety Poster regulations, which will require a 15-day notice, as well as the addition of a new document to the file (a revised sample of the proposed poster).

Action: Staff asks that the Board make and approve motions to:

1. Add the revised sample "Message to the Consumer" to the rulemaking file;
2. Approve the proposed modified text for a 15-day public comment period;
3. Delegate to the executive officer the authority to adopt the proposed regulatory changes as modified if there are no adverse comments received during the public comment period and also delegate to the executive officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.

BOARD OF BARBERING AND COSMETOLOGY
Division 9, Title 16, of the California Code of Regulations.

MODIFIED TEXT

LEGEND

<u>Underline</u>	Indicates proposed amendments or additions to the existing regulation.
Strikeout	Indicates proposed deletions to the existing regulation.
<u>Double Underline</u>	Indicates an addition to the originally proposed text of regulations.
Double Strikeout	Indicates a deletion to the originally proposed text of regulations.

904. Enforcement

~~(a) A copy of the board's Health and Safety Rules, as specified in Article 12 of the Rules and Regulations, shall be conspicuously posted in:~~

- ~~(1) Reception areas of both schools and establishments, and~~
- ~~(2) Theory rooms of schools.~~

(a) ~~(b)~~ The holder or holders of an establishment license or a mobile unit license, and the person in charge of any such establishment or mobile unit, shall be responsible for implementing and maintaining the Health and Safety Rules in such establishment or mobile unit individually and jointly with all persons in or employed by or working in or on the premises of such establishment or mobile unit.

(b) ~~(c)~~ All licensed barbers, cosmetologists, estheticians, manicurists, electrologists, instructors, or apprentices shall be held individually responsible for implementation and maintenance of the Health and Safety Rules.

(c) ~~(d)~~ All persons performing acts of a barber, cosmetologist, esthetician, manicurist or electrologist, except students in schools, shall, upon request of an authorized representative of the board, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other recognized government entity.

(d) ~~(e)~~ Failure to present valid proof of identification shall be grounds for disciplinary action.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312, 7313, 7317 and 7404, Business and Professions Code.

905. Posting of Consumer Information Message

(a) The following consumer information message shall be included at the bottom of the front page of the copy of the Health and Safety Rules, which must be conspicuously posted in reception areas of both schools and establishments: accordance with Section 904, in all establishments:

MESSAGE TO THE CONSUMER

~~This establishment is licensed by the California State Board of Barbering and Cosmetology. The board can address the following problems:~~

- ~~• Health and Safety (including unsanitary conditions and failure to disinfect instruments after each use)~~
 - ~~• Incompetence and Negligence~~
 - ~~• Misrepresentation or False Advertising of Services~~
 - ~~• Unlicensed Practice of Barbering, Cosmetology or Electrology~~
- If you would like to receive a Consumer Complaint Guide or if you have any unresolved questions regarding services provided in this establishment, please call or write the Board of Barbering and Cosmetology at (800) 952-5210; P.O. Box 944226, Sacramento, California 94244-2260. This establishment is licensed by the California State Board of Barbering and Cosmetology
To file a complaint, please contact the Board at www.barbercosmo.ca.gov or (800) 952-5210
The Board's laws and regulations can be found on the Board's Web site at www.barbercosmo.ca.gov or in B&P Code Sections 7301-7426.5 and Title 16 CCR Sections 901-999

(b) The heading of the consumer information message, "Message to the Consumer," shall be printed in at least 36 point boldface type. The body of the consumer information message must be printed in at least 14 point boldface type. The notice shall be printed on paper that measures 8 ½ X 11 inches.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 129(e), and 7404(b), Business and Professions Code



MESSAGE TO THE CONSUMER

**This Establishment is Licensed by the
California State Board of Barbering
and Cosmetology**

TO FILE A COMPLAINT, PLEASE CONTACT THE BOARD AT

**www.barbercosmo.ca.gov
or**

(800) 952-5210

The Board's laws and regulations can be found on the Board's Web site at

www.barbercosmo.ca.gov

or in B&P Code Sections 7301-7426.5 and Title 16 CCR Sections 901-999

BEFORE THE
BOARD OF BARBERING AND COSMETOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation Against:

MBM BEAUTY LLC, dba LASHES ON
BROADWAY; JAY DENMAN and AMANDA
DENMAN, Partnership Owners,

Respondent.

Citation No. 1002015008353

OAH No. 2015090048

In the Matter of the Citation Against:

MBM BEAUTY LLC, dba LASHES ON
BROADWAY; JAY DENMAN and AMANDA
DENMAN, Partnership Owners,

Respondent.

Citation No. 1002015008357

OAH No. 2015090049

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on June 8, 2016.

Diane De Kervor, Deputy Attorney General, represented complainant, Kristy Underwood, Executive Officer, Board of Barbering and Cosmetology, Department of Consumer Affairs, State of California.

Amanda and Jay Denman appeared on behalf of respondent, MBM Beauty LLC.

The matter was submitted on June 8, 2016.

FACTUAL FINDINGS

Background

1. On October 27, 2014, complainant issued citation number 1002015008357 to respondent, doing business as Lashes on Broadway, located in Carlsbad. The citation

contained six violations. The citation imposed administrative fines for each violation, resulting in a total administrative fine of \$2,000.

2. Respondent appealed the citation to the board's Disciplinary Review Committee (DRC). On March 17, 2015, Mr. and Mrs. Denman attended a hearing before the DRC. Following the hearing, the DRC upheld the citation and fines.

3. On October 27, 2015, complainant issued citation number 1002015008353 to respondent doing business as Lashes on Broadway, located in San Juan Capistrano. The citation contained three violations. The citation imposed administrative fines for each violation, resulting in a total administrative fine of \$800.

4. Respondent appealed the citation to the DRC. On March 17, 2015, Mr. and Mrs. Denman attended a hearing before the DRC. Following the hearing, the DRC upheld the citation and fines.

5. The two cases were consolidated for hearing.

The September 25, 2014, Carlsbad Inspection

6. Evangeline Medina, a board Inspector II, testified at the hearing. The summary of her testimony follows: On September 25, 2014, Ms. Medina conducted an inspection of Lashes on Broadway, located in Carlsbad. Prior to the inspection, Ms. Medina verified that it was not a board-licensed establishment. When Ms. Medina entered the establishment, she saw a person lying on a treatment table. An employee was standing next to the table moving her hands near the customer's face. In Ms. Medina's opinion, the employee was providing a service to a customer. Ms. Medina identified herself as a board inspector. The employee identified herself to Ms. Medina as "Katy Brown." Ms. Brown told Ms. Medina she was not licensed by the board and the establishment did not require a license. Ms. Brown admitted she was applying eyelash extensions. There was not a licensed person in charge at the establishment.

7. Ms. Medina started her inspection while Ms. Brown called the owner, Mr. Denman. Ms. Brown placed Mr. Denman on speaker phone. Mr. Denman said his attorney advised that the business did not need a board license. Mr. Denman told Ms. Brown that she should refuse the inspection. Ms. Medina asked Ms. Brown if she could complete her inspection report at the establishment. Ms. Brown said she should finish it elsewhere and mail a copy to the owner at an address she provided on a business card. Ms. Medina then left the establishment. Ms. Medina testified she did not perform a complete inspection because she had not inspected the area where the customer was receiving services.

Ms. Medina found a menu of services in the establishment. It contained prices for various lash packages. On the back listed, "Hair, Waxing, Spray Tanning, Massage, Nails, Beauty Supplies, Lash Training & More." Ms. Medina found a customer appointment book/sign-in sheet, which she said are typically found in establishments providing services.

8. During her limited inspection, Ms. Medina found tools used for applying synthetic eyelashes. The tools were in an unlabeled container containing disinfectant solution.

Ms. Medina found tweezers on a table that were not in a labelled container. Ms. Medina testified that the tweezers were "soiled."

Ms. Medina found an unlabeled and uncovered plastic container containing clean eyelash tools. Ms. Medina testified that regulations require clean instruments to be contained in closed and labelled containers.

Ms. Medina found clean towels on a shelf. Ms. Medina testified that clean towels must be stored in a closed container.

Ms. Medina found a "soiled" towel on top of a table. Ms. Medina said soiled towel must be in a closed container.

9. On cross examination, Ms. Medina admitted that she did not actually see Ms. Brown applying eyelashes to the person lying on the table. Instead, Ms. Medina testified she saw Ms. Brown moving her hands near the person's face. Ms. Medina said she did not interview or speak to the person lying on the bed.

September 25, 2014, San Juan Capistrano Inspection

10. Elizabeth Brennan, a board Inspector II, testified at the hearing. The summary of her testimony follows: On September 25, 2014, Ms. Brennan conducted a directed inspection at Lashes on Broadway located in San Juan Capistrano. Prior to the inspection, Ms. Brennan verified that the establishment was not board-licensed. Ms. Brennan did not see a posted license when she entered the establishment. When she arrived she saw an employee who appeared to be applying eyelashes to a person lying on a table. The employee told Ms. Brennan that the owners instructed her not to talk to Ms. Brennan. The employee said she herself was licensed, but the business did not require a license. The employee refused to show Ms. Brennan her license and said she was told to refuse an inspection. Ms. Brennan left the establishment as requested.

Testimony of Industry Expert Debra Van Kallan

11. Debra Van Kallan testified as an industry expert for the board. Ms. Van Kallan has been a licensed esthetician since 2000 and has owned a licensed establishment since 2003. She has performed lash extensions 20 to 30 times. She learned how to perform eyelash extensions in school and obtained advanced training. Ms. Van Kallan said estheticians are trained the basics of performing eyelash extensions in school. She described the process of applying eyelash extensions. The esthetician uses tweezers to glue a synthetic eyelash to the person's individual eye lash. During the process, the person's eyes are taped closed to avoid contact between glue and the eye. Additionally, tears can cause the glue to

not adhere to the lash. Ms. Van Kallan said that an initial consultation for eyelash extension requires a glue test, where the glue is tested on the person's skin to ensure there is no allergic reaction. Ms. Van Kallan said surgical glue is typically used. Ms. Van Kallan said the tweezers need to be properly sterilized, otherwise there is a risk of spreading infections, such as conjunctivitis. Ms. Van Kallan said eyelash extensions come in various forms: strips, clusters, and individual. Clusters and strips can be self-applied. Ms. Van Kallan said that performing eyelash extensions requires an esthetician license.

Testimony of Amanda Denman

12. Mrs. Denman testified that Lashes on Broadway is set up as a retail store, which she believes exempts it from the board's jurisdiction pursuant to Business and Professions Code section 7319, subdivision (e). According to Mrs. Denman, Lashes on Broadway applies the eyelashes as a free service after a customer purchases the lashes. Mrs. Denman believes her business is similar to services performed at department store makeup counters, where cosmetology licenses are not required. Since a store selling makeup can legally apply the makeup to a customer's face without a license, Mrs. Denman believed Lashes on Broadway could operate in a similar manner. In support for her contention, she noted that Lashes on Broadway charges sales tax on the lashes it sells, something it would not have to do if it were offering a service. Customers are seen by appointment only. A \$30 deposit is required to make an appointment. The store sells trays of lashes, glue, and removal product. However, the glue the customer purchases is only the glue being used to apply her individual lashes. The retail price for a tray of lashes starts at \$17.99, and are available for purchase from the company's website. However, the price for a full set of lashes and glue begin at \$125. The minimum price for glue is \$50. A customer is required to fill out a client profile sheet documenting any medical conditions. A customer is also required to sign a release of liability for application of the eyelashes.

Mrs. Denman completed 520 hours of esthetician school, but she is not a licensed esthetician. The Denmans own 18 locations. Some of the locations are licensed by the board and offer other board-regulated services. The Carlsbad and San Juan Capistrano locations, the subject of the citations, are no longer in business and have been closed.

LEGAL CONCLUSIONS

1. The standard of proof applied in a citation proceeding is preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 994.) A preponderance of the evidence means that the evidence on one side outweighs the evidence on the other side, "not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325, fn. omitted.) The burden of proof is on complainant to establish that the citation violations should be sustained.

Applicable Statutes and Regulations

2. Business and Professions Code section 7316, subdivision (c), provides that within the practice of cosmetology there exists the specialty branches of skin care and nail care. Skin care includes: "Giving facials, applying makeup, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person." (Bus. & Prof. Code, § 7316, subd. (c)(1).)

3. Business and Professions Code section 7346, defines "establishment" as "any premises, building or part of a building where any activity licensed under this chapter is practiced."

4. Business and Professions Code section 7317 provides:

Except as provided in this article, it is unlawful for any person, firm, or corporation to engage in barbering, cosmetology, or electrolysis for compensation without a valid, unexpired license issued by the board, or in an establishment or mobile unit other than one licensed by the board, or conduct or operate an establishment, or any other place of business in which barbering, cosmetology, or electrolysis is practiced unless licensed under this chapter.

5. Business and Professions Code section 7319, subdivision (e), provides, "Persons engaged in the administration of hair, skin, or nail products for the exclusive purpose of recommending, demonstrating, or selling those products" are exempted from the Barbering and Cosmetology Act.

6. Business and Professions Code section 7313, the board's executive officer and authorized representatives shall have access to, and shall inspect, any establishment or mobile unit during business hours or at any time in which barbering, cosmetology, or electrolysis are being performed.

7. Business and Professions Code section 7348 provides, "An establishment shall at all times be in the charge of a person licensed pursuant to this chapter except an apprentice."

8. Business and Professions Code section 7349 provides, "It is unlawful for any person, firm, or corporation to hire, employ, or allow to be employed, or permit to work, in or about an establishment, any person who performs or practices any occupation regulated under this chapter and is not duly licensed by the bureau . . ."

9. Business and Professions Code section 7406 authorizes the board to assess administrative fines for the violation of applicable laws and regulations.

10. California Code of Regulations, title 16, section 976 provides, "A citation containing an order of abatement or an order to pay an administrative fine may be assessed against any person, firm, or corporation who is engaged in barbering, cosmetology or any of its branches, or electrolysis for compensation without a valid, unexpired license issued by the board."

11. California Code of Regulations, title 16, section 965, subdivision (b), requires establishment licenses to be conspicuously posted in the reception areas.

12. California Code of Regulations, title 16, section 974, subdivision (a), provides a schedule of administrative fines for violations of specified laws and regulations. Subdivision (b) provides that for violations deemed not waivable, the violation cannot be corrected and the fine may not be avoided.

13. California Code of Regulations, title 16, section 979 outlines the procedure and requirements for disinfecting and storage of non-electrical tools. All tools used on a client must be placed in a container labelled as dirty or soiled. All disinfected tools must be placed in a container labelled as clean. Disinfected tools may not be placed in a container that cannot be disinfected.

14. California Code of Regulations, title 16, section 987 provides that after a towel is used "it shall be deposited in a closed container and not used until properly laundered and sanitized." All clean towels must be stored in clean, closed cabinets or a clean, closed container.

Respondent's Defense to the Citations

15. Applying eyelashes to a person is within the statutory definition of cosmetology, for which a license is required. (Bus. & Prof. Code, §§ 7316, subd. (c)(1) & 7317.) Respondent contends that the two cited Lashes on Broadway locations were retail stores selling synthetic eyelashes; the application of the eyelashes was a free service provided to the customer. As a free service, the stores' employees applied the products to their customers, much the same way employees at department store makeup counters apply makeup for their customers. Respondent believes the two stores were exempted from the Barbering and Cosmetology Act because they engaged in the administration of hair products "for the exclusive purpose of . . . selling those products." (Bus. & Prof. Code, § 7319, subd. (e).) By classifying its business as a retail establishment, and charging sales tax on its products, respondent believes the two cited stores fell outside the board's jurisdiction.

Respondent's argument is rejected. The evidence established that eyelash extension services provided at Lashes on Broadway provided were not for the "exclusive purpose" of selling a product. Rather, the nominal "sale" of products - the tray of eyelashes and glue - were incidental to the service provided. There are several factors that compel this conclusion. First, applying the eyelashes is in itself a time consuming process; it could take up to two hours to complete a full set, for which an appointment was required. Nothing in

the promotional brochures or website indicated to a consumer that the eyelash application was a free service incidental to the purchase of a product. Although the stores did sell trays of eyelashes, beginning at \$17.99, the price list that included the "free" application began at \$125 for a full set.

Moreover, unlike the department stores cited by respondent, that presumably sell makeup for the same price whether or not a clerk applies it to a customer, Lashes on Broadway charged exceedingly more when application was involved. Thus, the significant difference between the retail price for the lashes themselves and the price that included the "free" application strongly suggests that the "purpose" was the *application* of lashes, rather than the sale of a product. Although respondent charged sales tax on the product, this alone was insufficient to establish that the two locations were engaged in the practice of cosmetology for the "exclusive purpose" of selling a product. Rather, they were establishments providing a service falling under the board's regulatory authority. Respondent's classification of the business as a retail establishment was for the sole purpose of circumventing the board's regulation of the establishment.

In *Rosenthal v. Cory* (1977) 69 Cal.App.3d 950, 953, the court stated the general rules for statutory interpretation, as follows:

The cardinal principle of statutory construction is that the court should ascertain the intent of the Legislature so as to effect the purpose of that law. (*East Bay Garbage Co. v. Washington Township Sanitation Co.*, 52 Cal.2d 708.) The statute in question should be construed with due regard to the ordinary meaning of the language used and in harmony with the whole system of law of which it is a part. (*Anaheim Union Water Co. v. Franchise Tax Bd.*, 26 Cal.App.3d 95.) The aggregate legislation . . . must be viewed as an integrated whole with a single objective and all parts must be construed to harmonize the legislative scheme and to attain the legislative objective.

Respondent's expansive construction of the exemption contained in Section 7319, subdivision (e), would undermine the legislative intent of the Barbering and Cosmetology Act. A nail salon could avoid regulation simply by "selling" the nail polish it applies to a customer's nails. A hair salon could avoid regulation by "selling" the sheers a stylist uses to cut a customer's hair. Any person engaging in the practice of barbering or cosmetology could avoid compliance with the Act simply by asserting that services were nominally rendered incidental to the sale of a product. Such interpretation of the exemption contained in Section 7319, subdivision (e), would undermine the legislative attempt of providing regulation and oversight of the practice of barbering and cosmetology. While there may be retail establishments, such as department store makeup counters, where the application of product is incidental to the sale of the product such that no license is required, Lashes on Broadway was not such an establishment. Therefore, the two cited locations were

establishments within the meaning of Business and Professions Code section 7346, and were subject to the board's jurisdiction.¹

Citation No. 1002015008357

16. Cause exists to find a violation of Business and Professions Code section 7313. The board inspector was advised by the Lashes on Broadway employee that she could not continue with her inspection of the establishment, and she had to leave the premises. As a result, the inspector could not complete her inspection of the entire establishment. The administrative fine of \$250 is the minimum fine for this violation, and the fine is not waivable. (Cal. Code Regs., tit. 16, § 974, subd. (a).) The \$250 administrative fine is affirmed.

17. Cause exists to find a violation of Business and Professions Code section 7317. A preponderance of evidence established eyelash extensions were performed at the location for compensation without a valid license issued by the board. The administrative fine of \$500 is the minimum fine for this violation, and the fine is not waivable. (Cal. Code Regs., tit. 16, § 974, subd. (a).) The \$500 administrative fine is affirmed.

18. Cause exists to find a violation of Business and Professions Code section 7348. A licensee was not present or in charge of the establishment at the time of inspection. The administrative fine of \$100 is the minimum fine for this violation, and the fine is not waivable. (Cal. Code Regs., tit. 16, § 974, subd. (a).) The \$100 administrative fine is affirmed.

19. Cause exists to find a violation of Business and Professions Code section 7349. A preponderance of evidence established that Katy Brown, an unlicensed person, was performing eyelash extensions, a services regulated by the board (Bus. & Prof. Code, § 7316, subd. (c)(1).) The administrative fine of \$1,000 is the minimum fine for this violation, and the fine is not waivable. (Cal. Code Regs., tit. 16, § 974, subd. (a).) The \$1,000 administrative fine is affirmed.

20. Cause exists to find a violation of California Code of Regulations, title 16, section 979. A preponderance of evidence established that soiled instruments were not stored in a properly labeled container. Additionally, clean instruments were not stored in a clean, covered, and properly labelled container. The administrative fine of \$100 is the minimum fine for this violation, and the fine is not waivable. (Cal. Code Regs., tit. 16, § 974, subd. (a).) The \$100 administrative fine is affirmed.

¹ Additionally, respondent argued that the application of the Barbering and Cosmetology Act to its stores violates the Federal equal protection clause. Article III, section 3.5 of the California Constitution provides an administrative agency has no power to declare a statute unconstitutional or unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.

21. Cause exists to find a violation of California Code of Regulations, title 16, section 987. A preponderance of evidence established soiled and clean towels were not stored in closed containers or closets. The administrative fine of \$50 is the minimum fine for this violation, and the fine is not waivable. (Cal. Code Regs., tit. 16, § 974, subd. (a).) The \$50 administrative fine is affirmed.

Citation No. 1002015008353

22. Cause exists to find a violation of Business and Professions Code section 7313. The board inspector was denied access to the establishment in order to conduct an inspection. The administrative fine of \$250 is the minimum fine for this violation, and the fine is not waivable. (Cal. Code Regs., tit. 16, § 974, subd. (a).) The \$250 administrative fine is affirmed.

23. Cause exists to find a violation of Business and Professions Code section 7317. A preponderance of evidence established eyelash extensions were performed at the location for compensation without a valid license issued by the board. The administrative fine of \$500 is the minimum fine for this violation, and the fine is not waivable. (Cal. Code Regs., tit. 16, § 974, subd. (a).) The \$500 administrative fine is affirmed.

24. Cause exists to find a violation of California Code of Regulations, title 16, section 965. An establishment license was not visibly posted in the reception area. The administrative fine of \$50 is the minimum fine for this violation, and the fine is not waivable. (Cal. Code Regs., tit. 16, § 974, subd. (a).) The \$50 administrative fine is affirmed.

ORDER

Citation number 1002015008357 is affirmed.

Citation number 1002015008353 is affirmed.

Respondent shall pay to the board an administrative fine in the amount of \$2,800 within 30 days of the effective date of this decision, or if the board authorizes a payment plan, in accordance with that plan.

DATED: June 27, 2016

DocuSigned by:



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ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
STATE BOARD OF BARBERING AND COSMETOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation Against:

MBM BEAUTY LLC
DBA: LASHES ON BROADWAY
31781 Camino Capistrano #304
San Juan Capistrano, CA 92675

And

800 North Grand Avenue, Suite A7A
Carlsbad, CA 92008

Establishment License No.: Unlicensed

Respondent

Citation No. 1002015008353 and
1002015008357

OAH No. 2015090048 and
2015090049

DECISION AND ORDER

The attached Proposed Decision and Disciplinary Order is hereby accepted and adopted by the State Board of Barbering and Cosmetology as the Decision in the above entitled matter, except that, pursuant to the provisions of Government Code Section 11517, subdivision (c) (2) (C), under FACTUAL FINDINGS appearing on the second page, section number three, first line is hereby modified for technical reasons as follows:

"On October 27, 2014, complainant issued citation number 1002015008353 to..."

This Decision shall become effective on August 17, 2016.

IT IS SO ORDERED July 18, 2016.



Joseph Federico, President
State Board of Barbering and Cosmetology
Department of Consumer Affairs

No Attachment