Richard Hedges, Public Member, President

Deedee Crossett, Industry Member

Marie Lemelle, Public Member

Frank Lloyd, Public Member

Christie Truc Tran, Industry Member

Kristy Underwood
Executive Officer

Edmond G. Brown Jr., Governor
State of California

Department of Consumer Affairs
Board of Barbering and Cosmetology

Telephone: (916) 575-7100

Website: www.barbercosmo.ca.gov

2420 Del Paso Road, Suite 100
Sacramento, CA 95834

California State Board of Barbering and Cosmetology

Board Meeting Agenda

Monday, April 25, 2011
10:00 A.M. – 5:00 P.M.
Or until completion of business

Department of Consumer Affairs
1625 North Market Blvd.
1st Floor Hearing Room, S-102
Sacramento, CA 95834

ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

OPEN SESSION:

1. Call to Order/Roll Call (**Richard Hedges**)

2. Public Comment on Items not on the Agenda
   Note: the Board may not discuss or take action on any matter 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, 11125.7(a)]

3. Board President's Report (**Richard Hedges**)

4. Annual Election of Officers

5. Executive Officer Report (**Kristy Underwood**)
   - Review of Board Statistics

6. DCA Director's Report

7. Approval of Board Meeting Minutes
   January 21, 2011

8. Legislation Update
   - AB 797 - Cosmetology Schools
   - SB 498 - Transfer of BPPE to the CA Postsecondary Education Commission

9. Regulations Update
   - Administrative Fine Schedule
   - Disciplinary Guidelines
   - Scoring Methods in Examinations
   - Unregulated Practices
   - Curriculum

10. Update on Manicuring Technical Advisory Committee

California State Board of Barbering and Cosmetology

11. Discussion on Needle-Tip Tweezers

12. Update and Discussion on Exams in State Correctional Facilities

13. Public Comment
    Note: the Board may not discuss or take action on any matter 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, 11125.7(a)]

14. Agenda Items for Next Meeting

15. **Closed Session to Discuss Enforcement Case**
    - Discussion on Reconsideration and Disciplinary Cases (Closed Pursuant to Government Code Section 11126(c) (3)).

16. Adjournment

A quorum of the Board will be present. Meetings of the Board of Barbering and Cosmetology are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. The audience will be given appropriate opportunities to comment on any issue before the Board, but the Chair may apportion available time among those who wish to speak.

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting shall make a request no later than five (5) working days before the meeting to the Board by contacting Linda Sakauye at (916) 575-7144 or sending a written request to that person at the address noted above.

No Attachment

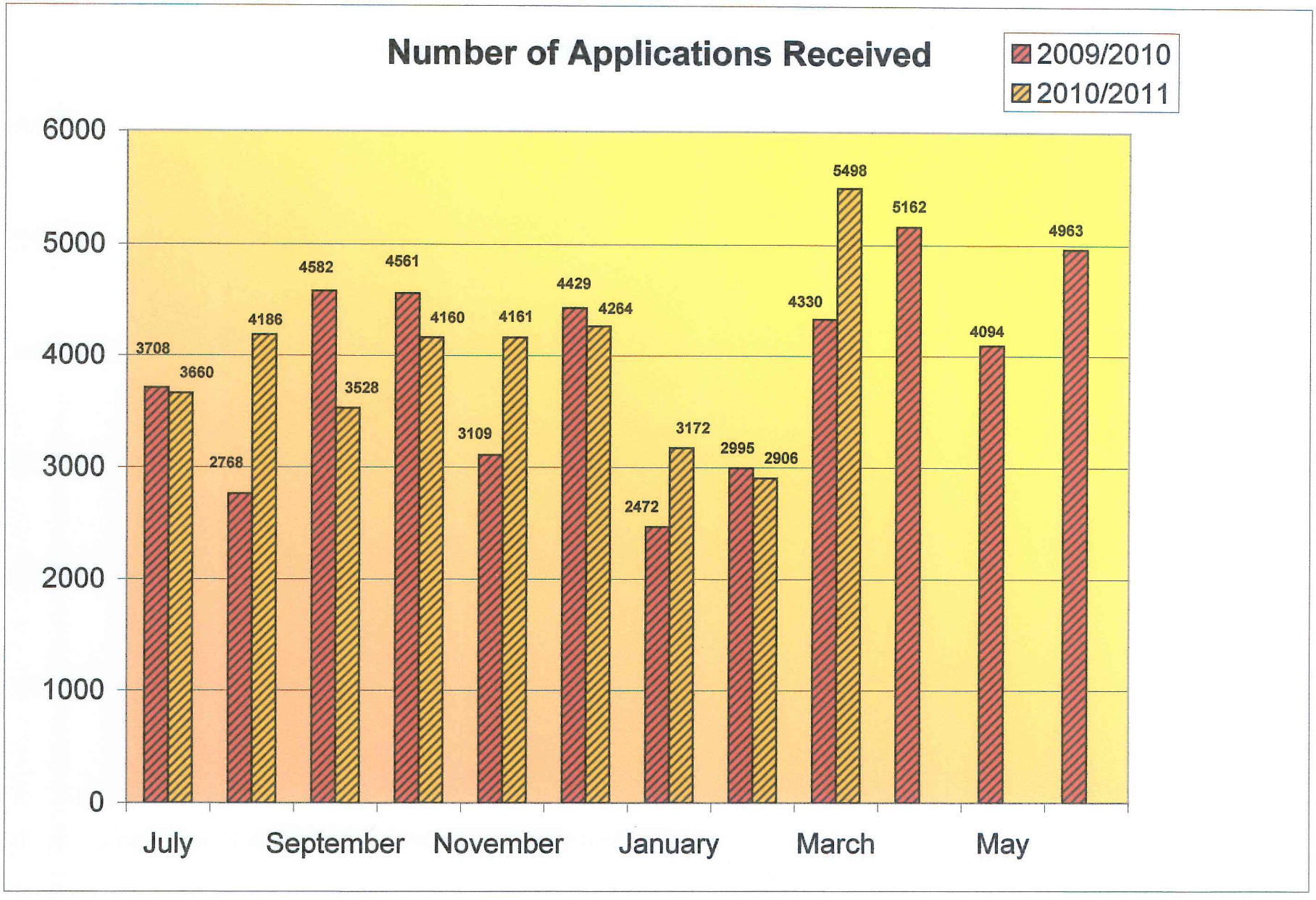
Quarterly Barbering and Cosmetology Licensing Statistics
Fiscal Year 10/11

Applications Received

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD*
Establishment	1,467	1,488	1,517		4,472
Barber	435	452	472		1,359
Barber Apprentice	63	49	97		209
Cosmetology	5,519	6,067	5,595		17,181
Cosmetology Apprentice	102	133	135		370
Electrology	7	8	8		23
Manicuring	1,980	2,268	1,830		6,078
Esthetician	1,801	2,120	1,885		5,806
Total	11,374	12,585	11,539	0	**35,498**

Licenses Issued

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD*
Establishment	1,667	1,302	1,376		4,345
Barber	367	215	309		891
Barber Apprentice	69	42	67		178
Cosmetology	3,107	2,833	2,532		8,472
Cosmetology Apprentice	103	123	96		322
Electrology	2	3	2		7
Manicuring	1,038	1,072	1,075		3,185
Esthetician	1,269	1,030	1,111		3,410
Total	7,622	6,620	6,568	0	**20,810**


Number of Applications Received
2009/2010
2010/2011
6000
5000
4000
3000
2000
1000
0
3708
3660
2768
4186
4582
3528
4561
4160
3109
4161
4429
4264
2472
3172
2995
2906
4330
5498
5162
4094
4963
July
September
November
January
March
May

Examination Results
(January 1, 2011- March 31, 2011)

Practical Examinations

Administered	Passed	Failed	Total	Pass Rate	*DNA
Barber	66	53	119	**55%**	33
Cosmetologist	1,141	493	1,634	**70%**	310
Esthetician	385	37	422	**91%**	45
Electrologist	0	0	0	**0%**	0
Manicurist	377	66	443	**85%**	40
TOTAL	**1,969**	**649**	**2,618**	**75%**	**428**

*** Did Not Attend**

Written Examinations

Barber	Passed	Failed	Total	Pass Rate
English	293	99	392	**75%**
Spanish	20	5	25	**80%**
Vietnamese	14	1	15	**93%**
TOTAL	**327**	**105**	**432**	**76%**

Cosmetologist	Passed	Failed	Total	Pass Rate
English	2,661	912	3,573	**74%**
Spanish	88	288	376	**23%**
Vietnamese	85	148	233	**36%**
TOTAL	**2,834**	**1,348**	**4,182**	**68%**

Manicurist	Passed	Failed	Total	Pass Rate
English	273	105	378	**72%**
Spanish	8	7	15	**53%**
Vietnamese	858	364	1,222	**70%**
TOTAL	**1,139**	**476**	**1,615**	**71%**

Esthetician	Passed	Failed	Total	Pass Rate
English	810	259	1,069	**76%**
Spanish	0	2	2	**0%**
Vietnamese	319	243	562	**57%**
TOTAL	**1,129**	**504**	**1,633**	**69%**

Electrologist	Passed	Failed	Total	Pass Rate
English	1	0	1	**100%**
Spanish	0	0	0	**0%**
Vietnamese	0	0	0	**0%**
TOTAL	**1**	**0**	**1**	**100%**

WRITTEN EXAMINATION STATISTICS

	EXAM TYPE	ENGLISH PASSED	ENGLISH FAILED	ENGLISH TOTAL	ENGLISH % PASSED	ENGLISH % FAILED	SPANISH PASSED	SPANISH FAILED	SPANISH TOTAL	SPANISH % PASSED	SPANISH % FAILED	VIETNAMESE PASSED	VIETNAMESE FAILED	VIETNAMESE TOTAL	VIETNAMESE % PASSED	VIETNAMESE % FAILED
Jul-10	BARBER	110	24	134	82%	18%	9	0	9	100%	0%	6	1	7	86%	14%
Aug-10		105	30	135	78%	22%	9	1	10	90%	10%	10	1	11	91%	9%
Sep-10		88	19	107	82%	18%	4	1	5	80%	20%	4	1	5	80%	20%
Oct-10		68	15	83	82%	18%	2	0	2	100%	0%	4	0	4	100%	0%
Nov-10		54	19	73	74%	26%	2	2	4	50%	50%	4	1	5	80%	20%
Dec-10		71	18	89	80%	20%	2	1	3	67%	33%	3	0	3	100%	0%
Jan-11		89	26	115	77%	23%	6	2	8	75%	25%	4	0	4	100%	0%
Feb-11		104	29	133	78%	22%	8	0	8	100%	0%	5	1	6	83%	17%
Mar-11		100	44	144	69%	31%	6	3	9	67%	33%	5	0	5	100%	0%
	TOTAL	789	224	1013	78%	22%	48	10	58	83%	17%	45	5	50	90%	10%
Jul-10	COSMETOLOGY	974	363	1,337	73%	27%	40	87	127	31%	69%	24	71	95	25%	75%
Aug-10		1,085	368	1,453	75%	25%	60	106	166	36%	64%	27	55	82	33%	67%
Sep-10		1,015	320	1,335	76%	24%	54	101	155	35%	65%	25	55	80	31%	69%
Oct-10		854	289	1,143	75%	25%	46	93	139	33%	67%	33	52	85	39%	61%
Nov-10		842	293	1,135	74%	26%	51	88	139	37%	63%	36	47	83	43%	57%
Dec-10		886	329	1,215	73%	27%	49	94	143	34%	66%	27	59	86	31%	69%
Jan-11		840	304	1,144	73%	27%	39	107	146	27%	73%	31	52	83	37%	63%
Feb-11		882	268	1,150	77%	23%	46	90	136	34%	66%	25	45	70	36%	64%
Mar-11		939	340	1,279	73%	27%	43	91	134	32%	68%	29	51	80	36%	64%
		8,317	2,874	11,191	74%	26%	428	857	1,285	33%	67%	257	487	744	35%	65%
Jul-10	MANICURIST	115	54	169	68%	32%	1	4	5	20%	80%	213	175	388	55%	45%
Aug-10		130	61	191	68%	32%	1	3	4	25%	75%	224	239	463	48%	52%
Sep-10		90	60	150	60%	40%	1	2	3	33%	67%	229	178	407	56%	44%
Oct-10		96	46	142	68%	32%	2	2	4	50%	50%	214	142	356	60%	40%
Nov-10		86	35	121	71%	29%	2	0	2	100%	0%	261	159	420	62%	38%
Dec-10		118	40	158	75%	25%	1	2	3	33%	67%	310	180	490	63%	37%
Jan-11		97	48	145	67%	33%	4	3	7	57%	43%	331	163	494	67%	33%
Feb-11		79	27	106	75%	25%	2	1	3	67%	33%	242	101	343	71%	29%
Mar-11		97	30	127	76%	24%	2	3	5	40%	60%	285	100	385	74%	26%
	TOTAL	908	401	1,309	69%	31%	16	20	36	44%	56%	2,309	1,437	3,746	62%	38%
Jul-10	ESTHETICIAN	343	95	438	78%	22%	1	1	2	50%	50%	84	101	185	45%	55%
Aug-10		309	82	391	79%	21%	2	1	3	67%	33%	125	135	260	48%	52%
Sep-10		260	81	341	76%	24%	0	4	4	0%	100%	118	129	247	48%	52%
Oct-10		206	80	286	72%	28%	1	0	1	100%	0%	107	80	187	57%	43%
Nov-10		226	81	307	74%	26%	0	2	2	0%	100%	115	93	208	55%	45%
Dec-10		258	77	335	77%	23%	1	1	2	50%	50%	138	81	219	63%	37%
Jan-11		280	91	371	75%	25%	0	0	0	0%	0%	106	94	200	53%	47%
Feb-11		246	67	313	79%	21%	0	0	0	0%	0%	107	75	182	59%	41%
Mar-11		284	101	385	74%	26%	0	2	2	0%	100%	106	74	180	59%	41%
	TOTAL	2,412	755	3,167	76%	24%	5	11	16	31%	69%	779	812	1,591	49%	51%
Jul-10	ELECTROLOGY	0	0	0	0%	0%	0	0	0	0%	0%	0	0	0	0%	0%
Aug-10		2	1	3	67%	33%	0	0	0	0%	0%	0	0	0	0%	0%
Sep-10		0	1	1	0%	100%	0	0	0	0%	0%	0	0	0	0%	0%
Oct-10		1	0	1	100%	0%	0	0	0	0%	0%	0	0	0	0%	0%
Nov-10		0	0	0	0%	0%	0	0	0	0%	0%	0	0	0	0%	0%
Dec-10		2	0	2	100%	0%	0	0	0	0%	0%	0	0	0	0%	0%
Jan-11		1	0	1	100%	0%	0	0	0	0%	0%	0	0	0	0%	0%
Feb-11		0	0	0	0%	0%	0	0	0	0%	0%	0	0	0	0%	0%
Mar-11		0	0	0	0%	0%	0	0	0	0%	0%	0	0	0	0%	0%
	TOTAL	6	2	8	75%	25%	0	0	0	0	0	0	0	0	0	0

Overall Pass/Fail Rates

	p	f	t		
Eng	789	224	1013		
Span	48	10	58		
Viet	45	5	50		
	882	239	1121	79%	21%
Eng	8,317	2,874	11,191		
Span	428	857	1,285		
Viet	257	487	744		
	9,002	4,218	13,220	68%	32%
Eng	908	401	1309		
Span	16	20	36		
Viet	2,309	1,437	3,746		
	3,233	1,858	5,091	64%	36%
Eng	2,412	755	3,167		
Span	5	11	16		
Viet	779	812	1,591		
	3,196	1,578	4,774	67%	33%
Eng	6	2	8		
Span	0	0	0		
Viet	0	0	0		
	6	2	8	75%	25%

REVISED 4/8/2011

State and Consumer Services Agency – Governor Edmund G. Brown Jr.
BOARD OF BARBERING AND COSMETOLOGY
P.O. Box 944226, Sacramento, CA 94244-2260
P (800) 952-5210 F (916) 575-7281 www.barbercosmo.ca.gov

QUARTERLY BARBERING AND COSMETOLOGY DISCIPLINARY REVIEW COMMITTEE STATISTICS

Fiscal Year 10-11

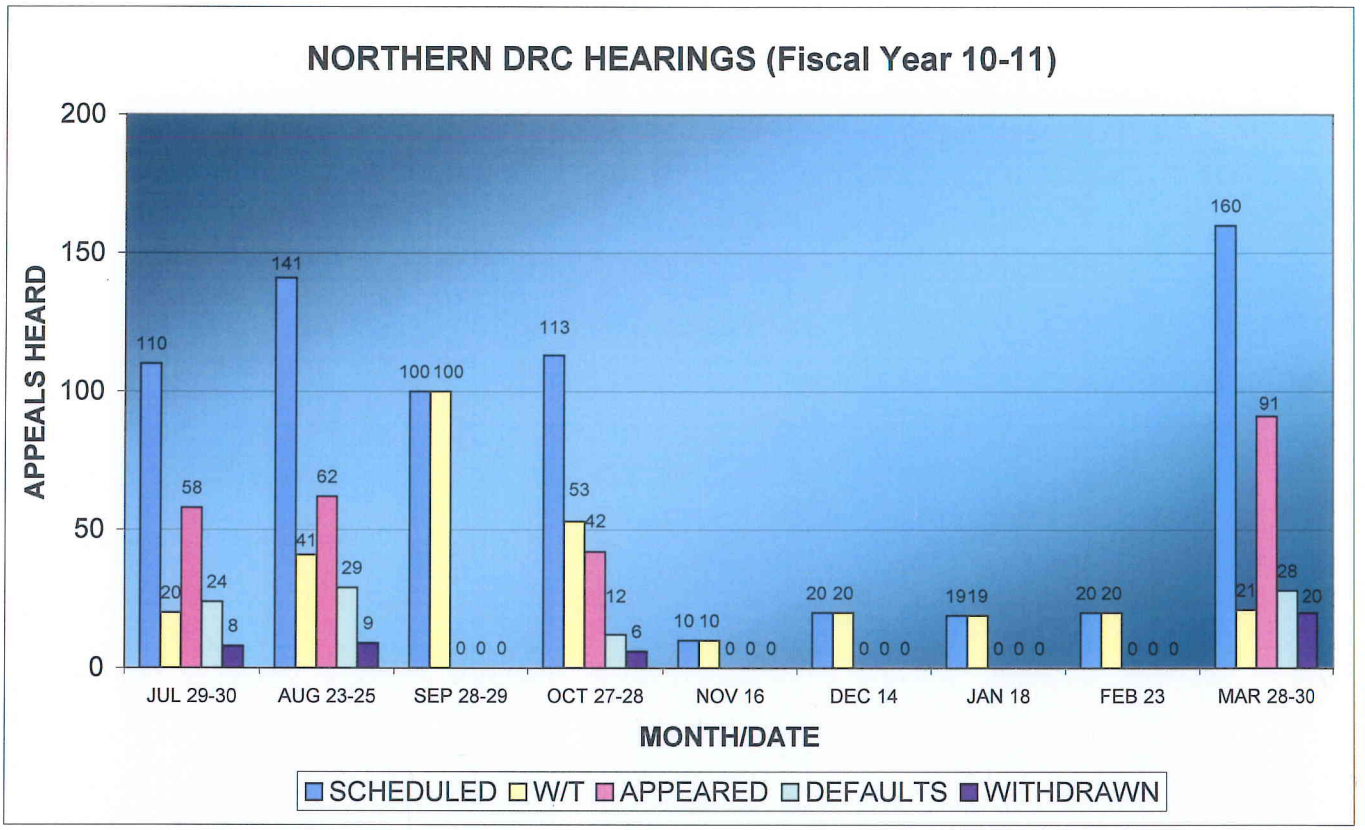
Report Date: March 31, 2011

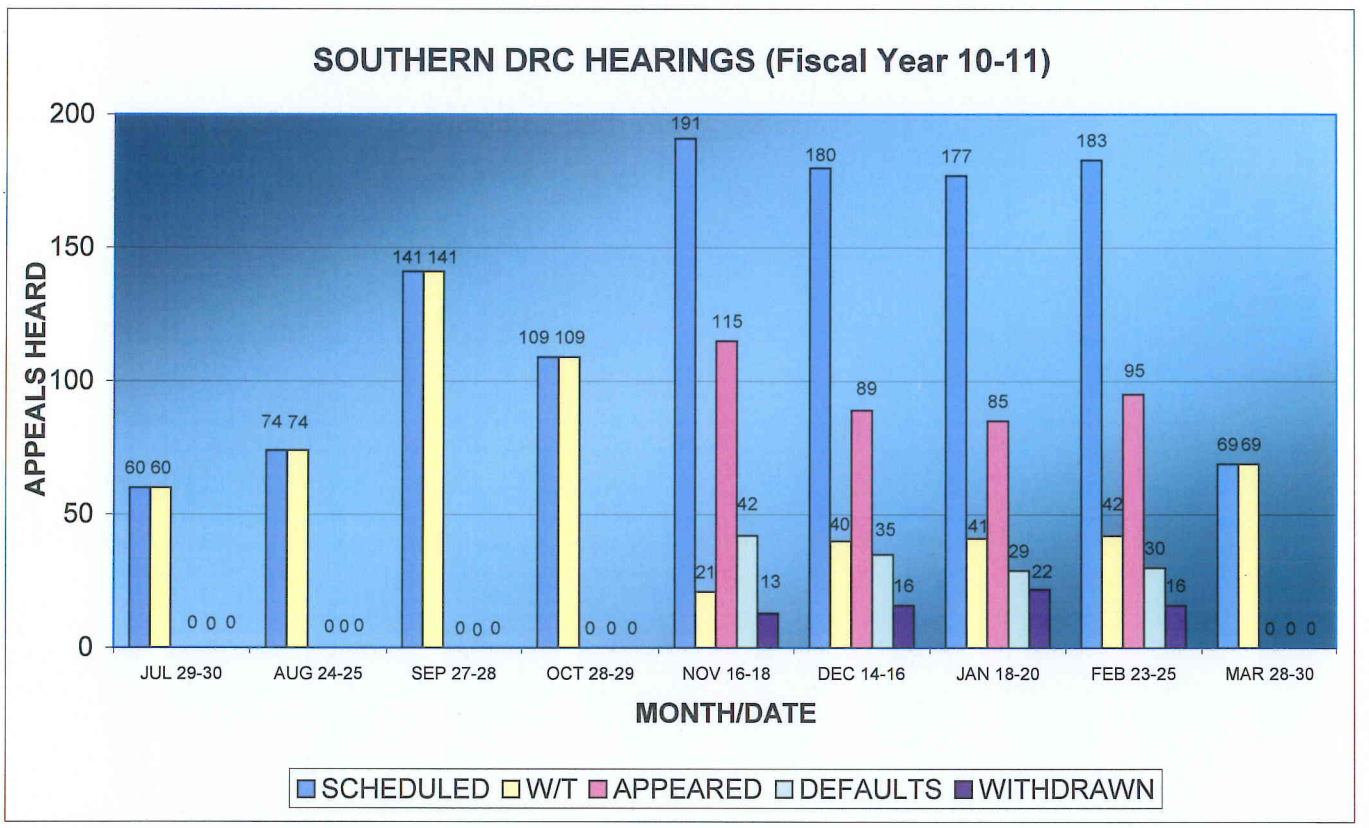
	January - March	YTD
SOUTHERN		
Heard	429	1,184
Received	584	1,637
Pending[1]	1,081	1,081[2]
NORTHERN		
Heard	199	693
Received	321	919
Pending[1]	616	616[2]

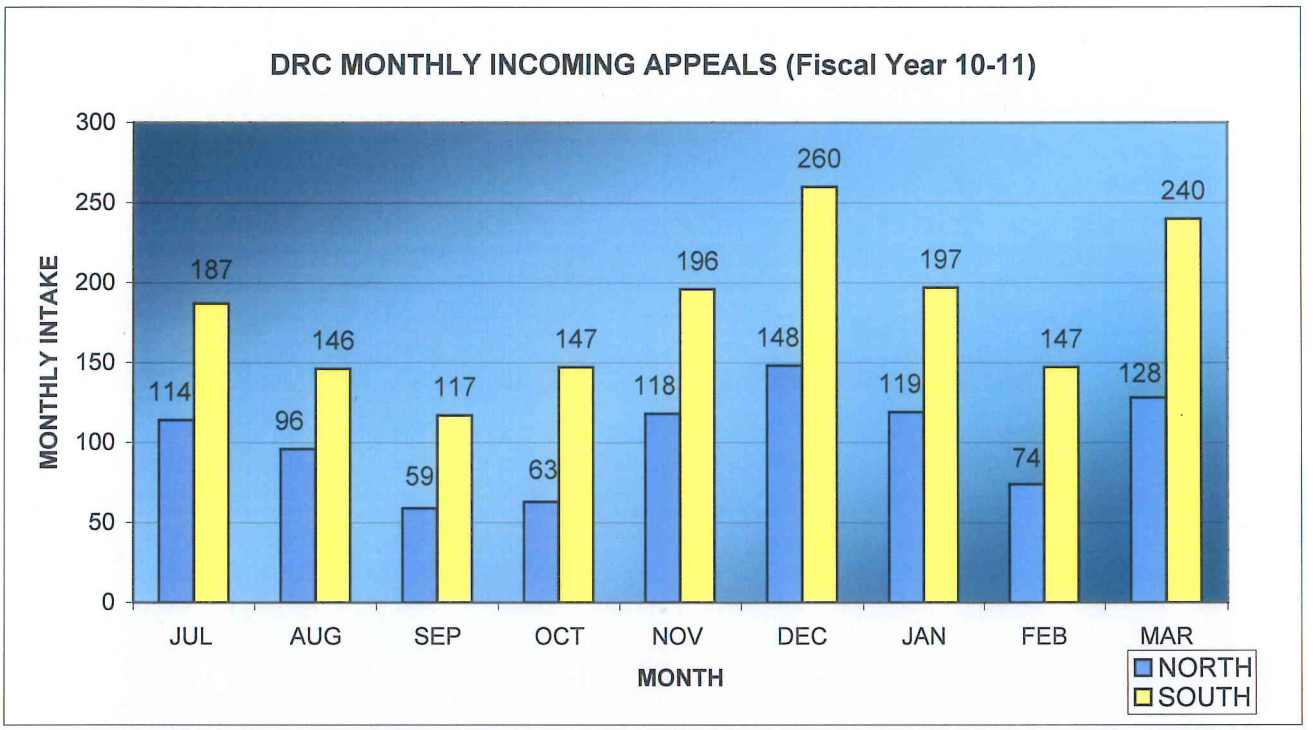
[1] Pending refers to the number of appeals received but not yet heard by DRC.
[2]Figure represents number of pending requests as of report date.

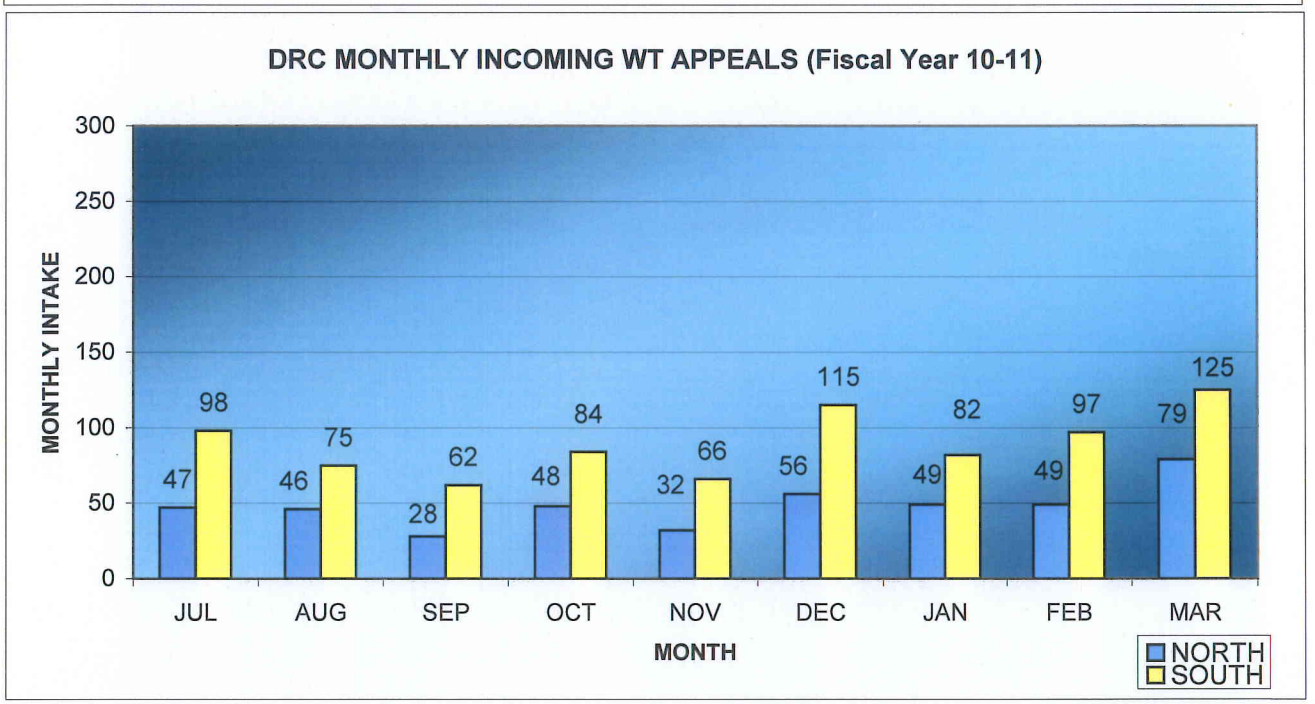
2011 SCHEDULED HEARINGS

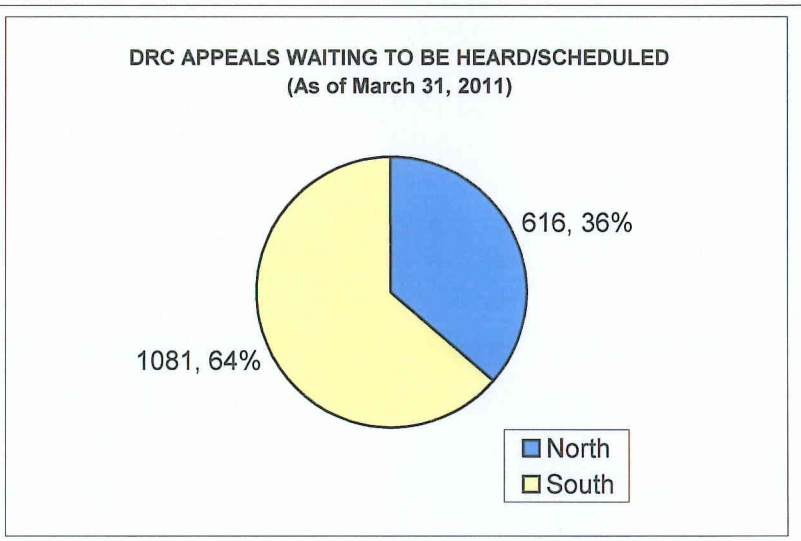
Area	Location	Date
Northern	Sacramento	April 27-29, 2011
Southern	San Diego	May 24-26, 2011
Southern	Los Angeles	June 15-17, 2011


NORTHERN DRC HEARINGS (Fiscal Year 10-11)
APPEALS HEARD
200
150
100
50
0
110
20
58
24
8
141
41
62
29
9
100 100
0 0 0
113
53
42
12
6
10 10
0 0 0
20 20
0 0 0
19 19
0 0 0
20 20
0 0 0
160
21
91
28
20
JUL 29-30
AUG 23-25
SEP 28-29
OCT 27-28
NOV 16
DEC 14
JAN 18
FEB 23
MAR 28-30
MONTH/DATE
SCHEDULED
W/T
APPEARED
DEFAULTS
WITHDRAWN


SOUTHERN DRC HEARINGS (Fiscal Year 10-11)
APPEALS HEARD
200
150
100
50
0
60 60
0 0 0
74 74
0 0 0
141 141
0 0 0
109 109
0 0 0
191
21
115
42
13
180
40
89
35
16
177
41
85
29
22
183
42
95
30
16
69 69
0 0 0
JUL 29-30
AUG 24-25
SEP 27-28
OCT 28-29
NOV 16-18
DEC 14-16
JAN 18-20
FEB 23-25
MAR 28-30
MONTH/DATE
SCHEDULED
W/T
APPEARED
DEFAULTS
WITHDRAWN


DRC MONTHLY INCOMING APPEALS (Fiscal Year 10-11)
MONTHLY INTAKE
300
250
200
150
100
50
0
114
187
96
146
59
117
63
147
118
196
148
260
119
197
74
147
128
240
JUL
AUG
SEP
OCT
NOV
DEC
JAN
FEB
MAR
MONTH
NORTH
SOUTH


DRC MONTHLY INCOMING WT APPEALS (Fiscal Year 10-11)
MONTHLY INTAKE
300
250
200
150
100
50
0
47
98
46
75
28
62
48
84
32
66
56
115
49
82
49
97
79
125
JUL
AUG
SEP
OCT
NOV
DEC
JAN
FEB
MAR
MONTH
NORTH
SOUTH


DRC APPEALS WAITING TO BE HEARD/SCHEDULED
(As of March 31, 2011)
616, 36%
1081, 64%
North
South

Agenda Item #12

QUARTERLY BARBERING AND COSMETOLOGY ENFORCEMENT STATISTICS Fiscal Year 10/11

Report Date January 6, 2011

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD*
COMPLAINTS					
Complaints Received	751	716	910		2377
Referred to DOI	14	15	8		37
Complaints Closed	1199	1146	1194		3539
Total Complaints Pending	929	857	931		857
APPLICATION INVESTIGATIONS					
Received	448	362	381		1191
Pending	98	71	57		71
Closed	441	390	395		1226
ATTORNEY GENERAL					
Referred	24	26	20		70
Accusations Filed	10	12	11		33
Statement of Issues Filed	1	0	1		2
Total Pending	98	91	88		91
DISCIPLINARY PROCESS					
Proposed Decision	1	3	2		6
Default Decision	5	4	5		14
Stipulation	7	9	6		22
DISCIPLINARY OUTCOMES					
Revocation	9	8	6		23
Revoke, Stay, Probation	2	5	1		8
Revoke, Stay, Suspend/Prob	12	4	6		22
Revocation, Stay w/ Suspend	0	0	0		0
Probation Only	0	0	0		0
Suspension Only	0	0	0		0
Suspension & Probation	0	0	0		0
Suspension, Stay, Probation	4	6	14		24
Surrender of License	1	0	3		4
Public Reprimands	0	0	0		0
License Denied	1	0	0		1
Other	0	0	0		0
Total	29	23	30		82
PROBATION					
Active	267	247	233		247
	Jul-Sept	**Oct-Dec**	**Jan- Mar**	**Apr-Jun**	**YTD**
CITATIONS*					
Establishments	2115	1867	1303		5285
Barber	143	122	81		346
Barber Apprentice	16	8	4		28
Cosmetologist	771	663	438		1872
Cosmetologist Apprentice	2	14	7		23
Electrologist	1	0	0		1
Electrologist Apprentice	0	0	0		0
Manicurist	505	443	285		1233
Esthetician	75	36	37		148
Unlicensed Est.	130	151	107		388
Unlicensed Individual	132	145	79		356
Total	3890	3449	2341		9680
INSPECTIONS*					
Establishments w/ violations	1480	1971	1298		4749
Establishments w/o violations	369	487	181		1037
Total	1849	2458	1479		5786

**Reporting Inspections and Citations through February 2011. Still inputing March data.*

BarberCosmo
Board of Barbering & Cosmetology

State and Consumer Services Agency – Governor Edmund G. Brown Jr

BOARD OF BARBERING AND COSMETOLOGY
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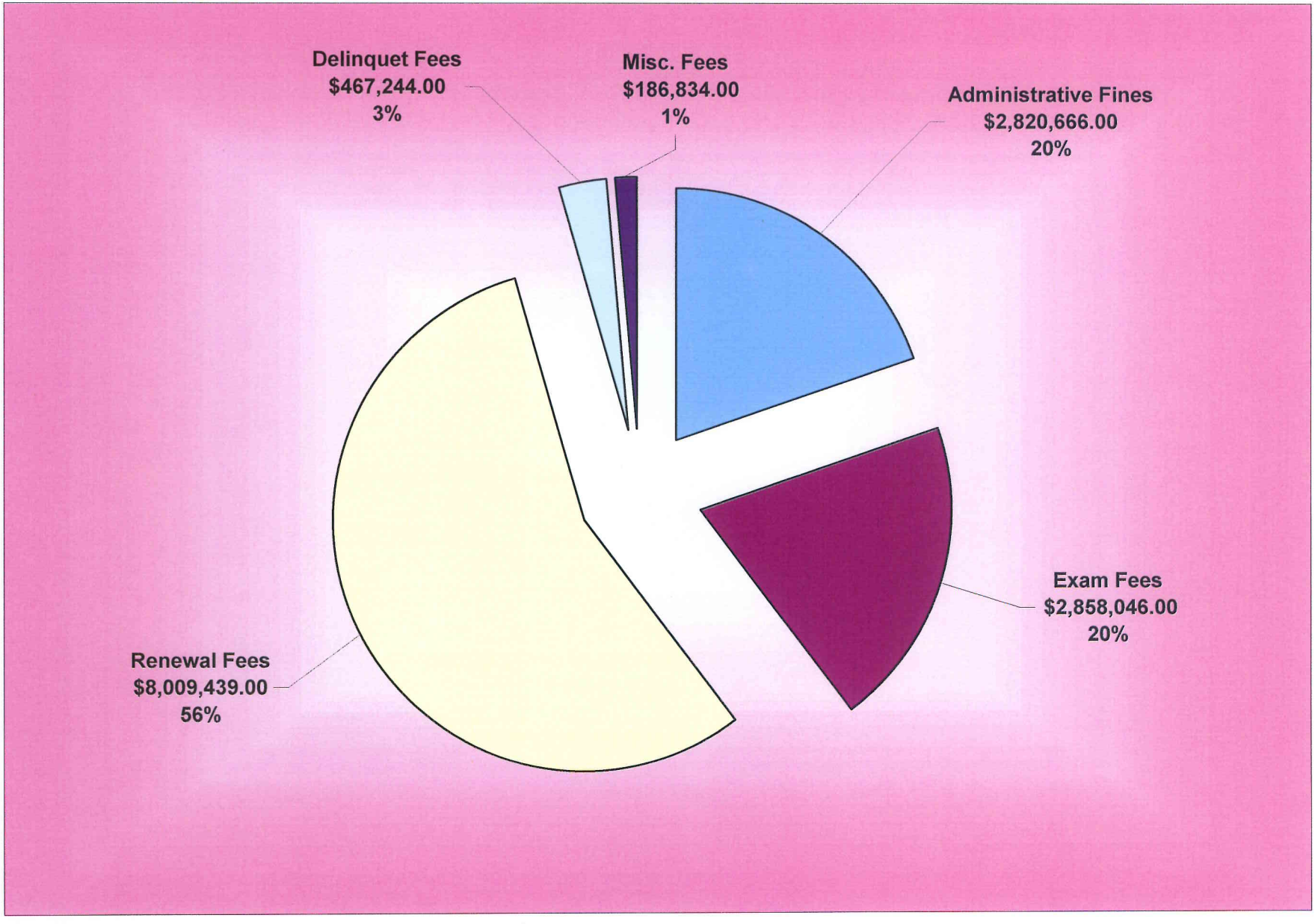
Budget Updates

1. **Budget 2010/11 Fiscal Year (July 2010 - June 2011):**

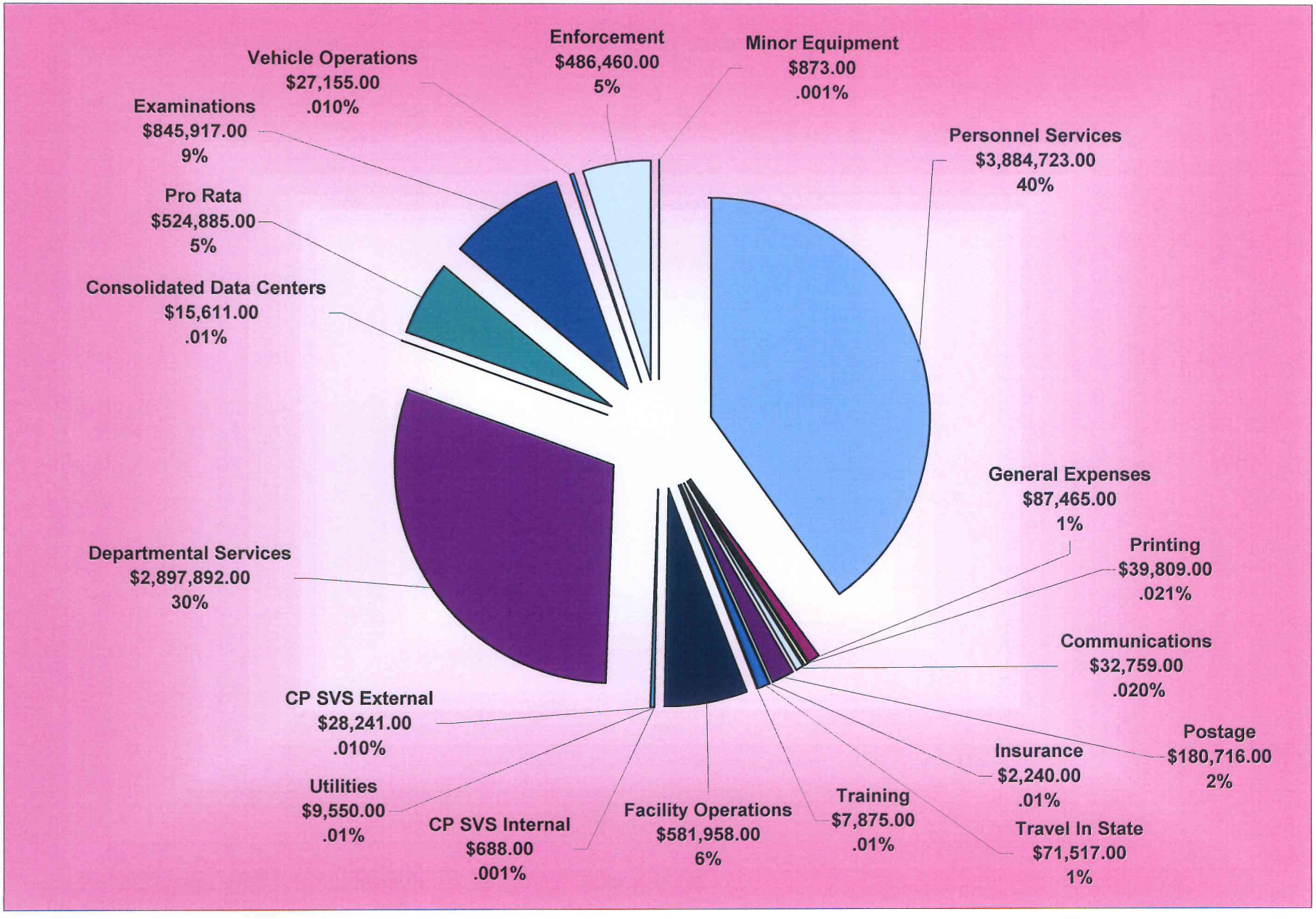
   Chart 1 displays the revenues received as of February 28, 2011.

   Chart 2 displays the expenditures as of February 28, 2011.

   Attachment 3 displays projected expenditures for end of the year.


Delinquet Fees
$467,244.00
3%
Misc. Fees
$186,834.00
1%
Administrative Fines
$2,820,666.00
20%
Exam Fees
$2,858,046.00
20%
Renewal Fees
$8,009,439.00
56%

Monthly Budget Report (10/11)
Expenditures
(As of 02/28/11)



Expenditures as of 02/28/11
$9,726,334

Board of Barbering and Cosmetology
Fiscal Year 2010/2011
Projected Expenditures 04/15/11

Personnel Services	ALLOTMENT	BBC Projected Expenditures	Projected Year
Permanent	3,920,690	3,920,690	0
Expert Examiners	464,259	464,259	0
Temporary	134,916	134,916	0
Statutory-Exempt	103,308	103,308	0
Board Member Commission	0	17,200	(17,200)
Overtime	0	4,400	(4,400)
Total Salary & Wages	**4,623,173**	**4,644,773**	**(21,600)**
Salary Savings	(155,368)	0	(155,368)
5% Salaray Savings	0	278,460	(278,460)
Net Salary & Wages	**4,467,805**	**4,923,233**	**(455,428)**
Staff Benefits	1,900,263	1,900,263	0
Total of Personnel Servies	**6,368,068**	**6,823,496**	**(455,428)**

Operating Expenses & Equipment (OE&E)	Allotment	BBC Projected Expenditures	Projected Year End Balance
General Expense	264,500	264,500	0
Printing	243,995	241,995	2,000
Communication	110,722	110,477	245
Postage	339,384	300,000	39,384
Insurance	4,489	2,500	1,989
Travel In State	82,789	82,789	0
Travel, Out-of-State	0	0	0
Training	24,513	20,000	4,513
Facilities Operations	1,327,231	1,327,231	0
Consultant & Professional Svs. - Interdept.	125,781	90,000	35,781
Consultant & Professional Svs. - External	196,947	196,947	0
Depart. and Central Admin. Services	5,514,424	5,490,943	23,481
Consolidated Data Center	70,088	70,088	0
Examinations	1,354,034	1,354,034	0
Major Equipment	189,390	50,000	139,390
Minor Equipment	15,000	15,000	0
Data Processing	0	2,000	(2,000)
Other Items of Expense	7,288	5,000	2,288
Vehicle Operations	14,772	14,772	0
Enforcement	1,746,520	1,112,837	633,683
Special Items of Expenses	0	0	0
Required OE&OSavings		148,724	(148,724)
Total Operating Expenses & Equipment	11,631,867	10,899,837	732,030
Total reimbusements	(57,000)		(57,000)
Total	**17,942,935**	**17,723,333**	**675,030**

0069 - Barbering and Cosmetology
Analysis of Fund Condition

Prepared 2/9/11

(Dollars in Thousands)

NOTE: $10 Million General Fund Repayment Outstanding

Proposed FY 2011/12 GF Loan With Repay

	Actual 2009-10	CY 2010-11	GOVERNOR'S BUDGET BY 2011-12	BY+1 2012-13	BY+2 2013-14	BY+3 2014-15
BEGINNING BALANCE	$ 6,066	$ 10,104	$ 11,258	$ 1,612	$ 2,631	$ 14,291
Prior Year Adjustment	$ 179	$ -	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ 6,245	$ 10,104	$ 11,258	$ 1,612	$ 2,631	$ 14,291
REVENUES AND TRANSFERS						
Revenues:						
125600 Other regulatory fees	$ 3,994	$ 3,733	$ 4,669	$ 4,669	$ 4,669	$ 4,669
125700 Other regulatory licenses and permits	$ 4,604	$ 4,731	$ 4,826	$ 4,826	$ 4,826	$ 4,826
125800 Renewal fees	$ 9,890	$ 9,293	$ 9,464	$ 9,464	$ 9,464	$ 9,464
125900 Delinquent fees	$ 660	$ 588	$ 600	$ 600	$ 600	$ 600
141200 Sales of documents	$ -	$ -	$ -	$ -	$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -	$ -
150300 Income from surplus money investments	$ 65	$ 93	$ 119	$ 52	$ 65	$ 290
150500 Interest Income from Interfund Loans	$ -	$ -	$ -	$ -	$ -	$ -
160400 Sale of fixed assets	$ 1	$ -	$ -	$ -	$ -	$ -
161000 Escheat of unclaimed checks and warrants	$ 25	$ -	$ -	$ -	$ -	$ -
161400 Miscellaneous revenues	$ 9	$ -	$ 7	$ 7	$ 7	$ 7
Totals, Revenues	$ 19,248	$ 18,438	$ 19,685	$ 19,618	$ 19,631	$ 19,856
Transfers from Other Funds						
Proposed GF Loan Repayment					$ 11,000	
Transfers to Other Funds						
Proposed GF Loan			$ -11,000			
Totals, Revenues and Transfers	$ 19,248	$ 18,438	$ 8,685	$ 19,618	$ 30,631	$ 19,856
Totals, Resources	$ 25,493	$ 28,542	$ 19,943	$ 21,230	$ 33,262	$ 34,147
EXPENDITURES						
Disbursements:						
0840 State Controller (State Operations)	$ 11	$ 27	$ 19	$ -	$ -	$ -
1110 Program Expenditures (State Operations)	$ 15,378	$ 17,394	$ 18,234	$ 18,599	$ 18,971	$ 19,350
1111 Program Expenditures (State Operations)						
BreEze funding re-alignment		$ -148				
8880 Financial Information System for California (State Ops)	$ -	$ 11	$ 78	$ -		$ -
9670 Equity Claims / Board of Control (State Operations)	$ -	$ -	$ -	$ -	$ -	$ -
Total Disbursements	$ 15,389	$ 17,284	$ 18,331	$ 18,599	$ 18,971	$ 19,350
FUND BALANCE						
Reserve for economic uncertainties	$ 10,104	$ 11,258	$ 1,612	$ 2,631	$ 14,291	$ 14,797
Months in Reserve	7.0	7.8	1.0	1.7	8.9	9.0

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2011-12

BarberCosmo
Board of Barbering & Cosmetology

State and Consumer Services Agency – Governor Edmund G. Brown Jr
BOARD OF BARBERING AND COSMETOLOGY
P.O. Box 944226, Sacramento, CA 94244-2260
P (800) 952-5210 F (916) 575-7281 www.barbercosmo.ca.gov

2011 Outreach/Industry Events

- May 8 - 9 Barristar Beauty School Forum in Anaheim
- October 16 - 17 Barristar Beauty School Forum in Burbank

No Attachment

State and Consumer Services Agency – Arnold Schwarzenegger, Governor
Board of Barbering and Cosmetology-Department of Consumer Affairs
PO Box 944226, Sacramento, CA 94244
P (800) 952-7574 F (916) 574-7574 | www.barbercosmo.ca.gov

CALIFORNIA STATE BOARD OF BARBERING AND COSMETOLOGY

MINUTES OF JANUARY 21, 2011

Doubletree Club Hotel
1515 Hotel Circle South
San Diego, CA 92108

Additional Meeting Location:
2406 Kalanianaole Ave. PH-11
Hilo, HI 96720

BOARD MEMBERS PRESENT
Richard Hedges (via telephone)
Frank Lloyd
Ken Williams
Christie Tran
Deedee Crossett
Marie Lemelle
Ted Nelson

STAFF MEMBERS PRESENT
Kristy Underwood, Executive Officer
Hilda Youngblood, Assist. Executive Officer
Gary Duke, Staff Counsel
Theresa Rister, Board Analyst

1. Agenda Item #1, CALL TO ORDER/ROLL CALL

President Richard Hedges called the meeting to order. The board members and staff introduced themselves.

2. Agenda Item #2, PUBLIC COMMENT

David Van Dyke, Hilga Van Dyke Skin Care requested clarification on the Board's standing on the regulations regarding the highest percentage of glycolic that can be used by a professional. He was recently questioned by DCA regarding the ramifications of 70% glycolic being sold online. Ms. Crossett agreed the percentage was important but also indicated that it's the PH level that we should be concerned about. It was noted that the derma layer of the skin was not penetrated. Mr. Van Dyke believed a standard needed to be set to protect the public. Ms. Crossett agreed and stated they would be discussing the establishment of a technical advisory committee later in the agenda to further educate the inspectors. Mr. Van Dyke offered his assistance.

Adrian Jackson Wright, educator, introduced a new set of cosmetology textbooks and requested the board form a committee to review and approve the textbooks. She provided two textbooks for review. Ms. Underwood stated the policy was to provide 10 copies that are reviewed by a group of experts who would then make a recommendation to the board.

Amy Chow, provided information on the California Nail Salon Collaborative and its concerns. She would like to see more focusing on heath and safety for the Asian community that would include more Vietnamese publications on the web and also suggested holding another town hall meeting.

Shari Davis of NCEA, supported the technical advisory board recommendation and offered her assistance.

3. Agenda Item, #3, BOARD PRESIDENT'S REPORT

Mr. Hedges discussed the booth rental license process. Additional funding could not be found for staff without legislation. Fred Jones of PBFC provided the framework.

Mr. Hedges reported he met with the DCA and OPES regarding further education on scoring methods for examination.

Mr. Hedges went on ride-alongs in December and was impressed by the inspectors' intelligence and dedication. He noted most inspectors had second jobs. The hiring freeze was still in place. He wanted to protect the inspectors and enable them to keep their cell phones in response to recent government directives.

Mr. Hedges noted he will not be running for Board president next election and recommended the positions be rotated among the members.

Public Comment

Fred Jones of PBFC thanked Mr. Hedges for his service as Board president. He also thanked all of the board members for their continuous work and long hours they have put in. He specially commended Mr. Lloyd for his service on the DRC.

Mr. Hedges reported this will be the last meetings for Mr. Nelson and Mr. Williams' as their appointments were expired. He commended both gentlemen for their work and input on the board. He hoped they would be available for the technical advisory committee.

4. Agenda Item #4, DCA DIRECTOR REPORT

Kim Kirchmeyer, DCA Deputy Director updated the Board on relevant activities of the DCA. She discussed the current transition, budget and hiring freeze. Inter-departmental transfers only are allowed. The Department is attempting to decrease cell phone usage per the executive order. They have asked all departments to submit their plans. She thanked Ms. Underwood for submitting her plan on time. She understood the field staff needed cell phones.

Ms. Kirchmeyer also discussed the Consumer Protection Enforcement Initiative. The department is gathering its second set of performance measurement and should be posted on the website in early February. She thanked the Board for posting the information online and providing the webcast.

Ms. Kirchmeyer discussed the implementation of the new BREEZE project, the replacement of the DCA licensing and enforcement system. The working sessions have been completed qualified vendors have been identified, and reviewed by subject matter experts. Final proposals are expected in February. BBC should be on board by the end of 2013. She thanked the Board and Ms. Underwood for allowing staff to work on the project.

Mr. Williams asked if the ability to pay online will be available. Ms. Kirchmeyer stated it would as well as the ability to check the status of a complaint or application.

Mr. Hedges thanked Ms. Kirchmeyer for recognizing Ms. Underwood. Ms. Kirchmeyer thanked Mr. Hedges for his direction of the board.

5. Agenda Item #5, SCORING METHODS FOR EXAMINATIONS – REGULATORY ACTION. Possible Action: Amendment to Section 932 of Article 4. Title 16, Division 9 of the California Code of Regulations

- Presentation by DCA's Office of Professional Examination Services

Bob Holmgren of the DCA OPES provided a detailed Power Point presentation of exam development and scoring methods. He spoke about various types of exams, background information, scoring items and combining scores. The DCA works on licensure exams which focus on job knowledge and readiness for safe independent practice. Minimum competence is tested. Single item exams test relevant content areas. He then discussed various tests and scoring factors. Standardization must be determined and followed. The criterion reference passing score (minimally acceptable competence) is used to determine the cut score. These scores are determined by subject matter experts, current licensees, who attend workshops given by the DCA. Mr. Holmgren provided an example using waiters and waitresses that is used during the workshops. The cut score is developed by determining the minimally acceptable competence, using the occupational analysis. Mr. Holmgren discussed the Cosmetology and Barbering exam cut scores from a mathematical perspective via graphs and charts.

In conclusion, Mr. Holmgren recommended an occupational analysis test plan and linkage with test questions. He recommended the use of the criterion reference to determine that passing score and standardize the scores. He recommended not using the aggregate scoring for barbers.

<u>Board Comment</u>

Ms. Crossett did not believe the model fit all learning types. Mr. Holmgren stated they used current licensees as subject matter experts to develop an examination and use appropriate language. The occupational analysis should specify the reading level required on the job. It will also determine the content areas and their relative weights. Ms. Crossett noted her concern was the weighting of the barbering vs. cosmetology. Mr. Holmgren explained from an exam development point of view, the manner of the question being asked (practical vs. written) is not as important as is the right question being asked. Are things being asked that are important on the job? Complaint analysis is a good resource to determine updated questions.

Mr. Hedges asked the percentage of barbers vs. percentage of cosmetologists. Ms. Underwood noted there are 273,374 cosmetologists and 21,530 barbers. The majority of inspectors are going to salons than barber shops. Barbers were cited for improper sanitation 18% of the time.

Mr. Hedges expressed his concerns about literacy requirements to read products and information after the test. Mr. Williams agreed this was a serious issue. A minimal reading threshold needs to be established to read labels and follow instructions. Ms. Crossett noted the top five violations for barbers were regarding health and safety. She believed minimal competencies should be set and the practical should prevail. Most accredited schools require GED or high school diploma. An entrance exam is required to test minimal competency.

Public Comment

Fred Jones of PBFC noted the board was not a policy making body. He agreed the practical shall prevail to determine competency because it is a practical hands-on industry. The subject matter experts write questions to determine the scope of practice to be a cosmetologist. They then determine which competency is tested better in a practical or written setting. He recommended one aggregate score that was weighted in favor of the practical. Only the barbers are in compliance with the law; they threatened a lawsuit when told aggregate scoring would be ended. He recommended the DCA talk to the legislature to take out the prevalency clause and reinstitute aggregate scoring. He recommended a minimum score on the written portion.

Jim Edwards with PBFC recalled aggregate scoring when one could ace the practical exam and not pass the written exam. When aggregate scoring was removed, the pass rate dropped and the unlicensed activity increased. He agreed with the reinstatement of aggregate scoring. He knew students who didn't pass the written then went to work unlicensed. He agreed to test for minimum competency. It was better to be licensed than working without a license.

Patti Gardner, a cosmetology instructor, believed the problem was at a school level where the books were written at a tenth grade level. The Los Angeles Times was written at a sixth grade level.

Peter Westbrook of RCC spoke in opposition of aggregate scoring according to the raw data presented. He noted the Board was tasked to look at public safety.

Mr. Nelson believed the barber exam does not completely go with aggregate scoring. The barber and cosmetology license should be equal with passing and/or failing.

Mr. Lloyd commented the practical exam would be very important to test on issues of health and safety. Ms. Underwood confirmed they were moving toward the new practical exam regardless of any new regulations.

Patti Gardner, an instructor, asked who would be chosen as subject matter experts and what the requirements would be. (Mr. Nelson noted the NIC would be in charge of developing the exam.)

Mr. Holmgren clarified what was meant by the practical shall prevail. He believed as long as a criterion based test score calculation was done, the amount of skill would prevail. Currently high scores in one competent area were compensating for low scores in another area. The test scores could be weighted but must first be standardized. The important portions of the job must be tested.

Mr. Hedges stated a test needed to be developed that ensured anyone working in the industry was minimally competent and still allowed the practical to prevail. He did not believe the Board needed to determine the numbers.

Ms. Crossett agreed this was important to protect the consumer. Mr. Holmgren agreed his department would be able to provide this.

> Jim Edwards believed 51% of the practical exam was related to consumer protection.
>
> Nadene Bruders noted 119 questions were for sanitation, disinfection, safety and following instructions, and 81 questions were basic knowledge of procedures.

Mr. Nelson made the motion to change the scoring on the new exam to 200 possible points and the written have 100 points for the barbering and cosmetology exams.

Mr. Hedges clarified criterion based testing was weighting questions based on their difficulty for the group that you're testing.

Mr. Nelson moved that the criterion referenced scoring method be utilized and weight the practical exam at twice the written exam. He then asked at what point do we ask NIC to weigh in?

Mr. Hedges reminded everyone that the legislature, Office of Administrative Law, and the DCA had to also weigh in on the issue. Ms. Crossett believed it would be good to get the process started. However, she did not believe the specific point amount needed to be determined yet.

Mr. Hedges proposed an alternate motion that the examination shall consist of a practical examination and a written examination. The Board shall establish passing scores for examinations based on criterion referenced scoring, keeping in mind that the practical must prevail. Mr. Williams seconded the motion.

Ms. Underwood cautioned the Board on setting regulations of the exact same language that was already in the statute. The DCA recommended this language and the line of "practical shall prevail" was already in the statute and is not needed in the regulation. It was redundant.

Mr. Hedges withdrew the phrase "the practical must prevail" and Mr. Williams confirmed his second.

Ms. Underwood confirmed NIC would use the appropriate practice to develop the practical exam including subject matter experts from California.

> Fred Jones spoke to Lee Schroeder, CEO of SNT a development partner of NIC. He was told they used criterion referenced scoring, subject matter experts, but will not weight the exam. However, if the Board wanted to follow the law, they had to set a final weight of the cut scores. He believes the motion does not fall under the law.

Ms. Underwood clarified by using the suggested language all the exams would be the same. Mr. Williams recalled NIC asked the Board what percentage they wanted to use.

Gary Duke clarified they could use the language proposed and during public comment period good suggestions may be received regarding weighting. The public comment period can start now for 45 days.

> Fred Jones noted criterion referenced scoring was not related to aggregate scoring. He believed a decision needed to be made on weighting and whether to endorse aggregate scoring. The current motion was vague and ambiguous and a restatement of current law. NIC provides the cut score but not the weight.

Mr. Hedges called for the question. Mr. Nelson wanted to give his last word by stating he has appreciated all that Mr. Hedges has done for the Board and also believes we are not following the law unless the Board factors in the weight. Gary Duke did not believe the Board was breaking the law with the barbering examination. He believed it was debatable how the cosmetology exam was scored, however the practical exam did prevail. He stated he needed to do more research to ensure that adopting criterion reference scoring was appropriate. Section 7338 did state the examination shall not be confined to any particular system or method.

Mr. Hedges reiterated his motion that the examination shall consist of a practical examination and a written examination. The Board shall establish passing scores for the examination based on criterion referenced scoring methodology. Mr. Williams recommended the addition that the Board will ensure that the language follows the law and is equipped to incorporate aggregate scoring. Mr. Hedges approved of the amendment to his motion. He clarified his motion to state that the examination shall consist of a practical examination and a written examination. The Board shall establish passing scores for the examination based on criterion referenced scoring methodology. The motion was approved by a 7-1 vote (Mr. Nelson).

At this point, Mr. Hedges turned the meeting over to Mr. Williams.

6. Agenda Item #6, REGULATORY ACTION TO REQUIRE ESTABLISHMENTS TO PROVIDE NOTICE TO CONSUMERS OF SERVICES PROVIDED OR OFFERED THAT ARE NOT REGULATED UNDER THE BARBERING AND COSMETOLOGY ACT. Possible Action: Addition to Article 9, Title 16, Division 9 of the California Code of Regulations.

Staff researched what could be done for the unregulated practices being done in salons. Inspectors are unsure if tools are being used appropriately. Staff submitted information for possible regulatory action. Staff recommends that establishments have signs posted listing the services that are performed in that salon that are not regulated by the State Board so the consumers know their license did not cover certain services. They would also prefer that when these unregulated services are being performed that the cosmetologist license is removed. Mr. Hedges believed it may be confusing to the consumer and should be posted next to the establishment license. Ms. Crossett and Mr. Lloyd believed the license should remain but something should be posted in the treatment rooms. Ms. Lemelle asked how other states listed this information? Ms. Underwood stated the information was taken from other states regulations.

Mr. Williams made the motion to adopt the language Section 966 unregulated practices, with the changes that the disclosure is posted in an area near where the work is being done. Mr. Hedges seconded the motion. Section C is eliminated.

Public Comment

Fred Jones noted the activities not regulated by the Board may be regulated by the County health department. He believed the term unregulated was too broad. He believed section C was needed.

The motion was approved by a 4-3 vote with Mr. Lloyd, Ms. Tran and Mr. Nelson voting no.

The meeting was adjourned for one-half hour for lunch. It was called to order after one-half hour.

7. **Agenda Item #7, Curriculum Regulations (Barber, Manicure, Electrology) Possible Action: Amendment to Section 950.1, 950.4 and 950.5, Title 16, Division 9 of the California Code of Regulations.**

Mr. Williams provided a brief background and Mr. Hedges further stated the previous regulation request was stopped at Secretary Leonard's desk due to the economy at that time, but Secretary Leonard is no longer in office. Staff has proposed that the total number of required hours at 400. Ms. Crossett noted there was no way of knowing what the extra hours would be spent on. Ms. Tran believes that 400 hours are sufficient for now.

Mr. Hedges made the motion to adopt the DCA's curriculum as outlined by staff. Ms. Lemelle seconded the motion. The motion was approved by a 7-0 vote.

8. **Agenda Item #8, LEGISLATION PRIORITIES:**

The goal, action and staff comments were presented by staff of the following issues. Most items were previously voted on by the board. Staff is recommending workgroups/ committees be formed to develop language.

- **Continuing Education**:
- **Remedial Education**
- **Default Decisions**
- **School Oversight (Fee and Disciplinary Authority)**: Currently there are no fees and we would need the authority to charge.
- **Booth Rental Licensure**

Ms. Crossett made the motion to allow the executive director to sign off on defaults. Mr. Williams seconded the motion. The Board thoroughly discussed the priorities. Mr. Hedges hoped booth rental licensure could be a high priority. He noted it should be voluntary. Ms. Crossett believed continuing education and remedial education were very important. Mr. Duke will research whether a regulatory change can be done and bring back to the next board meeting

Mr. Lloyd made the motion to approve the following priorities: The priorities were: 1) default decisions, 2) continuing education, 3) remedial education, 4) school oversight, 5) booth rental licensure Mr. Lloyd seconded the motion and it was approved by a 7-0 vote.

Ms. Underwood noted the lower priorities would also be focused on.

Kim Kirchmeyer with DCA encouraged the board to find a legislator. In addition add stipulation language for the surrender of the license.

<u>Public Comment</u>

None

It was noted that Ms. Lemelle left the board meeting.

9. **Agenda Item #9, REGULATIONS UPDATES**

- **Administrative Fine Schedule**: Has been submitted to the DCA.
- **Disciplinary Guidelines**: Process has been started and is in the 45 day comment period.

10. **Agenda Item #10, ESTABLISHMENT OF TECHNICAL ADVISORY COMMITTEES**

Mr. Hedges moved to authorize the executive director to establish the committees. It was seconded by Mr. Lloyd and approved by a 6-0 vote.

11. **Agenda Item #11, ANNUAL ELECTION OF OFFICERS**

This item was tabled.

12. **Agenda Item #12, EXECUTIVE OFFICER REPORT**

- **Review of Board Statistics:** Nothing unusual to discuss. Average wait time for a license is 6-8 weeks.
- **Classification Study of Inspector Positions**

13. **Agenda Item #13, APPROVAL OF BOARD MEETING MINUTES**

- **October 25, 2010**:
- **October 26, 2010**

Mr. Williams made the motion to approve the minutes. Mr. Hedges seconded the motion and it was approved by a 6-0 vote.

14. **Agenda Item #14, PUBLIC COMMENT**

Patti Gardner stated she can provide information on continuing education from the state of Illinois.

15. **Agenda Item #15, AGENDA ITEMS FOR NEXT MEETING**

All standard items

16. **Agenda Item #16, CLOSED SESSION TO DISCUSS ENFORCEMENT CASE**

- **Discussion on Reconsideration and Disciplinary Cases (Closed Pursuant to Government Code Section 11126(c)(3)).**

No Enforcement Cases to Discuss

17. **Agenda Item #17, ADJOURNMENT**

With no further business, the meeting was adjourned.

State and Consumer Services Agency – Arnold Schwarzenegger, Governor
Board of Barbering and Cosmetology-Department of Consumer Affairs
PO Box 944226, Sacramento, CA 94244
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MEMORANDUM

DATE: April 11, 2011

TO: Members, Board of Barbering and Cosmetology

FROM: Kristy Underwood, Executive Officer
Board of Barbering and Cosmetology

SUBJECT: Pending Legislation

Board staff is tracking two bills that are of interest to the Board. Listed below are summaries of each bill while the most recent version of each bill is attached.

AB 797: **Cosmetology Schools**
This bill exempts cosmetology schools from the California Private Postsecondary Education Act of 2009.

Status: This bill has not been heard in committee and at this time is not moving.

SB 498: **Bureau for Private Postsecondary Education**
This bill abolishes the current BPPE and would transfer the bureau's power and duties to the California Postsecondary Education Commission.

Status: This bill has not been heard in committee.

ASSEMBLY BILL No. 797

Introduced by Assembly Member Conway

February 17, 2011

An act to amend Section 94874 of the Education Code, relating to schools of cosmetology.

LEGISLATIVE COUNSEL'S DIGEST

AB 797, as introduced, Conway. Private postsecondary education: schools of cosmetology.

Existing law, the California Private Postsecondary Education Act of 2009, provides, among other things, for student protections and regulatory oversight of private postsecondary schools in the state. Schools of cosmetology are regulated under the act.

This bill would exempt schools of cosmetology, as defined, from the act.

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

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

1 SECTION 1. Section 94874 of the Education Code is amended
2 to read:
3 94874. The following are exempt from this chapter:
4 (a) An institution that offers solely avocational or recreational
5 educational programs.
6 (b) An institution offering educational programs sponsored by
7 a bona fide trade, business, professional, or fraternal organization,
8 solely for that organization's membership.

(c) A postsecondary educational institution established, operated, and governed by the federal government or by this state or its political subdivisions.

(d) An institution offering either of the following:

(1) Test preparation for examinations required for admission to a postsecondary educational institution.

(2) Continuing education or license examination preparation, if the institution or the program is approved, certified, or sponsored by any of the following:

(A) A government agency, other than the bureau, that licenses persons in a particular profession, occupation, trade, or career field.

(B) A state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, occupation, trade, or career field.

(C) A bona fide trade, business, or professional organization.

(e) (1) An institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, that meets all of the following requirements:

(A) The instruction is limited to the principles of that religious organization, or to courses offered pursuant to Section 2789 of Business and Professions Code.

(B) The diploma or degree is limited to evidence of completion of that education.

(2) An institution operating under this subdivision shall offer degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization.

(3) An institution operating under this subdivision shall not award degrees in any area of physical science.

(4) Any degree or diploma granted under this subdivision shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area.

(5) A degree awarded under this subdivision shall reflect the nature of the degree title, such as "associate of religious studies," "bachelor of religious studies," "master of divinity," or "doctor of divinity."

(f) An institution that does not award degrees and that solely provides educational programs for total charges of two thousand

five hundred dollars ($2,500) or less when no part of the total charges is paid from state or federal student financial aid programs. The bureau may adjust this cost threshold based upon the California Consumer Price Index and post notification of the adjusted cost threshold on its Internet Web site, as the bureau determines, through the promulgation of regulations, that the adjustment is consistent with the intent of this chapter.

(g) A law school that is accredited by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association or a law school or law study program that is subject to the approval, regulation, and oversight of the Committee of Bar Examiners, pursuant to Sections 6046.7 and 6060.7 of the Business and Professions Code.

(h) A nonprofit public benefit corporation that satisfies all of the following criteria:

(1) Is qualified under Section 501(c)(3) of the United States Internal Revenue Code.

(2) Is organized specifically to provide workforce development or rehabilitation services.

(3) Is accredited by an accrediting organization for workforce development or rehabilitation services recognized by the Department of Rehabilitation.

(i) An institution that is accredited by the Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, or the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.

(j) An institution that satisfies all of the following criteria:

(1) The institution has been accredited, for at least 10 years, by an accrediting agency that is recognized by the United States Department of Education.

(2) The institution has operated continuously in this state for at least 25 years.

(3) During its existence, the institution has not filed for bankruptcy protection pursuant to Title 11 of the United States Code.

(4) The institution's cohort default rate on guaranteed student loans does not exceed 10 percent for the most recent three years, as published by the United States Department of Education.

(5) The institution maintains a composite score of 1.5 or greater on its equity, primary reserve, and net income ratios, as provided under Section 668.172 of Title 34 of the Code of Federal Regulations.

(6) The institution provides a pro rata refund of unearned institutional charges to students who complete 75 percent or less of the period of attendance.

(7) The institution provides to all students the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the second class session, or the 14th day after enrollment, whichever is later.

(8) The institution submits to the bureau copies of its most recent IRS Form 990, the institution's Integrated Postsecondary Education Data System Report of the United States Department of Education, and its accumulated default rate.

(9) The institution is incorporated and lawfully operates as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code and is not managed or administered by an entity for profit.

(k) A school of cosmetology, as defined in Sections 7362 and 7362.1 of the Business and Professions Code.

O

SENATE BILL No. 498

Introduced by Senator Liu

February 17, 2011

An act to amend Sections 27, 101, and 149 of the Business and Professions Code, and to amend Sections 94800.5, 94806, 94807, 94820, 94875, 94876, 94877, 94878, 94909, 94910, 94911, 94936, 94937, and 95000 of, to repeal Section 94884 of, and to repeal and add Section 94803 of, the Education Code, relating to private postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

SB 498, as introduced, Liu. Bureau for Private Postsecondary Education: Successorship.

Existing law establishes the California Private Postsecondary Education Act of 2009, which, among other things, provides for student protections and regulatory oversight of private postsecondary schools in the state. Existing law establishes the Bureau for Private Postsecondary Education within the Department of Consumer Affairs to regulate private postsecondary institutions through the powers granted, and the duties imposed, by the act.

Existing law establishes the California Postsecondary Education Commission as the statewide postsecondary education coordinating and planning agency and provides for its functions and responsibilities.

This bill would abolish the Bureau for Private Postsecondary Education, and would transfer the bureau's powers and duties under the act to the California Postsecondary Education Commission. The bill would require the commission to adopt the regulations of the bureau and, by January 1, 2013, to revise the regulations in accordance with specified procedures. The bill would make various conforming changes to existing law.

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

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

1 SECTION 1. Section 27 of the Business and Professions Code
2 is amended to read:
3 27. (a) Each entity specified in subdivision (b) shall provide
4 on the Internet information regarding the status of every license
5 issued by that entity in accordance with the California Public
6 Records Act (Chapter 3.5 (commencing with Section 6250) of
7 Division 7 of Title 1 of the Government Code) and the Information
8 Practices Act of 1977 (Chapter 1 (commencing with Section 1798)
9 of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public
10 information to be provided on the Internet shall include information
11 on suspensions and revocations of licenses issued by the entity
12 and other related enforcement action taken by the entity relative
13 to persons, businesses, or facilities subject to licensure or regulation
14 by the entity. In providing information on the Internet, each entity
15 shall comply with the Department of Consumer Affairs Guidelines
16 for Access to Public Records. The information may not include
17 personal information, including home telephone number, date of
18 birth, or social security number. Each entity shall disclose a
19 licensee's address of record. However, each entity shall allow a
20 licensee to provide a post office box number or other alternate
21 address, instead of his or her home address, as the address of
22 record. This section shall not preclude an entity from also requiring
23 a licensee, who has provided a post office box number or other
24 alternative mailing address as his or her address of record, to
25 provide a physical business address or residence address only for
26 the entity's internal administrative use and not for disclosure as
27 the licensee's address of record or disclosure on the Internet.
28 (b) Each of the following entities within the Department of
29 Consumer Affairs shall comply with the requirements of this
30 section:
31 (1) The Acupuncture Board shall disclose information on its
32 licensees.
33 (2) The Board of Behavioral Sciences shall disclose information
34 on its licensees, including marriage and family therapists, licensed
35 clinical social workers, and licensed educational psychologists.

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(10) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

~~(13) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under~~

~~its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.~~

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

SEC. 2. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The Bureau of Barbering and Cosmetology.

(i) The Board for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

~~(k) The Bureau for Private Postsecondary Education.~~

~~(l)~~

(k) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

~~(m)~~

(l) The Board of Registered Nursing.

~~(n)~~

(m) The Board of Behavioral Sciences.

~~(o)~~

(n) The State Athletic Commission.

~~(p)~~

(o) The Cemetery and Funeral Bureau.

~~(q)~~

(p) The State Board of Guide Dogs for the Blind.

~~(r)~~

(q) The Bureau of Security and Investigative Services.

~~(s)~~

(r) The Court Reporters Board of California.

~~(t)~~

(s) The Board of Vocational Nursing and Psychiatric Technicians.

~~(u)~~

(t) The Landscape Architects Technical Committee.

~~(v)~~
(u) The Division of Investigation.
~~(w)~~
(v) The Bureau of Automotive Repair.
~~(x)~~
(w) The Respiratory Care Board of California.
~~(y)~~
(x) The Acupuncture Board.
~~(z)~~
(y) The Board of Psychology.
~~(aa)~~
(z) The California Board of Podiatric Medicine.
~~(ab)~~
(aa) The Physical Therapy Board of California.
~~(ac)~~
(ab) The Arbitration Review Program.
~~(ad)~~
(ac) The Physician Assistant Committee.
~~(ae)~~
(ad) The Speech-Language Pathology and Audiology Board.
~~(af)~~
(ae) The California Board of Occupational Therapy.
~~(ag)~~
(af) The Osteopathic Medical Board of California.
~~(ah)~~
(ag) The Naturopathic Medicine Committee.
~~(ai)~~
(ah) The Dental Hygiene Committee of California.
~~(aj)~~
(ai) The Professional Fiduciaries Bureau.
~~(ak)~~
(aj) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the

agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

(1) The Bureau of Barbering and Cosmetology.

(2) The Cemetery and Funeral Bureau.

(3) The Veterinary Medical Board.

(4) The Landscape Architects Technical Committee.

(5) The California Board of Podiatric Medicine.

(6) The Respiratory Care Board of California.

(7) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(8) The Bureau of Security and Investigative Services.

(9) The Bureau of Automotive Repair.

(10) The California Architects Board.

(11) The Speech-Language Pathology and Audiology Board.

(12) The Board for Professional Engineers and Land Surveyors.

(13) The Board of Behavioral Sciences.

(14) The Structural Pest Control Board within the Department of Pesticide Regulation.

(15) The Acupuncture Board.
(16) The Board of Psychology.
(17) The California Board of Accountancy.
(18) The Naturopathic Medicine Committee.
(19) The Physical Therapy Board of California.
~~(20) The Bureau for Private Postsecondary Education.~~

SEC. 4. Section 94800.5 of the Education Code is amended to read:

94800.5. Whenever a reference is made to the former Private Postsecondary Education and Student Protection Act, the former Private Postsecondary and Vocational Education Reform Act of 1989, or the former Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of Title 3 of the Education Code, as it read on June 30, 2007, by the provisions of any statute or regulation, it shall be construed as referring to the provisions of this chapter. Whenever a reference is made to the former Bureau for Private Postsecondary and Vocational Education *or the Bureau for Private Postsecondary Education* by the provisions of any statute or regulation, it shall be construed as referring to the ~~Bureau for Private Postsecondary Education~~ *California Postsecondary Education Commission.*

SEC. 5. Section 94803 of the Education Code is repealed.

~~94803. The bureau shall, by emergency regulation, amend, and repeal as necessary, the regulations, as they read on June 30, 2007, in Division 7.5 (commencing with Section 70000) of Title 5 of the California Code of Regulations, to conform to this chapter no later than February 1, 2010. These emergency regulations shall become permanent through the regular rulemaking process within one year of the enactment of this chapter.~~

SEC. 6. Section 94803 is added to the Education Code, to read:

94803. (a) The commission, by emergency regulation, shall adopt the regulations of the former Bureau for Private Postsecondary Education, as those regulations read on December 31, 2011.

(b) On or before January 1, 2013, the commission shall amend, and repeal as necessary, the regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall ensure that the amended regulations are consistent with federal law and

regulations governing private postsecondary education and financial aid.

SEC. 7. Section 94806 of the Education Code is amended to read:

94806. The Private Postsecondary and Vocational Education Administration Fund established by former Section 94932 of the Education Code, and extended by Chapter 635 of the Statutes of 2007, is continued in existence *under the administration of the commission*, and is renamed the Private Postsecondary Education Administration Fund.

SEC. 8. Section 94807 of the Education Code is amended to read:

94807. The Student Tuition Recovery Fund established by former Section 94944 of the Education Code, and extended by Chapter 635 of the Statutes of 2007, is continued in existence *under the administration of the commission.*

SEC. 9. Section 94820 of the Education Code is amended to read:

94820. "Bureau" *or "commission"* means the ~~Bureau for Private Postsecondary Education in the Department of Consumer Affairs~~ *California Postsecondary Education Commission.*

SEC. 10. Section 94875 of the Education Code is amended to read:

~~94875. The Bureau for Private Postsecondary Education, as established by Section 6 of Chapter 635 of the Statutes of 2007, is continued in existence and shall commence operations. This chapter establishes the functions and responsibilities of the bureau, for the purposes of Section 6 of Chapter 635 of the Statutes of 2007. The bureau~~

94875. (a) The Bureau for Private Postsecondary Education, which was established by Section 6 of Chapter 635 of the Statutes of 2007 and continued in existence pursuant to Section 6 of Chapter 310 of the Statutes of 2009 within the Department of Consumer Affairs, is hereby abolished.

(b) The California Postsecondary Education Commission is the successor to, and shall assume from, the Bureau for Private Postsecondary Education all of the administrative rights, abilities, obligations, and duties of the Bureau for Private Postsecondary Education under this chapter. The commission shall have possession and control of all moneys, funds, appropriations,

records, papers, contracts, licenses, and agreements connected with the administration of this chapter.

(c) An employee of the Bureau for Private Postsecondary Education who is performing a function transferred to the California Postsecondary Education Commission and who is serving in the state civil service, other than as a temporary employee, shall be transferred to the commission. The status, position, and rights of an employee shall not be affected by the transfer and shall be retained by the person as an employee of the commission pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to a position that is exempt from civil service.

(d) The commission shall regulate private postsecondary educational institutions through the powers granted, and duties imposed, by this chapter. In exercising its powers, and performing its duties, the protection of the public shall be the ~~bureau's~~ *commission's* highest priority. If protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 11. Section 94876 of the Education Code is amended to read:

94876. (a) The powers and duties set forth in this chapter are vested in the ~~Director of Consumer Affairs, who~~ *commission, which* may delegate them to ~~a bureau chief~~ *an executive officer*, subject to ~~the provisions of~~ this section.

(b) The ~~bureau chief~~ *executive officer* shall be appointed by the Governor, subject to confirmation by the Senate, and is exempt from the State Civil Service Act pursuant to Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code.

(c) Each power granted to, or duty imposed upon, the ~~bureau~~ *commission* under this chapter shall be exercised and performed in the name of the ~~bureau~~ *commission*, subject to any conditions and limitations ~~the director~~ *that the commission* may prescribe. The ~~bureau chief~~ *executive officer* may delegate any powers or duties to a designee.

(d) As may be necessary to carry out this chapter, the ~~director~~ *commission*, in accordance with the State Civil Service Act, may appoint and fix the compensation of personnel.

SEC. 12. Section 94877 of the Education Code is amended to read:

94877. (a) ~~The bureau~~ *On or before January 1, 2013, and consistent with Section 94803, the commission* shall adopt, ~~on or before January 1, 2011,~~ and shall enforce, regulations to implement this chapter pursuant to the Administrative Procedure Act in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The ~~bureau~~ *commission* shall develop and implement an enforcement program, pursuant to Article 18 (commencing with Section 94932) to implement this chapter. The enforcement program shall include a plan for investigating complaints filed with the ~~bureau~~ *commission*.

(c) The ~~bureau~~ *commission* shall establish a program to proactively identify unlicensed institutions, identify material or repeated violations of this chapter and regulations implementing this chapter, and take all appropriate legal action.

SEC. 13. Section 94878 of the Education Code is amended to read:

94878. (a) ~~On or before June 30, 2010, the bureau~~ *The commission* shall establish an Internet Web site that includes at least all of the following information:

(1) An explanation of the ~~bureau's transition plan for the reconstituted bureau and an explanation of the bureau's~~ *commission's* scope of authority *under this chapter*.

(2) (A) A directory of approved institutions, and a link, if feasible, to the Internet Web site of each institution.

(B) For each institution, the directory shall be developed in a manner that allows the user to search by institution and shall include all of the following information:

(i) The status of the institution's approval to operate.

(ii) The information provided by the institutions including, but not limited to, the annual report, as required by Section 94934, including the school catalog and the Student Performance Fact Sheet. The Student Performance Fact Sheet shall be maintained on the directory for at least five years after the date of its submission to the ~~bureau~~ *commission*.

(iii) The disciplinary history of the institution, which shall include, but shall not be limited to, all of the following:

(I) Pending formal accusations filed by the ~~bureau~~ *commission*.

(II) Suspensions, revocations, citations, fines, infractions, probations, pending litigation filed by the ~~bureau~~ *commission*, and final judgments resulting from litigation filed by the ~~bureau~~ *commission*.

(III) Pending or final criminal cases filed by the Attorney General, a city attorney, a district attorney, or a federal law enforcement official, of which the ~~bureau~~ *commission* has received notice.

(IV) Final administrative actions by the United State Department of Education, including orders requiring restitution to students.

(V) Final disciplinary actions by an accreditation agency, of which the ~~bureau~~ *commission* has received notice pursuant to Section 94934.

(b) The ~~bureau~~ *commission* shall maintain the Internet Web site described in subdivision (a). The ~~bureau~~ *commission* shall ensure that the information specified in subdivision (a) is kept current. The ~~bureau~~ *commission* shall update the Internet Web site at least annually, to coincide with the submission of annual reports by the institutions pursuant to Section 94934.

~~(c) In addition to maintaining the Internet Web site described in subdivision (a), the bureau shall provide the information described in paragraph (2) of subdivision (a) to the California Postsecondary Education Commission (CPEC), and the CPEC shall include that information in an Internet Web site directory of school performance data maintained by the CPEC. To the extent possible, the bureau shall provide this information consistent with the information collected for reporting to the Integrated Postsecondary Education Data System of the United States Department of Education, including institutional characteristics, completion, annual enrollment, and graduation rates.~~

SEC. 14. Section 94884 of the Education Code is repealed.

~~94884. The bureau is subject to Section 27 of the Business and Professions Code.~~

SEC. 15. Section 94909 of the Education Code is amended to read:

94909. (a) Prior to enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:

(1) The name, address, telephone number, and, if applicable, Internet Web site address of the institution.

(2) Except as specified in Article 2 (commencing with Section 94802), a statement that the institution is a private institution and that it is approved to operate by the ~~bureau~~ *commission*.

(3) The following statements:

(A) "Any questions a student may have regarding this catalog that have not been satisfactorily answered by the institution may be directed to the ~~Bureau for Private Postsecondary Education~~ *California Postsecondary Education Commission* at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and fax numbers)."

(B) "As a prospective student, you are encouraged to review this catalog prior to signing an enrollment agreement. You are also encouraged to review the School Performance Fact Sheet, which must be provided to you prior to signing an enrollment agreement."

(C) "A student or any member of the public may file a complaint about this institution with the ~~Bureau for Private Postsecondary Education~~ *California Postsecondary Education Commission* by calling (toll-free telephone number) or by completing a complaint form, which can be obtained on the ~~bureau's~~ *commission's* Internet Web site (Internet Web site address)."

(4) The address or addresses where class sessions will be held.

(5) A description of the programs offered and a description of the instruction provided in each of the courses offered by the institution, the requirements for completion of each program, including required courses, any final tests or examinations, any required internships or externships, and the total number of credit hours, clock hours, or other increments required for completion.

(6) If the educational program is designed to lead to positions in a profession, occupation, trade, or career field requiring licensure in this state, a notice to that effect and a list of the requirements for eligibility for licensure.

(7) Information regarding the faculty and their qualifications.

(8) A detailed description of institutional policies in the following areas:

(A) Admissions policies, including the institution's policies regarding the acceptance of credits earned at other institutions or through challenge examinations and achievement tests, admissions requirements for ability-to-benefit students, and a list describing any transfer or articulation agreements between the institution and any other college or university that provides for the transfer of

1 credits earned in the program of instruction. If the institution has
2 not entered into an articulation or transfer agreement with any
3 other college or university, the institution shall disclose that fact.
4 (B) Cancellation, withdrawal, and refund policies, including an
5 explanation that the student has the right to cancel the enrollment
6 agreement and obtain a refund of charges paid through attendance
7 at the first class session, or the seventh day after enrollment,
8 whichever is later. The text shall also include a description of the
9 procedures that a student is required to follow to cancel the
10 enrollment agreement or withdraw from the institution and obtain
11 a refund consistent with the requirements of Article 13
12 (commencing with Section 94919).
13 (C) Probation and dismissal policies.
14 (D) Attendance policies.
15 (E) Leave-of-absence policies.
16 (9) The schedule of total charges for a period of attendance and
17 an estimated schedule of total charges for the entire educational
18 program.
19 (10) A statement reporting whether the institution participates
20 in federal and state financial aid programs, and if so, all consumer
21 information that is required to be disclosed to the student pursuant
22 to the applicable federal and state financial aid programs.
23 (11) A statement specifying that, if a student obtains a loan to
24 pay for an educational program, the student will have the
25 responsibility to repay the full amount of the loan plus interest,
26 less the amount of any refund, and that, if the student has received
27 federal student financial aid funds, the student is entitled to a refund
28 of the moneys not paid from federal student financial aid program
29 funds.
30 (12) A statement specifying whether the institution has a pending
31 petition in bankruptcy, is operating as a debtor in possession, has
32 filed a petition within the preceding five years, or has had a petition
33 in bankruptcy filed against it within the preceding five years that
34 resulted in reorganization under Chapter 11 of the United States
35 Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.).
36 (13) If the institution provides placement services, a description
37 of the nature and extent of the placement services.
38 (14) A description of the student's rights and responsibilities
39 with respect to the Student Tuition Recovery Fund. This statement
40 shall specify that it is a state requirement that a student who pays

his or her tuition is required to pay a state-imposed assessment for the Student Tuition Recovery Fund. This statement shall also describe the purpose and operation of the Student Tuition Recovery Fund and the requirements for filing a claim against the Student Tuition Recovery Fund.

(15) The following statement:

"NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR INSTITUTION

The transferability of credits you earn at (name of institution) is at the complete discretion of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or certificate) you earn in (name of educational program) is also at the complete discretion of the institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that you earn at this institution are not accepted at the institution to which you seek to transfer, you may be required to repeat some or all of your coursework at that institution. For this reason you should make certain that your attendance at this institution will meet your educational goals. This may include contacting an institution to which you may seek to transfer after attending (name of institution) to determine if your (credits or degree, diploma or certificate) will transfer."

(b) If the institution has a general student brochure, the institution shall provide that brochure to the prospective student prior to enrollment. In addition, if the institution has a program-specific student brochure for the program in which the prospective student seeks to enroll, the institution shall provide the program-specific student brochure to the prospective student prior to enrollment.

(c) An institution shall provide the school catalog to any person upon request. In addition, if the institution has student brochures, the institution shall disclose the requested brochures to any interested person upon request.

SEC. 16. Section 94910 of the Education Code is amended to read:

94910. Prior to enrollment, an institution shall provide a prospective student with a School Performance Fact Sheet containing, at a minimum, the following information, as it relates to the educational program:

(a) Completion rates, as calculated pursuant to Article 16 (commencing with Section 94928).

(b) Placement rates, as calculated pursuant to Article 16 (commencing with Section 94928), if the educational program is designed to lead to, or the institution makes any express or implied claim related to preparing students for, a particular career, occupation, vocation, job, or job title.

(c) License examination passage rates for programs leading to employment for which passage of a state licensing examination is required, as calculated pursuant to Article 16 (commencing with Section 94928).

(d) (1) Salary or wage information, as calculated pursuant to Article 16 (commencing with Section 94928), if the institution or a representative of the institution makes any express or implied claim about the salary that may be earned after completing the educational program.

(2) Additionally, each institution that offers an educational program designed to lead to a particular career, occupation, vocation, trade, job, or job title shall disclose the wage and salary data for the particular career, occupation, trade, job, or job title, as provided by the Employment Development Department's Occupational Employment Statistics, if that data is available.

(e) If a program is too new to provide data for any of the categories listed in this subdivision, the institution shall state on its fact sheet: "This program is new. Therefore, the number of students who graduate, the number of students who are placed, or the starting salary you can earn after finishing the educational program are unknown at this time. Information regarding general salary and placement statistics may be available from government sources or from the institution, but is not equivalent to actual performance data."

(f) All of the following:

(1) A description of the manner in which the figures described in subdivisions (a) to (d), inclusive, are calculated or a statement informing the reader of where he or she may obtain a description

of the manner in which the figures described in subdivisions (a) to (d), inclusive, are calculated.

(2) A statement informing the reader of where he or she may obtain from the institution a list of the employment positions determined to be within the field for which a student received education and training for the calculation of job placement rates as required by subdivision (b).

(3) A statement informing the reader of where he or she may obtain from the institution a list of the objective sources of information used to substantiate the salary disclosure as required by subdivision (d).

(g) The following statements:

(1) "This fact sheet is filed with the ~~Bureau for Private Postsecondary Education~~ *California Postsecondary Education Commission*. Regardless of any information you may have relating to completion rates, placement rates, starting salaries, or license exam passage rates, this fact sheet contains the information as calculated pursuant to state law."

(2) "Any questions a student may have regarding this fact sheet that have not been satisfactorily answered by the institution may be directed to the ~~Bureau for Private Postsecondary Education~~ *California Postsecondary Education Commission* at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and fax numbers)."

SEC. 17. Section 94911 of the Education Code is amended to read:

94911. An enrollment agreement shall include, at a minimum, all of the following:

(a) The name of the institution and the name of the educational program, including the total number of credit hours, clock hours, or other increment required to complete the educational program.

(b) A schedule of total charges, including a list of any charges that are nonrefundable and the student's obligations to the Student Tuition Recovery Fund, clearly identified as nonrefundable charges.

(c) In underlined capital letters on the same page of the enrollment agreement in which the student's signature is required, the total charges for the current period of attendance, the estimated total charges for the entire educational program, and the total charges the student is obligated to pay upon enrollment.

(d) A clear and conspicuous statement that the enrollment agreement is legally binding when signed by the student and accepted by the institution.

(e) (1) A disclosure with a clear and conspicuous caption, "STUDENT'S RIGHT TO CANCEL," under which it is explained that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the first class session, or the seventh day after enrollment, whichever is later.

(2) The disclosure shall contain the institution's refund policy and a statement that, if the student has received federal student financial aid funds, the student is entitled to a refund of moneys not paid from federal student financial aid program funds.

(3) The text shall also include a description of the procedures that a student is required to follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund.

(f) A statement specifying that, if the student obtains a loan to pay for an educational program, the student will have the responsibility to repay the full amount of the loan plus interest, less the amount of any refund.

(g) A statement specifying that, if the student is eligible for a loan guaranteed by the federal or state government and the student defaults on the loan, both of the following may occur:

(1) The federal or state government or a loan guarantee agency may take action against the student, including applying any income tax refund to which the person is entitled to reduce the balance owed on the loan.

(2) The student may not be eligible for any other federal student financial aid at another institution or other government assistance until the loan is repaid.

(h) The transferability disclosure that is required to be included in the school catalog, as specified in paragraph (15) of subdivision (a) of Section 94909.

(i) (1) The following statement: "Prior to signing this enrollment agreement, you must be given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to review prior to signing this agreement. These documents contain important policies and performance data for this institution. This institution is required to have you sign and date the information included in the School Performance Fact Sheet relating to completion rates,

placement rates, license examination passage rates, and salaries or wages, prior to signing this agreement."

(2) Immediately following the statement required by paragraph (1), a line for the student to initial, including the following statement: "I certify that I have received the catalog, School Performance Fact Sheet, and information regarding completion rates, placement rates, license examination passage rates, and salary or wage information included in the School Performance Fact sheet, and have signed, initialed, and dated the information provided in the School Performance Fact Sheet."

(j) The following statements:

(1) "Any questions a student may have regarding this enrollment agreement that have not been satisfactorily answered by the institution may be directed to the ~~Bureau for Private Postsecondary Education~~ *California Postsecondary Education Commission* at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and fax numbers)."

(2) "A student or any member of the public may file a complaint about this institution with the ~~Bureau for Private Postsecondary Education~~ *California Postsecondary Education Commission* by calling (toll-free telephone number) or by completing a complaint form, which can be obtained on the ~~bureau's~~ *commission's* Internet Web site (Internet Web site address)."

(k) The following statement above the space for the student's signature:

"I understand that this is a legally binding contract. My signature below certifies that I have read, understood, and agreed to my rights and responsibilities, and that the institution's cancellation and refund policies have been clearly explained to me."

SEC. 18. Section 94936 of the Education Code is amended to read:

94936. (a) As a consequence of an investigation, and upon a finding that the institution has committed a violation of this chapter

or that the institution has failed to comply with a notice to comply pursuant to Section 94935, the ~~bureau~~ *commission* shall issue a citation to an institution for violation of this chapter, or regulations adopted pursuant to this chapter.

(b) The citation may contain either or both of the following:

(1) An order of abatement that may require an institution to demonstrate how future compliance with this chapter or regulations adopted pursuant to this chapter will be accomplished.

(2) ~~Notwithstanding Section 125.9 of the Business and Professions Code, an~~ *An* administrative fine not to exceed five thousand dollars ($5,000) for each violation. The ~~bureau~~ *commission* shall base its assessment of the administrative fine on:

(A) The nature and seriousness of the violation.

(B) The persistence of the violation.

(C) The good faith of the institution.

(D) The history of previous violations.

(E) The purposes of this chapter.

(F) The potential harm to students.

(c) (1) The citation shall be in writing and describe the nature of the violation and the specific provision of law or regulation that is alleged to have been violated.

(2) The citation shall inform the institution of its right to request a hearing in writing within 30 days from service of the citation.

(3) If a hearing is requested, the ~~bureau~~ *commission* shall select an informal hearing pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code or a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(4) If a hearing is not requested, payment of the administrative fine is due 30 days from the date of service, and shall not constitute an admission of the violation charged.

(5) If a hearing is conducted and payment of an administrative fine is ordered, the administrative fine is due 30 days from when the final order is entered.

(6) The ~~bureau~~ *commission* may enforce the administrative fine as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(d) All administrative fines shall be deposited in the Private Postsecondary Education Administration Fund.

SEC. 19. Section 94937 of the Education Code is amended to read:

94937. (a) As a consequence of an investigation, and upon a finding that an institution has committed a violation, the ~~bureau~~ *commission* may place an institution on probation or may suspend or revoke an institution's approval to operate for:

(1) Obtaining an approval to operate by fraud.

(2) A material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, "material violation" includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student.

(b) The ~~bureau~~ *commission* shall adopt regulations, within one year of the enactment of this chapter, governing probation and suspension of an approval to operate.

(c) The ~~bureau~~ *commission* may seek reimbursement *of the reasonable costs of the investigation and enforcement of the case from the institution found to have committed the violation* pursuant to ~~Section 125.3 of the Business and Professions Code~~ *a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

(d) An institution shall not be required to pay the cost of investigation to more than one agency.

SEC. 20. Section 95000 of the Education Code is amended to read:

95000. (a) Notwithstanding any other law, upon the repeal of Chapter 8 (commencing with Section 94800), the Student Tuition Recovery Fund shall be continued in existence under the administration of the ~~Department of Consumer Affairs~~ *California Postsecondary Education Commission*, and the moneys remaining in the fund shall be continuously appropriated to the ~~Department of Consumer Affairs~~ *California Postsecondary Education Commission* for the purpose of paying claims filed under Chapter 8 (commencing with Section 94800).

(b) Notwithstanding any other law, upon the repeal of Chapter 8 (commencing with Section 94800), the ~~Department of Consumer Affairs~~ *California Postsecondary Education Commission* shall continue to process and pay claims against the Student Tuition

1 Recovery Fund until all claims pending as of the repeal of Chapter
2 8 (commencing with Section 94800) are processed, or until the
3 moneys remaining in the fund are exhausted, whichever occurs
4 first.

O

State and Consumer Services Agency – Governor Edmund G. Brown Jr
Board of Barbering and Cosmetology-Department of Consumer Affairs
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MEMORANDUM

DATE: April 25, 2011

TO: Members, Board of Barbering and Cosmetology

FROM: Kristy Underwood, Executive Officer
Board of Barbering and Cosmetology

SUBJECT: Regulations Update

Administrative Fine Schedule: The final rulemaking file was approved by the State and Consumer Services Agency and is now with the Department of Finance. We expect them to be approved. Once they are, they will be submitted for review to the Office of Administrative Law (OAL), the final step in the rulemaking process.

Disciplinary Guidelines: Staff held a rulemaking hearing on March 21 concerning the Board's revised Disciplinary Guidelines. No one attended the hearing, and there were no comments received during the 45-day comment period mandated by rulemaking procedure. Staff was therefore able to complete the final file without changes and submit it to the Department of Consumer Affairs' Legislative and Policy Division on March 30. From there, the file will be reviewed by the DCA Director and the Secretary of the State and Consumer Services Agency before being submitted to OAL.

Scoring Methods in Examinations: The notice of proposed rulemaking was mailed to the public and published in the OAL register on or before April 22. A public hearing is schedule for June 13.

Unregulated Services: The notice of proposed rulemaking was mailed to the public and published in the OAL register on or before April 22. No public hearing is scheduled for this matter, but written comments will be received until June 6.

Curriculums: The Board has begun the process of resubmitting these regulations without the additional 100 hours for manicurists. The notice of proposed rulemaking was published in OAL's register and mailed to the public on or before April 22. A public hearing on the Board's proposals is scheduled for June 6.

BarberCosmo
Board of Barbering & Cosmetology

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Agenda Item 10

MANICURING TECHNICAL ADVISORY COMMITTEE REPORT

April 2011

Purpose

The Manicuring Technical Advisory Committee was established to provide assistance to Board staff on the technical aspect of the manicuring industry as well as make recommendations to the Board.

The committee met for the first time on April 4, 2011 in Sacramento, CA. At this meeting, some of the most common issues that Board staff faces were discussed and will be detailed in this report.

Members

Doug Schoon, Scientist, Schoon Scientific Consulting
Jim McConnell, Chemist, McConnell Labs
Linh Nguyen, Owner, Advanced Beauty College
Jaime Schrabeck, Licensed Manicurist and Establishment Owner
Christie Tran, Board member, Licensed Manicurist and Establishment Owner
Kristy Underwood, Board Executive Officer
Hilda Youngblood, Board Deputy Executive Officer
Heather Berg, Board Enforcement Manager
Debra Brown, Inspections/Cite and Fine Manager
Tami Guess, Cite and Fine Analyst
Linda Sekauye, Administrative Assistant

Issue #1: Nail Files-Disinfectable

Background

The Board is seeing more and more files in which the manufacturer claims they can be disinfected. These are files that appear to be single use files and would fall under section 981 which requires all instruments that can not be disinfected be disposed of after a single use. One of the Board's top ten violations found is the use of files on multiple clients. However, licensees are often stating that because the word "disinfectable" is printed on the file, they are acceptable for use on more than one client.

Discussion

Although non-porous nail files may be disinfected, there has been no evidence of a scientific study done on porous nail files and whether or not they can be disinfected. It is up to the manufacturers to conduct tests on their products to determine if they can be disinfected. Until the Board has information from manufacturers that tests have been performed, the Board can not determine if a file is a single use file or if a file can be properly disinfected and used more than one time.

Recommendation

The committee recommends that the Board take the position that they have no scientific proof that porous files can be disinfected. Upon receipt of test results, the Board will then make a determination. In addition, regardless if a file can be disinfected or not, the Board must protect consumers by appropriately citing for items that have not been disinfected and are being used on consumers.

Issue #2: Contaminated Nail Liquids and Nail Powders

Background

The Board often finds acrylic nail liquid and acrylic nail powder that appears to be dirty. This is cited as a violation of 988(a) (containers must be clean) and 988(c) (products can not be used in a way to contaminate the remaining portion); however, it has been brought to the staff's attention that this may be incorrect and the question has been raised on whether or not bacteria can grow in nail liquid and nail powder. (Note: nail liquid as referred to in this discussion is acrylic monomer).

Discussion

The committee discussed the fact that there are no test results currently published that state if bacteria can live in nail liquid or nail powder. A study has been conducted on nail liquids and the results will be out by the end of summer 2011. It is expected that results will state that bacteria can not grow and are aggressively killed in nail liquid. The ingredients that are in the nail liquid kill any signs of bacteria; therefore, if debris is found in a nail liquid, it will not cause bacteria to grow.

Tests are currently being conducted on nail powder and nail UV gels. It is anticipated that these tests will also show that bacteria can not grow in these products. This will mean that when "double-dipping" occurs in acrylic nail powder and the powder forms lumps, the powder should not be considered contaminated.

A report on nail powder and nail gels will be out by the end of summer 2011.

Recommendation

The Board should discuss if it will continue to cite for "double-dipping" or for contaminated nail liquid when it is questionable if bacteria in these products can exist. The Board currently does not cite for nail polish because bacteria can not grow in the polish and it is likely the same case for nail liquids and powders.

The committee also discussed the issue of contaminated wax. Staff will be conducting more research in this area, but it is believed that bacteria can grow in wax and the Board is citing correctly when contaminated wax is found.

Issue #3 Foot Spa Liners

Background

The Board is receiving inquiries on the use of liners in foot spas. Currently, board staff responds by stating that all laws and regulations must be followed and there are no provisions in the regulations for the use of liners. Therefore, each step that is defined in regulation for cleaning and disinfecting of foot spas must be completed.

Discussion

The committee discussed the use of liners. Advancements in the industry have allowed liners to become more popular. Most liners are made of recyclable material and are designed to be used only once. It was also discussed that the use of liners could be beneficial to the environment because it would reduce the amount of disinfectant that is used and discarded.

The committee discussed how liners could be used in the current regulatory requirements and determined that a regulation change would be required.

Recommendation
The committee recommends that the Board discuss the use of liners and determine what steps, if any, to take. It should be noted that the committee believes that liners should be considered for use in California.

Issue #4 Prohibited Substances

Background
Board inspectors often find products that contain ingredients that may or may not be prohibited. Inspectors will take photographs of the product and staff will then conduct research to determine if the ingredients are acceptable for use in a licensed establishment.

Discussion
Board staff presented various common ingredients to the committee to determine which are legal and which are not. In reviewing these items, it was determined that section 989 of the regulations is in need of updating. The current language states:

> *"No establishment of school shall have on its premises cosmetic products containing hazardous substances which have been banned by the U.S. Food and Drug Administration for use in cosmetic products, including liquid methyl methacrylate monomer (MMM) and methylene chloride."*

The ingredients noted in this regulation section (liquid methyl methacrylate monomer and methylene chloride) are not banned by the U.S.F.D.A. Listed below is information obtained from the U.S.F.D.A's web site on this subject:

Methacrylate Monomers in Artificial Nails ("Acrylics")

"Artificial nails are composed primarily of acrylic polymers and are made by reacting together acrylic monomers, such as ethyl methacrylate monomer, with acrylic polymers, such as polymethylmethacrylate. When the reaction is completed, traces of the monomer are likely to remain in the polymer. For example, traces of methacrylate monomers remain after artificail nails are formed. The polymers themselves are typically quite safe, but traces of the reactive monomers could result in an adverse reaction, such as redness, swelling, and pain in the nail bed, among people who have become sensitive (allergic) to methacrylates.

Ethyl methacrylate monomer is commonly used today in acrylic nails, although methyl methacrylate monomer may still be found in some artificial nail products. In the early 1970s, FDA received a number of complaints of injury associated with the use of artificial nails containing methyl methacrylate monomer. Among these injuries were reports of fingernail damage and deformity, as well as contact dermatitis. Unlike methyl methacrylate monomer, methyl methacrylate polymers were not associated with these injuries. Based on its investigations of the injuries and discussions with medical experts in the field of dermatology, the agency chose to remove from the market products containing 100 percent methyl methacrylate monomer through court proceedings, which resulted in a preliminary injunction against one firm as well as several seizure actions and voluntary recalls. **No regulation specifically prohibits the use of methyl methacrylate monomer in cosmetic products.**

The Cosmetic Ingredient Review Expert Panel determined in 2002 that ethyl methacrylate is safe as used when application is accompanied by directions to avoid skin contact because of its sensitizing potential (that is, the possibility that a person might develop an allergy to this material)."

In addition, MMM is not listed as a cosmetic ingredient in the International Nomenclature of Cosmetic Ingredients (INCI) dictionary. A review of other common ingredients was discussed with the committee and those results are included in Attachment A.

Recommended Board Position

The Board should discuss updating section 989 of the California Code of Regulations and may want to consider setting specific limits on ingredients; however, further research by staff will be needed.

Issue #5 Medical Pedicure

Background

This issue was brought up to discuss the trend of doctors hiring manicurists to perform medical pedicures. There has been some misconception that if a manicurist is working for a medical doctor/doctor of podiatry that they can perform medical pedicures.

Discussion

The Board has listed information on their web-site and published information in the California Stylist newspaper that manicurists (or any other Board licensee) can not perform a medical procedure under their license. If a medical doctor is offering cosmetology services in a medical office, the medical office must follow the laws and regulations of the board. For example, they must have an establishment license and must hire individuals licensed by the Board to perform services regulated by the Board.

Recommendation

The committee believes that the Board should continue to emphasize that manicurists can not remove calluses or treat ingrown toe nails as well as continue to stress what is listed on its web site:

> March 2, 2009
>
> The Board of Barbering and Cosmetology (Board) has received several inquiries regarding defining the term of "Medical Pedicure". Although the Board does not define or regulate medical procedures, the manicuring industry is governed by the Board and shall adhere to the Board's Laws and Regulations when performing manicuring services in any facility within the State of California.
>
> The Medical Office offering manicuring services must maintain a valid establishment license issued by the Board.
>
> The Medical Office manicurist performing services must maintain a valid license issued by the Board.
>
> The Medical Office manicurist are not licensed by the Board as medical professionals and may not engage in services outside the manicurist scope of practices as defined in the Board's Laws and Regulations.
>
> Any licensed manicurist providing services whether in a salon or a facility identified as a "Medical Office" (i.e. Podiatric Office, Hospital, Medical Clinic, etc.) shall provide manicurist services to include the nail care practice of cutting, trimming, polishing, coloring, tinting, cleansing, or

manicuring the nails of any person or massaging, cleansing, or beautifying the hands or feet of any person.

Any licensed manicurist shall not use razor-edged tools or other instrument to remove calluses. Callus removal is not within the manicurist scope of practice and shall not be performed by a manicurist in the State of California.

Issue #6 Callus Remover Products

Background
Liquid callus remover products are becoming more popular and there has been confusion on what Board licensees can and can not use.

Discussion
Most importantly it should be noted that Board licensees can not remove a callus by any means. The Board has clarified that the product being in a salon is not a violation, however, the product is not the issue that the Board should focus on. The Board should focus on educating licensees that they can smooth a callus but not remove a callus, that when using any product they should be carefully following the directions, and that a customer can not grant a licensee the authority to perform a service that is not within the scope of practice.

Recommendation
The Board should take a position that licensees (manicurists and cosmetologists) can smooth but not remove a callus. The Board should develop a publication for its web-site to better educate licensees of their scope of practice and inform them that removing a callus is a medical procedure. The Board should "recommend" that manufacturers not brand their products as "callus removers", since this suggests to manicurists that callus removal is an acceptable procedure.

Issue #7 Detox Foot Spas

Background
Detox Foot Spas are being marketed to Board licensees. These foot spas claim to cleanse the body and also claim to treat various health conditions.

Discussion
The committee discussed the fact that the claims that are associated with these devices are of a medical nature and therefore are not within the scope of any board licensee.

Recommendation
The committee recommends that the Board take a position that the detox foot spas are not within the scope of a licensee.

Attachment A

Review of Ingredients

Methyl Methacrylate (MMA) – *Prohibited (cannot site until R & Reg verbiage changes)*

Methyl Methacrylate Monomer (MMM) – *Prohibited – cannot site until R & Reg verbiage changes)*

Methyl Methacrylate Polymers - *Legal*

Ethyl Methacrylate (EMA) – *Legal*

Butyl methacrylate –*Legal*

Isobutyl Methacrylate – *Legal*

Lauryl Methacrylate – *Legal*

Ethyl Hexyl Methacrylate - *Legal*

Poly-Methyl Methacrylate (PMMA) – *Legal*

Monomethyl Ether of Hydroquinone (MEHQ) - *Legal*

Co-polymers poly (ethyl/methyl) methacrylate co-polymer – *Legal*

Methacrylic Acid - *Legal*

No Attachment