CALIFORNIA
BOARD OF BARBERING AND COSMETOLOGY

MARCH 9, 2020
Board Meeting

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

BarberCosmo
Board of Barbering & Cosmetology

BOARD MEMBERS:
Lisa Thong, President
Andrew Drabkin, Vice President
Jacquelyn Crabtree
Derick Matos
Calimay Pham
Christie Tran
Steve Weeks
Dr. Kari Williams

CALIFORNIA BOARD OF BARBERING AND COSMETOLOGY
BOARD MEETING NOTICE AND AGENDA
March 9, 2020

Department of Consumer Affairs
1747 North Market Blvd.
HQ2 Hearing Room 186, 1st Floor
Sacramento, CA 95834
10:00 A. M.

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

UNTIL COMPLETION OF BUSINESS

OPEN SESSION:

1. Call to Order/ Roll Call/ Establishment of Quorum **(Lisa Thong)**
2. Board President's Opening Remarks **(Lisa Thong)**
3. Annual Election of Officers
4. Board Member Remarks – Informational only
5. 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))
6. Discussion and Possible Approval of December 2, 2019 Board Meeting Minutes
7. Appointment of Committee Members to Standing Committees for 2020
   - Disciplinary Review Committee
   - Education and Outreach Committee
   - Enforcement and Inspection Committee
   - Legislative and Budget Committee
   - Health and Safety Advisory Committee
   - Licensing and Examination Committee
8. Executive Officer's Report **(Kristy Underwood)**
   - Licensing Statistics
   - Examination Statistics
   - Disciplinary Review Committee Statistics
   - Enforcement Statistics
   - Budget Updates
   - Outreach Updates
   - Practice Status Survey Results

9. Discussion and Possible Action Regarding the 2020 Board Member Guidelines and Procedure Manual

10. Discussion and Possible Action Regarding the 2020 Sunset Review

11. Health and Safety Advisory Committee Update

12. Legislative Update:
    Discussion and Possible Action on Proposed Bills:
    - AB 1928 (Kiley and Melendez) – Employment Standards
    - AB 2465 (Gonzalez) – Booth Renter Permit

13. Discussion and Possible Action Regarding Rulemaking Proposals:
    - Amend Title 16, California Code of Regulations (CCR), section 950.10 (Transfer of Credit or Training)
    - Amend Title 16, CCR section 961 (Instructional Materials-NIC Guides)
    - Amend Title 16, CCR sections 962, 962.1 and 962.2 (Externs)
    - Add Title 16, CCR section 965.2 (Personal Service Permit)
    - Amend Title 16, CCR sections 970 and 971 (Substantial Relationship Criteria, Criteria for Rehabilitation)
    - Amend Title 16, CCR section 972 (Disciplinary Guidelines)
    - Amend Title 16, CCR section 974.1 (Disciplinary Review Committee)

14. Department of Consumer Affairs (DCA) Update Which May Include Updates on DCA's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, and Legislative, Regulatory, or Policy Matters.

15. Suggestions for Future Agenda Items

16. 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. Note: This meeting will be Webcast, provided there are no unforeseen technical difficulties or limitations. To view the Webcast, please visit ***https://thedcapage.wordpress.com/webcasts/****. 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.

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CALIFORNIA STATE BOARD OF BARBERING AND COSMETOLOGY

BOARD MEETING

MINUTES OF DECEMBER 2, 2019

Crowne Plaza San Diego-Mission Valley
2270 Hotel Circle N.
San Diego, California

BOARD MEMBERS PRESENT
Lisa Thong, President
Andrew Drabkin, Vice President
Jacquelyn Crabtree
Calimay Pham
Steve Weeks
Dr. Kari Williams

STAFF MEMBERS PRESENT
Kristy Underwood, Executive Officer
Michael Santiago, Board Legal Representative
Marcene Melliza, Board Analyst

1. Agenda Item #1, CALL TO ORDER/ ROLL CALL/ ESTABLISHMENT OF A QUORUM

Lisa Thong, Board President, called the meeting to order at 9:19 a.m. and confirmed the presence of a quorum.

BOARD PRESIDENT'S OPENING REMARKS

Ms. Thong expressed her thanks and gratitude for everyone's hard work throughout 2019. 2019 was the Board's sunset year and there were a few surprises. She thanked staff for helping the Board to understand everything and what they needed to do. She thanked the Members of the Board, who have worked at half capacity since January.

Ms. Thong welcomed new Board Member Calimay Pham, who was recently appointed by Speaker Anthony Rendon.

2. Agenda Item #2, BOARD MEMBER REMARKS – Informational Only

No remarks were offered.

3. Agenda Item #3, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Wendy Cochran, Founder, California Estheticians – Esthetician Advocacy; Founder, California Aesthetic Alliance, asked Jamie Schrabeck to read her statement. Jaime Schrabeck, Ph.D., Owner, Precision Nails, read the statement written by Ms. Cochran about attending a recent Disciplinary Review Committee (DRC) action. The Board assessed the penalty of practice of medicine without a license for a microcurrent device

that the FDA has affirmed is a non-medical device. Ms. Cochran wrote about her concern with the challenge of deregulation efforts that cite barriers to entry and that state and local regulations are a growing burden on small business in California. She asked for a clear directive from the Board for licensees who incorporate services outside of the Board's purview. This is an unnecessary cost, barrier, and burden on small business. Ms. Cochran asked that the Board develop guidelines for licensees to responsibly follow.

4. Agenda Item #4, APPROVAL OF AUGUST 12, 2019, BOARD MEETING MINUTES

Mr. Drabkin referred to his comment on page 4 and asked to change the word "stuck" to "struck."

Ms. Thong referred to the first sentence in the third paragraph on page 5 and asked to add "exemptions specific to the Board" so it would read "Ms. Crabtree spoke in opposition to AB 5's exemptions specific to the Board."

> **MOTION**: Mr. Weeks moved to approve the August 12, 2019, California State Board of Barbering and Cosmetology Meeting Minutes as revised. Ms. Crabtree seconded. Motion carried 5 yes, 0 no, and 1 abstain, per roll call vote as follows:
>
> The following Board Members voted "Yes": Crabtree, Drabkin, Thong, Weeks, and Williams.
>
> The following Board Member abstained: Pham.

5. Agenda Item #5, EXECUTIVE OFFICER'S REPORT

- **Licensing Statistics**
- **Examination Statistics**
- **Disciplinary Review Committee Statistics**
- **Enforcement Statistics**
- **Budget Updates**
- **Outreach Updates**
- **Practice Status Survey Results**

Kristy Underwood, Executive Officer, reviewed the statistics and update reports, which were included in the meeting packet.

Questions and Discussion

Mr. Weeks asked about the low barbering examination scores. Ms. Underwood agreed that the barber pass rates were unusually low and stated staff has reached out to the national organization to question that and continues to monitor that weekly.

Mr. Drabkin asked staff to compare apprenticeships and schools. Ms. Underwood stated staff will present those statistics at the next Board meeting.

Ms. Thong asked if there had been a change to the barber examination.
Ms. Underwood stated the current examination has been in place for two years.

Mr. Weeks asked if the number of barbers taking the examination has changed. Ms. Underwood stated the numbers have increased.

Mr. Weeks asked what staff is looking to modify the inspector qualifications. Ms. Underwood stated the minimum qualifications include a college degree with a good number of criminal justice units, which should not be a requirement. The union recently approved a raise for inspectors so this should help with recruitment.

Mr. Weeks asked if the form that goes to the appellant at DRC hearings can include that the DRC has photographic evidence of the citation.

Ms. Thong asked if the ratio of establishments with and without violations in the enforcement statistics has ever improved. Ms. Underwood stated it has improved, especially over the past three to four years.

Mr. Weeks asked what is included in the examination expenses in the budget. Ms. Underwood stated the $1,354,000 includes the cost of the national examination, development, and analysis, but does not include rent or salaries allocated during the examination process.

Mr. Weeks asked if there is a staff member assigned to the budget. Ms. Underwood stated there is a staff person who tracks expenditures, but the Department of Consumer Affairs (DCA) Budget Office also works on the development of the budget and works with the Department of Finance (DOF).

6. Agenda Item #6, DISCUSSION AND POSSIBLE ACTION ON THE SUNSET REVIEW PROCESS

- **Review of Trends Presented by National Council of State Governments**

Ms. Underwood summarized the trends presented by the National Council of State Governments (CSG) and what the Board has done to address those national trends, which was provided in the meeting packet, including targeted reform for specific populations, universal license recognition, establishing a sunrise/sunset process, changing regulatory structure, and interstate compacts.

- **Discussion on 1600 Hour Curriculum and other State Requirements**
- **Discussion and Possible Action on Future Committees to Address Examinations and Curriculum**

Ms. Underwood stated one of the big issues that was brought up during Sunset Review was the curriculum. The chair of the Committee questioned the 1600-hour requirement. She stated the need to possibly set up specific Committees to research what the curriculum and examinations can look like. She stated the majority of states are at 1500 hours. There are many different licensing structures such as stackable licenses.

Questions and Discussion

Ms. Crabtree suggested a hair-only license.

Mr. Weeks asked what other states charge for cosmetology school hours and if states with lower hours charge less. One of the reasons for reducing the hours is to lower the

burden of the funds students must pay to be licensed. Ms. Underwood stated staff will look into this and report back at the next Board meeting.

Ms. Thong stated the manicurist license is only 400 hours of instruction, so those students would not qualify for federal student loans, which require 600 hours. Ms. Underwood agreed and stated other states' manicurist licenses are for 600 hours for that reason.

Ms. Thong suggested that the Committees address curriculum versus risk. Currently, the curriculum does not address areas that have the most risk; the most curriculum hours are spent on areas with the least amount of consumer harm complaints. Ms. Underwood stated this was discussed at the hearing on the risks. She noted that the state of Nevada took on a project to look at risks for the industry. Ms. Underwood was invited to be a part of that task force, which is made up of other states and subject matter experts nationwide.

Ms. Underwood stated the task force's next three-day meeting will be held next month to finalize the project. The finalized document is for Nevada but they are willing to share the results with other states. A sample of the project was presented at the Sunset Committee where they did a risk assessment for every step involved in every service. The final report will be presented in January.

Ms. Underwood stated a report from the federal government specifically on the cosmetology industry is expected out in December. The report will address the curriculum from a federal standpoint.

Ms. Underwood stated both of these reports will be made available in January and will be helpful to the Board's future discussions.

Ms. Thong stated the Board's Health and Safety Committee is also looking at regulation changes to better tie them to risk. She suggested that this would be a good opportunity to also look at the examination, since the testing of areas that have the highest amount of risk for consumer harm is the small percentage on the examination. Ms. Underwood agreed and stated the report that will soon be made available from the federal government will address that as well.

Ms. Thong asked if looking at the examination content and the curriculum will also impact the examination results. Ms. Underwood stated it would.

Ms. Thong stated aligning the curriculum to the examination while also aligning it to consumer protection and risk will make the entire process simpler for licensees.

Ms. Thong asked for a motion to propose how to move forward.

Ms. Crabtree moved to create a Committee to look into how to design new streamlined education in health and safety and risk. Ms. Thong seconded.

Public Comment

Fred Jones, Legal Counsel, Professional Beauty Federation of California (PBFC), stated he was unsure about where the Board is going with the NIC examination not giving points on health and safety. He stated he has discussed this issue with the NIC and their position is all the procedures and protocols, particularly in the

practical exam, are related to health and safety to ensure that all services are done safely.

Mr. Jones stated there was a CBBC Committee a year and a half ago that studied the 1600-hour curriculum. The Committee determined to protect the status quo but to move to a health and safety curriculum in 400-hour blocks to be included in each of the license categories. The Committee determined that the 1600-hour curriculum was well within the national norm.

Mr. Jones suggested creating another option for students – competency. The fixation on clock-hour credits misses whether students know how to do services safely on consumers. This is what really matters. How well they perform the techniques can be learned in a salon. He suggested providing an option for schools to provide competency-based education for students. This would require a statutory change.

Mr. Jones stated over 90 percent of cosmetologists surveyed consistently state they only want to do hair. He agreed with Ms. Crabtree that there should be a hair-stylist-only license that could have considerably fewer educational hours.

Sarah Mason, Senate Committee on Business Professions and Economic Development, stated her appreciation for the Board's participation and proactive approach to this process. She stated she looked forward to continuing to partner with the Board. She spoke in support of creating a Committee to dig deep into some of the topics mentioned today. She offered her assistance in this work.

Mr. Weeks asked where the Board is in testifying before the Committee.

Ms. Mason stated it has completed only the first part of its testimony. She stated this Board has shorter timeframes in its review, which means that it has come before the Legislature more frequently in past years than other Boards. Sunset Review provides an opportunity to ask a number of questions throughout a long process. It typically is a process that is undertaken within approximately a 12-month period. She stated this Board responded thoughtfully and practically to the questions asked of them in the form of the Sunset Review Report.

Ms. Mason stated typically there would be an opportunity for the Board to come to hearings in the Legislature in the spring to answer questions before the Legislature, but for this Board, there were considerations where those timeframes were extended to allow for some of these larger discussions to be had. The Board came to a more information-style hearing in August and has continued to participate in all of the information and oversight hearings to date. The next step is for the Board to come to a Sunset Hearing in late February or early March, where Committees, staff, and the Legislature produce a Background Paper, which outlines issues and identifies certain recommendations and possible direction that the Sunset Review process may take. Ms. Mason requested that the Board attend that as well to respond specifically to items in the Background Paper.

Mr. Weeks asked when the Background Paper report will be completed.

Ms. Mason stated the Board is in the cycle where the statute would require that the Board not be extended if there is no enabling legislation this year. The Legislature is in the second year of a two-year legislative session. She anticipated that the Background Paper would be completed in February, which would outline issues and identify recommendations. Then the Board would respond to that in the late winter or early spring. Legislation would be a potential vehicle to make any necessary statutory changes. The public document is expected to be made available in late winter and then the Board would respond to it both in writing and in person to the Committees in the late winter, or early spring.

Dr. Schrabeck spoke in support of a hair-only license but noted that some states, such as Texas, require continuing education. She stated, not to minimize the industry's role in the economy and in the population of residents and voters, possibly a third of the licensed population is inactive, which raises questions. She stated license renewal by paper only asks about military status, while renewal online asks about employment status. Unknown information about the population of licensees include how many are California residents, where they file taxes, how they identify according to race, ethnicity, and gender, how many hold establishment licenses as well as a license to provide services, and how many licenses are at risk of being canceled because they have not been renewed.

Dr. Schrabeck stated individuals who are self-employed are not reporting themselves as employees to the Bureau of Labor Statistics and will not be included in Occupational Employment Statistics (OES). Those are for employees, not for the self-employed. There is a huge number of self-employed licensees in this industry.

Dr. Schrabeck spoke about the alignment of the curriculum and the examination. She stated it means nothing if schools do not teach to the curriculum. It can be required and tested, but what is missing in the middle is the instruction.

Dr. Schrabeck stated an individual who presented at the hearing and spoke about trends mentioned artificial intelligence (AI) and automation and how that would impact the industry. Dr. Schrabeck stated the need to impress upon students the importance of following the rules.

> **MOTION**: Ms. Crabtree made a motion, seconded by Ms. Thong, to create a Committee to look into how to design new streamlined education in health and safety and risk. Motion carried 6 yes, 0 no, and 0 abstain, per roll call vote as follows:
>
> The following Board Members voted "Yes": Crabtree, Drabkin, Pham, Thong, Weeks, and Williams.

Ms. Thong asked for volunteers to serve on the new Committee. Ms. Crabtree, Ms. Pham, and Mr. Weeks volunteered.

7. Agenda Item #7, LEGISLATIVE UPDATE: DISCUSSION AND POSSIBLE ACTION ON PROPOSED BILLS

a. AB 5 (Gonzalez) – Worker Status: Independent Contractors

b. **AB 496 (Low) – Business & Professions Changes**
c. **AB 1607 (Boerner Horvath) – Gender Discrimination Notification**
d. **SB 606 (Glazer) – Sunset Extension**

Ms. Underwood summarized the Bill Analysis, which was included in the meeting packet. She stated the bills do not require implementation from the Board.

Questions and Discussion

Mr. Weeks referred to the third paragraph on page 12 for AB 496, which states that Section 102.3(b)(3) of the Business and Professions Code is amended to read, "The entity shall not delegate to a technical committee its authority to discipline a licensee who has violated the provisions of the applicable chapter of the Business and Professions Code that is subject to the director's delegation of authority to the entity." He asked how that relates to DRC hearings that regularly get involved in that.

Ms. Underwood stated DRC hearings do not reach the discipline level. They are hearings on appeals for citations.

8. Agenda Item #8, PROPOSED REGULATIONS: DISCUSSION AND POSSIBLE ACTION OF PROPOSED REGULATORY CHANGES

a. **Title 16, CCR Section 950.10 (Transfer of Credit or Training)**
b. **Title 16, CCR Section 961 (Instructional Materials-NIC Guides)**
c. **Title 16, CCR Sections 962, 962.1, and 962.2 (Externs)**
d. **Title 16, CCR Section 965.2 (Personal Service Permit)**
e. **Title 16, CCR Sections 970 and 971 (Substantial Relationship Criteria, Criteria for Rehabilitation)**
f. **Title 16, CCR Section 972 (Disciplinary Guidelines)**
g. **Title 16, CCR Sections 974 and 974.3 (Fine Schedule and Payment Plan)**

Ms. Underwood summarized the Regulations Update Memo, which was included in the meeting packet. She noted that the Fine Schedule and Payment Plan package was approved by the Office of Administrative Law that an establishment owner may not be cited for something that an individual did at the salon. It will go into effect on January 1, 2020.

Questions and Discussion

Ms. Thong asked about the status of the creation of a Committee for DRC hearings that would free up Board members, which was brought up in a past Board meeting.
Ms. Underwood stated the Board was not in favor of it at the time. It was brought up by a previous legal counsel and is something the Board can pursue. She stated the DRC should not be made up of Board members but should be a separate Committee with the Board making the final decision on the Committee's recommendations. She stated this matter will be put on the agenda for the next Board meeting.

9. Agenda Item #9, PROPOSED BOARD MEETING DATES/LOCATIONS FOR 2020

Mr. Weeks asked if four Board meetings will be enough. Ms. Underwood stated that is to be determined. There will always be an option to add a meeting, if necessary.

Ms. Thong suggested that the March 9th Board meeting be put back, based on Ms. Mason's public comment concerning the hearing to produce a Background Paper for the Sunset Review, which Ms. Mason anticipated would be held in late February or early March.

Ms. Underwood agreed and stated the Board will need to approve the final response back to the Legislature.

10. Agenda Item #10, AGENDA ITEMS FOR THE NEXT MEETING

Ms. Thong suggested a discussion on how the DRC can be restructured, an update from the newly-formed Committee, an update on booth rental in the industry, and the possibility of creating a permit for booth renters so they can be better tracked.

11. Agenda Item #11, ADJOURNMENT

There being no further business, the meeting was adjourned at 10:42 a.m.

BarberCosmo
Board of Barbering & Cosmetology

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY ● GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS ● BOARD OF BARBERING AND COSMETOLOGY
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Website: www.barbercosmo.ca.gov

MEMORANDUM

DATE March 9, 2020

TO: Members, Board of Barbering and Cosmetology

FROM: Kristy Underwood, Executive Officer

SUBJECT: Appointment of Committee Members to Standing Committtees for 2020

Action Required:

The Board by motion, will need to establish which Board Members will participate in the following committees:

- Disciplinary Review
- Education and Outreach
- Enforcement and Inspections
- Health and Safety Advisory
- Legislative and Budget
- Licensing and Examination

DISCIPLINARY REVIEW COMMITTEE

The purpose of the Disciplinary Review Committee is to conduct informal administrative citation review hearings and render~~s~~ decisions regarding disputed citations. The committee has authority to affirm, modify or dismiss the citations including any fine amounts. The Board President shall annually appoint members of the committee; the appointments will be made concurrently with the annual election of officers. The Board President shall select the dates and locations of the informal citation review hearings held before the disciplinary review committee. The Board may find a need to have an alternate member for the convenience of those members who cannot attend.

EDUCATION AND OUTREACH COMMITTEE

The purpose of the Education and Outreach Committee is to provide recommendations to the Board on the development of informational brochures and other publications, planning of outreach events for consumers and licensees, preparing articles for submission in trade magazines and attending trade shows.

ENFORCEMENT AND INSPECTIONS COMMITTEE

The purpose of the Enforcement and Inspections Committee is to advise the Board on policy matters that relate to protecting the health and safety of consumers. This includes recommendations on how inspections are conducted, the types of violations issued, maintenance of disciplinary guidelines, and other recommendations on the enforcement of the Board's statutes and regulations.

HEALTH AND SAFETY ADVISORY COMMITTEE

The purpose of the Health and Safety Advisory Committee is to provide the Board with advice and recommendations on health and safety issues, as well as ensuring licensees are aware of basic labor laws.

LEGISLATIVE AND BUDGET COMMITTEE

The purpose of the Legislative and Budget Committee is to review and track legislation that affects the Board. The committee shall make recommendations on what position the Board should take on legislation that could potentially affect the operation of the Board, the health and safety of consumers and the Board's licensees. In addition, the committee provides information and recommendations to the Board on potential policy matters relating to the budget.

LICENSING AND EXAMINATION COMMITTEE

The purpose of the Licensing and Examination Committee is to advise the Board on policy matters relating to the examining and licensing of individuals who want to practice barbering and cosmetology in California. The committee may also provide information and recommendations to the Board on issues relating to curriculum and school approval, exam appeals, laws and regulations.

Quarterly Applications Received Fiscal Year 19/20

License Type	Jul-Sept	Oct-Dec	Jan-Mar	Apr-June	YTD
Establishment	1,999	1,964			3,963
Mobile Unit	2	6			8
Barber					
Pre-App	250	240			490
Initial Application	431	402			833
Re-Exam	740	694			1,434
Sub-Total	***1,421***	***1,336***			***2,757***
Reciprocity	46	32			78
Apprentice	262	264			526
Cosmetology					
Pre-App	801	818			1,619
Initial Application	742	919			1,661
Re-Exam	1,285	1,228			2,513
Sub-Total	***2,828***	***2,965***			***5,793***
Reciprocity	334	296			630
Apprentice	200	240			440
Electrology					
Pre-App	6	10			16
Initial Application	2	-			2
Re-Exam	11	7			18
Sub-Total	***19***	***17***			***36***
Reciprocity	--	1			1
Apprentice	--	--			
Esthetician					
Pre-App	883	1,112			1,995
Initial Application	529	687			1,216
Re-Exam	506	514			1,020
Sub-Total	***1,918***	***2,313***			***4,231***
Reciprocity	103	86			189
Manicurist					
Pre-App	790	933			1,723
Initial Application	567	563			1,130
Re-Exam	790	940			1,730
Sub-Total	***2,147***	***2,436***			***4,583***
Reciprocity	123	98			221
Total	11,402	12,054			**23,456**

Practical Exam Results October 1, 2019 - December 30, 2019

Administered	Passed	Failed	Total	Pass Rate
Barber	703	412	1,115	**63%**
Cosmetologist	1,767	604	2,371	**75%**
Electrologist	17	5	22	**77%**
Esthetician	1,468	176	1,644	**89%**
Manicurist	1,516	669	2,185	**69%**
Total	**5,471**	**1,866**	**7,337**	**75%**

Written Exam Results October 1, 2019 - December 30, 2019

Barber	Passed	Failed	Total	Pass Rate
English	635	596	1,231	**52%**
Korean	0	5	5	**0%**
Spanish	46	145	191	**24%**
Vietnamese	24	21	45	**53%**
Total	**705**	**767**	**1,472**	**48%**

Cosmo	Passed	Failed	Total	Pass Rate
English	1,440	687	2,127	**68%**
Korean	34	5	39	**87%**
Spanish	211	425	636	**33%**
Vietnamese	98	52	150	**65%**
Total	**1,783**	**1,169**	**2,952**	**60%**

Esthetician	Passed	Failed	Total	Pass Rate
English	1,222	439	1,661	**74%**
Korean	20	N/A	20	**100%**
Spanish	12	10	22	**55%**
Vietnamese	211	32	243	**87%**
Total	**1,465**	**481**	**1,946**	**75%**

Manicurist	Passed	Failed	Total	Pass Rate
English	482	200	682	**71%**
Korean	8	9	17	**47%**
Spanish	36	34	70	**51%**
Vietnamese	1,052	382	1,434	**73%**
Total	**1,578**	**625**	**2,203**	**72%**

Electrologist	Passed	Failed	Total	Pass Rate
English	16	5	21	**76%**
Korean	N/A	N/A	N/A	**N/A**
Spanish	N/A	N/A	N/A	**N/A**
Vietnamese	N/A	N/A	N/A	**N/A**
Total	**16**	**5**	**21**	**76%**

Licenses Issued Fiscal Year 19/20

License Type	Jul-Sept	Oct-Dec	Jan-Mar	Apr-June	YTD
Barber	592	561			1,153
Barber Apprentice	203	227			430
Cosmetology	1,724	1,611			3,335
Cosmetology Apprentice	179	186			365
Electrology	7	18			25
Electrology Apprentice	0	0			0
Esthetician	937	1,305			2,242
Manicurist	901	1,342			2,243
Establishment	1,934	1,964			3,898
Mobile Unit	0	0			0
Totals	**6,477**	**7,214**			**13,691**

Licenses Issued Last 5 Years

License Type	FY 15/16	FY 16/17	FY 17/18	FY 18/19	FY 19/20*
Barber	1,950	2,189	2,259	1,966	1,421
Barber Apprentice	511	665	885	854	561
Cosmetology	10,813	8,389	7,085	6,468	4,031
Cosmetology Apprentice	650	793	727	842	463
Electrology	35	26	22	31	27
Electrology Apprentice	0	0	1	0	0
Esthetician	4,747	4,818	4,007	4,890	2,813
Manicurist	6,298	6,550	3,787	4,414	2,741
Establishment	6,996	6,875	7,609	7,706	4,623
Mobile Unit	7	7	2	0	0
Totals	**32,007**	**30,312**	**26,384**	**27,171**	**16,680**

*Data updated through February 13th

License Population*

Barber	32,490
Barber Apprentice	1,603
Cosmetology	312,316
Cosmetology Apprentice	1,418
Electrology	1,679
Electrology Apprentice	0
Esthetician	90,392
Manicurist	129,802
Establishment	53,694
Mobile Unit	48
Total	**623,442**

*Data updated through February 20th

Disciplinary Review Committee Appeals Fiscal Year 19/20

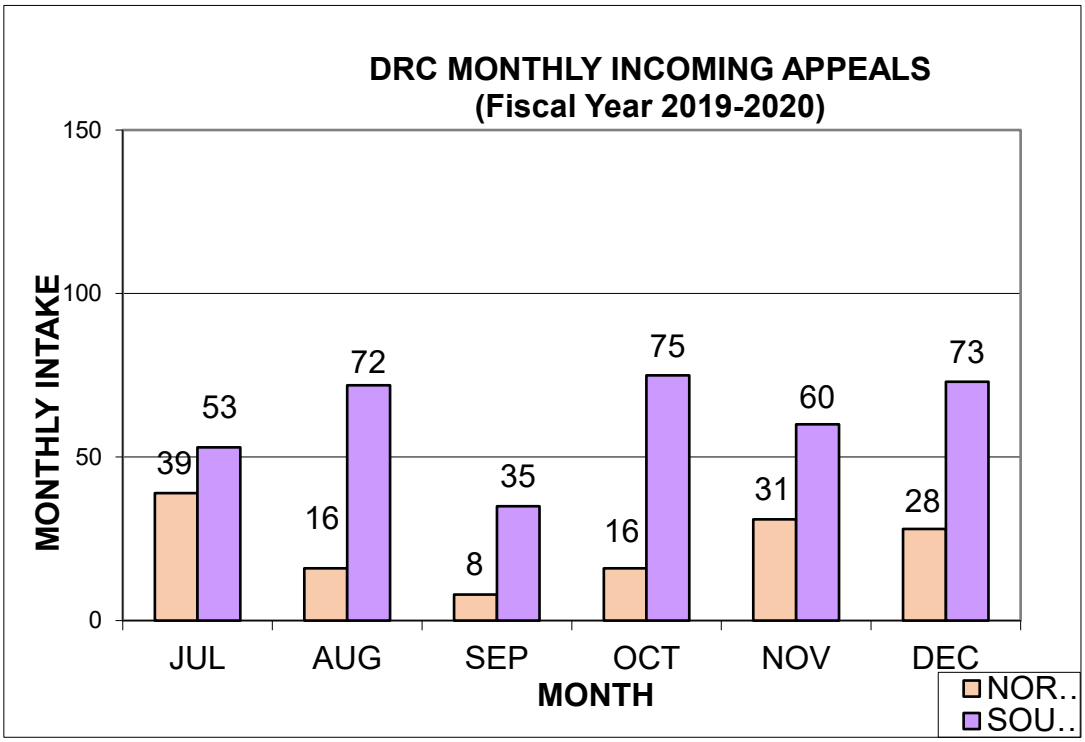
Northern	Jul - Sept	Oct - Dec	YTD
Heard	0	95	95
Received	63	75	138
Pending[1]	111	93	93[2]

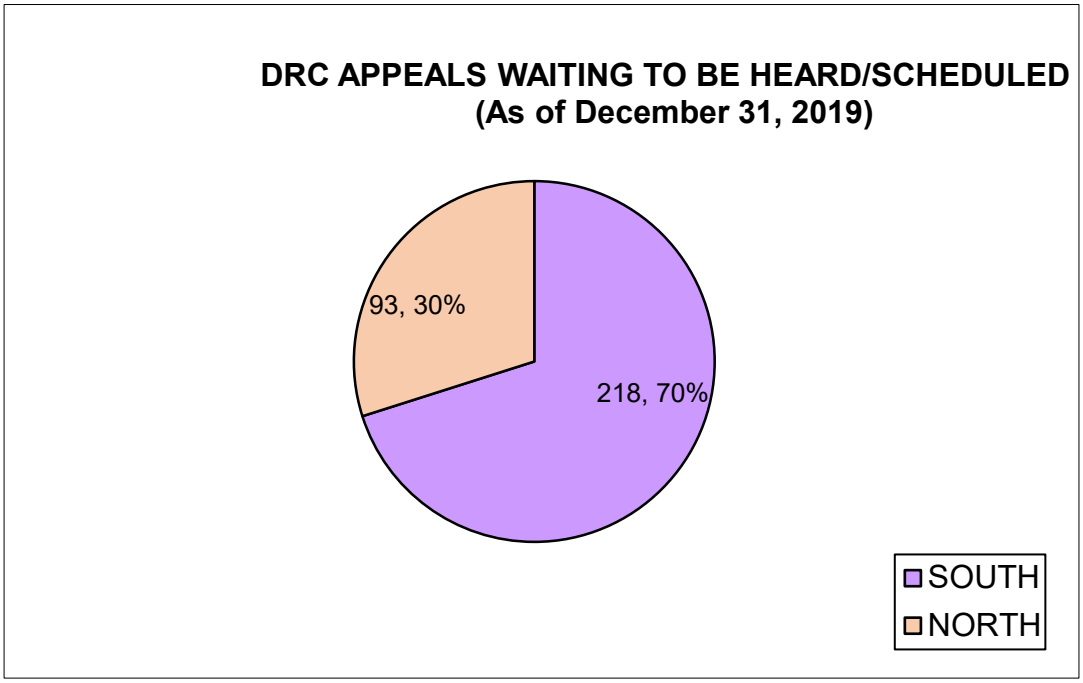
Southern	Jul - Sept	Oct - Dec	YTD
Heard	95	245	340
Received	160	208	368
Pending[1]	263	218	218[2]

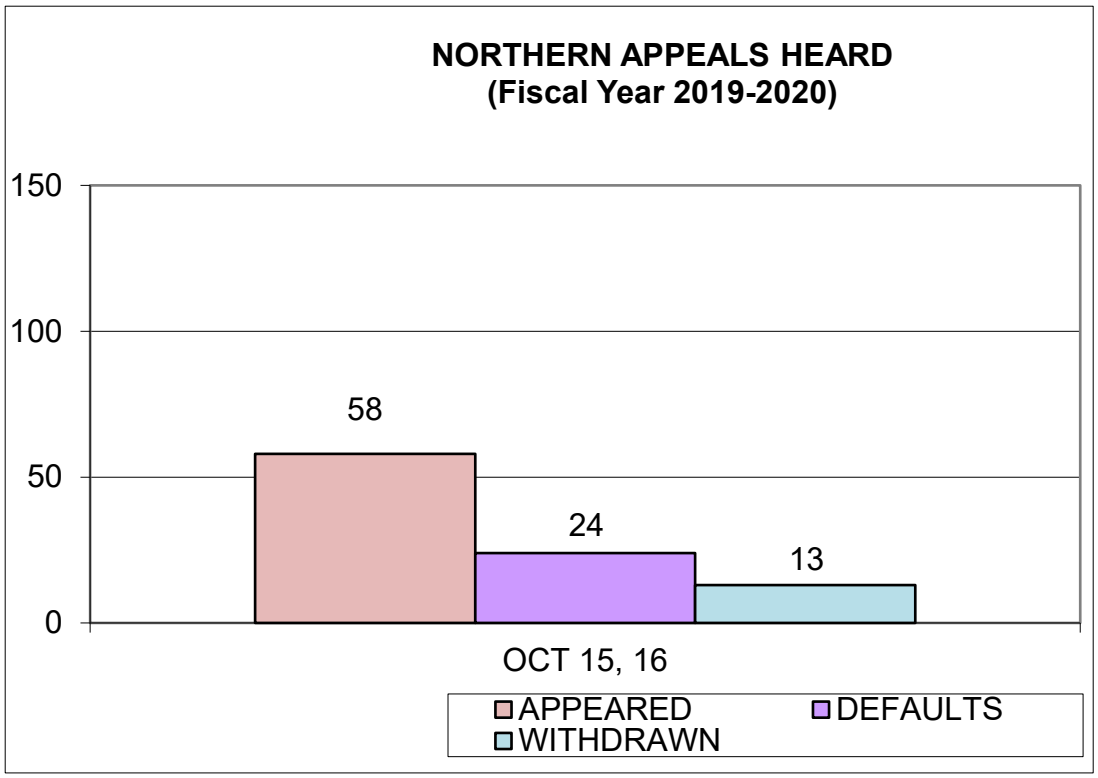
[1]Pending refers to the number of appeals received but not yet heard by DRC.
[2]Figure represents number of pending requests as of report date 12/31/2019.

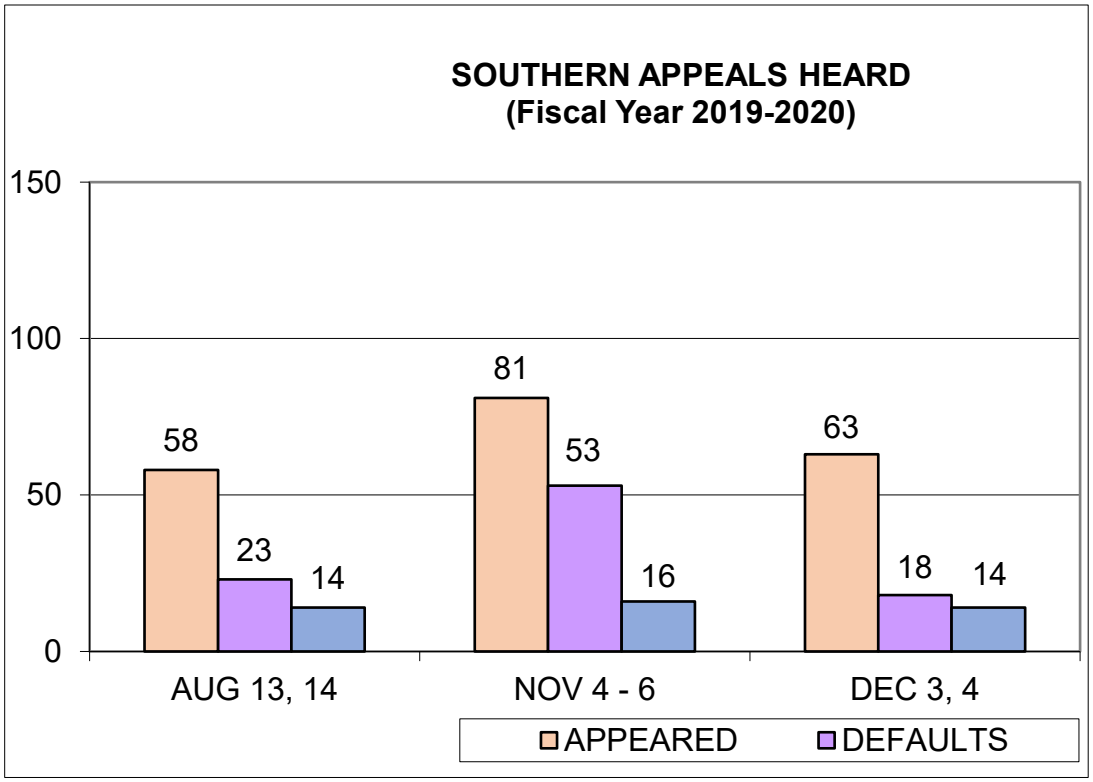
2020 Scheduled Hearings

Area	Location	Date
Northern	Sacramento	Mar. 10, 11, 2020
Southern	Orange County	Apr. 27, 28, 2020
Southern	San Diego	May 26, 27, 2020
Northern	Sacramento	June 29, 30, 2020


DRC MONTHLY INCOMING APPEALS
(Fiscal Year 2019-2020)
MONTHLY INTAKE
150
100
50
0
39
53
16
72
8
35
16
75
31
60
28
73
JUL
AUG
SEP
OCT
NOV
DEC
MONTH
NOR..
SOU..


DRC APPEALS WAITING TO BE HEARD/SCHEDULED
(As of December 31, 2019)
93, 30%
218, 70%
SOUTH
NORTH


NORTHERN APPEALS HEARD
(Fiscal Year 2019-2020)
150
100
50
0
58
24
13
OCT 15, 16
APPEARED
DEFAULTS
WITHDRAWN


SOUTHERN APPEALS HEARD
(Fiscal Year 2019-2020)
150
100
50
0
58
23
14
81
53
16
63
18
14
AUG 13, 14
NOV 4 - 6
DEC 3, 4
APPEARED
DEFAULTS

Quarterly Enforcement Statistics Fiscal Year 19/20

COMPLAINTS	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
Complaints Received	1348	1098			2446
Referred to DOI	2	0			2
Complaints Closed	1059	1077			2136
Total Complaints Pending	1353	1363			N/A
Average Days to Close	70	74			70

APPLICATION INVESTIGATIONS*	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
Received	4	1			5
Pending	0	2			N/A
Closed	6	0			6

ATTORNEY GENERAL	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
Referred	13	17			30
Accusations Filed	21	15			36
Statement of Issues Filed	0	1			1
Total Pending	76	72			N/A

DISCIPLINARY PROCESS	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
Proposed Decisions	1	1			2
Default Decision	4	4			8
Stipulation	**12**	**6**			**18**

DISCIPLINARY OUTCOMES	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
Revocation	7	3			10
Revoke, Stay, Probation	1	0			1
Revoke, Stay, Suspend/Prob	12	2			14
Revocation, Stay w/ Suspend	0	0			0
Probation Only	0	0			0
Suspension Only	0	0			0
Suspension & Probation	0	0			0
Suspension, Stay, Probation	1	1			2
Surrender of License	5	0			5
Public Reprimands	0	0			0
License Denied	0	0			0
Other	0	0			0
Total	**26**	**6**			**32**

PROBATION	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
Active	133	135			135

Quarterly Enforcement Statistics Fiscal Year 19/20 Continued

CITATIONS	Jul-Sept	Oct-Dec	Jan-Mar	Apr-Jun	YTD
Establishments	1623	1663			3286
Barber	173	186			359
Barber Apprentice	33	31			64
Cosmetologist	595	633			1228
Cosmetologist Apprentice	13	15			28
Electrologist	0	1			1
Electrologist Apprentice	0	0			0
Manicurist	480	683			1163
Esthetician	133	222			355
Unlicensed Est.	89	94			183
Unlicensed Individual	122	107			229
Total	**3261**	**3635**			**6896**

INSPECTIONS	Jul-Sept	Oct-Dec	Jan-Mar	Apr-Jun	YTD
Establishments w/ violations	1903	1563			3466
Establishments w/o violations	624	485			1109
Total	**2527**	**2048**			**4575**

Complaints Received October - December 2019

Complaint Type	Anonymous	Internal	Public	Totals
Fraud	11	0	3	14
Health & Safety	329	34	65	428
Non-Jurisdictional	37	4	44	85
Incompetence/Negligence	1	0	93	94
Other	0	2	1	3
Personal Conduct	0	2	0	2
Unlicensed Activity	251	177	45	473
App Investigation	0	1	0	1
Total	629	220	251	1100

Complaints Received Last 5 Fiscal Years

Category	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20*
Fraud	82	61	84	86	36
Health & Safety	1310	1616	1604	1637	1095
Non-Jurisdictional	294	284	319	354	232
Incompetence/Negligence	333	270	438	407	233
Other	42	35	19	39	9
Personal Conduct	19	20	6	2	2
Unlicensed Activity	1651	1817	1555	1841	1179
App Investigation	0	0	1061	194	3
Total	3731	4103	5086	4560	2789

*Data includes January, 2019

Board of Barbering and Cosmetology
Fiscal Year 2019/2020
Projected Expenditures 12/31/2019

Personnel Services	ALLOTMENT	BBC Projected Expenditures	Projected Year
Permanent	5,079,000	4,046,292	1,032,708
Statutory-Exempt	104,000	128,652	(24,652)
Temporary	587,000	719,159	(132,159)
Board Member Commission	0	12,900	(12,900)
Overtime	0	14,584	(14,584)
Total Salary & Wages	**5,770,000**	**4,921,587**	**848,413**
Net Salary & Wages	**5,770,000**	**4,921,587**	**848,413**
Staff Benefits	3,145,000	2,768,973	376,027
Total of Personnel Services	**8,915,000**	**7,690,560**	**1,224,440**

Operating Expenses & Equipment (OE&E)	Allotment	BBC Projected Expenditures	Projected Year End Balance
General Expense	191,000	107,090	83,910
Printing	275,000	387,959	(112,959)
Communication	41,000	55,938	(14,938)
Postage	283,000	85,805	197,195
Insurance	4,000	22,942	(18,942)
Travel In State	83,000	50,650	32,350
Travel, Out-of-State	0	6,649	(6,649)
Training	11,000	2,400	8,600
Facilities Operations	1,022,000	979,094	42,906
Consultant & Professional Svs. - Interdept.	82,000	2,000	80,000
Attorney General	1,371,000	825,556	545,444
Office of Administrative Hearings	219,000	156,936	62,064
Consultant & Professional Svs. - External	1,790,000	1,799,618	(9,618)
DCA Pro Rata	7,303,000	7,303,000	0
Interagency Services	1,000	54,692	(53,692)
IA w/OPES	0	85,116	(85,116)
Consolidated Data Center	68,000	2,000	66,000
Information Technology	38,000	81,658	(43,658)
Equipment	16,000	16,000	0
Other Items of Expense & Vehicles	43,000	41,736	1,264
			0
Total Operating Expenses & Equipment	12,841,000	12,066,839	774,161
Total Expenses	21,756,000	19,757,398	1,998,601
Schedule Reim. Other	(57,000)	(10,000)	(47,000)
Net Apprpriation	**21,699,000**	**19,747,399**	**1,951,601**

0069 - Barbering and Cosmetology Contingency Fund

Prepared 1.27.2020

Analysis of Fund Condition

(Dollars in Thousands)

2020-21 Governor's Budget w/ AB 434 Funding	PY 2018-19	CY 2019-20	Governor's Budget BY 2020-21	BY + 1 2021-22
BEGINNING BALANCE	$ 20,692	$ 21,360	$ 42,275	$ 43,916
Prior Year Adjustment	$ 20		$ -	$ -
Adjusted Beginning Balance	$ 20,712	$ 21,360	$ 42,275	$ 43,916
REVENUES AND TRANSFERS				
Revenues:				
4121200 Delinquent Fees	$ 1,173	$ 1,209	$ 1,245	$ 1,245
4127400 Renewal Fees	$ 12,159	$ 12,476	$ 12,833	$ 12,833
4129200 Other Regulatory Fees	$ 4,836	$ 4,985	$ 5,134	$ 5,134
4129400 Other Regulatory Licenses and Permits	$ 4,038	$ 4,147	$ 4,272	$ 4,272
4143500 Miscellaneous Services to the Public	$ 40	$ -	$ -	$ -
4163000 Investment Income - Surplus Money Investments	$ 372	$ 278	$ 602	$ 668
4171400 Escheat - Unclaimed Checks, Warrants, Bonds, and Coupons	$ 75	$ 12	$ 12	$ 12
4171500 Escheat - Unclaimed Property	$ -	$ -	$ -	$ -
4172500 Miscellaneous Revenue	$ 10	$ 9	$ 9	$ 9
Total Revenues	$ 22,703	$ 23,116	$ 24,107	$ 24,173
Transfers and Other Adjustments				
Proposed GF Loan Repayment (Budget Act of 2008)	$ -	$ 10,000	$ -	$ -
Proposed GF Loan Repayment (Budget Act of 2011)	$ -	$ 11,000	$ -	$ -
Total Revenues, Transfers, and Other Adjustments	$ 22,703	$ 44,116	$ 24,107	$ 24,173
Total Resources	$ 43,415	$ 65,476	$ 66,382	$ 68,089
EXPENDITURES				
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	$ 20,453	$ 21,699	$ 20,848	$ 21,473
AB 434 Funding	$ -	$ -	$ 187	$ -
8880 Financial Information System for California (State Operations)	$ 2	$ -3	$ -	$ -
9892 Supplemental Pension Payments (State Operations)	$ 134	$ 316	$ 316	$ 316
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	$ 1,466	$ 1,189	$ 1,115	$ 1,115
Total Disbursements	$ 22,055	$ 23,201	$ 22,466	$ 22,904
FUND BALANCE				
Reserve for economic uncertainties	$ 21,360	$ 42,275	$ 43,916	$ 45,185
Months in Reserve	11.0	22.6	23.0	23.0

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
B. ASSUMES APPROPRIATION GROWTH OF 3% PER YEAR BEGINNING IN BY+1.
C. ASSUMES INTEREST RATE AT 1.5%.

BarberCosmo
Board of Barbering & Cosmetology

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS • BOARD OF BARBERING AND COSMETOLOGY
P.O. Box 944226, Sacramento, CA 94244-2260
Phone : (800) 952-5210 Email: barbercosmo@dca.ca.gov
Website: www.barbercosmo.ca.gov

MEMORANDUM

DATE March 9, 2020

TO: Members, Board of Barbering and Cosmetology

FROM: Kristy Underwood, Executive Officer

SUBJECT: Outreach Update

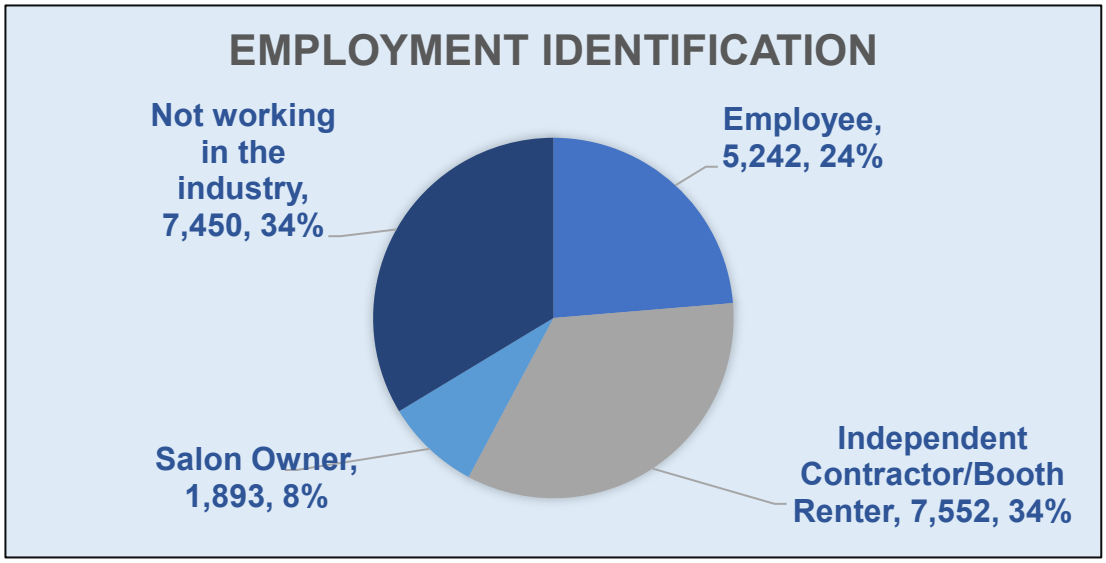
Participated:

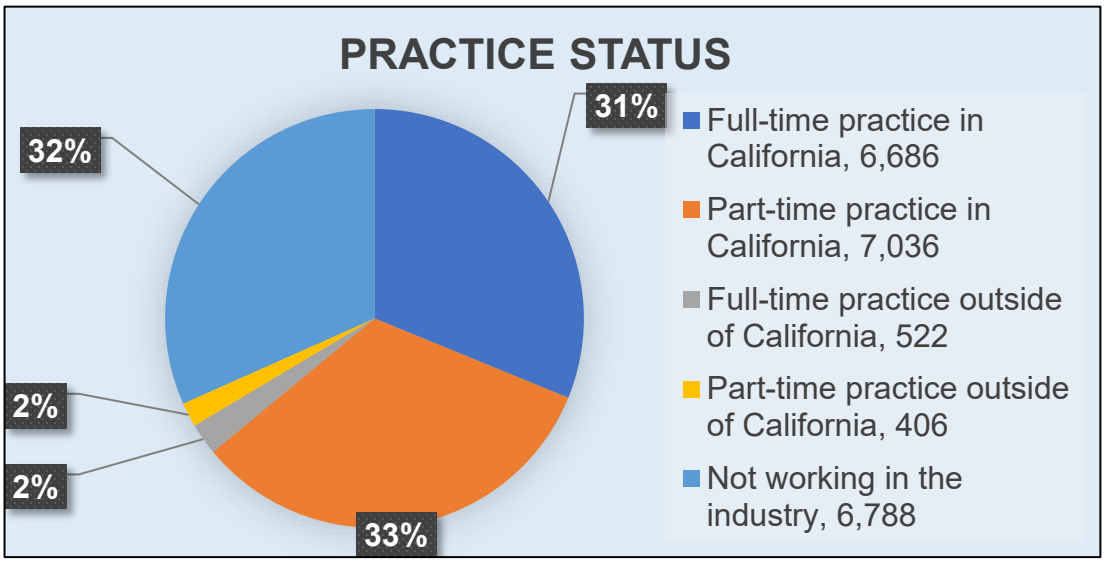
- Board staff participated in Assemblyman Tyler Diep's December 11, 2019 Town Hall in Westminster California. An overview of Assembly Bill 5 and the impact on the industry was presented by Assemblyman Diep and the Department of Industrial Relations. Staff provided information to establishment owners and licensed individuals on how to stay compliant with the board. The event was presented in English and Vietnamese and over 75 guests attended.

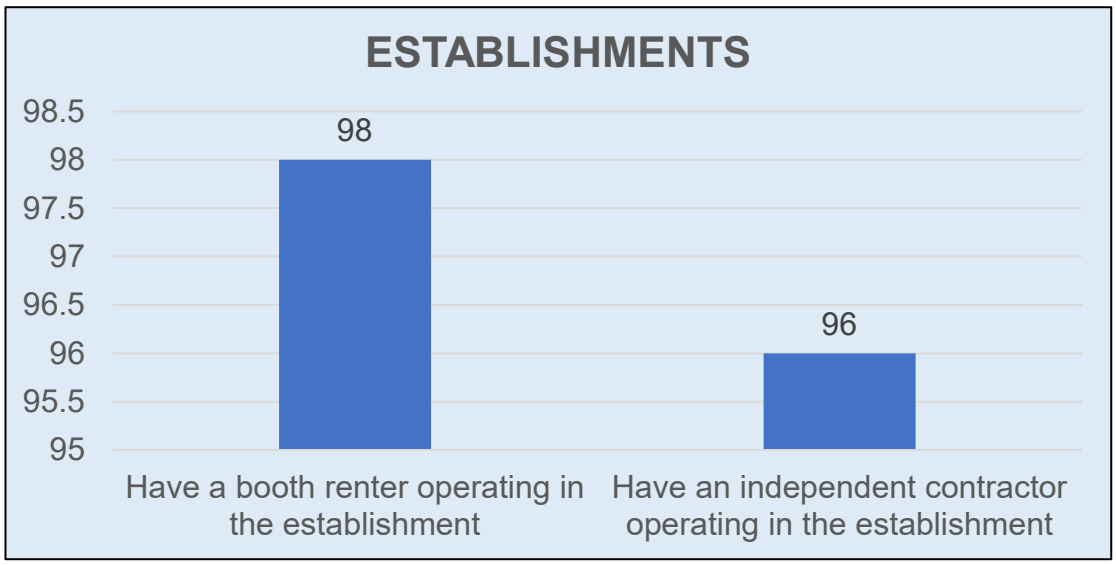
- Board staff participated in the Sacamento Impact and Head Start Business Sense Workshop on January 17, 2020. Staff distributed information and answered questions regarding the Board, Board requirements for licensure (individuals and establishments), and the apprenticeship program.

- Executive Officer Kristy Underwood spoke at the California Compliance Symposium on January 24, 2020 in Long Beach, California. California labor and wage law, employee classification, business compliance, and state legislative updates were the discussed during the event. Over 150 establishment owners and licensees attended.

Practice Status Survey Results
October 1 - December 31, 2019







No Attachment
For Agenda
Item 9 or 10

BarberCosmo
Board of Barbering & Cosmetology

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MEMORANDUM

DATE March 9, 2020

TO: Members, Board of Barbering and Cosmetology

FROM: Kristy Underwood, Executive Officer

SUBJECT: Report on the December 2, 2029 Health and Safety Advisory Committee Meeting

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This memo is to provide the Board with a summary of the Health and Safety Advisory Committee's meeting held on December 2, 2019 in San Diego.

Committee Members Present:

- Lisa Thong, Board President
- Jacquie Crabtree, Board Member
- Leslie Roste, Medical Professional Representative
- Zenith Khwaja, Department of Public Health Representative
- Fred Jones, Industry Association Representative
- Samia Tahir, Cosmetologist
- Joanie Gonella, Electrologist
- Kellie Swallow, Esthetician
- Jaime Schrabeck, Manicurist
- Larry Cromwell, Establishment Owner

Staff Members Present:

- Kristy Underwood, Board Executive Officer
- Allison Lee, Board Project Manager
- Marcene Melliza, Board Analyst

Presentation by Green Circle Salons on Recovering and Repurposing Beauty Waste

Bill Deliman, Global Business Development Director, provided a presentation of the background, processes, and solutions of the Green Circle Salon (GSC) Program. The goal of GCS is to close the loop on the materials that are sold into the professional beauty industry by working with manufacturers, distributors, and industry stakeholders to bring an awareness to the problem of climate change and the unsustainable efforts of the industry with packaging, raw materials, and sourcing. GSC finds green solutions for the beauty industry's waste, specifically the contaminated materials. They collect sorted waste products from salons, such as hair, foil, sponges, cotton, wax, and nail polishes to be reused or to become clean energy.

Discussion and Recommendations on Revised Health and Safety Regulations
Committee members reviewed the draft revisions prepared by Ms. Underwood and Ms. Roste. Revision suggestions were made so the regulations are practical and easier to understand, while still protecting consumers.

The discussion focused on the disinfection of non-electrical tools (CCR 979), disinfection of foot spas (CCR 980.1-980.4), and prohibited tools and services (CCR 989). Members discussed allowing non-electrical tools to be wiped or sprayed with disinfectant, except for specific tools that must be immersed. Members liked the idea of combing the four separate foot spa regulations into one. The listed prohibited substances/use of products was revised to include equipment, tools, and services, such as ultra-violet sterilizer cabinets, neck or nail dusters, and any type of injection.

Revisions will be discussed further at future meetings.

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BOARD OF BARBERING & COSMETOLOGY
BILL ANALYSIS

Author: Assembly Members Kiley and Melendez
Coauthors: Fong (A), Gallagher (A), Jones (S), Moorlach (S)

Subject: Employment Standards: Independent contractors and employees

Bill Number: AB 1928

Version: January 15, 2020

Existing Law:

Dynamex Operations W. Inc.v. Superior Court (2018) established a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of specified wage orders.

Existing law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. This test is commonly known as the "ABC" test.

Existing law exempts specified occupations and business relationships from the application of Dynamex and these provisions. Existing law instead provides that these exempt relationships are governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.

This Bill:

This bill would repeal those existing provisions and instead require a determination of whether a person is an employee or an independent contractor to be based on the specific multifactor test set forth in Borello, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. This bill would declare that it is to take effect immediately as an urgency statute.

Analysis:

Board licensees are already exempt from the application of Dynamex and are instead governed by the test adopted in Borello. However, this Bill would repeal the requirements specific to board licensees regarding:

- Setting their own rates, processing their own payments, and being paid directly by clients
- Setting their own hours of work and having sole discretion to decide the number of clients and which clients for whom they will provide services
- Having their own business license
- Issuing a Form 1099 to the salon or business owner from which they rent their space
- Becoming inoperative with respect to licensed manicurists on January 1, 2022.

The determination of whether a person is an employee or independent contractor would be based only on the Borello factors:

- Whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, which is the principal factor.
- Whether the one performing services is engaged in a distinct occupation or business.
- The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision.
- The skill required in the particular occupation.
- Whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work.
- The length of time for which the services are to be performed.
- The method of payment, whether by the time or by the job.
- The right to discharge at will, without cause.
- Whether or not the work is part of the regular business of the principal.
- Whether or not the parties believe they are creating the relationship of employer-employee.

This bill does not impact board operations.

ASSEMBLY BILL No. 1928

Introduced by Assembly Members Kiley and Melendez
(Coauthors: Assembly Members Fong and Gallagher)
(Coauthors: Senators Jones and Moorlach)

January 15, 2020

An act to amend Section 2750.5 of, to add Section 2750.7 to, and to repeal Section 2750.3 of, the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1928, as introduced, Kiley. Employment standards: independent contractors and employees.

Existing law, as established in the case of Dynamex Operations W. Inc. v. Superior Court (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of specified wage orders.

Existing law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is

customarily engaged in an independently established trade, occupation, or business. This test is commonly known as the "ABC" test. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of Dynamex and these provisions. Existing law instead provides that these exempt relationships are governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d (Borello).

This bill would repeal those existing provisions and instead require a determination of whether a person is an employee or an independent contractor to be based on the specific multifactor test set forth in Borello, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. The bill would make related, conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2750.3 of the Labor Code is repealed.

~~2750.3. (a) (1) For purposes of the provisions of this code and the Unemployment Insurance Code, and for the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:~~

~~(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.~~

~~(B) The person performs work that is outside the usual course of the hiring entity's business.~~

~~(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.~~

~~(2) Notwithstanding paragraph (1), any exceptions to the terms "employee," "employer," "employ," or "independent contractor,"~~

~~and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of "employee" in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.~~

~~(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court's decision in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 (Borello).~~

~~(b) Subdivision (a) and the holding in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903 (Dynamex), do not apply to the following occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello.~~

~~(1) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.~~

~~(2) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall apply to the employment settings currently or potentially governed by collective bargaining agreements for the licensees identified in this paragraph.~~

~~(3) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, engineer, private investigator, or accountant.~~

~~(4) A securities broker-dealer or investment adviser or their agents and representatives that are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.~~

~~(5) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.~~

~~(6) A commercial fisherman working on an American vessel as defined in subparagraph (A) below.~~

~~(A) For the purposes of this paragraph:~~

~~(i) "American vessel" has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.~~

~~(ii) "Commercial fisherman" means a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code.~~

~~(iii) "Working on an American vessel" means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, "working on an American vessel" does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.~~

~~(B) For the purposes of this paragraph, a commercial fisherman working on an American vessel is eligible for unemployment insurance benefits if they meet the definition of "employment" in Section 609 of the Unemployment Insurance Code and are otherwise eligible for those benefits pursuant to the provisions of the Unemployment Insurance Code.~~

~~(C) On or before March 1, 2021, and each March 1 thereafter, the Employment Development Department shall issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. This report shall include, but not be limited to, reporting the number of commercial fishermen who apply for unemployment insurance benefits, the number of~~

~~commercial fishermen who have their claims disputed, the number of commercial fishermen who have their claims denied, and the number of commercial fishermen who receive unemployment insurance benefits. The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.~~

~~(D) This paragraph shall become inoperative on January 1, 2023, unless extended by the Legislature.~~

~~(7) A newspaper distributor working under contract with a newspaper publisher, as defined in subparagraph (A), and a newspaper carrier working under contract either with a newspaper publisher or newspaper distributor.~~

~~(A) For purposes of this paragraph:~~

~~(i) "Newspaper" means a newspaper of general circulation, as defined in Section 6000 of the Government Code, and any other publication circulated to the community in general as an extension of or substitute for that newspaper's own publication, whether that publication be designated a "shoppers' guide," as a zoned edition, or otherwise.~~

~~(ii) "Publisher" means the natural or corporate person that manages the newspaper's business operations, including circulation.~~

~~(iii) "Newspaper distributor" means a person or entity that contracts with a publisher to distribute newspapers to the community.~~

~~(iv) "Carrier" means a person who effects physical delivery of the newspaper to the customer or reader.~~

~~(B) This paragraph shall become inoperative on January 1, 2021, unless extended by the Legislature.~~

~~(c) (1) Subdivision (a) and the holding in Dynamex do not apply to a contract for "professional services" as defined below, and instead the determination of whether the individual is an employee or independent contractor shall be governed by Borello if the hiring entity demonstrates that all of the following factors are satisfied:~~

~~(A) The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity. Nothing in this subdivision prohibits an individual from choosing to perform services at the location of the hiring entity.~~

~~(B) If work is performed more than six months after the effective date of this section, the individual has a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.~~

~~(C) The individual has the ability to set or negotiate their own rates for the services performed.~~

~~(D) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual's own hours.~~

~~(E) The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.~~

~~(F) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.~~

~~(2) For purposes of this subdivision:~~

~~(A) An "individual" includes an individual providing services through a sole proprietorship or other business entity.~~

~~(B) "Professional services" means services that meet any of the following:~~

~~(i) Marketing, provided that the contracted work is original and creative in character and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the contracted work.~~

~~(ii) Administrator of human resources, provided that the contracted work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.~~

~~(iii) Travel agent services provided by either of the following: (I) a person regulated by the Attorney General under Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, or (II) an individual who is a seller of travel within the meaning of subdivision (a) of Section 17550.1 of the Business and Professions Code and who is exempt from the registration under subdivision (g) of Section 17550.20 of the Business and Professions Code.~~

~~(iv) Graphic design.~~

~~(v) Grant writer.~~

~~(vi) Fine artist.~~

~~(vii) Services provided by an enrolled agent who is licensed by the United States Department of the Treasury to practice before the Internal Revenue Service pursuant to Part 10 of Subtitle A of Title 31 of the Code of Federal Regulations.~~

~~(viii) Payment processing agent through an independent sales organization.~~

~~(ix) Services provided by a still photographer or photojournalist who do not license content submissions to the putative employer more than 35 times per year. This clause is not applicable to an individual who works on motion pictures, which includes, but is not limited to, projects produced for theatrical, television, internet streaming for any device, commercial productions, broadcast news, music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of the distribution platform. For purposes of this clause a "submission" is one or more items or forms of content produced by a still photographer or photojournalist that: (I) pertains to a specific event or specific subject; (II) is provided for in a contract that defines the scope of the work; and (III) is accepted by and licensed to the publication or stock photography company and published or posted. Nothing in this section shall prevent a photographer or artist from displaying their work product for sale.~~

~~(x) Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year. Items of content produced on a recurring basis related to a general topic shall be considered separate submissions for purposes of calculating the 35 times per year. For purposes of this clause, a "submission" is one or more items or forms of content by a freelance journalist that: (I) pertains to a specific event or topic; (II) is provided for in a contract that defines the scope of the work; (III) is accepted by the publication or company and published or posted for sale.~~

~~(xi) Services provided by a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist provided that the individual:~~

~~(I) Sets their own rates, processes their own payments, and is paid directly by clients.~~

~~(II) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.~~

~~(III) Has their own book of business and schedules their own appointments.~~

~~(IV) Maintains their own business license for the services offered to clients.~~

~~(V) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.~~

~~(VI) This subdivision shall become inoperative, with respect to licensed manicurists, on January 1, 2022.~~

~~(d) Subdivision (a) and the holding in Dynamex do not apply to the following, which are subject to the Business and Professions Code:~~

~~(1) A real estate licensee licensed by the State of California pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by subdivision (b) of Section 10032 of the Business and Professions Code. If that section is not applicable, then this determination shall be governed as follows: (A) for purposes of unemployment insurance by Section 650 of the Unemployment Insurance Code; (B) for purposes of workers compensation by Section 3200 et seq.; and (C) for all other purposes in the Labor Code by Borello. The statutorily imposed duties of a responsible broker under Section 10015.1 of the Business and Professions Code are not factors to be considered under the Borello test.~~

~~(2) A repossession agency licensed pursuant to Section 7500.2 of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by Section 7500.2 of the Business and Professions Code, if the repossession agency is free from the control and direction of the hiring person or entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.~~

~~(e) Subdivision (a) and the holding in Dynamex do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:~~

~~(1) If a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation ("business service provider") contracts to provide services to another such business ("contracting business"), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:~~

~~(A) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.~~

~~(B) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business.~~

~~(C) The contract with the business service provider is in writing.~~

~~(D) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.~~

~~(E) The business service provider maintains a business location that is separate from the business or work location of the contracting business.~~

~~(F) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.~~

~~(G) The business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.~~

~~(H) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.~~

~~(I) The business service provider provides its own tools, vehicles, and equipment to perform the services.~~

~~(J) The business service provider can negotiate its own rates.~~

~~(K) Consistent with the nature of the work, the business service provider can set its own hours and location of work.~~

~~(L) The business service provider is not performing the type of work for which a license from the Contractor's State License Board~~

~~is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.~~

~~(2) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs labor or services for a contracting business.~~

~~(3) The determination of whether an individual working for a business service provider is an employee or independent contractor of the business service provider is governed by paragraph (1) of subdivision (a).~~

~~(4) This subdivision does not alter or supersede any existing rights under Section 2810.3.~~

~~(f) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the determination of whether the individual is an employee of the contractor shall be governed by Section 2750.5 and by Borello, if the contractor demonstrates that all the following criteria are satisfied:~~

~~(1) The subcontract is in writing.~~

~~(2) The subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license.~~

~~(3) If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.~~

~~(4) The subcontractor maintains a business location that is separate from the business or work location of the contractor.~~

~~(5) The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.~~

~~(6) The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided.~~

~~(7) The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.~~

~~(8) (A) Paragraph (2) shall not apply to a subcontractor providing construction trucking services for which a contractor's license is not required by Chapter 9 (commencing with Section~~

~~7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:~~

~~(i) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.~~

~~(ii) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.~~

~~(iii) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.~~

~~(iv) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.~~

~~(B) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.~~

~~(C) For purposes of this paragraph, "construction trucking services" mean hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver's license to operate or have a gross vehicle weight rating of 26,001 or more pounds.~~

~~(D) This paragraph shall only apply to work performed before January 1, 2022.~~

~~(E) Nothing in this paragraph prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall be reimbursed by the trucking company for the reasonable expense incurred for the use of the employee owned truck.~~

~~(g) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a referral agency and a service provider, as defined below, under the following conditions:~~

~~(1) If a business entity formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or~~

~~corporation ("service provider") provides services to clients through a referral agency, the determination whether the service provider is an employee of the referral agency shall be governed by Borello, if the referral agency demonstrates that all of the following criteria are satisfied:~~

~~(A) The service provider is free from the control and direction of the referral agency in connection with the performance of the work for the client, both as a matter of contract and in fact.~~

~~(B) If the work for the client is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration.~~

~~(C) If the work for the client requires the service provider to hold a state contractor's license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, the service provider has the required contractor's license.~~

~~(D) The service provider delivers services to the client under service provider's name, rather than under the name of the referral agency.~~

~~(E) The service provider provides its own tools and supplies to perform the services.~~

~~(F) The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed for the client.~~

~~(G) The service provider maintains a clientele without any restrictions from the referral agency and the service provider is free to seek work elsewhere, including through a competing agency.~~

~~(H) The service provider sets its own hours and terms of work and is free to accept or reject clients and contracts.~~

~~(I) The service provider sets its own rates for services performed, without deduction by the referral agency.~~

~~(J) The service provider is not penalized in any form for rejecting clients or contracts. This subparagraph does not apply if the service provider accepts a client or contract and then fails to fulfill any of its contractual obligations.~~

~~(2) For purposes of this subdivision, the following definitions apply:~~

~~(A) "Animal services" means services related to daytime and nighttime pet care including pet boarding under Section 122380 of the Health and Safety Code.~~

~~(B) "Client" means a person or business that engages a service contractor through a referral agency.~~

~~(C) "Referral agency" is a business that connects clients with service providers that provide graphic design, photography, tutoring, event planning, minor home repair, moving, home cleaning, errands, furniture assembly, animal services, dog walking, dog grooming, web design, picture hanging, pool cleaning, or yard cleanup.~~

~~(D) "Referral agency contract" is the agency's contract with clients and service contractors governing the use of its intermediary services described in subparagraph (C).~~

~~(E) "Service provider" means a person or business who agrees to the referral agency's contract and uses the referral agency to connect with clients.~~

~~(F) "Tutor" means a person who develops and teaches their own curriculum. A "tutor" does not include a person who teaches a curriculum created by a public school or who contracts with a public school through a referral company for purposes of teaching students of a public school.~~

~~(3) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs services for a client through a referral agency. The determination whether such an individual is an employee of a referral agency is governed by subdivision (a).~~

~~(h) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code and an individual performing services pursuant to a contract between the motor club and a third party to provide motor club services utilizing the employees and vehicles of the third party and, instead, the determination whether such an individual is an employee of the motor club shall be governed by Borello, if the motor club demonstrates that the third party is a separate and independent business from the motor club.~~

~~(i) (1) The addition of subdivision (a) to this section of the Labor Code by this act does not constitute a change in, but is declaratory of, existing law with regard to wage orders of the Industrial Welfare Commission and violations of the Labor Code relating to wage orders.~~

~~(2) Insofar as the application of subdivisions (b), (c), (d), (e), (f), (g), and (h) of this section would relieve an employer from liability, those subdivisions shall apply retroactively to existing claims and actions to the maximum extent permitted by law.~~

~~(3) Except as provided in paragraphs (1) and (2) of this subdivision, the provisions of this section of the Labor Code shall apply to work performed on or after January 1, 2020.~~

~~(j) In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by the Attorney General or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.~~

SEC. 2. Section 2750.5 of the Labor Code is amended to read:

2750.5. *(a)* There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, or who is performing ~~such~~ *those* services for a person who is required to obtain such a license is an employee rather than an independent contractor. ~~Proof of independent contractor status includes satisfactory proof of these factors:~~

~~(a) That the individual has the right to control and discretion as to the manner of performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for.~~

~~(b) That the individual is customarily engaged in an independently established business.~~

~~(c) That the individual's independent contractor status is bona fide and not a subterfuge to avoid employee status. A bona fide independent contractor status is further evidenced by the presence of cumulative factors such as substantial investment other than personal services in the business, holding out to be in business for oneself, bargaining for a contract to complete a specific project for compensation by project rather than by time, control over the time and place the work is performed, supplying the tools or~~

~~instrumentalities used in the work other than tools and instrumentalities normally and customarily provided by employees, hiring employees, performing work that is not ordinarily in the course of the principal's work, performing work that requires a particular skill, holding a license pursuant to the Business and Professions Code, the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract.~~

~~In~~

(B) In addition to the factors contained in ~~subdivisions (a), (b), and (c),~~ *Section 2750.7,* any person performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall hold a valid contractors' license as a condition of having independent contractor status.

~~For~~

(c) For purposes of workers' compensation law, this presumption is a supplement to the existing statutory definitions of employee and independent contractor, and is not intended to lessen the coverage of employees under Division 4 and Division 5.

SEC. 3. Section 2750.7 is added to the Labor Code, to read:

2750.7. (a) Notwithstanding any other law, a determination of whether a person is an employee or an independent contractor for the purposes of this division shall be based on the multifactor test set forth in S.G. Borello & Sons, Inc. v. Department of Industrial Relations.

(b) These factors include, but are not limited to, the following:

(1) Whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, which is the principal factor.

(2) Whether the one performing services is engaged in a distinct occupation or business.

(3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision.

(4) The skill required in the particular occupation.

(5) Whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work.

(6) The length of time for which the services are to be performed.

(7) The method of payment, whether by the time or by the job.

(8) The right to discharge at will, without cause.

(9) Whether or not the work is part of the regular business of the principal.

(10) Whether or not the parties believe they are creating the relationship of employer-employee.

(c) The individual factors set forth in subdivision (b) above shall not be applied mechanically as separate tests, but shall be intertwined.

(d) The test set forth in this section shall apply to any determinations before an administrative agency or court.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

Because the expansive nature of Assembly Bill 5 (Chapter 296 of the Statutes of 2019) has resulted in the significant and immediate impact of lost income and resulted in a disruption of the work relationship for thousands of Californians, thereby effecting many occupations essential to the preservation of the public peace, health, and safety, it is necessary for this measure to take immediate effect.

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BusinessCosmo
Board of Barbering & Cosmetology

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BOARD OF BARBERING & COSMETOLOGY
BILL ANALYSIS

Author: Assembly Member Gonzalez **Subject:** Booth Renter Permit

Bill Number: AB 2465 **Version:** February 19, 2020

Existing Law:
Dynamex Operations W. Inc.v. Superior Court (2018) established a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of specified wage orders.

Existing statutory law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the "ABC" test is met.

Existing law exempts specified occupations and business relationships from the application of Dynamex and these provisions, including a person licensed as an esthetician, electrologist, manicurist, barber, or cosmetologist who meets specified requirements. Existing law instead provides that these exempt relationships are governed by the multifactor test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.

This Bill:
Recasts and reorganizes the exemptions for a person licensed as an esthetician, electrologist, manicurist, barber, or cosmetologist. The licensees above are governed by Borello provided that the individual meets all of the following:

i. Is free from direction or control both under the contract for the performance of the work.
ii. Sets their own rates, processes their own payments, and is paid directly by clients.
iii. Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.
iv. Has their own book of business and schedules their own appointments.
v. Maintains their own business license for the services offered to clients.
vi. If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.
vii. Maintains a booth renter permit.

This bill requires the Board to, by July 1, 2022, adopt regulations for the development of a booth renter permit and a biennial fee not to exceed $50.

Analysis:
This bill would impact operations as the Board would be required to adopt regulations for the development of the booth renter permit and fee. The Board would then be required to develop procedures regarding how licensees would apply for such permit, who would review and approve the applications, and design a notice of booth renter permit for consumers to view. The Board would have to ensure the licensing system BreEZe is equipped to maintain a list of booth renters. In addition, the Board would need to distribute the information to licensees.

The establishment of a booth rental permit would require an individual licensee to post at their station: their personal board license, their city business license, and the new booth rental permit. Requiring several licenses/permits could be burdensome for individuals, especially during the board's sunset review process where less oversight is a topic.

Assembly Bill 5 already required an independent contractor to have a business license, so requiring an additional booth rental permit may be redundant. An alternative recommendation is requiring an individual's business license to be posted alongside the individual personal license. This would indicate to a consumer that the individual is operating their own business.

Fiscal Impact:
The fiscal impact is assumed to be substantial, however it is not known at this time. The Board will not be able to absorb the additional workload and will be required to request additional staff. In additional, the Breeze system will need to be programmed to allow for the new license type.

ASSEMBLY BILL No. 2465

Introduced by Assembly Member Gonzalez

February 19, 2020

An act to add Section 7314.6 to the Business and Professions Code, and to amend Section 2750.3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2465, as introduced, Gonzalez. Worker status: independent contractors: barbering and cosmetology.

Existing law, as established in the case of Dynamex Operations W. Inc. v. Superior Court (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of specified wage orders.

Existing law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. This test is commonly known as the "ABC" test. Existing

law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of Dynamex and these provisions, including a person licensed as an esthetician, electrologist, manicurist, barber, or cosmetologist who meets specified requirement. Existing law instead provides that these exempt relationships are governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.

Existing law, the Barbering and Cosmetology Act, provides for the licensure and regulation of the practice of barbering and cosmetology by the State Board of Barbering and Cosmetology in the Department of Consumer Affairs. Existing law authorizes the board to make rules and regulations in furtherance of the act.

This bill would recast and reorganize the exemptions for a person licensed as an esthetician, electrologist, manicurist, barber, or cosmetologist. This bill would also require the Board of Barbering and Cosmetology, by July 1, 2022, to adopt regulations for the development of a booth renter permit and a biennial fee, as specified, for a person licensed as an esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist, for purposes of compliance with Labor Code requirements for exemption from the presumption employee status for those individuals.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7314.6 is added to the Business and Professions Code, to read:

7314.6. The board shall, by July 1, 2022, adopt regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), for the development of a booth renter permit and a reasonable biennial fee not to exceed fifty dollars ($50), for a person licensed as an esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist, which may be included as an addendum to the initial and biennial license renewal application. The total fees collected shall not exceed the cost of administering

this section. Booth renters shall post a notice of their booth renter permit for consumers to view. The board shall share the list and contact information of all booth renters with any state agency that requests the list, for purposes of assuring compliance with paragraph (8) of subdivision (b) of Section 2750.3 of the Labor Code.

SEC. 2. Section 2750.3 of the Labor Code is amended to read:

2750.3. (a) (1) For purposes of ~~the provisions of~~ this code and the Unemployment Insurance Code, and for the *purposes of* wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity's business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(2) Notwithstanding paragraph (1), any exceptions to the terms "employee," "employer," "employ," or "independent contractor," and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of "employee" in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.

(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court's decision in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 (Borello).

(b) Subdivision (a) and the holding in Dynamex Operations ~~West,~~ *W.* Inc. v. Superior Court ~~of Los Angeles~~ (2018) 4 Cal.5th 903 ~~(Dynamex),~~ *(Dynamex)* do not apply to the following

occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello.

(1) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.

(2) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall apply to the employment settings currently or potentially governed by collective bargaining agreements for the licensees identified in this paragraph.

(3) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, engineer, private investigator, or accountant.

(4) A securities broker-dealer or investment adviser or their agents and representatives that ~~are registered with~~ *are either of the following:*

(A) Registered with the Securities and Exchange Commission or the Financial Industry Regulatory ~~Authority or licensed by~~ *Authority.*

(B) Licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

(5) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.

(6) A commercial fisherman working on an American vessel as defined in subparagraph (A) below.

(A) For the purposes of this paragraph:

(i) “American vessel” has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.

(ii) "Commercial fisherman" means a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code.

(iii) "Working on an American vessel" means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, "working on an American vessel" does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.

(B) For the purposes of this paragraph, a commercial fisherman working on an American vessel is eligible for unemployment insurance benefits if they meet the definition of "employment" in Section 609 of the Unemployment Insurance Code and are otherwise eligible for those benefits pursuant to the provisions of the Unemployment Insurance Code.

(C) *(i)* On or before March 1, 2021, and each March 1 thereafter, the Employment Development Department shall issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. This report shall include, but not be limited to, ~~reporting~~ *all of the following:*

(I) Reporting the number of commercial fishermen who apply for unemployment insurance ~~benefits, the~~ *benefits.*

(II) The number of commercial fishermen who have their claims ~~disputed, the number~~ *disputed.*

(III) The number of commercial fishermen who have their claims ~~denied, and the~~ *denied.*

(IV) The number of commercial fishermen who receive unemployment insurance benefits. ~~The~~

(ii) The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(D) This paragraph shall become inoperative on January 1, 2023, unless extended by the Legislature.

(7) A newspaper distributor working under contract with a newspaper publisher, as defined in subparagraph (A), and a newspaper carrier working under contract either with a newspaper publisher or *a* newspaper distributor.

(A) For purposes of this paragraph:

(i) "Newspaper" means a newspaper of general circulation, as defined in Section 6000 of the Government Code, and any other publication circulated to the community in general as an extension of or substitute for that newspaper's own publication, whether that publication be designated a "shoppers' guide," as a zoned edition, or otherwise.

(ii) "Publisher" means the natural or corporate person that manages the newspaper's business operations, including circulation.

(iii) "Newspaper distributor" means a person or entity that contracts with a publisher to distribute newspapers to the community.

(iv) "Carrier" means a person who effects physical delivery of the newspaper to the customer or reader.

(B) This paragraph shall become inoperative on January 1, 2021, unless extended by the Legislature.

(8) (A) A licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist, if the individual meets all of the following:

(i) Is free from direction or control both under the contract for the performance of the work.

(ii) Sets their own rates, processes their own payments, and is paid directly by clients.

(iii) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.

(iv) Has their own book of business and schedules their own appointments.

(v) Maintains their own business license for the services offered to clients.

(vi) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or establishment owner from which they rent their business space.

(vii) Maintains a booth renter permit. This clause shall become operative six months after the effective date of regulations adopted by the State Board of Barbering and Cosmetology pursuant to Section 7314.6 of the Business and Professions Code.

(B) Until clause (vii) of subparagraph (A) becomes operative, the employment relationship between a hiring entity and a worker who meets all the criteria in this paragraph except for the permit requirement of clause (vii) of subparagraph (A) shall be governed by the test adopted by the California Supreme Court in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341. Commencing on the operative date of clause (vii) of subparagraph (A), that test shall apply to working relationships that meet all the criteria of subparagraph (A).

(c) (1) Subdivision (a) and the holding in Dynamex do not apply to a contract for "professional services" as defined below, and instead the determination of whether the individual is an employee or independent contractor shall be governed by Borello if the hiring entity demonstrates that all of the following factors are satisfied:

(A) The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity. Nothing in this subdivision prohibits an individual from choosing to perform services at the location of the hiring entity.

(B) If work is performed more than six months after the effective date of this section, the individual has a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.

(C) The individual has the ability to set or negotiate their own rates for the services performed.

(D) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual's own hours.

(E) The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.

(F) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

(2) For purposes of this subdivision:

(A) An "individual" includes an individual providing services through a sole proprietorship or other business entity.

(B) "Professional services" means services that meet any of the following:

(i) Marketing, provided that the contracted work is original and creative in character and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the contracted work.

(ii) Administrator of human resources, provided that the contracted work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(iii) Travel agent services provided by either of the following: ~~(I) a~~

(I) A person regulated by the Attorney General under Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions ~~Code, or (II) an~~ *Code.*

(II) An individual who is a seller of travel within the meaning of subdivision (a) of Section 17550.1 of the Business and Professions Code and who is exempt from the registration under subdivision (g) of Section 17550.20 of the Business and Professions Code.

(iv) Graphic design.

(v) Grant writer.

(vi) Fine artist.

(vii) Services provided by an enrolled agent who is licensed by the United States Department of the Treasury to practice before the Internal Revenue Service pursuant to Part 10 of Subtitle A of Title 31 of the Code of Federal Regulations.

(viii) Payment processing agent through an independent sales organization.

(ix) *(I)* Services provided by a still photographer or photojournalist who ~~do~~ *does* not license content submissions to the putative employer more than 35 times per year. This clause is not applicable to an individual who works on motion pictures, which includes, but is not limited to, projects produced for theatrical, television, internet streaming for any device, commercial productions, broadcast news, music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of the distribution platform. ~~For~~

(II) For purposes of this ~~clause~~ *clause,* a "submission" is one or more items or forms of content produced by a still photographer or photojournalist ~~that: (I) pertains~~ *that meets all of the following:*

(ia) Pertains to a specific event or specific ~~subject; (II) is~~ *subject.*

(ib) Is provided for in a contract that defines the scope of the ~~work; and (III) is~~ *work.*

(ic) Is accepted by and licensed to the publication or stock photography company and published or posted. ~~Nothing~~

(III) Nothing in this section shall prevent a photographer or artist from displaying their work product for sale.

(x) *(I)* Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year. Items of content produced on a recurring basis related to a general topic shall be considered separate submissions for purposes of calculating the 35 times per year. ~~For~~

(II) For purposes of this clause, a "submission" is one or more items or forms of content by a freelance journalist ~~that: (I) pertains~~ *that meets all of the following:*

(ia) Pertains to a specific event or ~~topic; (II) is~~ *topic.*

(ib) Is provided for in a contract that defines the scope of the ~~work; (III) is~~ *work.*

(ic) Is accepted by the publication or company and published or posted for sale.

~~(xi) Services provided by a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist provided that the individual:~~

~~(I) Sets their own rates, processes their own payments, and is paid directly by clients.~~

~~(II) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.~~

~~(III) Has their own book of business and schedules their own appointments.~~

~~(IV) Maintains their own business license for the services offered to clients.~~

~~(V) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.~~

~~(VI) This subdivision shall become inoperative, with respect to licensed manicurists, on January 1, 2022.~~

(d) Subdivision (a) and the holding in Dynamex do not apply to the following, which are subject to the Business and Professions Code:

(1) A real estate licensee licensed by the State of California pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by subdivision (b) of Section 10032 of the Business and Professions Code. If that section is not applicable, then this determination shall be governed as follows: ~~(A) for~~

(A) For purposes of unemployment insurance by Section 650 of the Unemployment Insurance ~~Code; (B) for~~ *Code.*

(B) For purposes of ~~workers~~ *workers'* compensation by Section 3200 et ~~seq.; and (C) for~~ *seq.*

(C) For all other purposes in the Labor Code by Borello. The statutorily imposed duties of a responsible broker under Section 10015.1 of the Business and Professions Code are not factors to be considered under the Borello test.

(2) A repossession agency licensed pursuant to Section 7500.2 of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by Section 7500.2 of the Business and Professions Code, if the repossession agency is free from the control and direction of the hiring person or entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(e) Subdivision (a) and the holding in Dynamex do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation ("business service provider") contracts to provide services to another such business ("contracting business"), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:

(A) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business.

(C) The contract with the business service provider is in writing.

(D) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

(E) The business service provider maintains a business location that is separate from the business or work location of the contracting business.

(F) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(G) The business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.

(H) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.

(I) The business service provider provides its own tools, vehicles, and equipment to perform the services.

(J) The business service provider can negotiate its own rates.

(K) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

(L) The business service provider is not performing the type of work for which a license from the ~~Contractor's~~ *Contractors'* State License Board is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(2) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs labor or services for a contracting business.

(3) The determination of whether an individual working for a business service provider is an employee or independent contractor

of the business service provider is governed by paragraph (1) of subdivision (a).

(4) This subdivision does not alter or supersede any existing rights under Section 2810.3.

(f) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the determination of whether the individual is an employee of the contractor shall be governed by Section 2750.5 and by Borello, if the contractor demonstrates that all the following criteria are satisfied:

(1) The subcontract is in writing.

(2) The subcontractor is licensed by the ~~Contractors~~ *Contractors'* State License Board and the work is within the scope of that license.

(3) If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.

(4) The subcontractor maintains a business location that is separate from the business or work location of the contractor.

(5) The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.

(6) The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided.

(7) The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(8) (A) Paragraph (2) shall not apply to a subcontractor providing construction trucking services for which a contractor's license is not required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:

(i) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.

(ii) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public

works contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.

(iii) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.

(iv) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.

(B) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.

(C) For purposes of this paragraph, "construction trucking services" mean hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver's license to operate or have a gross vehicle weight rating of 26,001 or more pounds.

(D) This paragraph shall only apply to work performed before January 1, 2022.

(E) Nothing in this paragraph prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall be reimbursed by the trucking company for the reasonable expense incurred for the use of the ~~employee owned~~ *employee-owned* truck.

(g) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a referral agency and a service provider, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or corporation ("service provider") provides services to clients through a referral agency, the determination *of* whether the service provider is an employee of the referral agency shall be governed by Borello, if the referral agency demonstrates that all of the following criteria are satisfied:

(A) The service provider is free from the control and direction of the referral agency in connection with the performance of the work for the client, both as a matter of contract and in fact.

(B) If the work for the client is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration.

(C) If the work for the client requires the service provider to hold a state contractor's license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, the service provider has the required contractor's license.

(D) The service provider delivers services to the client under *the* service provider's name, rather than under the name of the referral agency.

(E) The service provider provides its own tools and supplies to perform the services.

(F) The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed for the client.

(G) The service provider maintains a clientele without any restrictions from the referral agency and the service provider is free to seek work elsewhere, including through a competing agency.

(H) The service provider sets its own hours and terms of work and is free to accept or reject clients and contracts.

(I) The service provider sets its own rates for services performed, without deduction by the referral agency.

(J) The service provider is not penalized in any form for rejecting clients or contracts. This subparagraph does not apply if the service provider accepts a client or contract and then fails to fulfill any of its contractual obligations.

(2) For purposes of this subdivision, the following definitions apply:

(A) "Animal services" means services related to daytime and nighttime pet care including pet boarding under Section 122380 of the Health and Safety Code.

(B) "Client" means a person or business that engages a service contractor through a referral agency.

(C) "Referral agency" is a business that connects clients with service providers that provide graphic design, photography, tutoring, event planning, minor home repair, moving, home

cleaning, errands, furniture assembly, animal services, dog walking, dog grooming, web design, picture hanging, pool cleaning, or yard cleanup.

(D) "Referral agency contract" is the agency's contract with clients and service contractors governing the use of its intermediary services described in subparagraph (C).

(E) "Service provider" means a person or business who agrees to the referral agency's contract and uses the referral agency to connect with clients.

(F) "Tutor" means a person who develops and teaches their own curriculum. A "tutor" does not include a person who teaches a curriculum created by a public school or who contracts with a public school through a referral company for purposes of teaching students of a public school.

(3) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs services for a client through a referral agency. The determination *of* whether such an individual is an employee of a referral agency is governed by subdivision (a).

(h) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code and an individual performing services pursuant to a contract between the motor club and a third party to provide motor club services utilizing the employees and vehicles of the third party and, instead, the determination *of* whether such an individual is an employee of the motor club shall be governed by Borello, if the motor club demonstrates that the third party is a separate and independent business from the motor club.

(i) (1) ~~The addition of subdivision (a) to this section of the Labor Code by this act~~ *Subdivision (a)* does not constitute a change in, but is declaratory of, existing law with regard to wage orders of the Industrial Welfare Commission and violations of ~~the Labor Code~~ *this code* relating to wage orders.

(2) Insofar as the application of subdivisions (b), (c), (d), (e), (f), (g), and (h) ~~of this section~~ would relieve an employer from liability, those subdivisions shall apply retroactively to existing claims and actions to the maximum extent permitted by law.

(3) Except as provided in paragraphs (1) and ~~(2) of this subdivision, the provisions of~~ *(2),* this section ~~of the Labor Code~~ shall apply to work performed on or after January 1, 2020.

(j) In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by the Attorney General or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.

SEC. 3. The amendments to Section 2750.3 of the Labor Code, enacted by this measure, shall be effective retroactively to January 1, 2020.

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BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY ● GAVIN NEWSOM, GOVERNOR
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MEMORANDUM

DATE March 9, 2020

TO: Members, Board of Barbering and Cosmetology

FROM: Kristy Underwood, Executive Officer

SUBJECT: Regulations Update

A hearing was held February 6, 2020 and there were no comments. The following final rulemaking file has been submitted to DCA and the Business, Consumer Services and Housing Agency for review before filing with the Office of Administrative Law:

- Title 16, CCR Section 970, 971 (Substantial Relationship Criteria, Criteria for Rehabilitation)

The following regulation packages are under internal review by DCA/Agency:

- Title 16, CCR Section 950.10 (Transfer of Credit or Training)
- Title 16, CCR Section 965.2 (Personal Service Permit)
- Title 16, CCR Section 972 (Disciplinary Guidelines)
- Title 16, CCR Section 961 (National Interstate Council (NIC) Translation Guides)

Staff is developing the filing documents on the following regulation package:

- Title 16, CCR Sections 962, 962.1 and 962.2 (Externs)

The following regulatatory language is being submitted to the Board for approval:

- Title 16, CCR Section 974.1 (Disciplinary Review Committee)

BOARD OF BARBERING AND COSMETOLOGY

Division 9, Title 16, of the California Code of Regulations.

SPECIFIC LANGUAGE

LEGEND	
Underlined	**Indicates proposed amendments or additions to the existing regulation.**
~~Strikeout~~	**Indicates proposed deletions to the existing regulation.**

- **Amend Section 974.1, Title 16, California Code of Regulations, as follows:**

§974.1 Disciplinary Review Committee

(a) ~~The~~ A disciplinary review committee ~~of the board~~ shall be composed of three (3) members appointed for a term of two years by ~~of~~ the Board.

~~(b)~~ The board ~~president, in his or her discretion,~~ may appoint multiple disciplinary review committees.

(b) Each committee may include at least one member of the barbering and cosmetology industry, one member who is not associated professionally or financially with that industry, and one board member.

(c) ~~The board president shall annually appoint members of the disciplinary review committee; the appointment will be made concurrently with the annual election of the Board President.~~ Each member of a disciplinary review committee may be removed before the end of his or her term by a majority vote of the board.

(d) ~~The board president shall select the dates and locations of the informal citation review hearings held before the disciplinary review committee.~~ Each committee shall meet as deemed necessary by the board. Each committee member shall be paid a per diem pursuant to Section 103 of the Business and Professions Code and shall be reimbursed for any travel expenses.

NOTE: Authority cited: Sections 7312, 7410 and 103, Business and Professions Code. Reference: Section 7410, Business and Professions Code.