

**CALIFORNIA
BOARD OF BARBERING AND COSMETOLOGY**



**OCTOBER 22, 2018
Board Meeting**

**Courtyard by Marriott
San Diego Mission Valley
595 Hotel Circle South
San Diego, CA 92108**



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

BOARD MEETING

October 22, 2018

**Courtyard by Marriott
San Diego Mission Valley
595 Hotel Circle South
San Diego, CA 92108**

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



MEMBERS OF THE BOARD

Dr. Kari Williams, President
Lisa Thong, Vice President
Bobbie Jean Anderson
Polly Codorniz
Jacquelyn Crabtree
Andrew Drabkin
Joseph Federico
Coco LaChine
Steve Weeks

AGENDA

10:00 A. M.

UNTIL COMPLETION OF BUSINESS

OPEN SESSION:

1. Call to Order/ Roll Call/ Establishment of Quorum (**Dr. Kari Williams**)
2. Board President's Opening Remarks (**Dr. Kari Williams**)
3. Board Member Remarks – Informational only
4. Public Comment on Items Not on the Agenda
Note: The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 1125.7(a))
5. Executive Officer's Report (**Kristy Underwood**)
 - a. Licensing Statistics
 - b. Examination Statistics
 - c. Disciplinary Review Committee Statistics
 - d. Enforcement Statistics
 - e. Budget Updates
 - f. Outreach Updates
 - g. Practice Status Survey Results
 - h. NIC October 2018 Conference Report
6. Approval of Board Meeting Minutes
 - August 27, 2018
7. Proposed Board Meeting Dates/Locations for 2019
8. Final Approval of the 2019 Sunset Review Report

9. Report on the August 28, 2018 Health and Safety Advisory Committee

- Dynamex Decision

10. Legislative Update:

Discussion and Possible Action on Proposed Bills:

- AB 2134 (Rubio) – Cosmetology Students - Externships
- AB 2138 (Chiu and Low) Denial of Application, Revocation or Suspension of License: Criminal Conviction
- AB 2775 (Kalra) – Professional Cosmetics: Labeling Requirements
- SB 984 (Skinner) - Board Representation: Women
- SB 1492 – (Hill) (SBP) Examination Failure Notification

11. Proposed Regulations:

Discussion and Possible Action of Proposed Regulatory Changes:

- Title 16, CCR Section 904 (Definition of Access)
- Title 16, CCR Section 950.10 (Transfer of Credit or Training)
- Title 16, CCR Section 961 (National Interstate Council (NIC) Translation Guides)
- Title 16, CCR Section 965.2 (Personal Service Permit)
- Title 16, CCR Section 972 (Disciplinary Guidelines)
- Title 16, CCR Section 974 & 974.3 (Fine Schedule and Payment Plan)
- Title 16, CCR Sections 977, 978, 979, 980, 980.1, 980.2, 980.3, 980.4, 981, 982, 983, 984, 985, 986, 987, 988 and 989 (Health and Safety Regulations)

12. Agenda Items for the Next Meeting

13. **CLOSED SESSION:**

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

OPEN SESSION:

14. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. Note: This meeting will be Webcast, provided there are no unforeseen technical difficulties or limitations. To view the Webcast, please visit <https://thedcapage.wordpress.com/webcasts/>. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

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

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

No Attachment

**Quarterly Barbering and Cosmetology
Licensing Statistics
Fiscal Year 18-19**

Applications Received

License Type	Jul-Sept	Oct-Dec	Jan-Mar	Apr-June	YTD
Establishment	1,556				1,556
Mobile Unit	-				
Barber					
Pre-App	212				212
Initial Application	327				327
Re-Exam	426				426
<i>Sub-Total</i>	<u>965</u>				<u>965</u>
Reciprocity	39				39
Apprentice	179				179
Cosmetology					
Pre-App	740				740
Initial Application	710				710
Re-Exam	1,301				1,301
<i>Sub-Total</i>	<u>2,751</u>				<u>2,751</u>
Reciprocity	323				323
Apprentice	136				136
Electrology					
Pre-App	5				5
Initial Application	7				7
Re-Exam	5				5
<i>Sub-Total</i>	<u>17</u>				<u>17</u>
Reciprocity	-				
Apprentice	-				
Esthetician					
Pre-App	664				664
Initial Application	367				367
Re-Exam	472				472
<i>Sub-Total</i>	<u>1,503</u>				<u>1,503</u>
Reciprocity	113				113
Manicurist					
Pre-App	574				574
Initial Application	457				457
Re-Exam	641				641
<i>Sub-Total</i>	<u>1,672</u>				<u>1,672</u>
Reciprocity	101				101
Total	9,355	-	-	-	9,355

Licenses Issued FY 2018-2019

License Type	Jul-Sept	Oct-Dec	Jan-Mar	Apr-June	YTD
Barber	614				614
Barber Apprentice	234				234
Cosmetology	1,812				1,812
Cosmetology Apprentice	211				211
Electrology	9				9
Electrology Apprentice	--				-
Esthetician	1,219				1,219
Manicurist	1,119				1,119
Establishment	1,852				1,852
Mobile Unit	--				-
Totals	7,070				7,070

Licenses Issued Last 5 Years

License Type	FY 14/15	FY 15/16	FY 16/17	FY 17/18	FY 18/19 (YTD)
Barber	1,715	1,950	2,189	2,259	614
Barber Apprentice	397	511	665	885	234
Cosmetology	12,702	10,813	8,389	7,085	1,812
Cosmetology Apprentice	543	650	793	727	211
Electrology	34	35	26	22	9
Electrology Apprentice	-	-	-	1	-
Esthetician	5,059	4,747	4,818	4,007	1,119
Manicurist	5,876	6,298	6,550	3,787	1,219
Establishment	6,654	6,996	6,875	7,609	1,852
Mobile Unit	8	7	7	2	-
Totals	32,988	32,007	30,312	26,384	7,070

License Population

Barber	30,715
Barber Apprentice	1,538
Cosmetology	314,840
Cosmetology Apprentice	1,432
Electrology	1,759
Electrology Apprentice	1
Esthetician	86,434
Manicurist	130,068
Establishment	51,326
Mobile Unit	47
Total	618,160

Examination Results

(July 1, 2018 through September 30, 2018)

Practical Examinations

Administered	Passed	Failed	Total	Pass Rate
Barber	728	268	996	73%
Cosmetologist	1,910	639	2,549	75%
Electrologist	11	--	11	100%
Esthetician	1,365	86	1,451	94%
Manicurist	1,259	408	1,667	76%
Total	5,273	1,401	6,674	79%

Written Examinations

Barber	Passed	Failed	Total	Pass Rate
English	634	285	919	69%
Korean	5	2	7	71%
Spanish	97	58	155	63%
Vietnamese	8	1	9	89%
TOTAL	744	346	1,090	68%

Cosmo	Passed	Failed	Total	Pass Rate
English	1,441	691	2,132	68%
Korean	21	5	26	81%
Spanish	214	487	701	31%
Vietnamese	66	24	90	73%
TOTAL	1,742	1,207	2,949	59%

Esthetician	Passed	Failed	Total	Pass Rate
English	1,145	355	1,500	76%
Korean	27	4	31	87%
Spanish	6	11	17	35%
Vietnamese	94	22	116	81%
TOTAL	1,272	392	1,664	76%

Manicurist	Passed	Failed	Total	Pass Rate
English	348	113	461	75%
Korean	12	6	18	67%
Spanish	17	14	31	55%
Vietnamese	855	333	1,188	72%
TOTAL	1,232	466	1,698	73%

Electrologist	Passed	Failed	Total	Pass Rate
English	10	6	16	63%
Korean	--	--	--	--
Spanish	--	--	--	--
Vietnamese	--	--	--	--
TOTAL	10	6	16	63%



Business, Consumer Services, and Housing 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 18-19

Report Date: September 30, 2018

	July - September	YTD
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NORTHERN

Heard	95	95
Received	96	96
Pending ¹	101	101 ²

SOUTHERN

Heard	150	150
Received	216	216
Pending ¹	267	267 ²

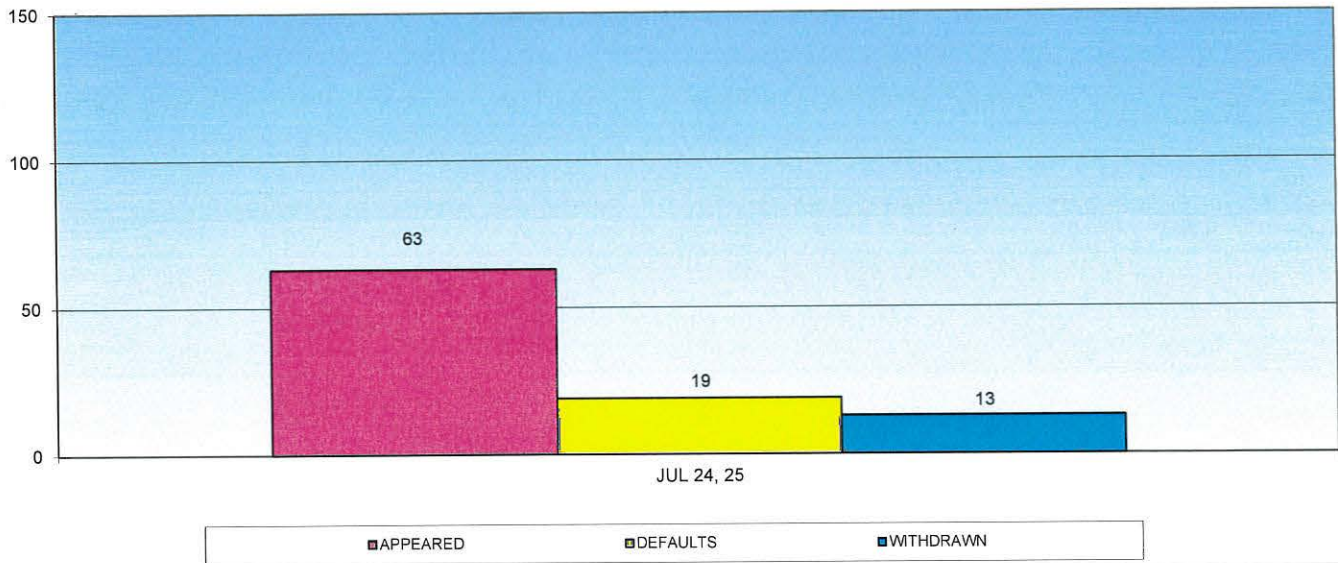
¹ Pending refers to the number of appeals received but not yet heard by DRC.

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

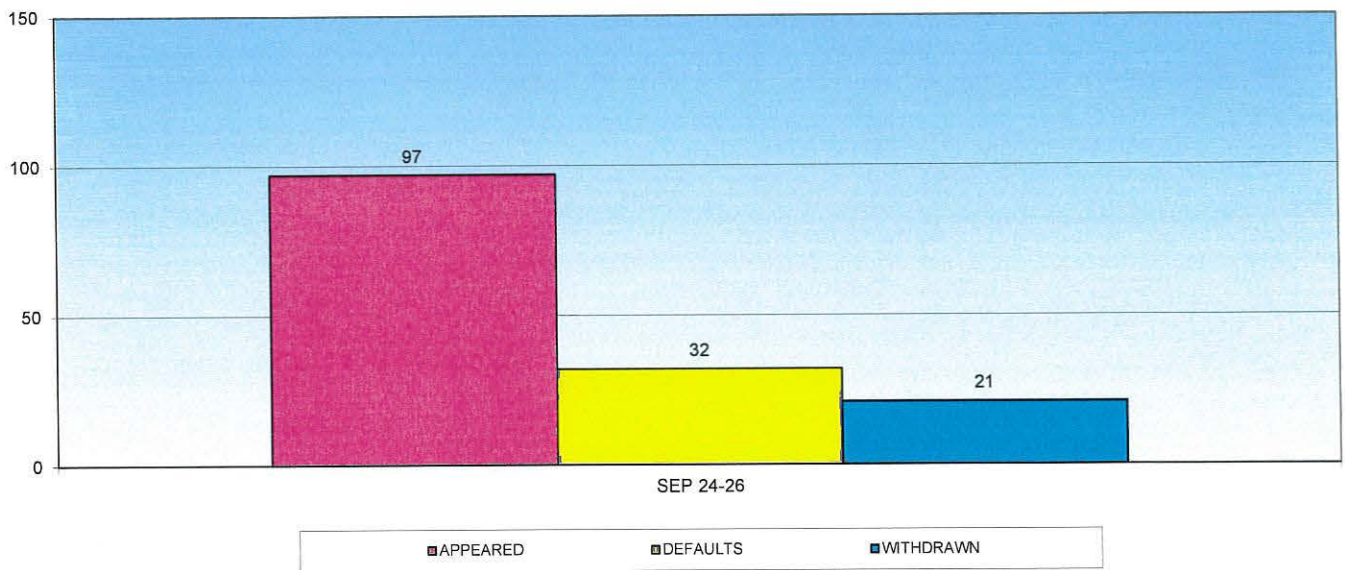
2018 SCHEDULED HEARINGS

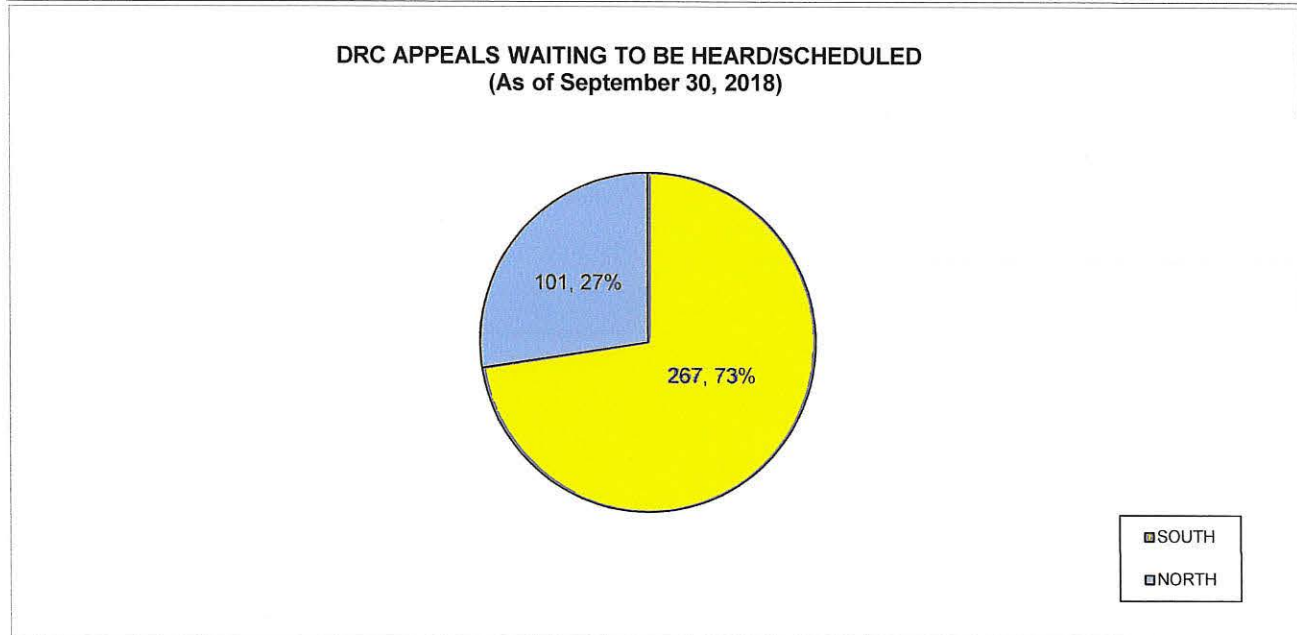
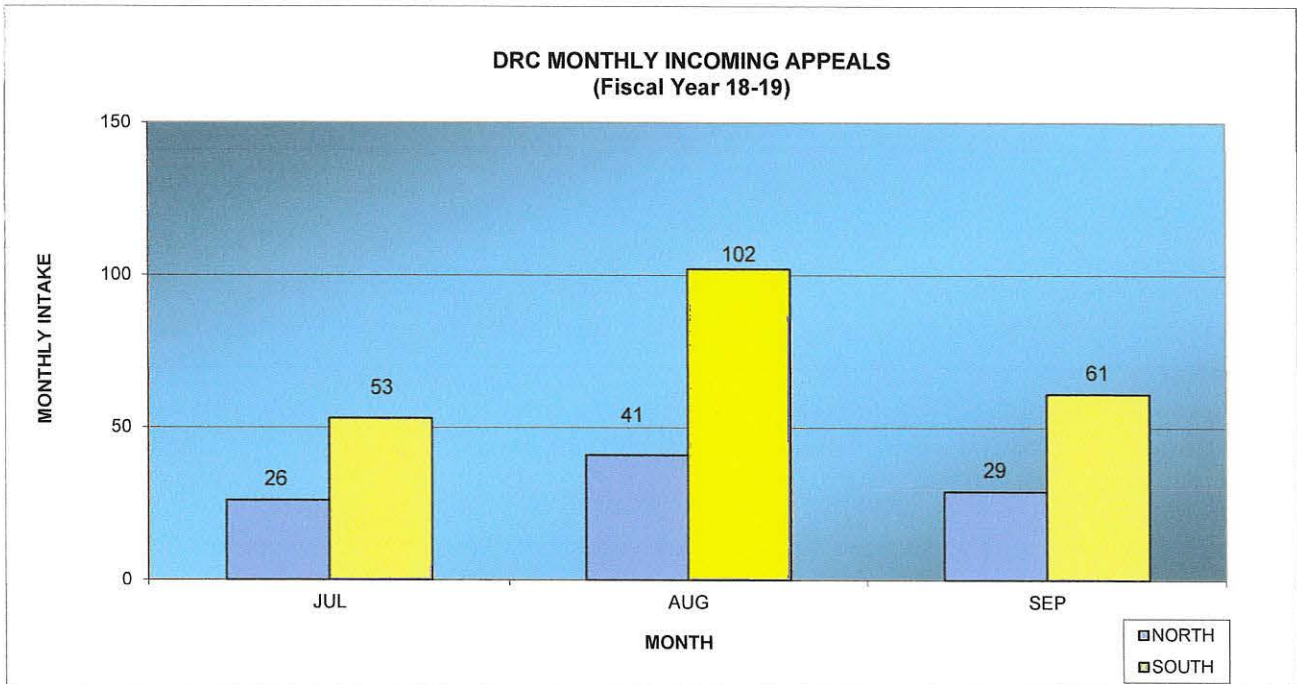
Area	Location	Date
Southern	San Diego	October 24, 25, 2018
Northern	Sacramento	November 26, 27, 2018
Southern	Santa Ana	December 17, 18, 19, 2018

NORTHERN APPEALS HEARD (Fiscal Year 18-19)



SOUTHERN APPEALS HEARD (Fiscal Year 18-19)





**QUARTERLY BARBERING AND COSMETOLOGY
ENFORCEMENT STATISTICS Fiscal Year 18-19**

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
COMPLAINTS					
Complaints Received	1039				1039
Referred to DOI	0				0
Complaints Closed	1102				1102
Total Complaints Pending	893				893
APPLICATION INVESTIGATIONS*					
Received	148				148
Pending	54				54
Closed	1067				1067
ATTORNEY GENERAL					
Referred	11				11
Accusations Filed	17				17
Statement of Issues Filed	4				4
Total Pending	72				72
DISCIPLINARY PROCESS					
Proposed Decisions	6				6
Default Decision	2				2
Stipulation	11				11
DISCIPLINARY OUTCOMES					
Revocation	8				8
Revoke, Stay, Probation	3				3
Revoke, Stay, Suspend/Prob	13				13
Revocation, Stay w/ Suspend	0				0
Probation Only	0				0
Suspension Only	0				0
Suspension & Probation	0				0
Suspension, Stay, Probation	1				1
Surrender of License	1				1
Public Reprimands	0				0
License Denied	0				0
Other	1				1
Total	27				27
PROBATION					
Active	136				136
Jul-Sept Oct-Dec Jan- Mar Apr-Jun YTD					
CITATIONS*					
Establishments	2294				2294
Barber	269				269
Barber Apprentice	49				49
Cosmetologist	761				761
Cosmetologist Apprentice	13				13
Electrologist	0				0
Electrologist Apprentice	0				0
Manicurist	852				852
Esthetician	94				94
Unlicensed Est.	89				89
Unlicensed Individual	138				138
Total	4559				4559
INSPECTIONS*					
Establishments w/ violations	1583				1583
Establishments w/o violations	524				524
Total	2107				2107

*Inspections includes July 1, 2018 - August 31, 2018

0069 - Barbering and Cosmetology Contingency Fund
Analysis of Fund Condition

Prepared 8/7/18

(Dollars in Thousands)

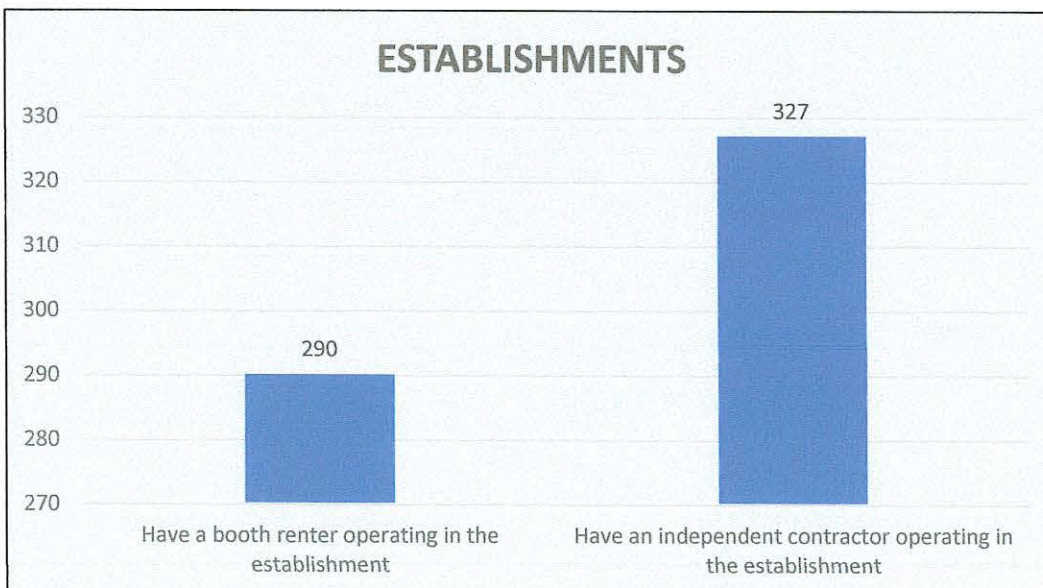
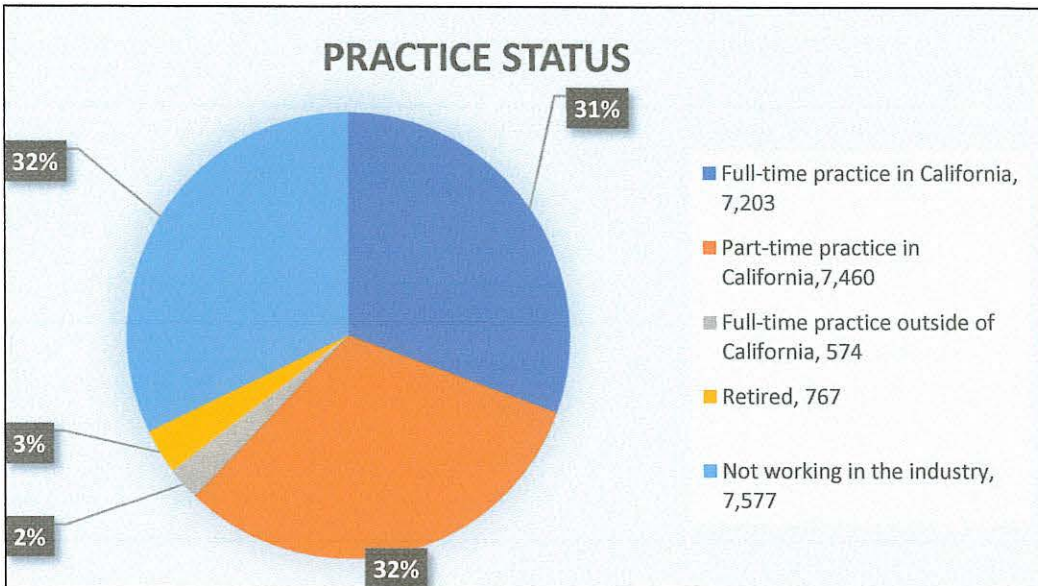
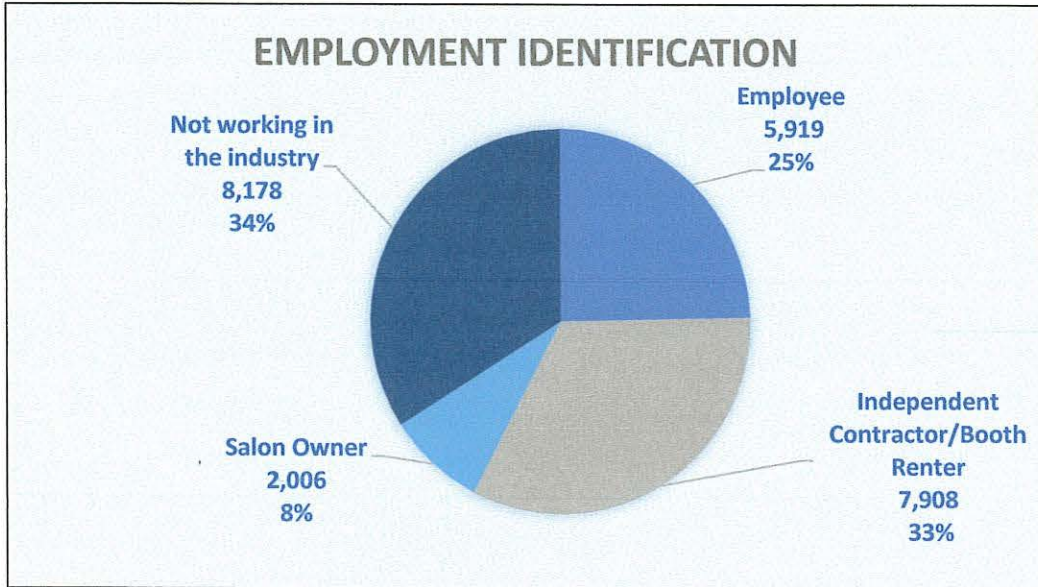
NOTE: \$21 Million General Fund Repayment Outstanding

Budget Act of 2018 with FM 11 projections

	Projected CY 2017-18	Budget Act BY 2018-19	BY + 1 2019-20	BY + 2 2020-21
BEGINNING BALANCE	\$ 20,565	\$ 19,996	\$ 21,532	\$ 22,632
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 20,565	\$ 19,996	\$ 21,532	\$ 22,632
REVENUES AND TRANSFERS				
Revenues:				
4121200 Delinquent fees	\$ 1,130	\$ 1,212	\$ 1,212	\$ 1,212
4127400 Renewal fees	\$ 12,413	\$ 12,712	\$ 12,712	\$ 12,712
4129200 Other regulatory fees	\$ 4,955	\$ 6,342	\$ 6,342	\$ 6,342
4129400 Other regulatory licenses and permits	\$ 3,946	\$ 4,683	\$ 4,683	\$ 4,683
4140000 Sales of documents	\$ 8	\$ -	\$ -	\$ -
4143500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -
4150500 Interest Income from Interfund Loans	\$ -	\$ -	\$ -	\$ -
4163000 Income from surplus money investments	\$ 220	\$ 66	\$ 68	\$ 70
4170400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -
4171400 Escheat - unclaimed checks, warrants, bonds, and coupons	\$ 11	\$ 10	\$ 10	\$ 10
4171500 Escheat - unclaimed property	\$ 3	\$ 3	\$ 3	\$ 3
4172500 Miscellaneous revenues	\$ 12	\$ 13	\$ 13	\$ 13
4173500 Settlements and Judgements	\$ -	\$ -	\$ -	\$ -
Total Revenues	\$ 22,698	\$ 25,041	\$ 25,043	\$ 25,045
Transfers from Other Funds				
Proposed GF Loan Repayment (Budget Act of 2008)				\$ 10,000
Proposed GF Loan Repayment (Budget Act of 2011)				\$ 11,000
Total Revenues, Transfers, and Other Adjustments	\$ 22,698	\$ 25,041	\$ 25,043	\$ 46,045
Total Resources	\$ 43,263	\$ 45,037	\$ 46,575	\$ 68,677
EXPENDITURES				
Disbursements:				
1110 Department of Consumer Affairs Regulatory Board Program Expenditures (State Operations)	\$ -	\$ -	\$ -	\$ -
1111 Department of Consumer Affairs Program Expenditures (State Operations)	\$ 21,642	\$ 21,903	\$ 22,341	\$ 22,788
8880 Financial Information System for California (State Operations)	\$ 28	\$ 2	\$ 2	\$ 2
9892 Supplemental Pension Payments (State Operations)	\$ -	\$ 134	\$ 134	\$ 134
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 1,597	\$ 1,466	\$ 1,466	\$ 1,466
Total Disbursements	\$ 23,267	\$ 23,505	\$ 23,943	\$ 24,390
FUND BALANCE				
Reserve for economic uncertainties	\$ 19,996	\$ 21,532	\$ 22,632	\$ 44,287
Months in Reserve	10.2	10.8	11.1	21.4

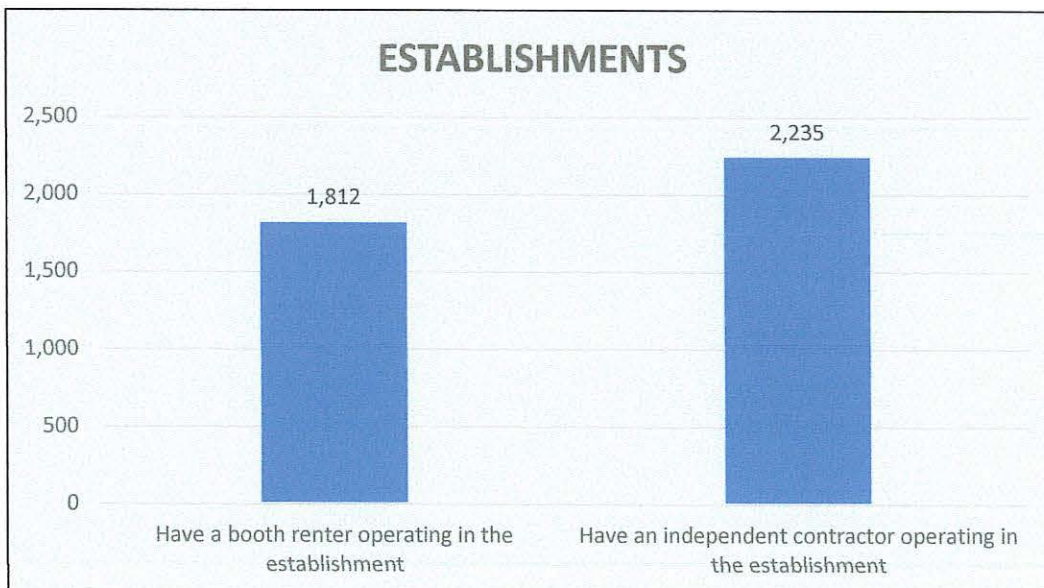
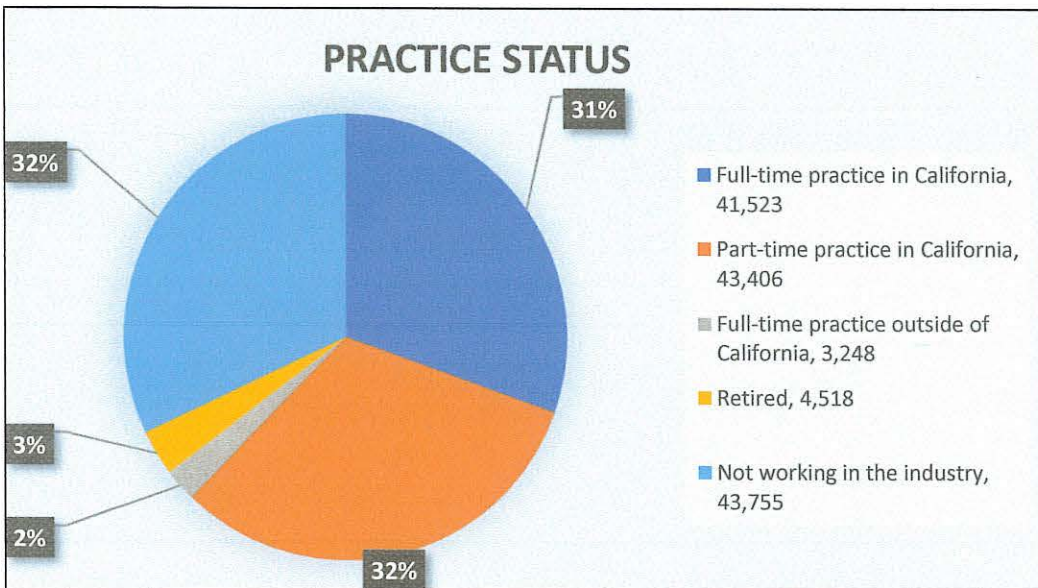
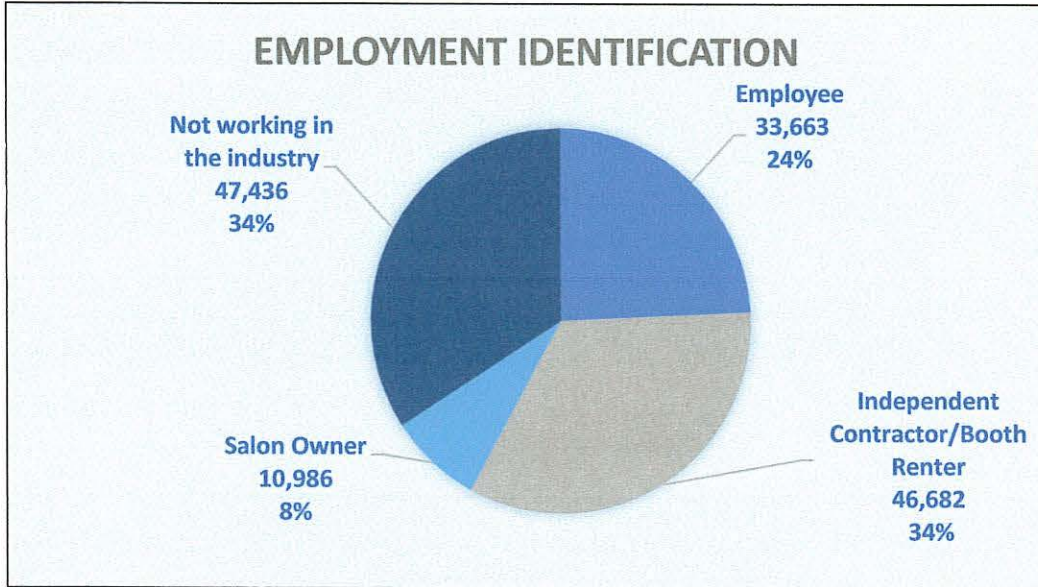
RENEWAL QUESTIONNAIRE

July 1, 2018 - September 30, 2018



RENEWAL QUESTIONNAIRE

Year to Date





DRAFT
CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY
BOARD MEETING
MINUTES OF AUGUST 27, 2018
Department of Consumer Affairs
1747 North Market Blvd.
HQ2 Hearing Room 186, 1st Floor
Sacramento, California

BOARD MEMBERS PRESENT

Dr. Kari Williams, President
Lisa Thong, Vice President
Polly Cordoniz
Jacquelyn Crabtree
Andrew Drabkin
Joseph Federico
Steve Weeks

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Michael Santiago, Board Legal Representative
Tami Guess, Board Project Manager
Carrie Harris, Board Enforcement Manager
Marcene Melliza, Board Analyst

BOARD MEMBERS ABSENT

Bobbie Jean Anderson
Coco LaChine

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

Dr. Kari Williams, Board President, called the meeting to order at approximately 10:00 a.m. and confirmed the presence of a quorum.

2. Agenda Item #2, BOARD PRESIDENT'S OPENING REMARKS

Dr. Williams thanked staff for doing an amazing job on the draft of the Sunset Review Report and stated a lot of work had been accomplished this year.

3. Agenda Item #3, BOARD MEMBER REMARKS

Mr. Weeks echoed Dr. Williams's comments. He asked Executive Officer Kristy Underwood if she had staff members in particular who contributed to the draft report.

Ms. Underwood stated Tami Guess, Board Project Manager, was the lead on this project. Ms. Guess put the report together and worked with the design team at the Department of Consumer Affairs (DCA). Ms. Underwood stated Carrie Harris, Board Enforcement Manager, Theresa Rister, Board Inspection Manager, Marcene Melliza, Board Analyst, and other staff were also contributors. She commended her staff for their great work.

4. Agenda Item #4, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Dr. Michael Marion, Jr., Bureau Chief, California Bureau for Private Postsecondary Education (BPPE), stated the BPPE has made some emergency decisions over the past few weeks. He stated the BPPE and Board staff have been doing great work together in the short time that he has been in his position and he looked forward to continued collaborative work in the future. He wished the Board well in their Sunset Review and offered his support.

Wendy Cochran, Founder, California Aesthetic Alliance (CAA), thanked the Board on behalf of her 4,000-member organization, for considering a revision in the scope of practice for estheticians. She stated her members are excited about the opportunity to be compliant.

Fred Jones, Legal Counsel, Professional Beauty Federation of California (PBFC), thanked Dr. Marion personally and on behalf of the PBFC for his work. The PBFC has consistently held the position that, if the BPPE was not going to do their job, then the Board needed their job. The Board already approves schools and curriculum, gives the licensing exam, does inspections to ensure appropriate facilities and equipment, and ensures that schools have bona fide student enrollees, but the important role that provides the authority to crack down on fraudulent schools has been given to the BPPE – and they seemingly did nothing for the past 18 years on these fraudulent schools. The fraudulent schools bring the reputation of all schools down. This is one of the reasons the industry is facing a deregulation movement in California. He commended Dr. Marion for, during his short tenure, beginning to shut down fraudulent schools. He thanked Dr. Marion for his leadership at the BPPE and staff for working with him.

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

- a. **Licensing Statistics**
- b. **Examination Statistics**
- c. **Disciplinary Review Committee Statistics**
- d. **Enforcement Statistics**
- e. **Budget Updates**
- f. **Outreach Updates**
- g. **Practice Status Survey Results**

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

Spanish Pass Rate

Ms. Underwood stated the cosmetologist Spanish pass rate continues to be around 34 percent. Staff is currently putting together a task force to study this issue as recommended by the Board. The National-Interstate Council of State Boards of Cosmetology (NIC) has agreed to participate in that task force.

Ms. Underwood stated staff continues to run data in search of anomalies. Out of the top 10 fail rates for the current fiscal year, five were from the apprenticeship sponsorship program. This is a concern that must be studied because the apprenticeship program is

different from the school program. One of the top 10 was a previously-licensed individual, and the last four out of the top 10 were from four schools that have high numbers of Spanish test-takers who are failing. Three out of those four schools are approved to teach in Spanish and their students are still failing. These schools are on staff's list to visit.

Ms. Underwood stated staff took out the apprenticeship programs to see if that would improve the numbers, but, when separating out the apprenticeship programs, previously-licensed individuals, and schools, the pass rate remains in the 30 percent range.

Ms. Underwood stated there are many students who take the Spanish test who did not go to a school that teaches in Spanish. Many schools have at least one test-taker who chose to take the test in Spanish.

Ms. Underwood stated staff's research on this issue was not enlightening but it did point out that apprenticeship committees and schools that are approved to teach in Spanish should be contacted to get their thoughts and ideas on this issue and to invite them to join the task force as part of the continued investigation into the Spanish pass rate.

Personnel

Ms. Underwood stated Associate Governmental Program Analyst Rachel Gayton was hired in a re-directed position dedicated to school issues in Northern California. Staff is recruiting for the Southern California position.

6. Agenda Item #6, APPROVAL OF BOARD MEETING MINUTES

- **May 20, 2018**

MOTION: Mr. Drabkin moved to approve the May 20, 2018, California State Board of Barbering and Cosmetology Meeting Minutes as presented. Ms. Crabtree seconded. Motion carried 5 yes, 0 no, and 2 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Crabtree, Drabkin, Thong, and Weeks.

The following Board Members abstained: Federico and Williams.

- **July 23, 2018**

MOTION: Mr. Drabkin moved to approve the July 23, 2018, California State Board of Barbering and Cosmetology Meeting Minutes as presented. Ms. Crabtree seconded. Motion carried 7 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Thong, Weeks, and Williams.

7. Agenda Item #7, DISCUSSION AND POSSIBLE ACTION RELATING TO CERTIFICATION OF STUDENT HOURS

Ms. Underwood stated the recent issue is the alarming number of applicants coming in with proofs of training dated five years ago from schools that have been closed. The thought is that this is forged documentation backdated from when the schools were in existence. She gave the example of receiving five applications in one day from a school that had been closed for some time. Almost every school has data on students who attended but never took the test, or failed it and decided to do something else and are now coming back because their proof of training is good forever. Most schools have a small number of these applicants; however, there are others with large numbers.

Ms. Underwood reviewed the Report on Certification of Student Hours, which was included in the meeting packet. She stated Board staff continues to do joint inspections with BPPE staff, which verified that Board requirements need to be strengthened in regards to the lack of approved curriculum being taught in schools. Board staff has stopped processing applications and has sent letters to students.

Mr. Federico asked if the joint reviews were completed in one day. Ms. Underwood stated the Board's review is completed in one day, but the BPPE's review is over multiple days due to extensive review of paperwork.

Mr. Federico asked what CIB stands for in Item 4 under Significant Issues Found. Ms. Underwood stated CIB stands for Candidate Information Bulletins.

Public Comment

Mr. Jones stated the PBFC supports a student enrollment requirement with verifiable proof of training document submittals to the Board and possibly the BPPE. He stated most schools are accredited for purposes of Title IV federal loans with the National Accrediting Commission of Career Arts and Sciences (NACCAS).

Ms. Underwood stated staff has been in contact with Dr. Anthony Mirando, Executive Director, NACCAS. NACCAS is more than willing to collaborate with the Board.

Mr. Jones stated the Board receives no funding for this work. Staff has been proactive in unprecedented ways, such as approaching and partnering with the BPPE and NACCAS, and schools are hearing the message. He thanked staff for their work.

Mr. Federico stated one of the elements of accreditation that is required to maintain Title IV funding is state authorization. The state authorization is given by the BPPE. The BPPE authorization must be submitted annually as part of school accreditation. He stated, if the BPPE has the power to remove their authorization, NACCAS can immediately be made aware when a school is no longer in compliance with their accreditation.

Ms. Underwood stated most of the particularly bad schools are unaccredited. Also, emergency decisions do not immediately shut schools down but prevent enrollment and accepting tuition. The Board and the BPPE have also partnered with the attorney general's office to work on creating interim suspension orders for schools. The Board and the BPPE are following the processes that are necessary following an emergency decision.

Mr. Weeks stated the industry lives or dies by the quality of the schools. Although bad schools are being uncovered, he stated the need to recognize that there are other schools that are doing a good job and making the system work. Ms. Underwood stated there are several good schools that have invited staff in to help answer questions. She stated Board inspectors go into the clinic floors and do inspections for health and safety, but most of the schools that have problems right now do not provide services to consumers. The new Board positions will build better relationships with the schools so that the schools feel comfortable asking the Board questions and the Board can also ask them questions.

Mr. Federico asked about Mr. Jones's suggestion to require schools to send student registrations to the Board. He asked how that process can begin. Ms. Underwood suggested that the Board make a motion during the Sunset Review agenda item to add it to the Sunset Review Report. Most other states have either a student registration at time of enrollment or a monthly electronic filing of student hours.

Ms. Crabtree asked about the disciplines that are more prevalently noncompliant in the schools. Ms. Underwood stated the largest noncompliance is with the manicurist schools, followed by cosmetologists and estheticians. Barbering is the lowest in the buying of hours, but the Board has concerns about the barbering quality of education.

Ms. Crabtree stated, because the buying of hours happens so much in the nail industry, the labor commissioner recently went into a nail salon in Los Angeles and found that 35 of the nail technicians were misclassified employees; the nail salon was fined \$1.5 million. She stated many individuals get their licenses in manicuring and go to work in nail salons not knowing the laws and rules and are being mistreated. This goes hand-in-hand as the problem continues to grow.

Ms. Underwood stated students are being taught to pass the test but do not learn about labor laws or health and safety. She stated the new Health and Safety Curriculum was sent to schools and teachers in CD form with instructor guides and student handbooks, but only two schools even knew what it was. Students are not getting even basic labor information.

Ms. Underwood stated another problem the Board has seen is good teachers in accredited schools do the best they can with what is given to them but things such as broken equipment are not being replaced.

Ms. Crabtree agreed and stated the scary thing is the amount of infection and disease that continues within the nail industry.

**8. Agenda Item #8, REVIEW OF THE NATIONAL INTERSTATE COUNCIL
COSMETOLOGY EXAMINATION AUDIT**

Dr. Williams introduced Irene Wong-Chi, from the Office of Professional Examination Services (OPES), who will present this agenda item.

Irene Wong-Chi, Research Program Specialist, OPES, provided a brief overview of the processes, procedures, and findings of the NIC Cosmetology Examination audit.

- The OPES found that the most critical areas of California cosmetology practice were measured on the NIC examinations, thereby making them suitable for use in California.
- OPES also found that, for the most part, the procedures used to establish and support the validity and defensibility of NIC's theory and practical examinations met professional guidelines and technical standards; however, the OPES found procedural areas that could be improved.

The OPES Executive Summary was included in the meeting packet.

9. Agenda Item #9, REVIEW AND CONDITIONAL APPROVAL OF THE 2019 SUNSET REVIEW REPORT DRAFT

Ms. Underwood stated changes and corrections suggested by the Board and stakeholders will be made to the 2019 Sunset Review Report Draft and the amended report will be presented at the next Board meeting along with an Executive Summary for final Board review.

Ms. Underwood stated the report was separated into two volumes. Volume I is the main body of the Sunset Review. Staff will use this volume as a reference on a regular basis. She asked for comments and suggestions from the Board.

Mr. Federico suggested adding a school student enrollment requirement with verifiable proof of training document submittals to the Board and possibly the BPPE.

Mr. Federico suggested removing the additional makeup artistry sublicense category since it is not nationally recognized by the NIC. Board members agreed.

Mr. Weeks suggested including a better definition of what a Personal Service Permit (PSP) holder is to keep PSP license holders from operating illegal establishments. He suggested "... someone who performs limited barbering or cosmetology services outside of a licensed establishment but only at a customer location. The PSP license holder may not act in any way as an establishment licensee with a fixed location serving multiple customers."

Mr. Weeks suggested drastically different health and safety protocols for the PSP license holders. PSP license holders cannot be held to what is required of an establishment individual. He gave the example that there are fourteen covered, labeled containers that would be necessary to comply with the current law. He asked if the PSP holders will travel with disinfectant solutions, with clean and dirty covered labels for everything, a trash container, or clean and dirty containers of towels and smocks. What will be required of the PSP license holders will require an amendment beyond what is required of establishments.

Mr. Weeks stated the Board issues ten different licenses and the PSP is the only one with no inspection ability. 80 percent of current inspections end in citations for noncompliance with the health and safety laws. He suggested a review of the PSP program by this Board in two years to see how things are progressing and the positive and negative lessons learned. Board members agreed.

Mr. Federico suggested statutory language that gives the Board some kind of oversight over the apps that are coming out.

Mr. Weeks agreed that there should be some formal method of communication with app providers to ensure everything is being done correctly.

Ms. Thong asked if PSP license holders or the apps must submit consumer complaints to the Board within a certain timeframe. Ms. Underwood stated there is some information in the proposed regulations that will address that but agreed that it could be expanded upon.

Mr. Weeks suggested leading the report with the statistic of the total size of the licensee population to give greater importance to the Board and what it does.

Ms. Thong suggested avoiding the use of acronyms in the report. The report states that meeting attendance has gone down. She suggested including the number of viewers who checked into the webcasts in the meeting attendance. She suggested including in the summary of what the Committees have done that the Committees have worked with the Healthy Nail Salon Collaborative. The Legislature is familiar with that organization. It would be good for them to see that the Board works with them. She also suggested including the number of individuals served with optional translation services for the DRC, inspections, and in the field.

Public Comment

Ms. Cochran suggested watermarking the document as being a draft. She stated schools have mistakenly sent information out to their students from this document not understanding that it is only a draft. She thanked the Board for considering the waxing and makeup sublicense categories.

Mr. Jones stated the 2019 Sunset Review Report Draft is a great report but the Legislature cannot read 100 pages. He suggested including an Executive Summary that lists specifically what the Board is asking for. He suggested including in the first sentence that the Board currently serves over 550,000 individuals who were licensed by this Board – over one and one-half percent of every man, woman, and child in California – as a response to the barriers-to-entry talking point. Mr. Jones suggested the following:

- Combine the written and practical exam scores into one passage score.
- Dramatically reduce the arbitrary restrictions on the existing externship program including the inability to pay student externs.
- If creating a new sublicense category, it should be limited to just hair styling, not waxing or makeup.
- School enrollment or registration for all students should be submitted to the Board within 30 days of enrolling in a school.
- The PSP should return to a brick-and-mortar establishment where inspections can be done of the protocols and equipment, where records can be kept and inspected, and where there is an employer who is

ultimately held responsible for all actions and activities of the PSP license holder and the services performed outside the establishment.

Richard Hedges, former Board member, stated the 2019 Sunset Review Report Draft was well done. He thanked Mr. Weeks for his due diligence on the report and stated all Board members made good comments. He seconded most of Mr. Jones's comments. He spoke in support of licensing the PSP apps because someone must be held responsible for ensuring the licensees are doing the work and should be held responsible if a member of the public is harmed by a person who is not licensed that the app sent to someone's home. He suggested that the Board set up their own app as a service to ensure that individuals are licensed.

Tracy Montez, Ph.D., Division Chief, Programs and Policy Review, California Department of Consumer Affairs, and the Office of Professional Examination Services (OPES), stated she has spent much time speaking with the Board about aggregate scoring over the past 20 years. It is an issue that comes up every four to six years. She stated the term "prevail" is not a psychometric term – it is not valid, defensible, or something in research to be worked toward. Instead, occupational analyses and research are done and licensees are worked with.

Ms. Montez stated what OPES has learned through their research is that Board applicants need to take a written test because they need to be assessed on a knowledge of health and safety issues. That is important. There should be a minimum cutoff where those individuals demonstrate a certain level of this knowledge.

Ms. Montez stated the practical exam is an important piece as well because that is a skill-based test, which measures different attributes. It still measures sanitation and safety, but in a skill-based format.

Ms. Montez stated, over time through all the occupational analyses, the OPES has demonstrated that these are two very important assessments that should be maintained with separate cutoff values or passing scores. The Board's exam programs are strong and robust. They have been vetted. The way the program is currently structured is fair, valid, and legally defensible.

Mr. Federico asked for a summary of changes suggested by the Board at this point in the meeting. Ms. Underwood provided the summary as follows:

- Student registration
- Increase the definition of the PSP
- Oversight over the apps for the PSP
- Review the PSP at two years
- Remove makeup artist sublicense category
- Meeting attendance numbers
- Remove acronyms in the report

- Include the Healthy Nail Collaborative by name as part of the association representation
- Include the number of individuals who were served at the DRC and during inspections with translation
- Lead the Executive Summary with the total size of the licensee population

Mr. Weeks stated the review of the Spanish language pass rate will continue to be reviewed.

Mr. Weeks stated the fact that aggregate exam scoring comes up every four to six years may be an indication that the outside thinking is that something should be looked at in how the exam is scored.

Mr. Federico asked to include reducing the restrictions on the existing externship program, including the inability to pay student externs. Ms. Underwood cautioned about the current conditions of the schools and the fact that the Board does not track externs.

Mr. Jones stated the length of time it takes for statute changes is less important than sending the message to the Legislature that the Board is looking for ways of reducing arbitrary barriers to entry. It is important for the Board to send as many messages as possible that the Board is being proactive in addressing barriers to entry.

Dr. Williams agreed to add this information into the report. If the Board chooses to work toward a statutory change in the future, it is at least documented.

10. **Agenda Item #10, LEGISLATIVE UPDATE: DISCUSSION AND POSSIBLE ACTION ON PROPOSED BILLS**

Ms. Underwood summarized the Bill Analysis, which was included in the meeting packet, for the following bills:

a. AB 767 (Quirk-Silva) – Master Business License Act

This bill has been amended and no longer impacts the Board.

b. AB 2134 (Rubio) – Cosmetology Students -Externships

This bill has passed through both Houses and was sent to the governor on August 20th.

c. AB 2138 (Chiu and Low) Denial of Application, Revocation or Suspension of License: Criminal Conviction

This bill was recently amended to allow asking on the application if someone has been convicted of a crime. Ms. Underwood suggested changing the Board's position from oppose to support.

MOTION: Mr. Federico made a motion, seconded by Ms. Thong, that the Board support AB 2138. Motion carried 7 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Thong, Weeks, and Williams.

d. AB 2775 (Kalra) – Professional Cosmetics: Labeling Requirements

This bill is currently in the Senate and is moving along through the process.

e. SB 715 (Newman) – Removal of Board Member from Office (applies to all state boards)

This bill no longer impacts the Board.

f. SB 984 (Skinner) -Board Representation: Women

This bill was held under submission in the Assembly Appropriations Committee.

g. SB 1492 – (Hill) (SBP) Examination Failure Notification

This bill has passed through both Houses and was sent to the governor.

11. Agenda Item #11, PROPOSED REGULATIONS: DISCUSSION AND POSSIBLE ACTION OF PROPOSED REGULATORY CHANGES

Ms. Underwood summarized the Regulation Update Memo, which was included in the meeting packet. The following regulation packages are under internal review at the DCA:

- a. Title 16, CCR Section 904 (Definition of Access)**
- b. Title 16, CCR Section 950.10 (Transfer of Credit or Training)**
- c. Title 16, CCR Section 961 (National Interstate Council (NIC) Translation Guides)**
- f. Title 16, CCR Section 974 and 974.3 (Fine Schedule and Payment Plan)**

Staff continues to develop the language for the following regulation packages and will present an update at a future Board meeting:

- g. Title 16, CCR Section 977, 978, 979, 980, 980.1, 980.2, 980.3, 980.4, 981, 982, 983, 984, 985, 986, 987, 988, and 989 (Health and Safety Regulations)**

Action Items:

- d. Title 16, CCR Section 965.2 (Personal Service Permit)**

Ms. Underwood reviewed the changes made to the language as requested by the Board at its last meeting.

Mr. Weeks asked to change the definition of Personal Service Permit. Ms. Underwood stated the definition is in statute.

Mr. Weeks asked where restrictive language can be placed. Michael Santiago, Board Legal Representative, stated it depends on the kind of restrictions or how it is proposed to further define what is generally listed in statute. Locations, number of places, whether services can be performed at a facility they own, or if they have some financial interest can be accomplished in regulations.

Mr. Weeks suggested further defining the definition of a PSP license holder by adding "only at a customer location. A PSP license holder may not act in any way as an establishment licensee, with a fixed location serving multiple customers" to Section 965.2 (a) Personal Service Permit in the Revised Draft after "The Board may

issue a personal service permit (PSP) authorizing the holder of the permit to perform limited barbering and cosmetology services outside of a licensed establishment.”

Ms. Underwood stated the second subsection (g) should be subsection (h). She suggested adding subsection (i). She suggested the language “A PSP license holder shall not operate out of a single location unless the location is licensed as an establishment according to the section.”

Mr. Weeks referred to the first subsection (g) about using disposable tools. He asked how to address that the Board will establish new protocols for health and safety for PSP license holders. Mr. Santiago stated, if the Board wants to create separate protocols focused only on the PSP license holder, it will have to develop that and put it through in conjunction with this revised regulation.

Mr. Weeks stated there is no time to do that here. He asked if reference can be made to it. Ms. Underwood stated not in regulation but it can be included in the PSP discussion in the Sunset Review Report.

Ms. Thong asked if the services listed that would be impacted and require separate regulations could be identified. Ms. Underwood stated staff will work on that.

Ms. Crabtree suggested tying the PSP to a brick-and-mortar establishment so it can be better regulated.

Ms. Codorniz questioned PSP holder’s non-disposable equipment.

Dr. Williams stated, according to the list of approved services, within regulation, shears can now be sprayed and no longer have to be immersed. When it comes to the disinfection portion, a number of the items already have to be disposed of, especially for manicuring services.

Ms. Codorniz suggested putting together a list of items that must be included in the PSP holder’s kit to be carried with them on appointments, such as the spray disinfectant.

Mr. Federico stated the state Board already sets the rules for disinfection and sanitation. He asked how the kits will be inspected. He stated he agreed with tying the PSP to a brick-and-mortar establishment, but the purpose of the PSP is to create a freelance license.

Ms. Crabtree stated the new ABC law is against independent contractors. The PSP license is an independent contractor license. App owners would need to hire PSP holders as employees.

Dr. Williams stated many licensees work independently and are establishment owners in the salon suite model. She stated the need to pin down the disinfection aspect. Because PSP services are limited and PSP holders are required to have at least two years in the industry, the items listed should be disinfected outside of electrical tools. Nonelectrical tools are shears and tweezers. She suggested discussing how tweezers should be disinfected since they are required to be immersed.

Ms. Underwood stated the PSP holders are required to follow the Health and Safety Regulations as applicable.

Mr. Weeks stated what is applicable needs to be defined. The Board has no control over this. He suggested laying out Board standards for the health and safety of the general public for PSP license holders to follow.

Mr. Drabkin asked Mr. Weeks if he meant more restrictive standards than non-establishment health and safety. Everyone should be held to the same standard.

Mr. Weeks agreed but stated, as an example, the difficulty of PSP license holders traveling around with the appropriate number of covered, labeled containers. Some regulations that apply to establishments need to be modified for mobility for PSP license holders.

Dr. Williams stated the same concerns continue to be raised. She noted that the Board adopted the revised draft by majority vote at the last Board meeting and staff was asked to make the changes discussed at that meeting and to bring back a newly-revised draft, which is before the Board today. She stated the Board understands that there will be no enforcement of rules and regulations for the PSP license holder. The best option, as discussed in the last meeting, was to educate the consumer and ensure that they are aware of what they should be looking for when someone comes into their home or place of work.

Ms. Crabtree asked why the Board is against requiring PSP license holders to be attached to a brick-and-mortar establishment when most freelance individuals follow the salon suite model.

Dr. Williams stated she was giving the example that not every PSP license holder may only use an app and was identifying another segment of the licensee population. The PSP may be an option for individuals who maintain their license but are not actively practicing.

Mr. Drabkin stated unfortunately the Legislature put the Board in the position where they are forced to allow things to go wrong and then point out the unintended consequences and do corrective action later instead of trying to fix it on the front end.

Mr. Weeks stated the Board does not want to set licensees up for disaster. He stated, if something went wrong and there was a lawsuit, the first thing the lawyer would look at is whether the PSP license holder was following the required rules and regulations put out by the Board. He stated, if current regulations were lined up with how the service was most likely performed in a client's home, the lawyer would prevail because the PSP license holder cannot possibly do all that is required in the regulations in a client's home. He suggested shortening the list or compromising in some respect so at least there would be coverage on the health and safety issue.

Dr. Williams agreed. She stated the Board has asked to include a review and evaluation of the PSP program in two years in the Sunset Review Report. It is constructive to consider the possibilities but she cautioned the Board not to get caught up and get so far away that it cannot move from this spot that the Board keeps coming back to. She agreed with Mr. Drabkin that, at some point, the Board will have to let it go, see how it impacts the licensees and the public, and do corrective action in the future.

Ms. Thong suggested including in the second sentence of the first subsection (g) that the PSP license holder must follow all health and safety laws and regulations that

equally apply to establishments. If that is clearly stated, the PSP holder would have to do the extra work of carrying a trash can and other containers in their car. They would have to follow all the laws but it would be incumbent on the PSP license holder to find the applicable solution for them.

Mr. Weeks agreed that that makes sense. He stated it would make someone think twice about being a PSP holder knowing that they would have to engage all health and safety protocols in order to be in business.

Mr. Federico stated the second sentence of the first subsection (g) states "A PSP holder shall follow all laws, rules, and regulations governing the practice for which the PSP holder is licensed by the Board." He stated it is implied that the health and safety rules are included. It would be redundant to specifically mention the health and safety rules.

Ms. Thong suggested gathering information for the two-year review of the program on whether the PSP license holder is an employee of an establishment, an individual license holder, or works for an app. Ms. Underwood stated that question can be added to the PSP application.

Mr. Federico agreed with the importance of collecting information from the start to assist the Board with its review in two years. At this point, the only thing the Board can do is to consider what can be reported on or followed up on within the two years.

Mr. Weeks agreed with including that question on the application so the Board can see how many establishment employees are considering a PSP and how many individuals are considering working for an app company. The answer to this question will give the Board a rough up-front idea because currently nothing is known about this market.

Mr. Federico stated the PSP is a two-year license. It makes sense to review the information of the first generation of PSP holders. He noted that the Board will not be able to see if the demographics or values changed between the initial licensure and the renewal at the two-year review. The Board will only review the one dataset.

Ms. Thong stated a suggestion was made in previous meetings that the PSP license holder must be in good standing. She noted that is not currently in the revised draft language. Ms. Underwood stated the language in the revised draft included that as "has held a valid license for a minimum of two years."

Ms. Thong stated the comments have come up that a PSP should not be issued if the licensee has had a history of health and safety violations. She questioned if it should be in statute, regulation, or just a consideration applied to the PSP when reviewing applications. It should be made clear.

Ms. Underwood stated Board decisions to issue a PSP based on an individual's citation history must be in regulation. Parameters must be set for that.

Mr. Drabkin suggested including the language that "the PSP license holder must have no upheld DRC convictions over the past two years."

Mr. Weeks suggested the language "no revocation of licenses."

Ms. Underwood stated subsection (a)(1) contains the language "is not subject to denial." She stated it would be difficult to make decisions based on violations because a non-

labeled drawer is a violation, even if the label just fell off, and one towel left on the counter is also a violation.

Mr. Weeks suggested the harsher violations such as if the license had been revoked or if the individual is on probation could be reason for denial of the PSP license.

Mr. Drabkin suggested the language "no outstanding fines" because, if an individual is fined, they pay the fine in acknowledgement that they did wrong, or the DRC dismissed the fine because they spoke with the individual and the individual now understands what they did wrong. He suggested holding the application, if an applicant has outstanding fines, until the matter is cleared up or the applicant has their DRC hearing.

Ms. Underwood stated "good standing" is defined in Article 8.5 Externship under Section 962(a) as "(1) the licensee maintains a valid, current barber, cosmetology, esthetician, or manicurist license issued by the Board, (2) there is no current or pending discipline against the license pursuant to Article 11, and (3) the licensee has no unpaid fine issued pursuant to Article 12 of the Barbering and Cosmetology Act."

Mr. Drabkin stated he liked that but questioned if an individual applies who has not yet had their DRC hearing. He asked if their application will be put on hold until the matter is cleared up or if their application will be denied and they must reapply later.

Ms. Underwood stated the application would not be denied, but staff would send the applicant a deficiency letter.

Carrie Harris, Board Enforcement Manager, stated the current guidelines are as follows:

- Individuals would be approved if a fine is not past due.
- Individuals are not considered charged with the violation during the appeal process.
- Violations are not part of an individual's record until after a decision is made from appeal.

Dr. Williams stated it sounds like licensees who need to renew their license can still practice during the appeal process but will owe a fine once the appeal decision has been made. It does not take away their license.

Ms. Underwood stated PSP applicants go through a background check so there is that additional level that is not done for licensees working in salons.

Mr. Drabkin made a motion to adopt the externship language for "good standing" in subsection (a)(1) and to include a subsection (i) to state "A PSP holder shall not operate out of a single location unless the location is licensed in accordance to Section 7346."

Dr. Williams seconded.

Public Comment

Laura Embleton, Associated Skin Care Professionals and Associated Hair Professionals, stated hair cutting outside salons probably happens a lot. The question is should the Board understand it is illegal according to the laws and regulations but it is happening anyway, or should the Board make the laws and regulations broader to include those individuals so at least the Board will know

what is going on. Not that the Board can do anything about it but it will know what is happening.

Ms. Embleton stated subsection (e) of the Revised Draft allows estheticians to basically wash someone's face. She requested allowing waxing, lash extensions, sugaring, and threading because they are already happening in the field.

Jaime Schrabec, Precision Nails, stated Section 7318 is not being addressed. Section 7318 allows manicurists to serve individuals in their homes if there is some illness or physical or mental incapacitation, which has never been defined. She stated it could be argued that a migraine or hangover could be a physical or mental incapacitation. A provider of services could do whatever they are licensed to do in an establishment at a home and say the client was incapacitated.

Ms. Schrabec referred to subsection (f) in the Revised Draft and stated, if manicurists are allowed to apply nail polish, they must be allowed to remove it. She asked is the term "polish" means traditional polish or gel polish, which most individuals drill off, not file off. She stated trimming and shaping the nail is a basic thing that manicurists do that requires tools. She also requested that massaging be included in subsection (f). There is not much risk in allowing manicurists to do the massage – elbow to fingertips, knees to toes – in someone's home that they are allowed to do in an establishment. She suggested adding "exclusively," "predominantly," or "solely" to the language about single location in the proposed subsection (i).

Ms. Schrabec stated the PSP will cause cities to lose tax revenue. This needs to be considered in terms of the health of the communities being served. Apps are businesses, money is being exchanged, and the cities are going to lose out.

Ms. Cochran thanked the Board for bringing up the phrase "good standing." The length of the appeal process needs to be considered. She referred to subsection (e) in the Revised Draft and stated estheticians basically are allowed to do the equivalent of someone's night routine. Subsection (e) does not allow tools for exfoliation purposes but this does not restrict an individual from using tools such as infusion devices, oxygen facials, and LEDs. These are important tools that estheticians carry with them in their establishments and what they do as professionals that is above and beyond a client's general homecare routine. Two of the largest esthetician services are disallowed in the Revised Draft – lash extensions and hair removal. A good brow service cannot be done without waxing, trimming, or sugaring. She requested adding sugaring to the language.

Mr. Jones spoke in favor of tying the PSP to a brick-and-mortar establishment to resolve many of the concerns that will not be resolved any other way. The benefits of a brick-and-mortar establishment is the establishment owner is a partner who can be held responsible for the behavior and actions of the employees or those within their establishment.

Mr. Jones stated the other half of the equation is missing – why this has come to the Board in the first place. He stated the answer is apps. He stated apps are potential partners that the Board could put some onus upon similar to

establishments. Establishments are partners in ensuring consumer protection. The only protection consumers will have with the PSP is with a trial attorney after they have been hurt. Everything the Board does with establishments is to prevent harm in advance.

Mr. Jones suggested requiring commercial enterprises that facilitate PSP services to at least maintain a registry of who their PSPs are. This will require the apps to verify that each of their contractors have a PSP issued by the Board. This is a way to partner with the apps.

Mr. Jones referred to Ms. Thong's question on the two-year review and whether it will be an automatic sunset or whether the Board will review it again in another two years. He stated there is a big difference between those two ideas. One is on autopilot and other is it will force the Board to look at what is happening in the PSP program and, if they do not approve the continuation, it goes away. He suggested requiring the PSP program to sunset in two years and not just review it in two years.

Ms. Crabtree suggested putting responsibility on app companies.

Dr. Williams stated this came up during the Sunset Review discussion. Ms. Underwood stated it will be included in the Sunset Review Report as something to consider. Adding that oversight would require statutory authority.

Ms. Thong stated, based on the app representatives in attendance at the last Board meeting, apps want to be in good standing, already have registries, and are willing to partner with the Board. The concern is that there are many individuals interested in a PSP who are not associated with apps but will be providing services on their own.

Mr. Drabkin suggested a larger app discussion at a future Board meeting, including other state's experiences with apps.

Ms. Thong suggested a committee to engage with apps to formalize a partnership or working group with them to answer questions. There are currently many assumptions. There needs to be real conversations with app companies.

Dr. Williams asked for a review of Mr. Drabkin's current motion on the table.

Ms. Underwood stated the motion is to adopt the externship language for "good standing" in subsection (a)(1) of the Revised Draft and to include a subsection (i) to state "A PSP holder shall not operate out of a single location unless the location is licensed in accordance to Section 7346."

Dr. Williams suggested adding that manicurists can also remove nail polish so subsection (f)(2) would read "removing and applying nail polish" and to add a subsection (f)(3) to allow massaging of hands and feet.

Ms. Underwood stated services were limited based on the risk assessment that was done. The concern is that the massaging may lead to a pedicure.

Dr. Williams withdrew her suggestion to add a subsection (f)(3) to allow massaging of hands and feet. Her suggestion to include that subsection (f)(2) would read "removing and applying nail polish" remained.

Mr. Drabkin accepted Dr. Williams's friendly amendment to his motion.

MOTION: Mr. Drabkin made a motion, seconded by Dr. Williams, that the Board adopt the externship language for "good standing" in subsection (a)(1) of the Revised Draft, to include a subsection (i) to state "a PSP holder shall not operate out of a single location unless the location is licensed in accordance to Section 7346," and to change subsection (f)(2) to read "removing and applying nail polish." Motion carried 6 yes, 1 no, and 0 abstain per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Drabkin, Federico, Thong, Weeks, and Williams.

The following Board Member voted "No": Crabtree.

e. Title 16, CCR Section 972 (Disciplinary Guidelines)

Ms. Underwood reviewed the changes made to the language of the Disciplinary Guidelines, which was included in the meeting packet.

MOTION: Mr. Federico made a motion, seconded by Ms. Crabtree, that the Board adopt the changes made to the Disciplinary Guidelines. Motion carried 7 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Thong, Weeks, and Williams.

12. Agenda Item #12, AGENDA ITEMS FOR THE NEXT MEETING

Mr. Drabkin suggested a larger app discussion at a future Board meeting, including other state's experiences with apps.

Ms. Underwood suggested giving Mr. Drabkin's suggestion to the Licensing Committee. Dr. Williams agreed. The Licensing Committee can thoroughly discuss the item and bring a report back to the Board at a future meeting.

Mr. Drabkin asked for a short, verbal, in-progress update from the Licensing Committee at the October Board meeting. Ms. Underwood stated she plans to attend the NIC meeting and will have an opportunity to talk to representatives from many states on this issue.

Ms. Thong suggested inquiring if there is a national working group between states on this issue.

Public Comment

Jaime Schrabek suggested in the future, as the Board works out the consequences for students who have completed their course and are applying but are not entitled to take the exam because they might have bought their hours, that the Board prepare a joint statement from the Board and the BPPE titled "Before you Enroll" that outlines the rules and reinforces that students cannot be attending a school in California while living out of state. Denial of applications has not happened up to this point to this extent. Now that the Board and the BPPE

are cooperating, it is important to be more outward facing to keep students from getting themselves into these situations in the first place.

Ms. Underwood stated language was added to the approved school list that students need to attend school and not just learn to pass the test. A press release on the emergency decisions was translated into multiple languages and sent out to various organizations.

Ms. Cochran stated apps support businesses. If the Board gets to the place of endorsing apps, manufacturers in the business will ask for those endorsements as well.

Matt Glockenstein (phonetic), GlamSquad, stated his appreciation on the attention given to apps today and for the PSP program. GlamSquad looks forward to following up with staff on providing the Licensing Committee with whatever they need, being available to answer questions, and working with the Board moving forward.

13. Agenda Item #13, CLOSED SESSION

There was no closed session.

14. Agenda Item #14, ADJOURNMENT

There being no further business, the meeting was adjourned.



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MEMORANDUM

DATE	October 22, 2018
TO	Board Members, Board of Barbering and Cosmetology
FROM	Marcene Melliza, Board Analyst Board of Barbering and Cosmetology
SUBJECT	Proposed Board Meeting Dates for 2019

February 10, 2019 - Board Meeting – Burbank
 February 11, 2019 - Reinstatement Hearing – Burbank

May 12, 2019 - Board Meeting – San Jose Area
 May 13, 2019 - Reinstatement Hearing- San Jose Area

August 12, 2019 - Board Meeting - Sacramento
 August 13, 2019 - Reinstatement Hearings – Sacramento

November 3, 2019 - Board Meeting – San Diego
 November 4, 2019 - Reinstatement Hearing – San Diego

*Please see additional
Meeting Materials
For Sunset Review
Report
Volume 1 & 2*



DRAFT
CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY

HEALTH AND SAFETY ADVISORY COMMITTEE MEETING

MINUTES OF AUGUST 28, 2018

Board of Barbering and Cosmetology
2420 Del Paso Road
Sequoia Room 1st Floor
Sacramento, CA 95834

BOARD MEMBERS PRESENT

Dr. Kari Williams, President
Lisa Thong

BOARD MEMBERS ABSENT

Jacquie Crabtree

COMMITTEE MEMBERS PRESENT

Janet Blaschke
Amanda Burkhart
Joanie Gonella
Brandon Hart
Fred Jones
Leslie Roste
Lori Schaumleffel
Susanne Schmaling-Smethurst
Delane Sims
Holly Tinloy
Dr. Charles Washington

COMMITTEE MEMBERS ABSENT

Amy Coombe
Idamae Kennedy
Sudabeh Phillips
Marissa Presley

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Michael Santiago, Board Legal Representative
Tami Guess, Board Project Manager
Marcene Melliza, Board Analyst

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

Dr. Kari Williams, Board President, called the meeting of the California State Board of Barbering and Cosmetology (Board) Health and Safety Advisory Committee to order at approximately 10:00 a.m. and confirmed the presence of a quorum.

2. Agenda Item #2, EXECUTIVE OFFICER'S OPENING REMARKS

Kristy Underwood, Executive Officer, thanked everyone for their continued service. She turned the microphone over to Tami Guess, Board Project Manager.

Ms. Guess stated this was her last Health and Safety Advisory Committee meeting as she will be retiring in December.

Ms. Guess cautioned that some of the subject matter of this meeting is emotionally charged for the industry. She went over ground rules and reiterated the purpose of this Committee. She read Business and Professions Code Section 7314.3(a) where this Committee was set out in statute.

Ms. Guess stated several state agencies and an association have been invited to speak with the Committee today with the goal of providing information so the Committee can make recommendations to staff on these issues.

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

No members of the public addressed the Committee.

4. Agenda Item #4, APPROVAL OF May 21, 2018, COMMITTEE MEETING MINUTES

MOTION: A motion to approve the meeting minutes of May 21, 2018, was made and seconded. The motion carried 11 yes, 0 no, and 2 abstain per roll call vote.

5. Agenda Item #5, DISCUSSION ON THE IMPACT OF THE DYNAMEX OPERATIONS WEST, INC., V. SUPERIOR COURT OF LOS ANGELES COUNTY DECISION ON VARIOUS STATE AND INDUSTRY ENTITIES AND RECOMMENDATIONS FROM THESE ENTITIES TO BOARD LICENSEES ON STAYING COMPLIANT WITH THE DECISION

Employment Development Department

Patrick Henning, Director, Employment Development Department (EDD), provided an overview of the role of the EDD. He stated the Dynamex case primarily affects the Department of Industrial Relations (DIR) because it addresses wage and hour rules and regulations and the way that the state needs to view the working relationship that the worker has with their employer. Broadly, this issue will not apply to the way that the EDD looks at the employment relationship between employees and their employers with the exception of the common law definition of employee.

Mr. Henning stated the number one issue that employers come to him with when it comes to regulation is to ask for an easy definition of who an employee is, but it is difficult to define that in the law. Dynamex was an attempt to codify the definition of employee. It is a three-part test, which has become known as the ABC standard: (a) the worker is not controlled by an entity; (b) the work provided is done outside the usual course of business; and (c) the worker is customarily involved in independent work. This still is not an easy definition.

Alex Acupido, Chief, Field Audit Compliance Division, EDD, provided an overview of the outreach activities of the EDD.

Velma Bardin, Tax Administrator, Sacramento Area Audit Office, EDD, stated the EDD auditors try to work with employers by offering a questionnaire, DE-1870, for employers requesting a determination regarding one of their workers to be filled out and sent in to the EDD. Auditors send the employers a ruling letter on whether that person should be an employee or an independent contractor. There are also Information Sheets on barbering and cosmetology.

Ms. Guess stated the Information Sheets are posted on the Board website.

Questions and Answers

Q: There are salon suites in the industry and then there are suites that are not designated as a salon suite where there are individual salon operators in one suite. Who would the principal be in that scenario where everyone had an establishment license, or could they all have establishment licenses?

A: Everyone could have an establishment license but the issue is what the relationship is between the operators and the landlord.

Q: There are also blended salons with employees working alongside booth renters where the B portion of the ABC standard is creating havoc.

A: How each individual is treated would have to be looked at as to how they would fall under the law.

Q: How do you become aware that there is a problem? Through a tax audit?

A: There are two customary ways. One way is that someone files a plaintiff insurance claim asserting that they are an employee because independent contractors do not qualify for unemployment insurance. The other way is if there were several obstructed claims, several disagreements on that employee/employer relationship.

Q: If a worker feels they were misclassified and their supervisor does not provide any help, what is the best way for the worker to begin a claim? Is it with the EDD, the DIR, or their employer?

A: In law, the employer has a responsibility to ensure that that is clear, but it is not always the case. An individual who is struggling with how they fall into the definition of employee should file with the Labor Commissioner's Office or the EDD, depending on where they feel they are being violated. Also, they can submit a DE-230 form to the EDD to learn their status.

Q: Does the EDD see a quantum shift with the Dynamex decision or is it just a series of decisions from Borello, Martinez, and Ayala?

A: The Dynamex decision is part of a continuum. Employment lawyers would say that the Borello decision was a shift, the wage order was another shift, and defining the IWC might be another shift. Lawyers will not be done until they come up with a definition for employee that stands the test of time. Upcoming court cases will further help define what this is.

Q: The experts in the field think it is a shift, not just a continuum. The Dynamex decision was a unanimous decision, written by a Chief Justice, adopting an out-of-state criteria.

The decision was a message-sender. The first few pages mention nothing about wage orders but are about common law, agency law, and the long, muddled history of it. Also, wrongly classifying someone as an independent contractor directly impacts the worker and state treasuries. The Chief Justice and her colleagues looked out-of-state to find something clear, simple, and concise to provide workers and employers with some clarity. That is the backdrop to Dynamex. The beauty industry in the late '80s and early '90s was 90-plus percent employee-based salons. It is almost flipped today. A huge percentage of booth-rental salons were propped up to avoid exactly what the Chief Justice described in the first two pages of the Dynamex decision.

When laws are skirted, often health and safety protocols are skirted, which ends up hurting the clientele, which ends up hurting the reputation of the beauty industry at large. It is important to raise and maintain high professional standards in the beauty industry. Booth rental has become a problem in that regard. Those who are trying to do it legitimately, like suite operators, spend more and charge more for those suites; those who are not trying to do it legitimately put all the legitimate businesses at a competitive disadvantage. Employees who are converted to "independent contractors" lose their worker's compensation coverage and Social Security and are now responsible for covering disability, employment tax, et cetera.

With these industry and legal backdrops, have or do you anticipate Dynamex changing this type of information that the EDD is providing to the public?

A: The EDD will be as reflective of the current state of the business economy as possible. The EDD's current test does not include Dynamex but only includes things that fall under the Unemployment Insurance Code. Employers are expected to follow the law as it applies to the Labor Code and the cases and case law that are affected under it.

Q: If everyone in California is looking for clarity in the definition of employee, why do all executive agencies not embrace the ABC standard, which offers a high degree of clarity, especially the B test?

A: The EDD does not have the authority. The Legislature in California is constantly updating laws and there are rules, regulations, and processes and could be brought in front of the EDD. To this point, that has not been the case. There may be a move one way or another in that regard.

Q: The EDD will keep on the current trajectory and criteria it has used for a number of years?

A: It is beyond the EDD's regulatory structure.

Q: The unanimous California Supreme Court decision lays out a clear standard. Why would executive agencies not, absent legislative action, use that new standard moving forward?

A: Because it is not the standard under the rules and regulations that have been set out for them to follow.

Q: The Dynamex case is to distinguish between an employee/employer relationship versus an independent contractor situation. The EDD governs and oversees

unemployment insurance and disability as it pertains to employee relationships only. Regardless of what the Dynamex case states about employees, if the DIR and labor relations side determined an individual to be an independent booth renter or in an independent contractor situation, the EDD would have no jurisdiction over the disability and unemployment compensation or insurance portion of that. Is that correct?

A: No. The EDD has authority over those programs whether or not an individual receives benefits under an employment insurance or state disability insurance.

Q: What if they are determined to be an independent contractor by the DIR or the Dynamex case definition?

A: The DIR is guided under a separate code of regulations and laws under the Labor Code. The EDD, unemployment insurance, and disability insurance are governed under the Unemployment Insurance Code and, in this situation, the EDD and the DIR have different views on that relationship and how that determination is made.

Q: Regardless of who makes the determination, does an independent contractor receive unemployment or disability insurance?

A: Who made the determination does matter. Unemployment insurance and disability insurance eligibility is under the sole jurisdiction of the EDD.

Q: Can there be a situation where the same worker is determined by the DIR to be an employee and therefore has to have worker's compensation, but is perceived by the EDD not to be an employee and therefore does not have unemployment insurance?

A: That happens.

Q: That is an intolerable situation. The beauty industry is 85 to 90 percent booth rental. This decision will have a great impact on this single sector of the economy. It is intolerable to tell the professionals in the beauty industry that they must talk to the Labor Commissioner, the DIR, and the EDD, and they may end up with three conflicting decisions. The executive branch needs to speak clearly with one voice. This was the purpose of Dynamex.

A: I agree. Difficult decisions are worth the effort.

Q: How many employees in the state of California find themselves in this situation?

A: The EDD will provide that number to staff.

Q: Do EDD staff maintain statistics broken down by industry on the complaints received?

A: Claims and phone calls are broken down by industry.

Q: Where does the hair care industry fall within that breakdown?

A: It is high.

Franchise Tax Board

Ms. Guess stated the Franchise Tax Board (FTB) representative was unable to be in attendance. She read written responses to staff questions submitted by Alvaro

Hernandez, Manager, Taxpayers' Rights Advocate's Office, FTB, into the record, as follows:

Q: How is FTB notified that a licensee has been misclassified? Does FTB find it on the tax return or does another entity advise FTB of the error?

A: Our Audit program conducts audits of income tax returns filed by corporate, partnership, and personal income taxpayers. Tax returns are subject to our audit selection process, which compares tax return data to a variety of data or information sources.

Q: Would there ever be a time when the FTB would ignore the Dynamex decision and fall back on prior Borello Standard?

A: FTB would not likely "ignore" a Supreme Court Decision. However, the Dynamex decision will not likely impact an entity's income tax liability.

Q: If a licensee has misclassified an employee (as an independent contractor), how far back will FTB audit their tax returns?

A: Additional tax resulting from an Audit may be proposed within an open statute of limitations, which generally is 4 years from the date the original tax return is filed. If an audit results in additional tax, applicable penalties (e.g., accuracy related penalty, failure to file or furnish information) and interest may apply. For more information regarding our audit process, please see FTB 985.

Q: Are there any tax forgiveness provisions?

A: Not that we are aware of.

Q: What are the tax penalties for filing inappropriately?

A: There could be Accuracy Related Penalties, Delinquent Penalty, or Failure to File or Furnish Information, depending on the additional tax liability resulting from the error.

Q: Speaking generally, after a company realizes they have misclassified an employee as an independent contractor, what is the process?

A: Taxpayers must file an amended tax return if there is any change in their tax liability resulting from errors or omissions of income, deductions, or credits on the original tax return. If an employee (W-2) is reclassified as an independent contractor (1099-misc) after they have filed their income tax return, they would need to file another Form 540, check the box indicating Amended Return, and attach California Schedule X, California Explanation of Amended Return Changes. They would need to include a copy of their federal income tax return, including a copy of form Schedule C. If an independent contractor (1099-misc) is reclassified as an employee (W-2) after they have filed their income tax return, they would need to file another Form 540, check the box indicating Amended Return, report the income as wages, and attach California Schedule X, California Explanation of Amended Return Changes.

The General Tax Bureau (GTB) doesn't think the Dynamex Decision has much, if any, impact on entity income tax return of businesses who misclassify an employee

as an independent contractor. Businesses deduct expenses they pay whether in the form of wages or 1099 type services. While businesses would be responsible for employee social security taxes, FICA, or other non-income taxes for employees that they would not have had for independent contractors, these taxes would not be paid to FTB and tax returns for the years in error would not likely change because deductions are only allowed for expenses paid.

We see a larger impact on individuals and their tax returns, if classified as independent contractor and then reclassified to an employee. This could result in the disallowance of many deductions taken on the individual return.

California Department of Tax and Fee Administration

Brad Miller, Business Tax Specialist, California Department of Tax and Fee Administration (CDTFA), provided an overview of the role of the CDTFA. He stated the main program that the CDTFA administers is the Sales and Use Tax Program, the CDTFA program that will be impacted the most, if at all, by the Dynamex decision. He summarized how the sales and use tax works and how the Dynamex decision will impact it. When dealing with taxpayers, the main question is who owes the tax and who has to register and pay. In California, any person who is making sales is required to register or any person who is a consumer of property should also be registering and paying taxes. The Dynamex decision may impact who is required to register for the program but it will not impact the sales tax side for the most part.

In an employer/employee situation, the employer is the person who registers with the CDTFA and collects sales tax on any sales that take place. In a salon, services are provided but also products are sold to customers.

In an independent contractor situation, it gets murky – questions must be answered to determine who is responsible for collecting the sales tax and therefore must register with the CDTFA – such as who owns the inventory being sold, how the independent contractor is compensated for sales made, and who the payment is made to. It is not a simple process. Mr. Miller stated taxpayers can call an 800 number to ask questions about their specific situation, but recommended that taxpayers send their questions in writing, including email, to avoid misunderstandings. He stated the more information and details given in writing, the better.

Questions and Answers

Q: Whoever makes a purchase in a salon is responsible but an employer could pay for the purchase on behalf of the employee?

A: Correct. The person that makes the purchase and consumes the property is the responsible person for the use tax.

Q: What if a person decided to use a product for their business that they had earlier purchased for sale? Would they pay both a sales and use tax?

A: There are different ways that this could happen. An individual typically buys products for resale. A resale certificate will be issued to the supplier and the individual does not pay sales tax when the product is acquired. The individual

collects tax on the items sold and reports that on their return. The individual will pay a use tax on products taken out of inventory for personal use. Tax is only paid once.

On the other hand, products that were purchased tax-paid can be taken out of inventory tax-free because the individual already paid tax on that product. If the individual sells any of that product, they can claim a credit for the tax already paid on those items. This is called a tax-paid purchases resale reduction. That line is not available on the Sales and Use Tax Return form. Individuals can request a different return form for filing a claim for that credit.

Professional Beauty Association

Mike Belote, PBA CA Lobbyist, Professional Beauty Association (PBA), spoke about the legislative context of the Dynamex case to help the Advisory Committee understand what is likely to happen or not happen. He stated the court rejected a motion to amend the opinion to say the three-pronged test is only prospective. This means the Dynamex decision has a potential legal risk going back four years.

Questions and Answers

Q: Does the PBA have a position on booth rental?

A: No. The PBA was concerned about the way that commissions were paid or the piece-rate issue. They sponsored a bill to try to bring clarity to how piece-rate should be paid.

Q: What are the differences in the interpretations of the Dynamex decision between the DIR and the EDD?

A: They have always had different jurisdictions. The problem of being considered an employee by one and an independent contractor by the other has always been possible.

Daniel Muller, PBA CA Labor Law Attorney, stated it has always been theoretically possible because the DIR was given its marching orders by a different set of laws and the EDD exists on its own island with its own set of laws and the Unemployment Insurance Code. The balance between the different sets of laws is not the big issue. It is more about companies that understand the basics and make choices as to how they will slot themselves and how much risk they are willing to take. The safest course would be to make an individual an employee and follow all employment laws.

Q: If the DIR makes a finding that the PBA misclassified, does the EDD jump on or does the PBA usually just deal with one agency?

A: One agency because the clients represented are dealing with a specific issue such as an employee or a former worker.

Q: The Board is not a labor-related Board but the Legislature has extended the role of this Advisory Committee to discuss labor law issues. The Board is in the position where salon owners and workers are looking for clarity in the post-Dynamex world. If the Board cannot get a consistent message from the departments that do labor law, what is their message going to be to individuals seeking clarity?

A: They fall into different scenarios. The first scenario would be the salon owner where everyone in their business is classified as an employee. The counsel would be not to change anything and to ensure the salon is following the rules. They do not have to wade into Dynamex at all.

The second scenario would be the salon owner who has some employees and some independent contractors. The independent contractors get a 1099 at the end of the year. In this scenario, Dynamex could not be clearer – this is against the law. The counsel would be no individual working in the salon owner's establishment where the salon owner collects the money should be getting a 1099 – that person is an employee.

The third scenario would be either the salon is completely booth rental or partially booth rental and partially employee. The message coming from Dynamex and the EDD is that individuals who are in an arrangement where they are renting space from the salon owner need to be independent businesses. The counsel would be not to use the vocabulary "independent contractor" because the definition varies.

The issue is if there would be space for an independent business within another business or renting space from another business. Within Dynamex and the EDD, this is possible. If the "landlord" (the preferred language) is willing to give the "tenant" full control over their space and run their own business, then there is a strong argument that that person is not an employee but is instead running an independent business, and therefore would not be subject to the rulings in Dynamex.

The counsel for salon owners who would rather have a landlord/tenant relationship would be to do everything possible to comply with everything in the EDD guidance sheet because it is a comprehensive roadmap for establishing that renters are independent businesses and that the landlord is renting space to those independent businesses.

Q: If I am a landlord and the only business I own is that business – maybe I have a few locations but all I do is hair – how does that pass the B standard?

A: The B standard assumes that you have workers in your business that you are paying. The counsel is not to pay those individuals anything. They do not work for you, they do not work with your clients, and they do not work in your business. They have their own clients and their own equipment, they pay their own expenses and taxes, and they are no different from any other independent business. The argument is that these are independent businesses. They would never get into the Dynamex analysis because they are not your workers. They run their own business and they rent space from you.

If you run a business where you have employees and you provide hair services but then you also rent space, there is tension there because you clearly are in the business of providing hair services. It is different clientele but they all intermix and move in the same space. There is more risk there for a business that does both. A salon owner should be able to have employees on the one hand and have tenants on the other hand and keep a distinction. There is a good argument that that should not matter but there is no guidance on that yet.

Q: A situation where the owner is also an esthetics operator who is renting out additional rooms is highly at risk with Dynamex because the primary business is esthetics, even though they are acting as a landlord for the additional rooms that are being rented.

A: Yes, but as long as the individuals to whom the owner is renting rooms in that business are not under the owner's control, they have their own clientele, collect their own money, make their own reservations, run their own business in every way, and all they do is send the owner a rent check every month and a 1099 at the end of the year for the amount they pay the owner for rent, the argument can be made that those individuals are independent businesses from start to finish, even though the owner may have employees in a different part of the business that are treated as employees.

A simplified application of Dynamex would say anyone who works in the owner's building is either a contractor or an employee. And, if they work doing esthetician services the same as the owner, then they have to be an employee because Dynamex says it is so, then, yes, there is risk. The Supreme Court's decision does not require a simple application like that but that is a matter of argument.

Q: The pre-Dynamex world looks at all criteria but does not require them all. The post-Dynamex world requires all criteria to be followed. Is that an appropriate way to phrase it?

A: That is a fair way to say it. There is more clarity now that, if there are individuals working in your business, they are more likely than not going to be classified as employees. You have to do everything you can to show that they are not working in your business. The EDD guideline is a great resource for that, especially number nine that the relationship between the principal and the licensed professional is that of a landlord and a tenant. That is how it should be laid out.

6. Agenda Item #6, DISCUSSION ON THE IMPACT OF THE DYNAMEX OPERATIONS WEST, INC., V. SUPERIOR COURT OF LOS ANGELES COUNTY DECISION AND RECOMMENDATIONS ON HOW TO BRING AWARENESS OF THIS DECISION TO BOARD LICENSEES

Dr. Williams asked Advisory Committee Members for recommendations to give to staff on how to notify licensees and ensure that licensees are compliant with the new laws.

Questions and Answers

Q: Since the Board is not labor-law related, how much can the Board do, even if it had clarity to offer?

A: It is not within the Board's authority to answer questions. The Board will only provide guidance on where individuals can go to find answers to their questions.

Q: What is the possibility of the Board's bringing awareness to the industry about the post-Dynamex world other what the Board has already done? What else can be done?

A: Further promoting what is learned as it travels through all the different steps.

Q: How? What is the mechanism of offering this evolving clarity?

A: It sounds like the mechanism is already in place. It is maybe a matter of updating the information.

Q: There does not seem to be links to this kind of information on the website. Is this of serious magnitude that it deserves extra awareness? How can the Board provide that extra accessible awareness?

Q: The Board should look at how establishment owners and licensees are fined because it is no longer in alignment with the labor laws.

A: The Board is already addressing that with the new statute, SB 1099, and it will be made clear with the new regulations based on who committed those violations.

A: It still might create confusion, even when separating who is responsible. This is one area the Board can help licensees stay compliant or at least inform them. Information can be prepared to help inform and educate Board members, appellants, and others at Disciplinary Review Committee (DRC) hearings.

Q: Is this important enough to make an asserted awareness? A problem may be that individuals will not view this as a problem until they are cited for it. Rather than citations, maybe take this as a learning opportunity the first time around. The Board putting it out as general information might cause more questions, problems, and issues at the Board level.

A: The purpose of the Dynamex case is to protect the individuals who are being misclassified and this Committee is getting bogged down in the details. Instead of seeing it as a hindrance, see it as a way to bring business owners into compliance. Licensees need to be aware of their rights.

A: There are many salon owners that want this information. The nail industry will be hit hard because they all believe they are independent contractors.

A: Mr. Muller provided possible solutions, especially for salons that have separate businesses operating in the same space. He suggested making them as distinct as possible. He spoke at the break about issuing the establishment license to one address so that, if there are multiple businesses, each would have its own establishment license. Separate establishment licenses would help to distinguish these businesses from each other.

Q: It is easier to delineate who is responsible for each section of an esthetician facility. Nail salons have foot spas that everyone uses. How can those salons be delineated?

A: Based on reading the material, commission payment should not have existed in California. In Oregon, they have a separate independent contractor license or independence license that goes under the facility license.

A: The Board can clarify what it considers is a booth renter for purposes of citations and inspections, but clarify that this in no way is a legal finding of separation in terms of labor law but, for purposes of inspections, this is what the Board is looking for. Until the labor-specific agencies get their act together, the Board should not have any business in it insofar as the labor side of it. Where the Board does have business is for purposes of inspection and who the Board will hold responsible for violations of Board laws and regulations. On that point, at least, the Board should be

able to offer some clarity, but it would have to come with some sort of disclosure that this in no way determines whether in labor law there are true independent contractors or employees.

Q: The Board does not have jurisdiction over the information on the website. Currently, when the Board sends out establishment licenses, is there a notice that this information is provided or a statement provided to establishment owners about the mechanism of conveying information?

A: They have to acknowledge that they understand basic worker's rights labor laws. Establishment owners and licensees are given the link to worker's rights information on the Board website.

Q: Has Dynamex risen to the level where the Board needs to send a message or some information out? If the Board decides it needs to do something special, it needs to clarify the limited function and role of the Board vis-à-vis booth renters and establishment owners.

Q: You want the Board to promote what high-level agencies cannot explain?

A: In the absence of clarity, the Board should let enforcement do their job. The DRC can educate licensees and do the best they can with what they have. That is all the Board can do because they cannot overfill into other agencies' responsibilities.

A: This information is already on the Board website. The Board can promote it and direct licensees to the information provided on the website without deciphering it for them. That is the best that the Board can do.

A: It may not be necessary to reference the Dynamex case, but nothing prevents the Board from pointing individuals to the correct entities for them to ask their questions of. Referencing the Dynamex case may create anxiety and unnecessary questioning. Directing individuals to the EDD's self-evaluation form is helpful.

A: Reorganize the website to make it clearer where to click to find further information about these things.

Q: Regarding the establishment license question, would it be helpful to look at establishment licenses where there are separate rooms? One way to make it clear that these businesses are separate entities is through the establishment license.

A: It would take a change in statute because common areas are not defined at this point. It has not been successful to bring this up at prior Sunset Review Hearings.

Q: Since the EDD has the two employer/employee forms, does the DIR do the same thing?

A: It does not.

Q: Would it be helpful for the Board to get an official opinion from the EDD and the DIR on some form of independent contractor license subcategory?

A: The concern is that the EDD and DIR opinions are not concrete but are based on whatever handwritten information is mailed in.

A: That's why the Advisory Committee is having some trouble here – it is trying to provide absolutes in a non-absolute world. The impact is really upon enforcement. That might be worth bearing in mind for doing some reorganization of the website.

Q: The Board addresses it in the DRC. Many individuals come to the DRC who are establishment owners. Has the Board ever had that issue with formal discipline as far as anyone deciding if someone was not responsible as an owner?

A: No. It has never happened where a judge determined that an owner was not responsible for something that happened in their shop. It does not matter how individuals are classified - services performed in the building are the responsibility of the establishment owner.

Public Comment

Wendy Cochran, Founder, California Aesthetic Alliance (CAA), stated she regularly gets questions from her participants about the commission that they should be paid for their new position. Assembly Bill (AB) 1315 is considered a new law and Senate Bill (SB) 490 is being weaponized by uninformed employees who threaten employers who are trying to do the right thing by bringing individuals into W-2 status by quoting the law that states employers are to pay double minimum wage and commission and threatening to turn the employer in to the DIR. She stated that is happening within her group. The state of the industry is misunderstandings and repeated cycles of abuse.

Jaime Schrabek, Precision Nails, stated she survived a random audit by the EDD two years ago. She stated she contacted Director Henning and encouraged him to attend the major trade shows and leverage relationships. Trade shows and magazines want to have the correct information but they get their information from experts or salon owners. The correct information must come from the agencies. Director Henning was at the Long Beach show last year teaching a class but his class was sparsely attended. She stated Ms. Cochran had the opportunity to guide him around the show, pointing out procedures and products being sold to individuals as legal. There is a lot that could be done to raise awareness using the existing mechanisms that are in place, not just the website, such as magazine and trade shows. Anything that supports and makes money from the industry can do more to support the professionalism of the industry by including representatives from different agencies to attend and offer classes at these events.

A Committee Member stated, going back to where the biggest problem lies, her area of expertise is infection control, which represents the highest number of citations. She once taught a class at a show, but attendees generally do not choose to attend those types of classes except for members of the Board. She stated change must start with reaching people who do not pay attention but instead only pay fines and keep doing the wrong thing.

Q: Can the DRC hearings be webcasted?

A: It is a public meeting but the facility does not have the capability. The Board could look at webcasting a meeting to be kept as an information tool.

Bridgett Sharp, Professional Beauty Association (PBA), stated the PBA runs the Las Vegas and Long Beach shows. She stated Mr. Muller put together a brief for the PBA specific to Dynamex. The PBA has not taken a position on the brief yet. She offered to share the brief as an educational tool.

Q: How can we get Ms. Underwood, Ms. Guess, and Ms. Roste to the trade shows to present material to licensees on how to avoid fines?

Larry Cromwell, Owner, Marabou Salons, Folsom, stated he has three locations with approximately 100 individuals – approximately 45 booth renters and 55 employees. He stated he is happy that the Advisory Committee is looking at these issues in the biggest context. It is complicated to run a salon based on all the reasons heard today. He explained how he runs his program. He stated he would rather that his workers remain as employees but they tend to choose to become booth renters. He stated his concern about booth renters who put in for unemployment or disability, booth renters who need to be dismissed and they put in for unemployment, and worker's compensation when they decide that he was misclassifying his 45 booth renters for the past four years. He asked the Advisory Committee and presenting agencies to do everything they can to bring clarity to this issue and get the information out.

7. Agenda Item #7, DISCUSSION AND RECOMMENDATIONS TO STAFF REGARDING WORKER'S RIGHTS CONCERNS WITHIN THE INDUSTRY

Dr. Williams asked for recommendations regarding worker's rights concerns.

No recommendations were given.

8. Agenda Item #8, DISCUSSION AND RECOMMENDATIONS TO STAFF REGARDING POTENTIAL HEALTH AND SAFETY CONCERNS WITHIN THE INDUSTRY

- Review, Discussion, and Recommendations to Staff Regarding the *CASafeSalon – Safely Using Chemicals* booklet draft.
- Review, Discussion, and Recommendations to Staff Regarding the *CASafeSalon – Safety Data Sheets* booklet draft.

Dr. Williams asked for recommendations on the *CASafeSalon – Safely Using Chemicals* and *Safety Data Sheets* (SDS) booklet drafts, which were provided in the meeting packet. She asked Committee Members to send changes to staff by November 1, 2018.

Both booklets would benefit from having the California Poison Control number on them.

Safely Using Chemicals Booklet

- Add esthetics and electrology products. The Committee Member will send a list to staff.

Page 9, Chemicals in the Establishment

- Rather than listing the products and what they might contain, put the chemicals in alphabetical order with a column of what they might be found in.

- Put the product list as a chart. Have a product category and check the boxes of the chemicals they may contain.

Q: Individuals should not be making their own products. It should be stated plainly that customization of products is not something licensees should be doing in the industry.

A: The Board does not have authority over that. This may be better addressed in another booklet in the five-booklet series, *Protection from Hazardous Chemicals*, and is also addressed in liability insurance.

Q: It is important to educate that just because a substance is natural does not make it safe.

A: The esthetics field has been customizing products for years.

Public Comment

Laura Embleton, Associated Skin Care Professionals and Associated Hair Professionals, stated there is no mention of estheticians in the booklet.

SDS Booklet

- Outline that “readily accessible” means that every employee or contractor has to be able to access the SDS Booklet at all times. An Internet version will no longer be accessible during power outages or during a fire where a fire fighter would need the SDS to be readily accessible. The best practice is to have the booklet printed in a binder that is readily accessible in a location that everyone has access to.
- Add the shelf life date to the SDS.

Page 1, How to Obtain an SDS

- The first sentence should read, “Cal/OSHA requires employers to maintain SDS and ensure they are readily accessible to employees for all hazardous chemicals used in the establishment.”

Page 12, Resource Groups, Agencies, Databases, and Publications

- The description of Cal/OSHA should read, “Cal/OSHA is a division within the Department of Industrial Relations that protects and improves the health and safety of working men and women in California by setting and enforcing standards, and providing outreach, education, and assistance. There are many Cal/OSHA offices throughout the state.”

Page 12, Regional Offices

- (Contact to File a Complaint) should read, “District Offices (Contact to File a Complaint).”
- The description under Regional Offices should read, “Contact the District Office closest to the establishment to file a confidential complaint regarding a potential safety and health hazard or a Cal/OSHA regulatory violation.”
- Do not list the District Managers’ names due to turnaround.

- The San Francisco District Office email address should be for the District Office. The Committee Member will send the correct address to staff.

Page 14, Cal/OSHA Consultation Offices (Establishment Owners)

- The description should read, "Provides confidential consultative services to establishment owners on correcting health and safety hazards."

Page 14, OSHA Occupational Chemical Database

- Add the word "Federal" so the title would read, "Federal OSHA Occupational Chemical Database."

9. Agenda Item #9, DISCUSSION AND RECOMMENDATIONS TO STAFF REGARDING PHYSICAL AND SEXUAL ABUSE WITHIN THE INDUSTRY

Dr. Williams asked for recommendations regarding physical and sexual abuse within the industry.

A Committee Member reached out to one of the state agencies since the last meeting to provide information to his students on sexual abuse. He recommended state agencies as a good informational resource.

Public Comment

A member of the public stated licensees do not want to be mandatory reporters.

A Committee Member suggested including a list of mandatory reporters that licensees can refer clients to.

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

Dr. Williams asked for suggestions for future agenda items.

A Committee member stated tools are being stored and presented to clients in autoclave sterilization pouches as if they have undergone that process. She suggested that enforcement cite that as an improperly-labeled container – to use the law as it is currently written to apply to those situations where tools are being labeled as something they are not. She noted that these tools may be properly cleaned but are still being misrepresented as being sterilized.

Ms. Underwood asked Committee Members to email Ms. Guess if they are interested in serving on the Advisory Committee for 2019.

11. Agenda Item #11, ADJOURNMENT

There being no further business, the meeting was adjourned.



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

MEMORANDUM

TO: Kristy Underwood
 Board of Barbering and Cosmetology

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

SUBJECT: Legislative Update

Date: October 2, 2018

AB 2134 (Rubio) - Externships

This bill was chaptered into law on September 14, 2018. The bill's effective date is January 1, 2019.

AB 2138 (Chiu and Low) Denial of Applications

This bill was chaptered into law on September 30, 2018. The bill's operative date is July 1, 2020.

AB 2775 (Kalra) Professional Cosmetics Labeling Requirements

This bill was chaptered into law on September 14, 2018. The bill's effective date is January 1, 2019.

SB 984 (Skinner) Board Representation: Women

This bill stayed in the Assembly. At the August 16th Assembly Appropriations Committee meeting this bill was held in committee and under submission. DEAD BILL

SB 1492 (Hill) (SBP) Examination Failure Notification

This bill was chaptered into law on September 14, 2018. The bill's effective date is January 1, 2019.

SPECIAL DATES

November 30th All bills die at midnight, if not signed into law.

January 1st Statutes take effect unless otherwise noted.

DEFINITIONS

HELD UNDER SUBMISSION

An action taken by a committee when a bill is heard in committee and there is an indication that the author and the committee members want to work on or discuss the bill further, but there is no motion for the bill to progress out of committee. This does not preclude the bill from being set for another hearing.



Assembly Bill No. 2134

CHAPTER 387

An act to amend Sections 7349 and 7395.1 of, and to add Section 7395.2 to, the Business and Professions Code, relating to barbering and cosmetology.

[Approved by Governor September 14, 2018. Filed with Secretary of State September 14, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2134, Rubio. Cosmetology students: externships.

Existing law, the Barbering and Cosmetology Act, authorizes a student who is enrolled in a school of cosmetology approved by the Bureau for Private Postsecondary Education in a course approved by the State Board of Barbering and Cosmetology to work as an unpaid extern in a cosmetology establishment participating in the educational program of the school, subject to certain requirements and conditions.

This bill would authorize a student who is enrolled in an approved course of instruction in a school of cosmetology approved by the board to work as an extern in an establishment pursuant to those provisions. The bill would also provide a similar authorization for a student enrolled in an approved course of instruction in a school of barbering approved by the board to work as an extern in an establishment participating in the educational program of the school.

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

SECTION 1. Section 7349 of the Business and Professions Code is amended to read:

7349. It is unlawful for any person, firm, or corporation to hire, employ, or allow to be employed, or permit to work, in or about an establishment, any person who performs or practices any occupation regulated under this chapter and is not duly licensed by the board, except that a licensed establishment may utilize a student extern, as described in Section 7395.1 or 7395.2.

Any person violating this section is subject to citation and fine pursuant to Section 7406 and is also guilty of a misdemeanor.

SEC. 2. Section 7395.1 of the Business and Professions Code is amended to read:

7395.1. (a) A student who is enrolled in an approved course of instruction in a school of cosmetology approved by the board pursuant to subdivision (a) of Section 7362 may, upon completion of a minimum of 60 percent of the clock hours required for graduation in the course, work as an

unpaid extern in an establishment participating in the educational program of the school.

(b) A person working as an extern shall receive clock hour credit toward graduation, but that credit shall not exceed eight hours per week and shall not exceed 10 percent of the total clock hours required for completion of the course.

(c) The externship program shall be conducted in an establishment meeting all of the following criteria:

(1) The establishment is licensed by the board.

(2) The establishment has a minimum of four licensees working at the establishment, including employees and owners or managers.

(3) All licensees at the establishment are in good standing with the board.

(4) Licensees working at the establishment work for salaries or commissions rather than on a space rental basis.

(5) No more than one extern shall work in an establishment for every four licensees working in the establishment. No regularly employed licensee shall be displaced or have his or her work hours reduced or altered to accommodate the placement of an extern in an establishment. Prior to placement of the extern, the establishment shall agree, in writing sent to the school and to all affected licensees, that no reduction or alteration of any licensee's current work schedule shall occur. This shall not prevent a licensee from voluntarily reducing or altering his or her work schedule.

(6) Externs shall wear conspicuous school identification at all times while working in the establishment, and shall carry a school laminated identification, that includes a picture, in a form approved by the board.

(d) (1) No less than 90 percent of the responsibilities and duties of the extern shall consist of the acts included within the practice of cosmetology as defined in Section 7316.

(2) The establishment shall consult with the assigning school regarding the extern's progress during the unpaid externship. The owner or manager of the establishment shall monitor and report on the student's progress to the school on a regular basis, with assistance from supervising licensees.

(3) A participating school shall assess the extern's learning outcome from the externship program. The school shall maintain accurate records of the extern's educational experience in the externship program and records that indicate how the extern's learning outcome translates into course credit.

(e) Participation in an externship program made available by a school shall be voluntary, may be terminated by the student at any time, and shall not be a prerequisite for graduation.

(f) The establishment that chooses to utilize the extern is liable for the extern's general liability insurance, as well as cosmetology malpractice liability insurance, and shall furnish proof to the participating school that the establishment is covered by both forms of liability insurance and that the extern is covered under that insurance.

(g) (1) It is the purpose of the externship program authorized by this section to provide students with skills, knowledge, and attitudes necessary

to acquire employment in the field for which they are being trained, and to extend formalized classroom instruction.

(2) Instruction shall be based on skills, knowledge, attitudes, and performance levels in the area of cosmetology for which the instruction is conducted.

(3) An extern may perform only acts listed within the definition of the practice of cosmetology as provided in Section 7316, if a licensee directly supervises those acts, except that an extern may not use or apply chemical treatments unless the extern has received appropriate training in application of those treatments from an approved cosmetology school. An extern may work on a paying client only in an assisting capacity and only with the direct and immediate supervision of a licensee.

(4) The extern shall not perform any work in a manner that would violate the law.

SEC. 3. Section 7395.2 is added to the Business and Professions Code, to read:

7395.2. (a) A student who is enrolled in an approved course of instruction in a school of barbering approved by the board pursuant to subdivision (a) of Section 7362 may, upon completion of a minimum of 60 percent of the clock hours required for graduation in the course, work as an unpaid extern in an establishment participating in the educational program of the school.

(b) A person working as an extern shall receive clock hour credit toward graduation, but that credit shall not exceed eight hours per week and shall not exceed 10 percent of the total clock hours required for completion of the course.

(c) The externship program shall be conducted in an establishment meeting all of the following criteria:

(1) The establishment is licensed by the board.

(2) The establishment has a minimum of four licensees working at the establishment, including employees and owners or managers.

(3) All licensees at the establishment are in good standing with the board.

(4) Licensees working at the establishment work for salaries or commissions rather than on a space rental basis.

(5) No more than one extern shall work in an establishment for every four licensees working in the establishment. No regularly employed licensee shall be displaced or have his or her work hours reduced or altered to accommodate the placement of an extern in an establishment. Prior to placement of the extern, the establishment shall agree, in writing sent to the school and to all affected licensees, that no reduction or alteration of any licensee's current work schedule shall occur. This shall not prevent a licensee from voluntarily reducing or altering his or her work schedule.

(6) Externs shall wear conspicuous school identification at all times while working in the establishment, and shall carry a school laminated identification, that includes a picture, in a form approved by the board.

(d) (1) No less than 90 percent of the responsibilities and duties of the extern shall consist of the acts included within the practice of barbering as defined in Section 7316.

(2) The establishment shall consult with the assigning school regarding the extern's progress during the unpaid externship. The owner or manager of the establishment shall monitor and report on the student's progress to the school on a regular basis, with assistance from supervising licensees.

(3) A participating school shall assess the extern's learning outcome from the externship program. The school shall maintain accurate records of the extern's educational experience in the externship program and records that indicate how the extern's learning outcome translates into course credit.

(e) Participation in an externship program made available by a school shall be voluntary, may be terminated by the student at any time, and shall not be a prerequisite for graduation.

(f) The establishment that chooses to utilize the extern is liable for the extern's general liability insurance, as well as barbering malpractice liability insurance, and shall furnish proof to the participating school that the establishment is covered by both forms of liability insurance and that the extern is covered under that insurance.

(g) (1) It is the purpose of the externship program authorized by this section to provide students with skills, knowledge, and attitudes necessary to acquire employment in the field for which they are being trained, and to extend formalized classroom instruction.

(2) Instruction shall be based on skills, knowledge, attitudes, and performance levels in the area of barbering for which the instruction is conducted.

(3) An extern may perform only acts listed within the definition of the practice of barbering as provided in Section 7316, if a licensee directly supervises those acts, except that an extern may not use or apply chemical treatments unless the extern has received appropriate training in application of those treatments from an approved barbering school. An extern may work on a paying client only in an assisting capacity and only with the direct and immediate supervision of a licensee.

(4) The extern shall not perform any work in a manner that would violate the law.



Assembly Bill No. 2138

CHAPTER 995

An act to amend, repeal, and add Sections 7.5, 480, 481, 482, 488, 493, and 11345.2 of, and to add Section 480.2 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 30, 2018. Filed with
Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, Chiu. Licensing boards: denial of application; revocation or suspension of licensure; criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been subject to formal discipline, as specified, or convicted of a crime only if the applicant or licensee has been convicted of a crime within the preceding 7 years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding 7 years, except as specified. The bill would prohibit a board from

denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction, as defined, for a crime, if the conviction has been dismissed or expunged, if the person has provided evidence of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction.

The bill would require the board to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession. The bill would require a board to consider whether a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

Existing law authorizes a board, after a specified hearing requested by an applicant for licensure to take various actions in relation to denying or granting the applicant the license.

This bill would revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.

This bill would clarify that the existing above-described provisions continue to apply to the State Athletic Commission, the Bureau for Private Postsecondary Education, and the California Horse Racing Board.

This bill would also make necessary conforming changes.

This bill would make these provisions operative on July 1, 2020.

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

SECTION 1. Section 7.5 of the Business and Professions Code is amended to read:

7.5. (a) A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2. Section 7.5 is added to the Business and Professions Code, to read:

7.5. (a) A conviction within the meaning of this code means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) or (c) of Section 480.

(b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(A) The State Athletic Commission.

(B) The Bureau for Private Postsecondary Education.

(C) The California Horse Racing Board.

(c) Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.

(d) This section shall become operative on July 1, 2020.

SEC. 3. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 4. Section 480 is added to the Business and Professions Code, to read:

480. (a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

- (i) Chapter 1 (commencing with Section 5000) of Division 3.
- (ii) Chapter 6 (commencing with Section 6500) of Division 3.

- (iii) Chapter 9 (commencing with Section 7000) of Division 3.
- (iv) Chapter 11.3 (commencing with Section 7512) of Division 3.
- (v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.
- (vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that he or she has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing

with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
- (2) The Bureau for Private Postsecondary Education.
- (3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 5. Section 480.2 is added to the Business and Professions Code, to read:

480.2. (a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime.
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the ground that the applicant knowingly made a false

statement of fact that is required to be revealed in the application for the license.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

(B) Considering suspension or revocation of a license under Section 490.

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the Bureau for Private Postsecondary

Education, the State Athletic Commission, or the California Horse Racing Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(j) This section shall become operative on July 1, 2020.

SEC. 6. Section 481 of the Business and Professions Code is amended to read:

481. (a) Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 7. Section 481 is added to the Business and Professions Code, to read:

481. (a) Each board under this code shall develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following:

(1) The nature and gravity of the offense.

(2) The number of years elapsed since the date of the offense.

(3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation submitted by an applicant pursuant to any process established in the practice act or regulations of the particular board and as directed by Section 482.

(d) Each board shall post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

(e) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(f) This section shall become operative on July 1, 2020.

SEC. 8. Section 482 of the Business and Professions Code is amended to read:

482. (a) Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (1) Considering the denial of a license by the board under Section 480;
- or
- (2) Considering suspension or revocation of a license under Section 490.
- (b) Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.
- (c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 9. Section 482 is added to the Business and Professions Code, to read:

482. (a) Each board under this code shall develop criteria to evaluate the rehabilitation of a person when doing either of the following:

- (1) Considering the denial of a license by the board under Section 480.
- (2) Considering suspension or revocation of a license under Section 490.
- (b) Each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

- (1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.
- (2) The board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated.

(c) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
- (2) The Bureau for Private Postsecondary Education.
- (3) The California Horse Racing Board.
- (d) This section shall become operative on July 1, 2020.

SEC. 10. Section 488 of the Business and Professions Code is amended to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

- (1) Grant the license effective upon completion of all licensing requirements by the applicant.
- (2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.
- (3) Deny the license.
- (4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 11. Section 488 is added to the Business and Professions Code, to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(c) This section shall become operative on July 1, 2020.

SEC. 12. Section 493 of the Business and Professions Code is amended to read:

493. (a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(b) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 13. Section 493 is added to the Business and Professions Code, to read:

493. (a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

- (B) The number of years elapsed since the date of the offense.
- (C) The nature and duties of the profession.
- (2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.
- (c) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."
- (d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:
 - (1) The State Athletic Commission.
 - (2) The Bureau for Private Postsecondary Education.
 - (3) The California Horse Racing Board.
- (e) This section shall become operative on July 1, 2020.

SEC. 14. Section 11345.2 of the Business and Professions Code is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. Notwithstanding subdivision (c) of Section 480, if the individual's felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 15. Section 11345.2 is added to the Business and Professions Code, to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. If the individual's felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser

refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become operative on July 1, 2020.

O



Assembly Bill No. 2775

CHAPTER 393

An act to add Section 110371 to the Health and Safety Code, relating to professional cosmetics.

[Approved by Governor September 14, 2018. Filed with Secretary of State September 14, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2775, Kalra. Professional cosmetics: labeling requirements.

(1) The Sherman Food, Drug, and Cosmetic Law, among other things, regulates the labeling of cosmetics and authorizes the State Department of Public Health to require a cosmetic label to list ingredients under specified circumstances. The law generally defines the term "cosmetic" as an article, or its components, intended to be applied to the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance. The law makes a violation of its provisions a crime.

This bill would require a professional cosmetic manufactured on or after July 1, 2020, for sale in this state to have a label affixed on the container that satisfies all of the labeling requirements for any other cosmetic pursuant to specific federal laws. By expanding the requirements of this law, the bill would expand the scope of a crime, and thus would impose a state-mandated local program. The bill would define terms for its purposes and make legislative findings in support of its provisions.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

(a) According to the State Board of Barbering and Cosmetology, there are over 129,000 licensed manicurists, and almost 53,000 licensed salon businesses, many of which provide manicure services. There are over 312,000 licensed cosmetologists who are licensed to provide nail and hair services.

(b) Most cosmetologists and manicurists are of reproductive age and, therefore, are particularly vulnerable to chemical exposures.

(c) It is estimated that as many as 59 to 80 percent of manicurists in California are Vietnamese immigrants, many with limited English skills.

(d) Existing federal law does not regulate professional cosmetics in the same manner as cosmetics sold to consumers. Information on the ingredients in professional salon products is essential to ensuring that workers and owners can make safer product choices and take steps to protect themselves and their customers against harmful exposures.

SEC. 2. Section 110371 is added to the Health and Safety Code, to read:

110371. (a) A professional cosmetic manufactured on or after July 1, 2020, for sale in this state shall have a label affixed on the container that satisfies all of the labeling requirements for any other cosmetic pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301, et seq.), and the federal Fair Packaging and Labeling Act (15 U.S.C. Sec. 1451, et seq.).

(b) The following definitions shall apply to this section:

(1) "Ingredient" has the same meaning as in Section 111791.5.

(2) "Professional" means a person that has been granted a license by the State Board of Barbering and Cosmetology to practice in the field of cosmetology, nail care, barbering, or esthetics.

(3) "Professional cosmetic" means a cosmetic product as it is defined in Section 109900 that is intended or marketed to be used only by a professional on account of a specific ingredient, increased concentration of an ingredient, or other quality that requires safe handling, or is otherwise used by a professional.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

AMENDED IN ASSEMBLY JULY 3, 2018
AMENDED IN ASSEMBLY JUNE 21, 2018
AMENDED IN ASSEMBLY JUNE 19, 2018
AMENDED IN SENATE MAY 25, 2018
AMENDED IN SENATE MAY 1, 2018

SENATE BILL

No. 984

Introduced by Senator Skinner

February 5, 2018

An act to add Section 11142 to the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 984, as amended, Skinner. State boards and commissions: representation: appointments.

Existing law establishes various boards and commissions within state government. Under existing law, it is the policy of the State of California that the composition of these state boards and commissions broadly reflect the general public, including ethnic minorities and women. Under existing law, the Governor and other appointing authorities are responsible for nominating to these boards and commissions persons of different backgrounds, abilities, interests, and opinions.

This bill, on and after January 1, 2024, would require the composition of each appointed state board and commission to have a specified minimum number of women board members or commissioners based on the total number of board members or commissioners on that board. The bill would also require the office of the Governor to collect and

release, annually, at a minimum, aggregated demographic data provided by state board and commission applicants, nominees, and appointees.

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 11142 is added to the Government Code,
2 to read:

3 11142. (a) (1) Beginning on and after January 1, 2024, the
4 composition of each appointed state board and commission shall
5 comply with the following:

6 (A) If the number of board members or commissioners is ~~six~~
7 *five* or more, the state board or commission shall have a minimum
8 of 40 percent women board members or commissioners.

9 ~~(B) If the number of board members or commissioners is five,~~
10 ~~the state board or commission shall have a minimum of two women~~
11 ~~board members or commissioners.~~

12 ~~(C)~~

13 (B) If the number of board members or commissioners is four
14 or fewer, the state board or commission shall have a minimum of
15 one woman board member or commissioner.

16 (2) For the purposes of this section, "woman" means an
17 individual who self-identifies her gender as a woman, without
18 regard to the individual's designated sex at birth.

19 (b) (1) The office of the Governor shall collect and release,
20 annually, at a minimum, and on an aggregate basis, both of the
21 following:

22 (A) Demographic data provided by all state board and
23 commission applicants relative to ethnicity, race, gender, gender
24 identity, and sexual orientation.

25 (B) Demographic data provided by all state board and
26 commission nominees or appointees relative to ethnicity, race,
27 gender, gender identity, and sexual orientation.

28 (2) Any demographic data disclosed or released pursuant to this
29 subdivision shall disclose only aggregated statistical data and shall
30 not identify any individual applicant, nominee, or appointed board
31 member or commissioner.

1 (3) Any demographic data disclosed or released pursuant to this
2 subdivision shall also indicate the percentage of respondents who
3 declined to respond.

4 (c) The provisions of this section are severable. If any provision
5 of this section or its application is held invalid, that invalidity shall
6 not affect other provisions or applications that can be given effect
7 without the invalid provision or application.

O



Senate Bill No. 1492

CHAPTER 422

An act to amend Sections 5095, 5130, and 7341 of, and to add Section 5100.1 to, the Business and Professions Code, and to amend Sections 94874, 94880, 94927.5, and 94947 of the Education Code, relating to the Department of Consumer Affairs.

[Approved by Governor September 14, 2018. Filed with Secretary of State September 14, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1492, Committee on Business, Professions and Economic Development. The Department of Consumer Affairs.

(1) Existing law establishes the California Board of Accountancy in the Department of Consumer Affairs for the purpose of licensing and regulating the practice of accountancy. Existing law requires a licensee, in order to be authorized to sign reports on attest engagements, to have completed a minimum of 500 hours of experience in attest services, as specified.

This bill would delete an obsolete reference within that provision.

Existing law authorizes the board to revoke, suspend, or refuse to renew any public accountancy permit or certificate or censure a permit or certificate holder for unprofessional conduct for various causes, including, among others, discipline by any other state or country, suspension or revocation of the right to practice before any governmental body, or the imposition of discipline on a registered public accounting firm or permit, certificate, or licenseholder by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission.

This bill, for the causes identified above, would require the board to rely on findings or events stated in a certified true and correct copy of the disciplinary or other action as conclusive evidence for purposes of determining discipline.

Existing law authorizes the board to charge and collect a fee from each applicant for the certificate of certified public accountant, and requires the fee to accompany the application, as specified.

This bill would correct a reference contained in that provision.

(2) The Barbering and Cosmetology Act provides for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices by the State Board of Barbering and Cosmetology, which is within the Department of Consumer Affairs. Under the act, the board is required to mail or deliver to every person failing an examination the total grade received on the examination. The act also grants an unsuccessful applicant for licensure, after taking an examination and within 90 days after

the results thereof have been declared, the right to inspect his or her examination paper.

This bill would delete the provision that grants an unsuccessful applicant the right to inspect his or her examination paper. The bill would also delete the option for the board to mail a person his or her total grade received on a failed examination.

(3) Existing law, the California Private Postsecondary Education Act of 2009, provides, among other things, for student protections and regulatory oversight of private postsecondary institutions in the state. The act is enforced by the Bureau for Private Postsecondary Education within the Department of Consumer Affairs.

This bill would make nonsubstantive, clarifying changes to specified provisions of the act, including updating cross-references.

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

SECTION 1. Section 5095 of the Business and Professions Code is amended to read:

5095. (a) To be authorized to sign reports on attest engagements, a licensee shall complete a minimum of 500 hours of experience, satisfactory to the board, in attest services.

(b) To qualify under this section, attest experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy and provide attest services, and this experience shall be verified. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy and perform attest services, and this experience shall be verified. An applicant may be required to present work papers or other evidence substantiating that the applicant has met the requirements of this section and any applicable regulations.

(c) The board shall adopt regulations to implement this section, including, but not limited to, a procedure for applicants under Section 5092 or Section 5093 to qualify under this section.

SEC. 2. Section 5100.1 is added to the Business and Professions Code, to read:

5100.1. Notwithstanding any other law, in causes for discipline against a licensee under subsections (d), (h), or (i) of Section 5100, the board shall rely on the findings or events stated in a certified or true and correct copy of the disciplinary or other action as conclusive evidence for the purpose of determining discipline.

SEC. 3. Section 5130 of the Business and Professions Code is amended to read:

5130. The board shall charge and collect a fee from each applicant for the certificate of certified public accountant. The fee shall accompany the application, which must be made on a form provided by the board.

SEC. 4. Section 7341 of the Business and Professions Code is amended to read:

7341. The board shall deliver to every person failing any examination provided for in this chapter the total grade received on the examination.

SEC. 5. Section 94874 of the Education Code, as amended by Chapter 260 of the Statutes of 2017, is amended to read:

94874. Except as provided in Sections 94874.2, 94874.7, and 94927.5, the following are exempt from this chapter:

(a) An institution that offers solely avocational or recreational educational programs.

(b) (1) An institution offering educational programs sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(2) (A) Except as provided in subparagraph (B), a bona fide organization, association, or council that offers preapprenticeship training programs, on behalf of one or more Division of Apprenticeship Standards-approved labor-management apprenticeship programs that satisfies one of the following conditions:

(i) It is not on the Eligible Training Provider List established and maintained by the California Workforce Development Board but has met the requirements for placement on the list.

(ii) It is on the Eligible Training Provider List established and maintained by the California Workforce Development Board and meets the requirements for continued listing.

(B) If an organization, association, or council has been removed from the Eligible Training Provider List established and maintained by the California Workforce Development Board for failure to meet performance standards, it is not exempt until it meets all applicable performance standards.

(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 the 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) Flight instruction providers or programs that provide flight instruction pursuant to Federal Aviation Administration regulations and meet both of the following criteria:

(1) The flight instruction provider or program does not require students to enter into written or oral contracts of indebtedness.

(2) The flight instruction provider or program does not require or accept prepayment of instruction-related costs in excess of two thousand five hundred dollars (\$2,500).

(k) (1) An institution owned, controlled, operated, and maintained by a community-based organization, as defined in Section 7801 of Title 20 of the United States Code, as that section exists on March 1, 2017, that satisfies all of the following criteria:

(A) The institution has programs on or is applying for some or all of their programs to be on the Eligible Training Provider List established and maintained by the California Workforce Development Board.

(B) The institution is registered as a nonprofit entity qualified under Section 501(c)(3) of the federal Internal Revenue Code.

(C) The institution does not offer degrees, as defined in Section 94830.

(D) The institution does not offer educational programs designed to lead directly or specifically to positions in a profession, occupation, trade, or career field requiring licensure, if bureau approval is required for the student to be eligible to sit for licensure.

(E) The institution would not otherwise be subject to oversight of the bureau under this chapter if it did not receive funding under the federal Workforce Innovation and Opportunity Act (29 U.S.C. Sec. 3101 et seq.). For purposes of this requirement, funds received through the federal Workforce Innovation and Opportunity Act (29 U.S.C. Sec. 3101 et seq.) do not count towards the total referenced in subdivision (f) or any other fee charge limitation condition for an exemption from this chapter.

(F) The institution can provide a letter from the local workforce development board that demonstrates the institution has met the initial criteria of that board.

(2) An institution granted an exemption pursuant to paragraph (1) shall comply with all of the following requirements:

(A) The institution shall provide to the Employment Development Department all required tracking information and data necessary to comply with performance reporting requirements under the federal Workforce Innovation and Opportunity Act, codified in Chapter 32 (commencing with Section 3101) of Title 29 of the United States Code, for programs on the Eligible Training Provider List.

(B) The institution shall comply with the Eligible Training Provider List policy developed by the California Workforce Development Board.

(C) The institution shall not charge a student who is a recipient of funding under the federal Workforce Innovation and Opportunity Act (29 U.S.C.

Sec. 3101 et seq.) any institutional charges, as defined in Section 94844, for attending and participating in the program.

SEC. 6. Section 94880 of the Education Code is amended to read:

94880. (a) There is within the bureau a 12-member advisory committee. The members of the committee shall be appointed as follows:

(1) Three members, who shall have a demonstrated record of advocacy on behalf of consumers, of which the director, the Senate Committee on Rules, and the Speaker of the Assembly shall each appoint one member.

(2) Two members, who shall be current or past students of institutions, appointed by the director.

(3) Three members, who shall be representatives of institutions, appointed by the director.

(4) One public member appointed by the Senate Committee on Rules.

(5) One public member appointed by the Speaker of the Assembly.

(6) Two nonvoting, ex officio members as follows:

(A) The chair of a policy committee of the Assembly with jurisdiction over legislation relating to the bureau appointed by the Speaker of the Assembly. The chair may designate a representative for any meeting or meetings he or she is unable to attend.

(B) The chair of a policy committee of the Senate with jurisdiction over legislation relating to the bureau appointed by the Senate Committee on Rules. The chair may designate a representative for any meeting or meetings he or she is unable to attend.

(b) (1) A member appointed pursuant to paragraph (2), (4), or (5) of subdivision (a) shall not, either at the time of his or her appointment or during his or her tenure in office, have any financial interest in any organization currently or previously subject to regulation by the bureau, be a close family member of an employee, officer, or the director of any institution subject to regulation by the bureau, or currently have, or previously have had, a business relationship, in the five years preceding his or her appointment, with any institution subject to regulation by the bureau.

(2) A member appointed pursuant to paragraph (2), (4), or (5) of subdivision (a) shall not, within the five years immediately preceding his or her appointment, have engaged in pursuits on behalf of an institution or institutional accreditor or have provided representation to the postsecondary educational industry or a profession regulated by the bureau, if he or she is employed in the industry or a member of the profession, respectively, and he or she shall not engage in those pursuits or provide that representation during his or her term of office.

(c) The advisory committee shall examine the oversight functions and operational policies of the bureau and advise the bureau with respect to matters relating to private postsecondary education and the administration of this chapter, including annually reviewing the fee schedule and the equity of the schedule relative to the way institutions are structured, and the licensing and enforcement provisions of this chapter. The advisory committee shall make recommendations with respect to policies, practices, and

regulations relating to private postsecondary education, and shall provide any assistance as may be requested by the bureau.

(d) The bureau shall actively seek input from, and consult with, the advisory committee regarding the development of regulations to implement this chapter prior to the adoption, amendment, or repeal of its regulations, and provide the advisory committee with sufficient time to review and comment on those regulations. The bureau shall take into consideration and respond to all feedback provided by members of the advisory committee.

(e) The bureau chief shall attend all advisory committee meetings and shall designate staff to provide ongoing administrative support to the advisory committee.

(f) Until January 1, 2017, the director shall personally attend, and testify and answer questions at, each meeting of the advisory committee.

(g) The Chief of the Office of Student Assistance and Relief established in Article 20.6 (commencing with Section 94949.7) shall attend, and testify and answer questions at, each meeting of the advisory committee.

(h) The advisory committee shall have the same access to records within the Department of Consumer Affairs related to the operation and administration of this chapter as do members of constituent boards of the department in regard to records related to their functions.

(i) Advisory committee meetings shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). Advisory committee meeting materials shall be posted on the Internet. A majority of the voting members of the committee shall constitute a quorum for the committee's meetings.

(j) The advisory committee shall meet at least quarterly and shall appoint a member of the committee to represent the committee for purposes of communicating with the Legislature.

(k) The Department of Consumer Affairs shall review, and revise if necessary, the department's conflicts of interest regulations to ensure that each advisory committee member is required to disclose conflicts of interest to the public.

SEC. 7. Section 94927.5 of the Education Code is amended to read:

94927.5. (a) Prior to closing, an institution shall provide the bureau with the following:

(1) Copies of pertinent student records, including transcripts, in hardcopy or electronic form, as determined by the bureau, pursuant to regulations adopted by the bureau.

(2) If the institution is an accredited institution, a plan for the retention of records and transcripts, approved by the institution's accrediting agency, that provides information as to how a student may obtain a transcript or any other information about the student's coursework and degrees completed.

(b) Subdivision (a) applies to all private postsecondary institutions, including institutions that are otherwise exempt from this chapter pursuant to Article 4 (commencing with Section 94874).

SEC. 8. Section 94947 of the Education Code is amended to read:

94947. (a) Notwithstanding Section 94874.2, an institution described in subdivision (i) of Section 94874 that satisfies all of the following requirements may claim an exemption from this chapter:

(1) The institution has been accredited by an accrediting agency recognized by the United States Department of Education for at least 10 years, and has not been placed on probation or on a greater level than standard monitoring, or sanctioned, by its accrediting agency.

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

(3) The institution is privately held and prior to its current exemption, the institution was granted an approval to operate by the Bureau for Private Postsecondary Education, or its predecessor agency and has experienced no change of ownership since the institution was last approved.

(4) During its existence, the institution has not filed for bankruptcy protection.

(5) The institution maintains an equity ratio composite score of at least 1.5 based on the current financial stability test.

(6) At least 12.5 percent of the institution's revenues are derived from sources other than financial aid. For purposes of this requirement, financial aid includes all forms of state or federal student assistance, including, but not limited to, financial aid provided to veterans and financial aid through the Cal Grant Program.

(7) The institution's cohort default rate does not exceed 13 percent for the most recent three years, as published by the United States Department of Education.

(8) The institution has a graduation rate that exceeds 60 percent, as reported to the Integrated Postsecondary Education Data System.

(9) The institution has not been subject to any legal or regulatory actions by a state attorney general for a violation of consumer protection laws that resulted in monetary settlement, fines, or other documented violations.

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

(11) 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.

(12) The institution complies with all other reasonable criteria, necessary to ensure educational quality and protection of veterans, established by the California State Approving Agency for Veterans Education.

(13) The institution verifies its exemption pursuant to Section 94874.7.

(b) An institution exempt from this chapter pursuant to this section may apply to the bureau for an approval to operate pursuant to Section 94874.8.

(c) It is the intent of the Legislature that if the exemption provided in this section is declared by a court to be invalid for any reason, the

requirements of this chapter shall apply to an institution that would otherwise be subject to receive this exemption.

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

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



MEMORANDUM

DATE	October 22, 2018
TO	Members, Board of Barbering and Cosmetology
FROM	Kristy Underwood, Executive Officer
SUBJECT	Regulations Update

Action Item:

The language for this regulations package has been revised and is being resubmitted for approval by the Board. The package is still undergoing internal review at the Department of Consumer Affairs (DCA).

- Title 16, CCR Section 961 (National Interstate Council (NIC) Translation Guides)

Status Update

The following regulation packages are under internal review at the Department of Consumer Affairs.

- Title 16, CCR Section 904 (Definition of Access)
- Title 16, CCR Section 950.10 (Transfer of Credit or Training)
- Title 16, CCR Section 974 & 974.3 (Fine Schedule and Payment Plan)

Staff is developing the filing documents of these regulations packages.

- Title 16, CCR Section 965.2 (Personal Service Permit)
- Title 16, CCR Section 972 (Disciplinary Guidelines)

Staff is developing the language on the following regulation package:

- Title 16, CCR Sections 977, 978, 979, 980, 980.1, 980.2, 980.3, 980.4, 981, 982, 983, 984, 985, 986, 987, 988 and 989 (Health and Safety Regulations)

BOARD OF BARBERING AND COSMETOLOGY

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

SPECIFIC LANGUAGE

LEGEND

<u>Underlined</u>	Indicates proposed amendments or additions to the existing regulation.
Strikeout	Indicates proposed deletions to the existing regulation.

- Amend Section 961, Title 16, California Code of Regulations, as follows:

§ 961. ~~Online Training and Text and Textbooks and Reference Books or Online Training for Students.~~

(a) ~~In teaching, An approved schools school shall use text textbooks and reference books approved by the National Interstate Council of State Boards of Cosmetology (NIC). An Approved schools approved school may use other teaching instructional material or on-line online training programs, in lieu of the text-book textbook, under the condition that they have been provided those are materials or programs approved by the NIC.~~

(b) ~~Each student shall possess~~ An approved school shall provide the following to each student:

~~(1) At least one (1) of the textbooks approved by the NIC or have access to a NIC-approved online program.~~

~~(2) The Barbering and Cosmetology Act and the Rules and Regulations of the Board of Barbering and Cosmetology.~~

(1) A printed copy of at least one (1) of the textbooks approved by the NIC, or the Web site address to a NIC-approved online program.

(2) A printed copy of, or the Web site address to, the Barbering and Cosmetology Act and the Board of Barbering and Cosmetology's regulations.

(3) A printed copy of, or the Web site address to, the appropriate licensing examination translation guide approved by the NIC, if the student intends to take the examination in one of the non-English languages offered by the board.

(c) ~~There shall be~~ An approved school shall have the following available for the use of students in the school:

(1) A list of the text textbooks and reference books approved by the NIC.

(2) ~~Any~~ At least two NIC-approved texts textbooks or reference books other than the one text textbook or online program access, possessed by provided to the student as required in subsection (b)(1). (Shall not apply to barber schools if there are less than three approved texts.)

Note: Authority cited: Sections 7312 and 7362, Business and Professions Code. Reference: Sections 7312 and 7362, Business and Professions Code.

No Attachment