

BACKGROUND PAPER FOR The Board of Barbering and Cosmetology

**Joint Sunset Review Oversight Hearing, April 9, 2021
Senate Committee on Business, Professions, and Economic Development
and Assembly Committee on Business and Professions
IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS**

BRIEF OVERVIEW OF THE BOARD OF BARBERING AND COSMETOLOGY

History and Function of the Board of Barbering and Cosmetology

The Board of Barbering and Cosmetology (BBC) is responsible for licensing and regulating barbers, cosmetologists, estheticians, electrologists, manicurists, apprentices and establishments. In 1927, the Board of Barber Examiners and the Board of Cosmetology were established. The Board of Barber Examiners governed the barbering profession, and the Board of Cosmetology governed the cosmetology profession. The Board of Barber Examiners consisted of 5 members, 2 of which were public members. The Board of Cosmetology consisted of 7 members, 2 of which were public members. Throughout the years there were minor changes to the laws of each profession. In 1939, the manicurist license and the electrology license were added, and in 1978 the esthetician license was added. In 1992, the Board of Barber Examiners and the Board of Cosmetology merged to create the BBC.

In July 1997, the BBC was eliminated by the California Legislature and its duties, powers, and functions were transferred directly to the Department of Consumer Affairs (DCA) and were administered by the Bureau of Barbering and Cosmetology. The BBC was reinstated through SB 1482 (Polanco, Chapter 1148, Statutes of 2002), but was sunset again and its functions transferred back to a Bureau within DCA as a result of SB 797 (Ridley-Thomas, Chapter 33, Statutes of 2008). The current BBC was reconstituted in 2009 as a result of AB 1545 (Eng, Chapter 35, Statutes of 2008).

The BBC is an autonomous regulatory entity supported by licensing fees, with full policy and enforcement authority over the practices of hair, skin and nail care, and electrolysis in the state. The Barbering and Cosmetology Act (Act) regulates the practice of barbering, cosmetology and electrolysis. Title protection is provided for the use of the term “cosmetologist” and “barber.” The Act also regulates the specialty branches within the practice of cosmetology, including skin and nail care. The Act provides exemptions for: those involved in the health care field who, within their own scope of practice, may perform particular procedures which would constitute the practice of barbering or cosmetology; commissioned officers in the military service, or their attendants, when engaged in the actual performance of their official duties; persons employed in the movie, television, theatrical, or radio business; persons selling or demonstrating certain products; .

BBC is one of the largest boards in the country, with over 615,000 licensees. Annually, BBC issues approximately 261,000 licenses (initial and renewal licenses) and administers approximately 24,000

practical examinations and 28,000 written examinations (initial and retake examinees). Each profession has its own scope of practice, entry-level requirements, and professional settings, with some overlap in areas. The BBC's licensing population includes: Barbers; Barber Apprentices; Cosmetology Apprentices; Cosmetologists; Electrologists; Estheticians; Manicurists; Establishments; and, Mobile Units.

BPC Section 7303.1 states the mandate of the BBC is protecting the public and protection of the public should be its highest priority in exercising its licensing, regulatory, and disciplinary functions; and, whenever the protection of the public is inconsistent with other interests sought to be promoted, protection of the public is paramount.

BBC's vision is that California will set and enforce the highest level of health and safety standards and provide an environment where consumers will obtain barbering and cosmetology services with the confidence and security that their health and safety will be protected. Its current mission, as stated in the 2018-2022 Strategic Plan is as follows:

To ensure the health and safety of California consumers by promoting ethical standards and by enforcing the laws of the barbering and beauty industry.

The BBC protects the interests of California consumers by:

- ***Serving as a guardian of their health and safety;***
- ***Enhancing public and industry participation in decision-making;***
- ***Promoting ethical and professional standards; and,***
- ***Creating politics that are contemporary, relevant and responsive.***

BBC is comprised of nine members: five public and four professional. The Senate Committee on Rules and the Speaker of the Assembly each appoint one public member. The other seven members (four public members and three professional members) are appointed by the Governor. BPC § 7303 specifies that board members are appointed to a four-year term, except that two of the public members and two of the professional members appointed by the Governor are appointed for an initial two-year term. BBC members may not serve more than two consecutive terms. BBC members receive a \$100-a-day per diem. Each year, BBC elects a president and vice president, who each serve a one-year term, and can serve for a total of two years.

BBC meets quarterly and rotates meeting locations between northern and southern California. These meetings are webcasted and open to the public. The meetings provide an opportunity for BBC to educate licensees and the public about the various topics relating to the practice of barbering and cosmetology. All board-related committee meetings are subject to the Bagley-Keene Open Meetings Act. BPC § 453 requires new members to complete a board member orientation provided by the DCA within one year of assuming office, which encompasses open meeting laws, ethics, conflicts of interest, legislative and regulatory process, reimbursement of expenses, and executive officer's responsibilities. Board members also receive on-the-job training in budgets, licensing, examinations, enforcement, and the disciplinary process. BPC § 7315 requires a majority of board members to be present in order to take action on agenda items. Since the BBC's last sunset review, no meetings have been cancelled due to a lack of a quorum. BBC's composition is further discussed in Issue #1.

The following is a listing of the current BBC members:

Board Member	Appointment Date	Term Expiration Date	Appointing Authority	Professional or Public
<p>Dr. Kari Williams, Vice President Dr. Williams has been the owner at Mahogany Hair Revolution Salon and Trichology Clinic since 2007 and was a hair stylist at Eclectic Salon from 2006 to 2007. Dr. Williams earned a Doctor of Philosophy degree in trichology from the Elan Center for Trichology and a Master of Arts degree in anatomical and nutritional study from the International Institute of Trichology.</p>	4/5/2013	6/30/2021	Governor	Professional
<p>Jacquelyn Crabtree has been owner of four Aveda Salon and Spa Stores since 2005. She was manager and a hairstylist at Maida’s Touch Salon from 1999 to 2005 and a bookkeeper at Wild Carter and Oliver Law Firm from 1991 to 1999.</p>	2/8/2017	1/1/2025	Governor	Professional
<p>Andrew Drabkin has been a database analyst for SEIU United Healthcare Workers since 2015. He was director of information technology for the California Democratic Party from 2010 to 2014, where he was deputy director of information technology from 2006 to 2010. Mr. Drabkin was staff at Phil Giarrizzo Campaign Consultants from 1999 to 2006.</p>	4/5/2013	6/30/2021	Governor	Public
<p>Derrick Matos has been the owner of Empire Barbershop since 2013. He was a licensed barber at VIP Barbershop from 2009 to 2013 and a barber apprentice from 2007 to 2009. Mr. Matos is a member of the Greater Concord Chamber of Commerce Board of Directors.</p>	12/11/2019	1/1/2023	Governor	Professional
<p>Calimay Pham has been an attorney for the County of Los Angeles, Child Support Services Department since 2017. Ms. Pham is a graduate of UCLA School of Law and currently serves as President of the Asian Pacific American Women Lawyers Alliance and Secretary of the Multicultural Bar Alliance of Southern California.</p>	11/22/2019	1/1/2023	Speaker of the Assembly	Public
<p>Christie Tran has been owner and manager of Happy Nails of La Habra since 2013. She was owner and manager of Happy Nails of Costa Mesa from 2005 to 2012, manager of Happy Nails of Newport Coast from 2002 to 2005, nail technician at Happy Nails of Rancho Santa Margarita from 2001 to 2002, and a travel agent at Travel World from 1990 to 2001.</p>	12/13/2019	1/1/2023	Governor	Professional
<p>Steve Weeks Mr. Weeks of Los Angeles has been reappointed to the California Board of Barbering and Cosmetology. He has served on the Board since July 28, 2017. Mr. Weeks was formerly president of a national mortgage banking company and an international business finance company. He also serves as an executive board member of Southern Methodist University and has served on</p>	7/28/2017	1/1/2025	Senate Committee on Rules	Public

several Los Angeles County Commissions.				
Vacant			Governor	Public
Vacant			Governor	Public

BBC has five standing committees and utilizes task forces, ad hoc committees, and advisory committees that are formed to examine specific topics, and then are disbanded following completion of the task. These committees recommend policies that advance mission-related goals. The five standing committees, described below, assist the BBC in establishing its goals and aids in organizing its activities in pursuit of ensuring the health, safety and welfare of the public.

- **Legislation and Budget Committee:** Reviews and tracks legislation and recommends positions on legislation. The Committee also provides information and recommendations regarding potential policy matters relating to the budget.
- **Examination and Licensing Committee:** Advises on policy matters relating to the examining and licensing of individuals who want to practice barbering, cosmetology, and electrology in California. The Committee may also provide information and recommendations on issues relating to curriculum and school approval, exam appeals, laws, and regulations.
- **Education and Outreach Committee:** Provides recommendations on the development of informational brochures and other publications; plans outreach events for consumers and licensees; prepares articles for submission in trade magazines; and attends trade shows.
- **Enforcement and Inspections Committee:** Advises on policy matters that relate to protecting the health and safety of consumers, including recommendations on how inspections are conducted, the types of violations issued, maintenance of disciplinary guidelines, and other recommendations on the enforcement of current statutes and regulations.
- **Disciplinary Review Committee (DRC):** Conducts informal administrative citation review hearings and renders decisions regarding appealed citations. The Committee has authority to affirm, modify or dismiss the citations, including any fines. The Board President annually appoints members to the committee which are made concurrently with the annual election of officers. Due to the high volume of appeals, all members of the Board are designated as members of the DRC. However, only three members attend meetings.
- **Technical Advisory Committees:** Offers input on specific technology, processes or elements within the beauty industry, as needed. The Committee is usually comprised of 3-10 specialized professionals who offer opinions, research and tactical information that are used to revise regulations or clarify processes related to health and safety.

Occasionally, BBC forms a committee of experts to offer input on specific technology, processes or elements within the beauty industry. The technical advisory committee is usually comprised of 3-10 specialized professionals that offer opinions, research and tactical information that is used by BBC to revise regulations or clarify processes related to health and safety. Recent uses of these committees include:

- Medical Services Task Force: On May 4, 2015 and August 3, 2015, members of this task force met to discuss improvements that could be made by BBC and regulatory changes that could clarify which services can be performed by licensees. Representatives of the task force were two board members (Richard Hedges and Dr. Kari Williams), the Board's Executive Officer, a board inspector, Board Enforcement Unit staff, Board-licensed estheticians, a Board-licensed establishment owner, a dermatologist, a U.S. Food and Drug Administration regulatory attorney and representative, and representatives from: the California Department of Public Health, the Medical Board of California, Professional Beauty Federation of California, Paramedical Consultants, and AmSpa. These meetings resulted in the development of: an Industry Bulletin "Skin Care Machines/Devices" and an Equipment Evaluation Binder. Based on the committee's work, BBC recommends establishment owners and licensees use these resources to help them stay in compliance with professional standards.
- Health and Safety Advisory Committee: BPC Section 7314.3 established the Health and Safety Advisory Committee which provides BBC with advice and recommendations on health and safety issues that impact licensees, including how to ensure licensees are aware of basic labor laws. Annually, BBC recruits committee members by posting on its web site. Committee participants are appointed for a one-year term (January - December) and are volunteers that do not receive a per diem or travel expense reimbursement. Committee membership includes two board members, one board member alternate, representation from each board license type, industry association representation (these have included representatives from the California Healthy Nail Salon Collaborative, the Professional Beauty Federation of California and Black Women for Wellness), a Department of Public Health representative, a Department of Industrial Relations representative, a U.S. Food and Drug Administration representative, a specialist in physical and sexual abuse awareness training, medical professionals, and a scientist.

The 2016 Health and Safety Advisory Committee met on June 6, 2016 (Sacramento) and August 8, 2016 (Norwalk). Members of the committee met to discuss current health and safety and workers' rights concerns impacting the industry, including the availability of less toxic disinfectants. The 2016 meetings resulted in revisions to BBC's Prohibited Tool Flyer; implementation of BBC's Workers' Rights Pocket Guide; posting of Quick Start Guides offering tips for starting a barbering or beauty business and tips to understanding safety data sheets on BBC's website; and minor revisions to Section 9 of the Health and Safety Course on Workers' Rights. The 2017 Health and Safety Advisory Committee met on June 26, 2017 (Sacramento) and October 23, 2017 (San Diego). Committee members provided suggested edits to BBC's *Know Your Workers' Rights* publication and regulatory suggestions were made regarding clarification of disinfectants that may be used by licensees. The 2018 Health and Safety Advisory Committee met on May 20, 2018 (Santa Ana) and August 28, 2018 (Sacramento). Committee members reviewed and offered revisions on the Board's Health and Safety Course, Section 10 - Physical & Sexual Abuse Awareness. BBC directed staff to provide additional information regarding the *Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County* case. Staff arranged for the Director of the Employment Development Department (and staff), the California Department of Tax and Fee Administration and the Professional Beauty Association (lobbyist and labor attorney) to present to the members how the various entities were affected by the Dynamex Decision. This open dialogue allowed the members to see the possible impact of the decision on the booth rental business model. Dynamex is further discussed below in Issue # 6. Upon conclusion of the presentations, the members suggested minor updates to BBC's website.

- *Nail Care Scope of Practice Task Force*: At the request of State Senators Jerry Hill and Janet Nguyen, on September 18, 2017, BBC convened a task force to study the appropriate educational and training requirements for an individual licensed as a manicurist in order to possibly increase their skill set to allow them to safely practice superfluous hair removal while prioritizing public health. Subject matter experts included two board members, board staff, a waxing specialist, a school representative, a public representative, an industry association representative, and licensee representation. This meeting resulted in a report of the task force's recommendations.

BBC is member of the National-Interstate Council of State Boards of Cosmetology (NIC). On July 1, 2017, BBC became a full member of NIC and now has voting privileges. As a full member, BBC has one vote in matters before the association, however in order to exercise the right to vote on bylaws, officer assignments or general policy, a BBC representative must be present at the annual conference. There are no provisions set up for a vote by proxy.

BBC ensures that information is available for consumers, licensees, applicants, students, and other interested parties through its website as well as media outlets such as television, radio, Facebook, Twitter, and trade magazine/publications. BBC's website provides general information about the BBC, instruction on how to file a complaint, consumer brochures and informational fact sheets, barbering and cosmetology law, and licensing and enforcement information. In recent years, BBC has utilized a listserv to alert interested parties when new materials are added to the website or to ensure the parties receive immediate notification of regulatory changes, board meeting dates, and legislative updates. Over the last couple of years, BBC staff has actively campaigned to encourage licensees to sign up for the listserv.

BBC reports that it routinely participates in wellness fairs, Town Hall meetings, workshops and seminars to educate the public on health and safety issues. BBC also customarily has a booth at trade shows throughout California and visits beauty colleges in the state to help students become familiar with BBC regulations. BBC writes a column for the monthly industry newspaper, "The Stylist" that is distributed to all licensed establishments in California.

Additionally, BBC has developed outreach campaigns designed to educate consumers on how they can protect their health and safety when receiving services from a licensee. BBC advises that campaigns such as their "CASafeSalon", "SafeSandalSeason" and "NoViolenceinBeauty" have proven successful.

BBC is required to provide information on basic labor laws (Workers' Rights) to its applicants and licensees pursuant to statutory changes made in 2017. BBC's publication, *Know Your Workers' Rights and Responsibilities*, is available on its website and has been translated as well as distributed to BBC's media contacts, including media contacts that speak Vietnamese, Spanish and Korean.

BBC posts agendas for all board, committee and subcommittee meetings on its web page. Agendas are posted at least ten days in advance of any meeting and includes a brief description of each topic, so the public has a general idea of what will be discussed in advance. Typically, seven to ten days before a meeting, meeting background materials are also posted, the same materials provided to BBC members which BBC believes provides the public with more specific information about BBC activities and permits the public to be fully prepared to participate in discussions. BBC reports that a concerted effort has been made to encourage public input. BBC begins and ends each public meeting with an invitation

for public comments that are not specifically addressed on the agenda. BBC webcasts its meetings but notes that attendance at public meetings has declined and BBC has not had the level of public interaction it once enjoyed as a result of webcasting.

BBC remains in compliance with the Dymally-Alatorre Bilingual Services Act which requires state agency to provide information in languages utilized by the public who accesses information from a particular agency. BBC translates all informational materials into Korean, Spanish, and Vietnamese and BBC advises that language access continues to be one of the Board's top priorities.

As of August 2014, BBC issues all citations and supporting information to manicurists in both English and Vietnamese. BBC also adds language to all correspondence from the enforcement unit that advises individuals to call BBC if an interpreter is needed. As of November 2015, BBC's licensing unit sends examination admission letters in the applicant's preferred language (English, Korean, Spanish, or Vietnamese). As of early 2016, examination sites provide examination orientation materials and written examination instructions for the practical examination in English, Korean, Spanish, or Vietnamese. As of August 2016, BBC provides interpreter services in Spanish and Vietnamese, free of charge, if requested by the appellant, at all Disciplinary Review Committee hearings. BBC has provided interpretation services to hundreds of Spanish-speaking and Vietnamese-speaking appellants.

BBC notes that it developed a video, *BBC Celebrates Diversity*, which informs viewers of some of the ways BBC provides language access to all its diverse consumer and licensee population. BBC has continued to hold Town Hall meetings for limited English proficient (LEP) licensees. According to BBC, these Town Hall meetings provide licensees the opportunity to learn about the top violations found in establishments, the inspection process, and the appeal process. BBC staff attend and answer questions and BBC makes interpreters available.

In association with the Los Angeles Mexican Consulate and DCA, on March 23, 2017, BBC participated in a Town Hall event to educate Spanish-speaking licensees of their rights under the provisions of SB 1159 (Lara, Chapter 752, Statutes of 2014) regarding the use of an Individual Taxpayer Identification Number (ITIN). A video recapping the information provided at that Town Hall is posted in Spanish on BBC's website.

In addition, BBC held two Town Hall meetings to help licensees and students understand their workers' rights and responsibilities. BBC invited representatives from the Department of Industrial Relations, Cal OSHA, and the Employment Development Department to speak at these events. Spanish and Vietnamese translators were present.

Fiscal, Fund and Fee Analysis

As a special fund entity, the BBC receives no General Fund support, relying solely on fees set in statute and collected from licensing and renewal fees. BBC is a special fund agency whose activities are funded through regulatory fees and license fees. BBC's primary source of revenue is derived from applicants and licensees through the collection of the application, renewal and examination fees. BBC began Fiscal Year (FY) 2020/21, with a current reserve level of 25.4 months and year-end expenditures of \$20,122. While BBC does not have a specific statute that requires a certain reserve level to be maintained, BBC advises that future reserves will be monitored to determine if any action is needed. BBC indicated that it does not currently plan to increase or decrease fees.

In response to the COVID-19 pandemic, SB 94 (Skinner, Chapter 9, Statutes of 2021) provided economic relief to licensees most severely impacted by the COVID-19 pandemic, waiving licensing fees for barbering and cosmetology professionals and Department of Alcoholic Beverage Control licensees.

The following is the past, current and projected fund condition for BBC, as indicated in the BBC sunset report:

Fund Condition							
(Dollars in Thousands)	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Beginning Balance	\$15,919	\$19,125	\$18,721	\$20,565	\$20,893	22,374	\$22,061
Revenues and Transfers	\$23,557	\$23,129	\$23,642	\$24,313	\$22,860	\$21,236	\$47,184*
Total Revenue	\$23,557	\$23,129	\$23,642	\$24,313	\$22,860	\$21,236	\$47,184
Budget Authority	\$21,526	\$24,910	\$22,294	\$22,561	\$22,46	\$21,699	\$20,122
Expenditures	\$20,690**	\$24,087	\$21,343	\$21,642	\$22,157	\$21,549	\$21,553
Loans to General Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$25,000
Accrued Interest, Loans to General Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,213	\$0.00
Loans Repaid from General Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$21,000	\$0.00
Fund Balance	\$19,125	\$18,721	\$20,565	\$21,611	\$21,596	\$22,061	\$47,692
Months in Reserve	9.5	10.0	10.6	11.0	12.0	12.3	25.8

*Includes the \$25,600 funding from the General Fund for the Fee Waivers.

BBC's fees are set in statute. There have only been two amendments to BBC's fee structure in the last 13 years, one in 2007 to establish an application and examination fee and one in 2011, to update the fee for a dishonored check.

Fee	Current Fee Amount
Apprenticeship Fee	\$25.00
Barber Delinquency Renewal	\$20.00
Barber Delinquency Renewal	\$25.00
Barber Exam Fee	\$75.00
Barber License Fee	\$50.00
Barber Renewal	\$40.00
Barber Renewal	\$50.00
Non-Sufficient Funds Check Fee	\$25.00
Certification Fee	\$10.00
Cosmetology Exam Fee	\$75.00
Cosmetology Renewal	\$40.00

Cosmetology Licensee Fee	\$50.00
Cosmetology Renewal	\$50.00
Cosmetology Delinquency Renewal	\$20.00
Cosmetology Delinquency Renewal	\$25.00
Duplication Fee	\$10.00
Electrologist Delinquency Renewal	\$20.00
Electrologist Delinquency Renewal	\$25.00
Electrologist Exam Fee	\$75.00
Electrologist License Fee	\$50.00
Electrologist Renewal	\$40.00
Electrologist Renewal	\$50.00
Establishment Delinquency Renewal	\$20.00
Establishment License Fee	\$50.00
Establishment Renewal	\$40.00
Esthetician Delinquency Renewal	\$20.00
Esthetician Delinquency Renewal	\$25.00
Esthetician Exam Fee	\$40.00
Esthetician Exam Fee	\$75.00
Esthetician License Fee	\$50.00
Esthetician Renewal	\$40.00
Esthetician Renewal	\$50.00
Manicurist Delinquency Renewal	\$20.00
Manicurist Delinquency Renewal	\$25.00
Manicurist Exam Fee	\$75.00
Manicurist License Fee	\$35.00
Manicurist Renewal	\$40.00
Manicurist Renewal	\$50.00
Mobile Delinquency Renewal	\$20.00
Mobile Unit App Fee	\$50.00
Mobile Unit Inspection/License Fee	\$100.00
Mobile Unit Renewal	\$40.00
Pre-Application Fee Barber	\$9.00
Pre-Application Fee Cosmetologist	\$9.00
Pre-Application Fee Electrologist	\$9.00
Pre-Application Fee Esthetician	\$9.00
Pre-Application Fee Manicurist	\$9.00

BBC notes that it breakdown its expenditures by two separate program components, personnel services (staff and benefits) and operating expenses. The table below shows the percentage of expenditures, by program component, for enforcement, examinations, licensing, administration and pro rata

Expenditures by Program Component (dollars in thousands)								
	FY 2014/15		FY 2015/16		FY 2016/17		FY 2017/18	
	Personnel Services	OE&E						
Enforcement	\$3,589	\$2,840	\$3,656	\$2,638	\$4,025	\$2,007	\$4,582	\$2,697
Examination	\$994	\$2,880	\$937	\$2,816	\$789	\$2,725	\$610	\$1,977
Licensing	\$1,447	\$686	\$1,500	\$730	\$1,579	\$454	\$1,625	\$606
Administration *	\$925	\$386	\$960	\$411	\$1,002	\$255	\$628	\$190
DCA Pro Rata	\$0	\$7,036	\$0	\$10,530	\$0	\$8,595	\$0	\$8,784
Diversion (if applicable)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTALS	\$6,955	\$13,828	\$7,054	\$17,125	\$ 7,395	\$14,036	\$7,445	\$14,254

Staffing Levels

BBC is currently authorized in the Governor’s 2021/2022 budget for a total of 82.1 permanent positions and 21 temporary positions.

BBC notes that its staffing levels for all programs, with the exception of the inspections program, are adequate. The classification of inspectors is at the heart of the issue. The Board currently has 24 inspector positions, 2 of which are supervisor positions. There are currently 7 vacancies. The inspectors are responsible for conducting random, initial and targeted inspections of over 50 thousand licensed establishments. The inspector positions are considered hard-to-fill as the pay is equivalent to an entry-level clerical position. BBC conducted a classification study on the inspector class and it was determined that the positions are classified correctly, but that the pay should be reviewed during the bargaining process. Personnel issues are further discussed in Issue # 3 below.

Generally BBC has very little turnover and staff retention is excellent. Steps are being taken to recruit new staff prior to long-term staff retirements to ensure that training can take place and there will be a smooth transition.

BBC supports and encourages training opportunities to improve or enhance performance, as well as, training that promotes learning and development for future career growth, ideally, within BBC’s organization. BBC worked with the DCA’s training unit to provide Diversity Training to board inspectors and also provides training to inspectors during regular staff meetings, and annual all-inspector meetings. BBC holds regular inspector trainings, which includes training on verbal communication, consistency in job performance, and language access training.

Licensing

BBC’s licensing program is responsible for reviewing and processing all individual and establishment licensing applications, a high workload given the volume of applications and licenses. The Act specifies the regulations and requirements for licensure and BBC regulations outline specific

curriculum applicants are required to complete. BBC ensures that individuals possess at least minimal competency to practice barbering, cosmetology, esthetics, electrology independently and safely pursuant to BPC Section 7301. After successful completion of the required courses for each training area from a BBC-approved school or apprenticeship program, each individual seeking licensure must take and pass both a written examination and a practical examination. For applicants who have received training from a BBC-approved school, the BBC provides the schools a Proof of Training document (POT) that is completed by the school administration. The POT verifies how many hours of training were completed. In order to verify submitted POT documents, a representative from the school is required to sign, under the penalty of perjury, that the information is true and correct.

BPC Section 7362 states that a school that is approved by BBC is one that is first approved by BBC and subsequently approved by the Bureau for Private Postsecondary Education (BPPE) or is a public school in this state, and provides a course of instruction approved by BBC. Upon approval, BBC issues a code to the school that must be provided on an applicant's POT. In order to receive BBC approval, a school must meet the following requirements:

- Possess minimum equipment
- Possess minimum floor space
- Utilize BBC-approved text books
- Obtain BBC approval of the curriculum to be offered
- Provide a list of potential bona fide students

BBC then provides copies of approval letters to the BPPE, as BPPE cannot issue its approval of a school prior to BBC's approval. BBC also forwards complaints it receives about schools to the BPPE, as students often submit complaints to BBC rather than BPPE. BBC also attempts to work in conjunction with BPPE on inspections and investigations.

BBC's licensing and examination program is unique in that examinations are administered Monday through Friday, and an individual who passes the examinations obtains a license on the same day. Individuals who wish to enter this industry have various paths to obtain the required education, such as community college, private vocational schools or apprentice programs. The cost of education in this industry can range from \$2,500 to \$19,000, with the average cost of a private college being approximately \$15,000 for a 1600-hour course in cosmetology.

The law specifies that in order to become a licensed barber, an applicant must be at least 17, complete 10th grade (or the equivalent of public school 10th grade), and submit proof of completion to BBC of 1500 training hours covering all practices of a barber. An individual may also submit documentation that they obtained comparable military training in barbering. To become a licensed cosmetologist, an applicant must be 17, complete 10th grade (or the equivalent of public school 10th grade), and submit proof of completion to BBC of 1600 training hours covering all practices of a cosmetologist. To become an esthetician, an applicant must be 17, complete 10th grade (or the equivalent of public school 10th grade), and submit proof of completion to BBC of 600 hours covering all practices of skin care. To become an electrologist, a person must be at least 17, complete 10th grade (or the equivalent of public school 10th grade), and submit proof of completion to BBC of 600 hours covering all practices of electrology. To become a licensed manicurist, an applicant must be at least 17, complete 10th grade

(or the equivalent of public school 10th grade), and submit proof of completion to BBC of 400 training hours training covering all practices of a manicurist.

BPC Section 7332 provides authority for an apprenticeship pathway to licensure. The BBC Apprenticeship Program is a training program approved by the Division of Apprenticeship Standards (DAS) and BBC that allows a trainee, an apprentice, to earn a wage while studying to become a cosmetologist, barber or electrologist under the guidance and supervision of a trainer in an establishment licensed by BBC. An apprentice commits to working a minimum of 32 hours and no more than 42 ½ hours per week of On the Job Training (OJT) hours and must complete a minimum of 3200 OJT hours over a 2-year period. The individual also completes Related Supplemental Instruction (RSI) classes, a minimum of 220 hours over a 2-year period. An individual interested in becoming an apprentice contacts a program sponsor – program sponsors charge a fee or fees that usually cover the individual’s kit, textbooks and any related supplemental classes taken at a school, in addition to other administrative fees for adding or changing trainers, transferring to a different establishment, or extending the term of the apprenticeship. Apprentices complete a 39-hour Pre-apprentice Training Class with the program sponsor which focuses on basic sanitation and health and safety laws. Upon completion, the individual finds a trainer and establishment, both BBC licensed in good standing with no disciplinary actions in the prior 2 years. The individual also registers as an apprentice with DAS. Apprentices are paid at least minimum wage and cannot work for commission or rent a station in the establishment they are registered to work in. The training establishment obtains workers compensation for the individual. After completing at least 21 months of the apprenticeship program, the required OJT and RSI hours, the individual applies to take the same exam as individuals who completed the traditional school pathway. Apprenticeships are further discussed in Issue #11 below.

The BBC externship program allows a student who is enrolled in a cosmetology school to perform services in a licensed salon, for which they are not compensated, under the direct and immediate supervision of a designated licensee. Unlike an apprentice who is paid while working under the guidance and supervision of a licensee in lieu of attending school, an extern works in an establishment while attending a cosmetology school but is not paid. A student is eligible to participate in the externship program after completion 60 percent of the hours required for program completion. In order for a cosmetology student to participate in an externship, the cosmetology school they attend must submit a “Notification of Participation in the Cosmetology Externship Program” form to BBC; Title 9, Division 9, 962.1 CCR § states that “It is the responsibility of the each participating school to ensure that the establishments and licensees participating in the cosmetology externship program remain in good standing.” The BBC’s rules also limit participation to those establishments that employ individuals to provide beautification services, and prohibits establishments that only contract with individuals from having externs.

The goal behind the statutory creation of an externship opportunity was to provide students the opportunity to work in the field prior to graduating and becoming licensed. At the time, the sponsor of SB 1498 (Hughes, Chapter 1142, Statutes of 1994) which established the extern framework in the Act, noted that the program would give students a better chance to secure a job after becoming licensed and simultaneously allow schools to track graduates more efficiently to comply with job placement data requirements. While the student earns hours that can be used to fulfill the requirements of their private cosmetology program, only up to 8 hours per week can be earned, and only up to 10 percent of the total hours required to complete a program are eligible to be earned as an extern. Externships are further discussed in Issue #11 below.

BBC adopted the national NIC written examination in May 2009 and adopted the national NIC practical examination in October 2011. BBC offers the examinations in English, Spanish, Vietnamese, and Korean. BBC maintains two practical examination facilities that operate Monday through Friday: one in Fairfield (Northern) and one in Glendale (Southern). Once BBC receives an application for examination and evaluates it for accuracy, staff schedules a written and a practical examination for the applicant. Both portions are generally scheduled to be taken on the same day. The written test may be administered in the morning and the practical examination in the afternoon, or vice versa. Once the applicant has passed both the written and practical portions of the examination, the license is issued immediately at the examination facility. If an applicant fails either part of the examination (written or practical) he or she must pay another examination fee to schedule a re-examination. The new application and fee must be submitted to BBC within one year, as examination scores are only valid for a one-year period. The NIC exam is further discussed in Issue #9 below.

BBC works with the California Department of Corrections and Rehabilitation to make sure inmates do not face barrier to entry issues upon prison release by conducting examinations in state correctional facilities. BBC works closely with the California Department of Corrections and Rehabilitation to schedule and administer these examinations in the correctional facilities – staff travels to the correctional facility and provides both the written and practical portions of the examination. The examinations are graded, and written examination results are provided on the same day the examination is administered. NIC practical examination scores are provided within two weeks.

The Act defines an “establishment” as any premises, building or part of a building where any activity licensed under this chapter is practiced, including one in which natural hair styling is practiced for compensation. Any person, firm, or corporation that wishes to operate an establishment applies to BBC and pays a fee. The application must also include a signed acknowledgment that the applicant understands that establishments are responsible for compliance with any applicable labor laws of the state and that the applicant understands information on basic labor laws that BBC is required to provide applicants.

BBC has internal performance measures for application processing. BBC’s 2019/20 performance is listed below:

Performance Measure	Definition	Target	Actual*
Initial Applications	Average days from receipt of application to examination scheduling.	42 days	21 days
Establishment Applications	Average days from receipt of application to license issuance.	28 days	21 days
Apprentice Applications	Average days from receipt of application to license issuance.	28 days	22 days
Reciprocity Applications	Average days from receipt of application to license issuance.	28 days	13 days
Examination Scheduling	Average number of days from date of approval of qualifications to examination date.	60 days	85 days

BBC reports that it monitors its licensing performance on a weekly basis. Due to the high volume of applications, statistics are provided every Monday by licensing staff on the processing timeframes for the applications on their desks. BBC says that implementation of the BreEZe database has allowed BBC to significantly reduce its licensing processing times as more online transactions are completed. Cashiering times have also decreased, so applications are processed more quickly. BBC meets and exceeds its performance measures, except for the examination scheduling which has been significantly delayed due to the COVID pandemic.

Enforcement

One of BBC's mandates is to protect the health and safety of consumers who seek services from its licensees and licensed establishments. To accomplish this, the Enforcement Program receives and investigates complaints from the public and various entities to determine if there has been a violation of the Act and its regulations, and if warranted, takes formal disciplinary action. Complaints involving allegations of health and safety violations are evaluated using a combination of desk investigations and field inspections. However, the more egregious cases, including allegations of consumer harm, may result in formal disciplinary action (including probation, suspension, or revocation) against the licensee.

To ensure the health and safety of the consumer, all complaints are investigated. Investigations may include an inspection of the establishment, requests for additional information from the consumer or licensee, assistance from the DCA's Division of Investigation (DOI) which utilizes sworn peace officers, or an evaluation by an expert. The BBC reports that cases are prioritized using guidelines similar to those found in DCA's Complaint Prioritization Guidelines for Health Care Agencies. Complaints are prioritized according to the most egregious violation alleged in the complaint such as consumer harm, gross negligence or incompetence. Complaints alleging health and safety or unlicensed activity violations are considered high priority, along with cases opened as the result of inspection reports indicating egregious health and safety violations or unlicensed activity. Complaint cases are closed after the investigation has revealed insufficient evidence to proceed, or compliance with BBC rules and regulations has been demonstrated, or if disciplinary action is pursued against the licensee. Complaints regarding the health and safety of barbering and cosmetology schools are processed by the Enforcement Program's designated school analyst. To ensure proper oversight of the Apprentice Program and to ensure apprentices are properly trained in their chosen profession and taught proper health and safety standards, the Enforcement Program works with the Division of Apprenticeship Standards (DAS), Local Education Agencies (LEA), and Apprenticeship Program Sponsors.

An essential arm of BBC's enforcement activities is the Inspection Program, whose primary role is enforcing the BBC's health and safety regulations. This is accomplished through directed, random, initial and/or targeted inspections of the over 50,000 establishments and 246 schools of barbering, cosmetology, and electrology. Inspections can be:

- Directed - BBC receives a complaint regarding consumer harm or alleged violations of the health and safety regulations, and enforcement staff will request a directed inspection of the establishment. Directed inspections are the top priority for inspectors and are to be completed immediately (no later than 30 days). A new process was implemented in 2018 to ensure timely emailed inspection requests are sent to BBC inspectors, who work throughout the state.
- Random (Routine) – BBC advises that inspectors strive to inspect each establishment on a regular basis to ensure that the establishment continues to be in compliance with BBC's health and safety regulations.
- Initial - BPC Section 7353 requires an initial inspection to be conducted within 90 days of licensure to ensure that the establishment is in compliance with health and safety regulations.

- Targeted – In the event of an outbreak or infection, or if knowledge becomes available that there are several unlicensed establishments/individuals, BBC will conduct targeted inspections in a specific geographical area.

BBC advises that it has made several staffing and procedural changes within the inspections program in order to gain efficiencies, including hiring an inspection manager and implementing compliance inspections which allow an inspector to go into an establishment to verify that a specific violation has been corrected. For example, if an establishment was found to have a foot spa that was not disinfected properly but the establishment had little to no other violations, a compliance inspection will be requested for the inspector to go in and only verify that the foot spa violation has been corrected. BreEZe has also improved BBC's ability to track establishment inspection dates so that inspectors can focus on businesses that have not been visited in many years. BBC reports that in March 2016, there were approximately 14,000 establishments that needed to be inspected and in May 2018 this number was less than 3,500. BBC also redefined inspector territories to reduce the distance inspectors might potentially have to travel in order to conduct inspections.

Complaint cases opened as the result of allegations regarding unlicensed activity continue to account for 40 percent of the most common allegations. BBC has no real disciplinary recourse for owners and individuals who are performing services without a license. Owners who are operating unlicensed establishments and owners who employ unlicensed individuals face fines of up to \$1,000. Each unlicensed individual working in an unlicensed establishment is also cited and fined \$1,000.. Cases involving licensed owners who have been repeatedly cited for employing unlicensed individuals are forwarded for formal discipline. While administrative citations are issued to unlicensed individuals, 55 percent of these citations go unpaid. Collecting the fines for these citations provides a challenge for BBC. To process a citation for collections, the Franchise Tax Board requires a Social Security number and the collections agency BBC contracts with requires a valid identification number. Unlicensed individuals often do not provide their legal name, current address, or any type of valid photographic identification. Without proper identification, BBC cannot gather identifying information, such as a California Identification number or Driver's License number, birth date, or Social Security information. BBC can request that during a joint BBC inspector/DOI investigator inspection the DOI investigators issue misdemeanor citations to unlicensed owners and unlicensed individuals which are forwarded to the local District Attorney's (DAs) office for prosecution, which could result in probation, BBC fine recovery, and/or jail time, depending on the county. Some establishment owners continue to operate their business without complying with licensing regulations. The cited owners and operators do not pay their fines and because the DA's office does not always prosecute cases, BBC says that the issuance of misdemeanor citations is not a strong deterrent.

Anyone who is issued a citation by BBC has the right to appeal any or all the violations cited before the BBC's Disciplinary Review Committee (DRC). The DRC allows an individual to appear in person and contest whether a violation actually occurred, the period of time offered for a correction, and the amount of the fine. DRC hearings feature interpreters to ensure the ability for all licensees to appear. During FY 2014/18 BBC held 141 DRC hearings. If the individual still does not agree with the DRC decision, they can appeal to have their case heard before an Administrative Law Judge. These monthly hearings last two to four days and an average of 60 cases are heard each session (about 180 cases per month). The DRC is further discussed in Issue # 14 below.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

BBC was last reviewed by the Legislature through sunset review in 2014-2015. During the previous sunset review, 18 issues were raised. BBC was originally scheduled for sunset review oversight in 2018-2019. In order to provide an opportunity to explore BBC education and training requirements and the impacts of those on barriers to entry in the profession, the review was extended for one year and the BBC's sunset date was extended to January 1, 2021. Due to the limitations on Legislative processes as a result of the COVID-19 pandemic, BBC's review and sunset date were pushed out another year beyond 2020-2021. In December 2018, BBC submitted its required sunset report to the Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions (Committees). In this report, BBC described actions it has taken since its prior review to address the recommendations made. The following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made. For those which are not addressed and which may still be of concern to the Committees, they are addressed and more fully discussed under "Current Sunset Review Issues."

- **Language access efforts have been enhanced.** BBC notes that it is proud of its extensive efforts to provide meaningful language access to consumers and the hundreds of thousands of individuals that have chosen the barbering and beauty industry for their career. BBC addresses California's diverse population by providing all Board-created information in English, Vietnamese, Spanish and Korean, the top four language requests. BBC also developed a Language Access Protocol for inspectors and then expanded that to all BBC programs. Training on this protocol is now updated and provided every two years, as well as at the beginning of an individual's employment with BBC. BBC's DRC increased accessibility by providing certified interpreters for Vietnamese and Spanish speaking individuals, at no cost to the individuals, so that licensees can better understand why they were cited and how to properly correct violations to avoid being cited in the future.
- **Inspection enhancements were undertaken.** BBC has made numerous improvements in its inspection program and advises that it continues to push for further enhancements and efficiencies. Inspectors are required to undergo training and take efforts to communicate more effectively with LEP-licensees and the public. A more streamlined approach to inspections, allowing for compliance inspections and shorter visits, has improved relationships with licensed establishments. Tracking inspection data through BreEZe has allowed BBC to increase the impact of inspectors and the program.
- **Actions have been taken against fraudulent schools and the relationship with BPPE has been more productive.** Despite having minimal statutory oversight over BBC-approved schools, BBC has made significant progress in directly confronting fraudulent private postsecondary institutions. In FY 2017/18, BBC denied 444 applications for examinations from individuals who allegedly bought hours instead of attending school or who did not receive BBC-approved curriculum and were only taught how to pass the two-part (practical and written) licensing examination. These "graduates" were not provided health and safety information, nor were they given a simple primer on basic labor laws, leaving them more susceptible to wage discrimination in the workplace (a concern among BBC's diverse licensed population, many of whom are first-generation immigrants). BBC and BPPE continue to work more closely than it has since the BPPE was created in 2010 to improve its communication as well as oversight of schools. Over the last number of years, BBC has inspected schools and

been able to partner with BPPE, as well as work to make recommendations to the BBC Act to hold BBC-approved schools accountable. Schools are further discussed further in Issue #5 below.

- **The Health and Safety Committee was established and a key aspect of necessary education was developed.** The committee now meets biannually to make recommendations to BBC on health and safety issues for both consumers and workers in the industry and how to raise the industry's awareness of basic labor laws and physical and sexual abuse. BBC believes that the committee has been instrumental in updating the BBC's required Health and Safety Course and assisting BBC in the development of valuable information for licensees, such as: *Know Your Workers' Rights*, *CASafeSalon*, and physical and sexual abuse awareness training. The committee also brought together multiple agencies, associations, and community advocacy groups to collaborate on various issues. On January 22, 2017 BBC finalized the updated versions of the Health and Safety course and provided the updated version, which now includes a student handbook, instructor handbook, and curriculum, to all schools. BBC also made the course available on its website for easy access and continues to update this course, including adding physical and sexual abuse awareness training and workers' rights awareness training. In July 2018, the Board worked with 5 schools and an apprenticeship sponsor to perform a pilot test of the full curriculum. BBC has translated the course into Vietnamese, Spanish and Korean.
- **Outreach on ability to use Individual Taxpayer Identification Numbers (ITIN) is ongoing.** Since 2015, BBC has made significant efforts to raise awareness of the Individual Taxpayer Identification Number option on license applications for those who do not have a valid Social Security Number. BBC continues to work toward greater access and inclusion of California's diverse communities in the industry through language access for licensees, cultural sensitivity training for inspectors, and outreach partnerships with organizations like the Korean-American Cosmetology Association and the Mexican Consulate.
- **BreEZe is functional and effective.** BBC utilizes the system well and has made many process improvements as a result of BreEZe implementation. BBC is now able to utilize new reporting mechanisms to streamline and track workloads. BBC continues to work toward additional enhancements and system upgrades.
- **BBC updated its strategic plan.** BBC's Strategic Plan identifies goals and objectives to fulfill BBC's statutory mandates and responds to changes in the beautification services industry. BBC adopted a 2018-2022 plan in 2017.
- **BBC completed numerous mandatory and requested reports.**
 - On May 15, 2017, BBC approved the *Personal Service Report* which provides information on the regulatory and implementation progress of the Personal Service Permit, as required by BPC Section 7402.5.
 - Report to Senators Hill and Nguyen on the Nail Care Scope of Practice Task Force. In a letter dated May 24, 2017, Senators Hill and Nguyen respectfully requested BBC to assemble a task force to study the appropriate educational and training requirements for an individual licensed as a manicurist to possibly increase their skill set to safely practice superfluous hair removal while prioritizing public health and well-being. The task force met on September 18, 2017. The report contains the

task force's recommendations and was provided to the Legislature on October 30, 2017.

- BBC requested that the Department of Consumer Affairs' Office of Professional Examination Services (OPES) conduct an occupational analysis of cosmetology practice in California. The purpose of the occupational analysis was to define the practice for California cosmetologists in terms of actual job tasks that new licensees must be able to perform safely and competently at the time of licensure. The results of this occupational analysis provide a thorough description of practice for the cosmetologist profession that was subsequently used to review the National Cosmetology Theory Examination and the National Cosmetology Practical Examination, which were developed by the NIC. At BBC's request, OPES conducted a review of the NIC Cosmetology Theory Examination and the National Cosmetology Practical Examination. The purpose of this review was to verify compliance with psychometric and legal standards for licensing examinations.
- BPC Section 7303.2 (a) requires BBC to review the 1600-hour training requirement for cosmetologists. BBC established a working group consisting of board members, industry representatives, community college representatives, and private cosmetology school representatives to produce a report..
- BBC has experienced low passing rates for candidates who take the cosmetology written examination in Spanish. (AB 181, Bonilla, Chapter 430, Statutes of 2016) specifically addressed this issue by requiring BBC to review the Spanish language examination if, by January 1, 2016, the pass rate for Spanish speakers did not increase to the average pass rate for all other language examinations. The pass rates have significantly increased, therefore, in compliance with California Business and Professions Code, Section 7303.2 (b) BBC completed its review.
- **Licensees can evaluate inspectors.** BBC developed an anonymous survey and posted it on the website, encouraging licensees to evaluate BBC's inspection process and the inspectors' conduct during inspections. BBC also includes a postage-paid postcard with the Inspection Satisfaction Survey with every mailed citation. BBC compiles a report of the result quarterly and reviews the information with staff to determine where improvements can be made.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to BBC or areas of concern that should be considered, along with background information for each issue. There are also recommendations Committee staff have made regarding particular issues or problem areas BBC needs to address. BBC and other interested parties have been provided with this Background Paper and BBC will respond to the issues presented and the recommendations of staff.

BBC ADMINISTRATION ISSUES

ISSUE #1: (BOARD COMPOSITION.) Does BBC's composition need to be updated?

Background: Boards within DCA are semiautonomous bodies whose members are appointed by the Governor and the Legislature. Although most of the non-healing arts boards like BBC have statutory authority for a public majority allotment in their makeup, most boards are comprised of a majority of members representing the profession, based on appointments, terms, and vacancies.

In 2010, the Federal Trade Commission (FTC) brought an administrative complaint against the North Carolina State Board of Dental Examiners (Board) for exclusion of non-dentists from the practice of teeth whitening. The FTC alleged that the Board's decision was an uncompetitive and unfair method of competition under the Federal Trade Commission Act. This opened the Board to lawsuits and substantial damages from affected parties. *North Carolina State Board of Dental Examiners v. FTC* placed limitations on the immunity of regulatory boards controlled by active market participants. This is because individuals who are directly affected by their own rulemaking may not be able to detect their biases, purposefully or inadvertently placing their benefit over those of the public. Or, as the Supreme Court stated, "Dual allegiances are not always apparent to an actor."

While BPC § 7303(b) requires four professional members be appointed, it does not specify what, if any, segments of the professional population must be represented. If the appointing authority makes a determination, all professional appointees could be an establishment owner, or all professional appointees could be a school owner. "Professions" is not defined and the law does not require the appointee to be a licensee, does not clarify that the specific practices of the professions regulated by BBC should be represented, and as such, the BBC itself may suffer from a lack diversity in perspective and experience depending on what "profession" means to a given appointing authority. As was discussed during the prior review of BBC, the law does not ensure that appointees represent practical experience in providing beautification services, and historic representation of a variety of professions on BBC has not been consistent.

BBC reports that it forms technical advisory committees in order to engage a variety of stakeholders and gain important insight but in its responses to the Committees during the prior sunset review, noted that there would be a significant benefit to allowing for each of the different license categories to always be represented in BBC proceedings and discussions.

The beautification services industry in general has evolved significantly since the current membership was outlined in statute. BBC can only remain effective, up to speed on current practice, able to reflect evolutions in professions, and relevant to upholding consumer protection if a variety of experiences and viewpoints is provided at the board member level.

Staff Recommendation: *The Committees should work with BBC and the appointing authorities to determine how best to ensure diversity in perspective and broad representation among professional members appropriately reflect the beautification services industry.*

ISSUE #2: (REGULATIONS.) As an entity within the DCA organization, BBC is required to follow certain DCA-established processes to promulgate regulations. What is the current timeframe for BBC regulatory packages to be approved and finalized?

Background: Promulgating regulations assists BBC in implementing the Act and changes to the Act stemming from legislation in order to establish a framework for consumer protection. The majority of BBC rules and guidance on standards necessary for licensure are outlined in regulations. According to the Office of Administrative Law (OAL), a “regulation” is any rule, regulation, order or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it. When adopting regulations, every department, division, office, officer, bureau, board or commission in the executive branch of the California state government must follow the rulemaking procedures in the Administrative Procedure Act (APA) (Government Code section 11340 et seq.) and regulations adopted by OAL, unless expressly exempted by statute from some or all of these requirements. The APA requirements are designed to provide the public with a meaningful opportunity to participate in the adoption of regulations or rules that have the force of law by California state agencies and to ensure the creation of an adequate record for the OAL and judicial review.

The rulemaking process does provide some discretion to agencies. While each agency must comply with timeframe requirements and must produce the same uniform documents supporting rulemaking efforts to submit to OAL, there are not the same standards for how regulation packages are determined, written, and produced.

Prior to 2016, boards and bureaus like BBC organized within DCA filed rulemaking packages directly with OAL. Boards and bureaus were not required to submit rulemaking packages to DCA or the overseeing agency for review and approval prior to submission for publication in the Notice Register. OAL reported that this process was unusual within state government: most programs must submit regulations packages to their respective agency for approval. As a result, in September 2016, the Secretary of the Business, Consumer Services and Housing Agency (BCSH) changed the procedures: boards and bureaus were now required to submit rulemaking packages to the department and BCSH for review prior to filing with OAL. BCSH stated that the reason for the decision was an increase in the number of regulations disapproved by OAL for failing to meet their statutory requirements.

According to a 2019 DCA report to the Legislature, Internal Review of Regulation Procedures, “the resulting enhanced scrutiny from Agency and DCA’s Legal Affairs Division successfully reduced the number of disapproved regulation packages, with the number of disapprovals falling from nine in 2016 to only one in 2018.” The report also found that “while disapproval rates plummeted, a consequence was lengthened timelines to adopt regulations. Several boards and bureaus raised objections to the lengthened review time and reported difficulty obtaining timely updates about regulation packages under review.” The “pre-review” process required regulations to go through DCA’s entire review process prior to the package being submitted for public comment. DCA established a formal Regulations Unit to “minimize the length of time it currently takes to review regulatory packages;

allow board and bureau attorneys to focus on the increased workload of non-regulatory work; respond to the demand of regulation packages under review and the increase of regulation packages from AB 2138 (Chiu and Low; Chapter 995, Statutes of 2018); avoid the habitual carry-over of regulation packages; and, enhance the level of regulation training provided to boards and bureaus to improve the quality of regulations and create efficiencies by having better quality packages submitted for review.”

It would be helpful for the Committees to have a better understanding of the status of necessary BBC regulations, the timeframe for regulations to be processed and complete, and what efficiencies BBC has realized since the creation of the Regulations Unit.

Staff Recommendation: *BBC should provide the Committees with an update on pending regulations and the current timeframes for regulatory packages. In addition, the BBC should inform the Committees of any achieved efficiencies in promulgating regulations in recent years.*

ISSUE #3: (PERSONNEL FLEXIBILITY.) BBC is limited in its ability to make staffing changes in a budget year. Are updates necessary in order to ensure BBC can reorganize staff and respond to changes in its staffing structure?

Background: BPC Section 7313(2) specifically states that “The board shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget Act and described in supporting budget documents, and shall not redirect funds or personnel-years allocated to those inspection and investigation purposes to other purposes.”

Maintaining the integrity of the inspection program is critical but BBC may be unnecessarily hindered by this language, which renders BBC unable to account for vacancies due to retirement or various other factors that may require reorganization or redirecting staff in a given budget year in order to respond to workload needs and priorities.

Staff Recommendation: *The Act should be amended to provide BBC with flexibility to address staffing needs by striking this language.*

ISSUE #4: (MEDICAL PRACTICE.) Are clarifications necessary to specify that BBC-regulated beautification services do not constitute the practice of medicine?

Background: Current law specifies that the Act does not confer authority to practice medicine or surgery. The rise of medical spas has long been a concern for the Medical Board of California and efforts there have been efforts to establish clear lines between beautification services and treatments that constitute the practice of medicine, particularly in light of the significant growth in the beauty and wellness industry, and the availability of approved products and devices. Lasers and medical-level skin treatments are only allowed to be provided by a physician and surgeon licensed by the MBC, registered nurse licensed by the Board of Registered Nursing, or physician assistants licensed by the Physician Assistant Board when those individuals are practicing according to the practice agreement with a supervising physician.

BBC reports that licensees are often providing services that are technically considered the practice of medicine. Inspectors routinely enter establishments to find products, devices, and treatment offerings that are beyond the authority of a BBC license. BBC is concerned that the Act limits its authority by

referring to “practicing” which allows establishments to skirt the law by “offering” certain services. BBC requests to amend the Act to include language specifying that the practice of medicine shall not be performed or offered by a licensee without being authorized and licensed to perform the service pursuant to a certificate obtained in accordance with another provision of law.

Staff Recommendation: *The Committees may wish to amend the Act to provide clear direction on the prohibition of BBC licensees providing medical services.*

ISSUE #5: (SCHOOL AND STUDENT OVERSIGHT.) BBC approves curriculum, facilities, equipment, and textbooks at schools offering training programs for eventual licensees. The issue of what appropriate role BBC should play in school and program approval has been raised in every recent prior sunset review and has been the subject of proposed legislation, legislative amendments, and legislative oversight hearings for over 10 years. What steps should be taken to ensure appropriate oversight of schools and student success?

Background: BPC Section 7362 specifies that a school approved by the BBC is one that is first approved by the BBC and subsequently approved by the BPPE, or is a public school providing BBC-approved instruction. The BBC and the BPPE may simultaneously review a school's application. However, a school is not approved until it has received approval from both entities.

BPPE and BBC regulate two separate aspects of an institution. In order to obtain BBC approval, a school must possess certain equipment, have a certain amount of floor space, use BBC-approved text books, receive BBC approval for the school curriculum, and provide BBC with a list of potential bona fide students. BBC does not receive revenue from schools for the work it conducts to provide approval. BPPE enforces the Private Postsecondary Education Act which establishes prohibitions on false advertising and inappropriate recruiting; requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures; guarantees students can complete their educational objectives if their institution closes its doors; and provides students tuition recovery recourse in the event of economic loss stemming from a school closure or fraud. However, the BPPE is the only entity authorized to collect a fee during the approval process.

Schools are not required to be accredited in order to operate in California but, in order for an institution to participate in federal financial aid programs under Title IV of the Higher Education Act (Pell Grant, federal student loans, etc.), the institution must be approved by an accrediting agency recognized by USED. Many of BBC's 246 approved schools are accredited and thus eligible to receive federal financial aid revenue.

The cost of education in this industry can range from \$2,500 to around \$20,000, with the average cost of a private college at around \$15,000 for the 1600-hour course in cosmetology. Concerns about student debt incurred by individuals who enroll in training programs at BPPE schools are longstanding, particularly as compared to the starting wages for a new licensees. Thousands of students have been left in the lurch by sudden school closures and are often left with few choices but to start again when they are defrauded by a bad school. In 2016, following investigations conducted by USED's Office of Federal Student Aid, that found that a school serving California students, Marinello Schools of Beauty, was knowingly requesting Federal aid for students based on invalid high school diplomas, underawarding Title IV aid to students, charging students for excessive overtime, and engaging in other acts of misrepresentation, USED withheld federal financial aid. Facing the loss of vast sums of

revenue, the school shuttered, leaving thousands of Californians with limited options to continue their required training.

Prior to the establishment of BPPE in 2010, many boards, including BBC, took on a more direct role in institutional approval following the sunset of the former Bureau for Private Postsecondary and Vocational Education (BPPVE). Before the BPPVE sunset, BBC and BPPVE worked according to a formal Memorandum of Understanding (MOU) which provided for an active working relationship to ensure that schools met all requirements for licensure before being licensed or approved. BBC and BPPVE worked collaboratively on school inspections and shared information on a daily basis regarding school compliance.

Yet BBC's relationship with BPPE has been fraught from the outset. BBC often finds various health and safety violations during inspections and in recent years, has discovered outright fraud. BBC has been concerned about the impacts on problematic schools to future licensees and the public alike. Over the past three years, BBC and BPPE have attempted to work more collaboratively, despite having a MOU in place to outline joint oversight. Joint investigations were finally undertaken and combined efforts of the two agencies have resulted in some of the first orders in many years for fraudulent schools selling hours and conducting diploma mill activity to stop enrolling students. It would be helpful for the Committees to know if progress is continuing and if the two agencies are continuing collaborative efforts to ensure swift action is taken against fraudulent schools.

BBC reports that it continues to see unprecedented numbers of fraudulent proof of training documents, including many from applicants who lives hundreds of miles away from a school they claimed to attend, and some applicants who do not even live in California. BBC denies applications but in some instances, individuals continue to apply to take their examination. In order to enhance oversight of schools and provide opportunities for students, BBC is again requesting to have authority to require schools to register their students at the time the individual enrolls. BBC believes implementation of a registration process will be a valuable deterrent to the selling of hours and issuing fraudulent proof of training documents that BBC is required to utilize in order to qualify a candidate for an examination. According to BBC, this step will ensure that, for example, if a student applies for licensing examination in cosmetology and their enrollment date does not match the information originally provided by the school, BBC will be able to investigate and determine if the training was recorded in a fraudulent manner.

BBC has also requested to clarify that BBC representatives can access a school to ensure that BBC-approved curriculum is actually being taught. BBC is authorized to inspect to ensure health and safety standards are being met but BBC visited several schools over the past four years and found many that are only teaching students how to pass the examination and are not the teaching the required curriculum. BBC staff spoke with students and instructors, many of whom had never seen BBC laws and regulations and had zero knowledge about BBC's required health and safety course.

Staff Recommendation: *BBC should again provide the Committees with an update on its current working relationship with BPPE. The Committees may wish to explore providing BBC with additional resources from fees BBC-approved schools pay BPPE in order to support BBC's subject matter expertise and school approval efforts. The Committees may wish to take steps to enhance the Act so that BBC has the tools that it needs to maintain oversight of schools and promote student success. BBC should update the Committees on the workload and impacts of additional authority. BBC should advise the Committees if certain student populations and applicants are disproportionately impacted by fraudulent schools.*

ISSUE #6: (AB 5.) What are the remaining implications for BBC licensees in light of the passage of AB 5 and clarify the bill provided as to how individuals providing beautification services should be classified for employment purposes?

Background: Many beautification services providers in California are independent contractors who rent or utilize space in a licensed establishment but do not have a traditional employee-employer relationship with the establishment. Some services, however, are likely being provided by individuals who have historically been misclassified from a wage and employment standpoint.

The Labor Code establishes a comprehensive set of protections for employees, including a time-sure minimum wage, meal and rest periods, workers' compensation coverage in the event of an industrial injury, sick leave, disability insurance in the event of a non-industrial disability, paid family leave, and unemployment insurance. Through the Industrial Welfare Commission (IWC), industry-specific wage orders set the wages, hours, and working conditions of employees. The IWC wage orders have the force of regulation and are enforced by the Division of Labor Standards Enforcement (DLSE).

BBC has long referred to independent contractor practitioners as "booth renters" and captured the independent contractor model as "booth rental". The terms are not defined and have a total of two references in the Act – BPC Section 7401 requires a licensee, at the time of renewal, to indicate if they are an employee, independent contractor or "booth renter", or salon owner (if the individual is a licensed practitioner); or if they have a "booth renter" or independent contractor operating in the establishment (if they are a licensed establishment owner). BBC has suggested in a number of prior sunset reviews that "booth renter's license" should be established in order to identify licensees who are independent contractors and differentiate from those who may be employees of an establishment.

Following these years-long discussions at BBC meetings, hearings focusing on BBC licensee employment status, and reports highlighting impacts on BBC licensees from misclassification as independent contractors, in the spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly confounded prior assumptions about whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test for determining if a worker is an independent contractor, which is comprised of three necessary elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity's business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

In 2019, the enactment of Assembly Bill 5 (Gonzalez, Chapter 296, Statutes of 2019) effectively codified the *Dynamex* decision's ABC test for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and for IWC wage orders of the Industrial Welfare Commission. However, the author negotiated many exceptions with different business entities and professions, allowing those exempted from the bill to return to using the multi-factor balancing test in *Borello*. Licensed manicurists were exempt from the bill and are able to use the *Borello* multi-factor balancing

test to determine employee status, but only until January 1, 2022. The bill authorized an individual contracting for professional services to do so as a sole proprietor or other business entity, and for a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist, specified that they are providing professional services if the licensee:

- Sets their own rates, processes their own payments, and is paid directly by clients.
- Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.
- Has their own book of business and schedules their own appointments.
- Maintains their own business license for the services offered to clients.
- If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.

AB 5 also specified that licensed manicurists will be considered based on the *Dynamex* standards beginning January 1, 2022. AB 231 (Nguyen) is currently pending in the Assembly and would delete the January 1, 2022 inoperative date from the exception granted in AB 5. Should this bill pass, the licensed manicuring profession will be able to continue to classify employees using the *Borello* multi-factor balancing test indefinitely, rather than eventually convert to the *Dynamex* ABC test.

In 2020, AB 2465 (Gonzalez), was introduced to require BBC to establish a “booth renter” permit which in turn would be added to the standards above that a BBC licensee would have to meet in order to be considered an independent contractor for Labor Code, Unemployment Code, and IWC wage order purposes. The role of BBC in enforcing labor laws, or issuing a separate license for purposes of easier identification of individuals who may not be complying with labor and wage laws, seems to have little positive benefit to the actual licensees, while potentially paving the way for establishment owners to skirt accountability and responsibility for the individuals operating in their establishment. The “booth renter” permit and license attempts have historically been perceived as ensuring that salon owners skirt certain responsibilities for individuals operating at their place of business. In justifying prior attempts, BBC advised, in its 2013 report to the Legislature on the regulation of “booth rentals” that the pros include “establishment owners are protected against citations and fines caused by renters who chose not to comply with the BBC law; the roles of an owner and renter would be established; and both parties would clearly know what is required of them with regards to scheduling, establishment access, insurance provisions, and the use of supplies and equipment. It is not entirely clear if this change will enhance DLSE efforts, nor does it appear to benefit the broader licensee community for BBC to potentially encourage more independent contractors.

Staff Recommendation: BBC should provide an update on discussions at the board level, including feedback from interested parties like nail professionals advocates, among others, received since the passage of AB 5. The Committees need to better understand the implications of a “booth renter” or “booth rental” permit on BBC and beautification services providers alike.

BBC LICENSING ISSUES

ISSUE #7: (SCOPE OF PRACTICE.) The Act provides narrow exemptions for certain services and captures a wide variety of beautification practices that may not require the education and training necessary for licensure. While BBC has explored narrowing licensure categories to allow an individual to only practice one aspect of what is today considered the practice of barbering or the practice of cosmetology, questions remain about whether those steps are necessary to prevent consumer harm and whether an evaluation of risk to public health is a more appropriate means by which to determine the practices that require licensure. Are changes necessary?

Background: The Act outlines many beautification services as the practice of barbering and the practice of cosmetology, including certain services that do not appear to pose a significant risk to the consumer.

The practice of barbering is defined as all or any combination of certain beautification practices (other than selling, fitting, or styling wigs or hairpieces; natural hair braiding or; threading) including: shaving or trimming beards or cutting hair; giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances; singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics; applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, or neck and; hairstyling.

The practice of cosmetology is defined as all or any combination of certain beautification practices (other than selling, fitting, or styling wigs or hairpieces; natural hair braiding or; threading) including: arranging, dressing, curling, waving, machine-less permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating hair; massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body with hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; removing superfluous hair from a person by using depilatories or tweezers, chemicals, preparations, devices, or appliances; cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring a person's nails; and massaging, cleansing, treating, or beautifying a person's hands or feet.

The Act also requires individuals performing barbering or cosmetology to only provide those services in a BBC-licensed establishment, or outside of an establishment in accordance with BBC regulations which specify requirements one must meet in order to obtain a personal services permit. In addition to the exemptions for selling, fitting, or styling wigs or hairpieces; natural hair braiding; or threading, the law authorizes a licensed individual to provide beautification services outside of a licensed establishment or mobile unit, when necessary, due to illness or other physical incapacitation, such as in convalescent homes. These services, however, must be obtained from an individual who is employed by a licensed-establishment.

Notably, the Act exempts a number of individuals from having to meet the same requirements as licensees, despite being authorized to provide many of the same beautification services that require licensure. BPC Section 7319 does not require individuals licensed to practice medicine, surgery,

dentistry, pharmacy, osteopathic medicine, chiropractic, naturopathy, podiatry, or nursing, acting within the scope of practice for which they are licensed, to become licensed by BBC. Commissioned officers of the United States Army, Navy, Air Force, Marine Corps, members of the United States Public Health Service, and attendants attached to those services when engaged in the actual performance of their official duties are also exempt. Significantly, the Act exempts “persons employed to render barbering, cosmetology, or electrolysis services in the course of and incidental to the business of employers engaged in the theatrical, radio, television or motion picture production industry.” These individuals do not attend school and, despite having decades of experience, are not authorized for licensure if they provide beautification services outside the industry or after they leave the industry and wish to provide services elsewhere. Individuals are also exempt for licensure if they engage in beautification services within a particular practice but if they do so outside of a licensed establishment and without compensation. The Act also exempts individuals “engaged in the administration of hair, skin, or nail products for the exclusive purpose of recommending, demonstrating, or selling those products”, which in essence provides a pathway for an individual to apply makeup at a retail store, after receiving industry or manufacturer training, but that same experienced person is deemed unsafe to provide the same services on their own unless they attend school for 1600-hours and become licensed.

Many of the current practices, including those that are outdated, those that do not pose a significant risk to consumers, and those that are rarely done, remain subjects of required school curriculum. It appears that the connection to school textbooks and maintaining the necessity of keeping certain practices as necessary for licensure could be directly related to the number of school hours required for licensure, which is further discussed in Issue #8 below.

During the past number of years, BBC has discussed what services should remain a part of licensed practice and continues to oppose efforts aimed at reflecting advancements in the way that services are delivered and providing potential flexibility to licensees providing those services. For example, the 2012 sunset review for BBC recommended maintaining the long-standing exemption for natural hair braiding services. Some stakeholders continue to believe that the incidental use of scissors in these services means that cosmetology is being practiced, and others were extremely concerned about the prevalence of the practice and scalp damage. After convening a task force, BBC advised that it

“recognizes that some forms of braiding are passed down by generations. The Board believes that individuals that perform this type of braiding, to family and friends, without charging a fee, should continue to be exempt...The Board does realize that natural hair care is a specialized practice under the scope of practice for a cosmetologist. The Board recommends that if an individual is offering natural hair care services, including braiding, for a fee, they must in fact be trained in infection control and proper braiding techniques to prevent further consumer harm; that the Legislature consider enacting a bill for the development of a natural hair care license, with a theory hour requirement of 400 hours and a curriculum to be determined by the Board; and a grandfathering clause be added to the bill to allow persons currently engaging in natural hair care to be able to be licensed by passing a State exam without the inclusion of school training. This clause would be in effect for a two-year period. New natural hair care stylists would be required to attend schooling and pass the State exam.”

Despite the fact that complaints made to BBC pertaining to natural hair braiding remain low and enforcement action for harm stemming from these services is low, BBC recommended ending the exemption and adding required hours of schooling. However, grandparenting current licensees appears to counter than in fact risk remains low if those individuals would be allowed to continue practicing without a license. It seems that the prudent step to ensure individuals continue to engage in this

practice is to instead clarify the exemption, by striking language currently in the Act that leaves open the possibility that those providing natural hair braiding services would have to be licensed if they did any other practice of cosmetology as part of the hair braiding service. It would be helpful to understand why the Legislature would potentially require individuals who wash, blow dry, or incidentally trim hair as part of a braiding service to become licensed, adding a possible unnecessary barrier to practice, when there are not clear ways to teach and test for competency in the space, and when there are not clear issues arising from status quo.

In its current sunset report to the Legislature, BBC suggests creating a hairstylist and waxing license to allow practitioners to obtain fewer training hours and gain faster entry to the profession. Stemming from workshops held throughout 2018 during its statutorily mandated review of the current requirements to obtain licensure, BBC decided that a hairstylist-only license, like the cosmetology license but without including skin and nail care, should be pursued. The practice of hairstyling, though, would still, as proposed by BBC, include arranging, dressing, curling, cleansing, and shampooing, among other hair-specific beautification practices that utilize instruments or require chemical products to be applied. The waxing-only license was designed to respond to issues arising from the debate about SB 296 (Nguyen, 2016) which proposed authorizing manicurists to remove superfluous hair from the lip, eyebrows, elbow to the fingertips or knees to the toes of a person by expanding the practice of nail care. The Author was concerned about the impacts of current lengthy training requirements on Vietnamese-Americans, who comprise the majority of nail practitioners in the state. While BBC's proposal is similar to that bill, in that SB 296 also required an individual to complete waxing-only training to add this practice to what they are eligible to perform as a manicurist, the BBC approach would require the individual to complete the required training necessary to become a manicurist, obtain licensure, but still have to obtain the separate waxing license. The proposed hours for these license categories is discussed in Issue #8 below.

The issue of appropriate licensing categories has been raised during every recent BBC review. Recognizing that although there may be health concerns related to certain practices, it may not be necessary for an individual performing narrow, specialized beautification services to be constrained by a broad definition of what constitutes cosmetology and requires a full license. Many entrepreneurial individuals throughout the state, including a large number of women and minorities, have become successful small business owners focused on providing one specialized service. BBC's approach has typically been to add to the existing practice frameworks for licensing categories, rather than look for pathways to evaluate to risk and create opportunities for individuals to safely provide only one or a few services considered within the larger practice definitions. For example, waxing, makeup artistry, and eyelash extension application are all considered cosmetology services but a growing segment of professionals offering these services do not ever intend to work as a hairstylist.

In its sunset report, BBC requests changes to the Act to "establish standard language across the barbering, cosmetology, manicuring, an esthetic scopes of practice". Among the proposed changes, the language would clarify that barbering includes shaving a face with a razor, rather than only shaving or trimming a beard as the law currently establishes. Additionally, BBC proposes to specifically state that applying hair extensions is the practice of cosmetology. The BBC's proposal would also add applying makeup or eyelashes to any person and tinting the eyelashes or eyebrows of any person to the practice of cosmetology and the practice of skin care. Cosmetology and skin care practice would also specifically reference the use of certain devices, and esthetics would be expanded to include services for the entire body. It would be helpful for the Committees to understand the evaluation of risk BBC has undertaken in specifying certain services, as well as the practical impacts of these changes,

including whether BBC believes unlicensed activity complaints might arise if businesses use BBC to gain marketplace advantage by providing notice that one competitor is applying makeup, for example.

A number of states throughout the nation have taken steps to strike practices from those required for licensure that seemingly do not pose a risk of harm to the consumer, including shampooing or cleansing, combing, blow drying, curling, and dressing, to name a few. The Legislature was asked to decide whether certain hair beautification services that do not utilize instruments or chemicals should still require licensure. SB 999 (Morrell, 2018) would have deleted services from the definition of the practice of barbering and cosmetology, including shampooing, arranging, dressing, curling, and waving hair from barbering and arranging, dressing, curling, waving, cleansing, shampooing, and beautifying hair from cosmetology. The bill would have also specified that the practices of barbering and cosmetology do not include arranging, beautifying, cleansing, curling, dressing, shampooing, or waving the hair of any person. 2018 legislation in Minnesota created an exemption from licensure for individuals who only perform hairstyling and makeup services, if the person completes a four-hour course in health, safety, and infection-control matters. The legislation also exempted a facility in which individuals only provide hairstyling and makeup services from licensure. Just last month, the Utah Legislature passed a bill to create a licensure exemption for a stylist who “dries, styles, arranges, dresses, curls, hot irons, shampoos, or conditions hair.” The bill would not apply to cosmetologists who cut the hair, apply dye or “apply reactive chemicals to straighten, curl, or alter the structure of the hair” and unlicensed stylists who only perform exempt services have to receive a “hair safety permit” by completing a two-hour “hair safety program”. Tennessee considered legislation last year to strike licensing requirements for a number of professions, including cosmetologists if the individual receives a signature that the consumer acknowledges they know about the lack of license and if the consumer releases the individual from liability that may arise from performance of the services. Legislation pending in Illinois last year would allow cosmetology, barbering, esthetics, hair braiding or nail technology services to be provided without a license as long as the individual posts a notice that the services are provided by someone unlicensed. Michigan legislation proposed to eliminate barber licensing requirements, including an 1800-hour school completion requirement, entirely.

A practice act is the highest and most restrictive form of professional regulation, and is intended to avert severe harm to the public health, safety or welfare that could be caused by unlicensed practitioners. Clearly some beautification services could result in a higher risk of infection, while some may result in a higher risk of customer dissatisfaction, some may result in significant and irreparable body damage, and others may not yield any true harm, even if performed inadequately. It would be helpful for the Committees to better understand what services result in complaints and negative consumer health impacts. It would be helpful for the Committees to know which services carry inherent risk and whether some services could safely be provided by an individual who did not complete 1600 hours of education.

Staff Recommendation: *The Committees may wish to consider removing certain practices from the definition of barbering and cosmetology based on an evaluation of risk and an analysis of BBC enforcement data.*

ISSUE #8: (HOURS). What is the continued justification for individuals to complete so many hours of training in order to safely provide beautification services? Do current requirements, and costs associated with training, benefit students and the public? Is an evaluation of risk ever part of the rationale for requiring so many hours?

Background: Recent studies and reports have focused on the impacts of licensing requirements for employment and on individuals seeking to become employed. According to a July 2015 report on occupational licensing released by the White House, strict licensing creates barriers to mobility for licensed workers, citing several groups of people particularly vulnerable to occupational licensing laws, including former offenders, military spouses, veterans and immigrants.

In October 2016, the Little Hoover Commission released a report entitled *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*. The report noted that one out of every five Californians must receive permission from the government to work, and for millions of Californians that means contending with the hurdles of becoming licensed. The report noted that many of the goals to professionalize occupations, standardize services, guarantee quality and limit competition among practitioners, while well intended, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers. The study found that occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach.

The report found that California compares poorly to the rest of the nation in the amount of licensing it requires for occupations traditionally entered into by people of modest means. According to the report, researchers from the Institute for Justice selected 102 lower-income occupations, defined by the Bureau of Labor Statistics as making less than the national average income, ranging from manicurist to pest control applicator. Of the 102 occupations selected, California required licensure for 62, or 61 percent of them. According to the report, California ranked third most restrictive among 50 states and the District of Columbia, following only Louisiana and Arizona. California ranked seventh of 51 when measuring the burden imposed on entrants into these lower- and moderate-income occupations: on average, Californians typically pay about \$300 in licensing fees, spend 549 days in education and/or training and pass one exam.

To become a licensed barber, an applicant must submit proof of completion to BBC of 1500 training hours covering all practices of a barber, according to the following:

- 1100 hours of technical instruction and practical training in hair dressing –
65 hours of hairstyling including hair analysis, shampooing, finger waving, pin curling, comb outs, straightening, waving, curling with hot combs and hot curling irons and blower styling; 40 hours of permanent waving and chemical straightening including hair analysis, acid and alkaline permanent waving, chemical straightening including the use of sodium hydroxide and other base solutions and; 60 hours of bleaching including the use of semi-permanent, demi-permanent and temporary colors, hair analysis, predisposition and strand tests, safety precautions, formula mixing, tinting, bleaching, high and low lights, and the use of dye removers; 20 hours of hair cutting including the use of scissors, razor (shaper), electrical clippers/trimmers, and thinning (tapering) shears for wet and dry cutting.

- 200 hours of technical instruction and practical training in shaving – The subject of Preparation and Performance shall include, but is not limited to the following techniques and procedures: Preparing the client's hair for shaving, assessing the condition of the client's skin, performing shaving techniques, applying after-shave antiseptic following facial services, massaging the client's face, rolling cream massages
- 200 hours of technical instruction in health and safety – 20 hours on the Act and BBC regulations; 45 hours on health and safety/hazardous substances including training in chemicals and health in establishments, material safety data sheets, protection from hazardous chemicals and preventing chemical injuries, health and safety laws and agencies, bacteriology and preventing communicable diseases including HIV/AIDS and Hepatitis B; **20 hours in disinfection and sanitation including proper procedures to protect the health and safety of the consumer as well as the technician and proper disinfection procedures for equipment used in establishments** and; 15 hours in the subjects of anatomy and physiology.

To become a licensed cosmetologist, an applicant must submit proof of completion to BBC of 1600 training hours covering all practices of a cosmetologist, according to the following:

- 1100 hours of technical instruction and practical training in hair dressing – 65 hours of hairstyling including hair analysis, shampooing, finger waving, pin curling, comb outs, straightening, waving, curling with hot combs and hot curling irons and blower styling; 40 hours of permanent waving and chemical straightening including hair analysis, acid and alkaline permanent waving, chemical straightening including the use of sodium hydroxide and other base solutions; 60 hours of hair coloring and bleaching including hair analysis, predisposition and strand tests, safety precautions, formula mixing, tinting, bleaching, high and low lights, and the use of dye removers and; 20 hours of hair cutting including the use of scissors, razor (shaper), electrical clippers/trimmers, and thinning (tapering) shears for wet and dry cutting.
- 200 hours of technical instruction in health and safety – 20 hours on the Act and BBC regulations; 45 hours on health and safety/hazardous substances including cosmetology chemistry like the chemical composition and purpose of cosmetic, nail, hair and skin care preparations, elementary chemical makeup, chemical skin peels and chemical and physical changes of matter, hazardous substances chemicals and health in establishments, protection from hazardous chemicals and preventing chemical injuries, ergonomics, theory of electricity in cosmetology, bacteriology, communicable diseases, including HIV/AIDS, Hepatitis B, and staph and Material Safety Data Sheets; Disinfection and Sanitation (20 hours of Technical Instruction); **20 hours in disinfection and sanitation including proper procedures to protect the health and safety of the consumer as well as the technician and proper disinfection procedures for equipment used in establishments and;** 15 hours in the subjects of anatomy and physiology.
- 200 hours of technical instruction and practical training in esthetics – 25 hours in manual, electrical and chemical facials including cleansing, scientific manipulations, packs, and masks, electrical facials using electrical modalities, dermal lights and electrical apparatus, chemical skin peels, packs, masks and scrubs; 25 hours in eyebrow beautification and makeup including eyebrow arching and hair removal, the use of wax, tweezers, electric or manual, and depilatories for the removal of superfluous hair, skin analysis, complete and corrective makeup, the application of false eyelashes, and lash and brow tinting, if a product exists that is not

disapproved, prohibited or banned by the U.S. Food and Drug Administration, the Occupational Safety and Health Administration, or the U.S. Environmental Protection Agency.

- 100 hours of technical instruction and practical training in manicuring and pedicuring – 10 hours of manicuring and pedicuring including water and oil manicure, including nail analysis, and hand/foot and arm/ankle massage; 25 hours of artificial nails and wraps including acrylic, liquid and powder brush-ons, artificial nail tips and nail wraps and repairs.

To become a licensed manicurist, an applicant must submit proof of completion to BBC of 400 training hours training covering all practices of a manicurist, according to the following:

- 300 hours of technical instruction and practical training in nail care – 60 hours of technical instruction in manicures and pedicures (water and oil manicures including hand and arm massage, complete pedicure including foot and ankle massage, application of artificial nails including liquid, gel, and powder brush-ons, nail tips, nail wraps and repairs, and nail analysis); 60 hours of practical operations in manicures and pedicures; and 180 hours of nails
- 100 hours of technical instruction and practical training in health and safety – 10 hours on laws and regulations including the Act and BBC Rules and Regulations; 25 hours on chemistry pertaining to the practices of a manicurist including the chemical composition and purpose of nail care preparations, health and safety/hazardous substances, including training in chemicals and health in establishments, material safety data sheets, protection from hazardous chemicals and preventing chemical injuries, health and safety laws and agencies, ergonomics, and communicable diseases, including HIV/AIDS and Hepatitis B; **20 hours on disinfection and sanitation procedures to protect the health and safety of the consumer as well as the technician which entail disinfecting instruments and equipment as specified with special attention given to pedicure foot spa and basin disinfection procedures** and; 10 hours in bacteriology, anatomy and physiology

BBC also recommends that schools provide training in communication skills that includes professional ethics, salesmanship, decorum, record-keeping, client service record cards, and basic tax responsibilities related to independent contractors, booth renters, employees, and employers.

Students may perform services on the public while enrolled in a school approved by BBC but do not get licensed if they offer services at that school, nor are they authorized to receive compensation for that work. Schools, however, do receive compensation from members of the public who receive beautification services from current students.

The 1600-hour education requirement for cosmetology licensure, in particular, has been a discussion point for the Legislature for a number of years. During the 2012-13 sunset review oversight for BBC, Committee staff raised the issue of appropriate licensing categories, noting the need for BBC to evaluate adding specialized certificates or licensure in certain practices. The review asked whether many of the beautification services offered by BBC licensees require the mandatory schooling and training hours necessary for a cosmetologist or esthetician and noted that while there may be significant health concerns related to some practices, there may also not be a need for an individual performing specialized services to invest in a whole training program. The review found that training for many of the beautification services provided by BBC licensees is provided directly from

manufacturers and likely not even reflected in BBC-approved curriculum and at BBC-approved schools.

An informal survey conducted by a licensed establishment owner found that most licensees indicated they had a lot of down time, sat around and didn't do anything, noted that working once licensed provided skills and knowledge never gained in school, and that hundreds of hours were wasted learning outdated techniques that are never utilized in day-day to practice but remain components of the practical exam.

The 2014-15 sunset review oversight of the BBC further examined the issue of the required curriculum and connection to practice. AB 181 (Bonilla, Chapter 430, Statutes of 2013) required BBC to conduct a study and review of the 1600-hour training requirement for cosmetologists, conduct an occupational analysis of the cosmetology profession in California, and conduct a review of the national written examination for cosmetologists and of the California practical examination, in order to evaluate whether both examinations assess critical competencies for California cosmetologists and meet professional testing standards. BBC's study advised that the 1600-hour requirement is justified and should remain.

As is the case with a number of states taking efforts to ensure that only practices that pose a harm or risk to the consumer are regulated, a number of states have decreased the number of hours required for licensure. Vermont and Texas now require 1000 hours. Rhode Island went even further and reduced the requirement for a cosmetology license from 1500 to 600; the requirement for a manicurist license from 300 to 200; the requirement for an esthetics license from 600 to 300; and the requirement for a barbering license from 1500 to 600. States like New York that have long had lower requirements than 1600-hours do not demonstrate any greater consumer harm or significant enforcement statistics related to the lesser amount of required school hours.

BBC has never evaluated the actual risks to the consumer and licensee and where specific harm arises in justifying the 1600-hour requirement, nor is it clear why this standard remains. The first type of evaluation of risks was recently completed by the Nevada Board of Cosmetology which reviewed 21 common services and the risk associated with each. It is unclear where BBC-approved curriculum diminishes the potential for an individual to become infected after visiting a nail salon that does not properly disinfect foot spas, as one example. Health and safety and public protection is the rationale for licensure and for the hours required to become licensed, however the majority of the mandatory training requirements are not related to health and safety. There may be other reasons behind the continuance of this mandate, including clock-hour specifications outlined by USED for schools and training programs to accept federal financial aid or standards that must be met related to examination passage rates (a number of hours are spent directly preparing to pass the examination).

BBC does not require any proof of actual practical operations performed but rather only requires an individual to provide proof that they completed a certain number of hours. Significantly, in California, a review of the *total* number of hours an individual must complete in a particular topic for cosmetology training, compared with the *minimum* number of required hours, highlights a major difference that continues to raise the question as to why 1600-hours remains the standard in this state. BBC regulations require a total of 1100 hours in hair design, but only 185 minimum required hours, a difference of 915 hours. Notably, particularly in light of recent discussions about health and safety, infection control, and the preparedness of licensees to provide services safely during the COVID-19 pandemic, only 200 hours are required in health and safety topics, 85 of which are the minimum number required. Students are only required to complete 20 hours in disinfection and sanitation, yet

the only reasons a licensee is cited by a BBC inspector is for disinfection and sanitation violations. 200 hours overall are required in esthetics but only 50 of those constitute the minimum number of required hours. 100 total hours are mandated in manicure/pedicure training but 35 is the minimum number of required hours. As noted in a 2017 occupational analysis conducted by DCA's Office of Professional Examination Services, students spend almost 90 percent of their training focused on hair, 12 percent in esthetics, and just over 9 percent in manicuring/pedicuring. BBC's new request to establish a hairstylist-only license still sets the mandatory number of hours at 1100, the same number of hours currently required in hair design.

Staff Recommendation: *It is important that future licensees receive training in key health and safety topics like infection control, sanitation standards, infection control, and basic labor laws. The Committees may wish to decrease the amount of hours required for licensure in order to allow individuals a swifter path to completing necessary curriculum that will lead to safe beautification services practice. BBC should provide the Committees with demographic statistics, if available, about student populations most significantly impacted by the current requirements to complete so many hours. BBC should provide information to the Committees about the impact this change could have on licensure portability and the ability for California practitioners to easily become licensed in other states. BBC should provide information to the Committees about federal financial aid eligibility related to clock hour requirements.*

ISSUE #9: (EXAMS.) BBC requires individuals seeking licensure as a barber, cosmetologist, esthetician, electrologists, or a manicurist to take and pass both a written examination and a practical examination. BBC relies on NIC tests, the same tests utilized in 39 states. Is the national written exam the best means by which to evaluate licensee competency? Is the practical exam still necessary?

Background: In order to obtain a license from the BBC, applicants are required to take and pass both a written examination and a practical examination. BPC Section 7338 specifies that examinations must be "limited to clearly job-related questions, activities, and practical services. Examinations shall also include written tests in antisepsis, disinfection, sanitation, the use of mechanical apparatus and electricity as applicable to the practice of barbering, cosmetology, or electrolysis."

Typically, applicants take both the written and practical examinations in one day but may also take the written examination at a separate PSI testing center, located throughout the state, then take the practical examination at one of the two facilities in the state. As soon as an applicant passes both portions of the examination, they can be issued a license immediately. BBC reports in its 2018 Sunset Review Report that it annually administers approximately 23,000 practical examinations and 26,000 written examinations (initial and retake examinees).

Both the written and practical examinations BBC uses are developed by the National Interstate Council of Board of Cosmetology (NIC). BBC adopted the NIC written examination in 2009 and the NIC practical examination in 2011. According to the NIC, approximately 39 states utilize both a practical and written examination administered by the NIC. Usage of the written and practical examinations has been an issue discussed during each of BBC's prior sunset reviews, including discussion about the low passage rate applicants who take the examination in Spanish. BBC notes again that "The Spanish pass rate for the written examinations continues to be low. The Board has researched several potential causes often low pass rate but has not found a significant, identifiable cause. While the cosmetology Spanish pass rate has increased from 29% in FY 2013/2014 to 45% in FY 2017/2018, this is still a low passage rate that causes the Board concern."

The written test is typically multiple-choice and varies in number of questions based on the type of license and individual is seeking. For the practical examination, applicants are required to demonstrate certain services in person while an exam proctor watches their technique and process. According to BBC, the esthetician, manicurist and electrologist examinations take two hours or less, and the barber and cosmetologist examinations take four hours or less. According to the NIC's examination information for cosmetologists, the practical examination tests applicants on industry services such as client protections (disinfecting work areas, disposal of soiled materials), haircutting, thermal curling, chemical waving, hair lightening and color retouch, and blowstyling, among others. These skills are demonstrated on a mannequin head or hand. If an individual meets certain requirements the BBC will authorize the use of an interpreter; a form must be filled out and approved prior by the BBC prior to allowance for the practical examination. Individuals must provide their own mannequin heads or hands, and there are companies that specifically rent practical exam "kits" to applicants, the cost for which is typically around \$200. This cost is in addition to the \$125 examination fee. Kits are marketed to students as ready to go, containing the supplies and equipment needed to complete the examination. Kit rental companies are private businesses not affiliated with BBC. These companies also offer test preparation, creating a whole cottage industry related to the examination that does not appear to be connected to assessing competency. BBC urges applicants, when utilizing one of these companies, to make sure the supplies are in compliance. For example, manufacturer's labels are required on all disinfectants and sanitizers. Any deviation of the standards, including mislabeled items, may result in lost points on the examination.

As with many professions, the COVID-19 pandemic had a significant impact on testing access for applicants for licensure. Due to the emergency stay at home orders, BBC testing centers were required to pause examinations. Prior to the pandemic, the daily number of candidates examined by BBC was 64 candidates at the Fairfield site and 96 candidates at the Glendale site. In order to maintain social distancing, BBC is now examining 36 candidates daily at the Fairfield site and 64 at the Glendale site. It is unclear the total number of individuals who were impacted by the closure, or what BBC's current testing backlog is.

AB 181 (Bonilla, Chapter 430, Statutes of 2013), the bill stemming from the comprehensive review of BBC in 2014, required BBC to conduct a study and review of the 1600-hour training requirement for cosmetologists along with an occupational analysis of the cosmetology profession in California, and conduct a review of the national written examination for cosmetologists and of the California practical examination, in order to evaluate whether both examinations assess critical competencies for California cosmetologists and meet professional testing standards. BBC contracted with DCA's Office of Professional Examination Services (OPES) to conduct the occupational analysis of both the written and practical examinations of the NIC. The assessment was completed in 2017, and, based on its work with subject matter experts (SME's) and stakeholders, OPES determined that, "overall, the SMEs concluded that the National Cosmetology Theory Examination and the National Cosmetology Practical Examination adequately assess what a California cosmetologist is expected to have mastered at the time of licensure." However, the assessment acknowledged that issues with the passage rate of the Spanish examination continue to be of concern for the BBC.

A number of states have taken steps to ease the licensing process by eliminating a hands-on practical examination. Iowa does not require a practical examination for licensees other than barbers. Kansas is transitioning to a written practical exam. Pennsylvania eliminated a practical exam in 2014 and requires skills demonstrated by answering questions in a written exam. Arkansas eliminated both the practical and written examination in 2017 and requires schools to test competency. Minnesota also

requires an exam at the school level. Tennessee is moving to requiring a virtual practical exam. Maine, Delaware, and Wyoming are considering a written practical exam. South Dakota eliminated the requirement for an individual to complete a practical exam as a result of the pandemic and may consider implementing a written practical exam.

Although the occupational analysis noted that the NIC covers what a California cosmetologist is expected to have mastered, the question remains as to whether the test is actually necessary after a student has graduated from a BBC-approved institution. Other than potentially for ease of California licensees becoming licensed in other states that require the individual to have passed a test, it is not clear if both the written and practical examinations are necessary to assess minimal competency and determine whether an individual can safely provide beautification services.

In addition to the cost burdens for individuals to take BBC-required tests, the practical exam in particular does not cover any aspect of practice that a licensee is actually cited for during an inspection. An individual has to demonstrate in the practical exam that they can properly throw away sheets used during a perm but does not ever have to demonstrate that they know how to display their license, the most common reason someone receives a citation. Individuals are cited for hair in shampooing basins or errant hair remaining on scissors and combs that inspectors identify and take photos of, yet at no point in the practical examination do they need to show they can properly clean and disinfect equipment. Some individuals, despite the amount of time they spend in school, may still not be successful at performing beautification services to the level that consumers desire, such as a stylist who provides bad haircuts regardless of the amount of training received. While that same individual has to show a proctor during a practical exam that they can position foils on the hair for a highlight treatment that are a certain amount of space away from an individual's scalp, no inspection ever reviews any aspect of practice. The examination does not even assess whether an individual can properly mix disinfectant. Yet it is this exam that the Act specifies prevails over written tests that actually require someone to demonstrate knowledge about health and safety issues. The practical examination is another step of many toward the end goal of licensure, one that does not appear to add value to licensee's ability to safely conduct their work, nor does it appear to enhance public safety, particularly given that there is no requirement for individuals to show that they can control infections or uphold sanitation protocols, key aspects of maintaining health and safety standards.

Staff Recommendation: *Strong consideration should be given to eliminating the practical examination. BBC should provide the Committees an update on the NIC exam and whether it is necessary to maintain a contract for a national exam, or whether BBC on its own can better craft something to ensure basic minimal competency in the aspects of practice that actually impact consumers like those related to health and safety.*

ISSUE #10: (ENDORSEMENT.) BBC offers licensure reciprocity to individuals licensed and in good standing in other states. It may no longer be necessary for current limitations on this type of recognition and amendments to the Act may allow individuals to become licensed more quickly.

Background: The Act currently authorizes an individual licensed in another state to become licensed in California without having to take additional steps or conduct additional review, including determining whether the individual completed the same number of hours as California requires for licensure.

BPC Section 7331 allows BBC to license an individual from another state if they complete and application, pay a fee, and show that they possess a current unrestricted license, are in good standing with their licensing authority, and have been “active for three of the last five years, during which time the applicant has not been subject to a disciplinary action or a criminal conviction.”

Since BBC-regulated practice is extremely similar from state to state (other than states that do not require certain low-risk practices to be regulated), and virtually every state recognizes the same basic practices, it is not clear what added risk there is to California consumers to receive services from an individual who has been licensed in another state for a shorter period of time and has not faced any licensure sanctions. Particularly given the need for licensure portability among certain populations like military spouses, it would be helpful for the Committees to understand whether the requirement for an individual to have been active for three of the last five years is necessary and whether other states require the same of California licensees.

Staff Recommendation: *The Committees may wish to amend the Act to streamline the process for licensure based on an individual’s possession of a license in good standing from another state.*

ISSUE #11: (APPRENTICESHIPS AND EXTERNSHIPS.) BBC allows individuals to obtain training toward licensure through an apprenticeship and externship. Examination passage rates for apprentices are not high and apprenticeship candidates may not have all of the information necessary in order to make an informed decision about this pathway. Externs are required to comply with a number of standards when working in an establishment as a student. Are changes necessary to ensure future licensees are provided fair opportunities through these pathways?

Background: The BBC apprenticeship and externship options toward licensure, and, while not utilized by large numbers of future applicants, provide alternatives and options. A number of issues have arisen about apprenticeship program oversight and the Legislature has been asked to evaluate whether externs should be allowed to receive payment for services they provide during training.

The number of apprenticeship programs has increased significantly in the past number of years. Programs do not have to be approved as schools and instead are approved by the Division of Apprenticeship Standards. In order to become licensed through an apprenticeship, an individual must be over 16 years old and have a 10th grade education or its equivalent. BBC works with DAS, local education agencies throughout the state, and apprenticeship program sponsors as a means of ensuring proper oversight of the Apprentice Program and to ensure apprentices are properly trained in their chosen profession and taught proper health and safety standards. BBC regulations require apprenticeships to consist of an on-the-job training component and a classroom component of related training, 216 hours of instruction over a two year period for barbering and 220 hours over a two year period for cosmetology. BBC defines two years as 3200 hours (5-day work week, maximum of 8.5 hours per day). In order to be recognized by BBC as an apprentice, which is necessary since the individual will be providing services to consumers, a person must complete 39 hours on pre-apprenticeship training. BBC requires a licensee who wishes to train an apprentice to first obtain BBC approval. Upon completion of an apprenticeship, the instructor, apprentice, and apprenticeship program sponsor sign a certificate of completion.

According to BBC, DAS evaluates programs based on completion rates, rather than apprentice success in meeting requirements necessary for licensure in a particular field such as examination passage rates.

BBC is concerned that apprentices are being required to take the pre-apprentice training more than once, for example, if the apprentice changes sponsors. The individual may have to then pay multiple times prior to even being licensed to continue as an apprentice. These should be provided at no cost. BBC believes that it makes more sense for the board to require this training, which is comprised of BBC health and safety regulations, only after the individual obtains an apprentice license. This streamlining will better protect the interests of apprentices and remove a potential barrier to successful apprenticeship completion. BBC advises that it can easily develop a necessary course available online, for free, for apprentices to complete in order to move forward in their training.

BBC's externship program is the focus of current legislation (AB 492) which aims to expand the number of hours of clock hours and individual can earn as an extern and would allow externs to be paid. The externship program allows a current student to work according to strict requirements in a licensed establishment while they are in school. Students are not authorized to receive compensation for beautification services provided while they are being trained and earning hours outside of the legal parameters set forth in the Act for the externship program. Coupled with a potential decrease in the number of hours required for licensure and the ability to work while attending school and receiving compensation as an employee, individuals may be able to benefit and ultimately become successful licensees sooner, having gained on-the-job training and experience.

Staff Recommendation: *The Committees may wish to enhance oversight of apprenticeships and provide opportunities for future applicants to more easily access this training option by allowing BBC to establish a course necessary for apprentices to complete in order to become licensed and practice throughout their apprenticeship.*

ISSUE #12: (PSP.) BBC has worked for the past number of years to implement a personal services permit in order to authorize licensees to have flexibility in where they offer beautification services. Amendments to the Act may be necessary to recognize this option for licensees.

Background: The Act specifies that all BBC-regulated beautification services are required to be obtained within a BBC licensed establishment. BCP § 7317 specifically states that it is unlawful for any person, firm, or corporation to engage in barbering, cosmetology or electrolysis practices, for compensation, in an establishment or mobile unit which is not licensed by the BBC (other than incidental services provided by individuals employed to provide services in the theater, radio, television or motion picture production industry or services performed on a client who is ill or has a physical or mental incapacitation and the appointment is made through a licensed establishment.)

During the 2014-15 sunset review oversight, BBC reported that current trends in the beautification industry show that consumers are beginning to seek services outside the walls of a traditional brick and mortar establishment such as homes, hotels, businesses, and other non-traditional locations. In its 2014 sunset report to the Legislature, the BBC provided information on other states that offer a more flexible license or registration. Washington offers a personal service license and Oregon offers a freelance authorization, both of which allow consumers to access services outside of a licensed establishment. Ohio offers a temporary special event permit which temporarily allows for cosmetology services to be provided in a location not licensed by the regulatory entity. In addition, New York authorizes licensees to practice in remote locations as long as the applicable requirements are followed. Individuals are receiving services at business offices, hotels, or other sites not traditionally common to industry practices in California.

In response to the questions of whether more people are seeking beautification services outside of a traditional salon establishment and whether BBC needs to update current establishment requirements to meet consumer demands, AB 181 also required BBC to establish regulations to issue a personal services permit (PSP). BBC was required to hold at least two stakeholder meetings and was authorized to issue a PSP to individuals who meet the requirements set forth in the regulation. PSP holders would be able to perform services outside of a licensed establishment but would still be required to obey existing health and safety requirements. AB 181 prohibited BBC from requiring a PSP holder to be employed by an establishment unless BBC determines it would be necessary in order to maintain consumer safety. The regulations also authorized BBC to require a PSP applicant to have proof of liability insurance and pass a criminal background clearance.

In the BBC's report to the Legislature providing an update on the progress of the PSP regulation, BBC summarized the various viewpoints of stakeholder meeting attendees, including that not all services should be authorized under a PSP, liability insurance should be required, and licensees should be in good standing. BBC's Licensing and Examination Committee initially determined the following for a proposed PSP:

- The PSP will be limited to cutting and styling hair
- The PSP will be tied to a licensed, working, brick-and-mortar establishment.
- The licensed establishment and PSP holder will provide proof of liability insurance.
- The number of PSP holders per establishment will be limited.
- A criminal background check will be part of the PSP process.
- The regulations will stipulate how tools will be disinfected and transported. The clean, closed container language can be used and the PSP holder will also be required to carry a soiled container to bring back to the establishment to disinfect later.
- Spray-on disinfectants and wipes will be permitted in the field.
- The PSP holder will post their PSP and establishment licenses on any advertisement.
- A notice will be posted on the website to direct consumers to check license numbers online and verify the connection to an establishment.
- The PSP holder will be required to have a photo I.D. to show that they match the license number advertised.

BBC's report also noted additional requests from industry representatives to require PSP holders to demonstrate, while at the licensed establishment, protocols used when in someone's home or place of business; to require minimum liability insurance of \$1 million; to limit the geographical boundary of a PSP holder so that person can only practice a certain distance from the licensed establishment and; to make PSP holders employees of the establishment they are tied to.

Limitations on the types of services offered by a PSP holder and requirements to remain affiliated with a licensed establishment appeared to be counter to the intention of flexibility and allowing BBC to better recognize trends in the beautification services industry.

The PSP has undergone a number of changes and is still pending final adoption. According to the most recent proposal:

- The PSP applicant must hold a valid license for a minimum of two consecutive years (or have been licensed in another state for three years)
- The PSP applicant must submit fingerprints for use in conducting a criminal background check through the California Department of Justice
- The PSP applicant must provide proof of current liability insurance in a minimum amount of \$1,000,000
- Barbers with a PSP may provide the following: shampooing; cutting, styling, dressing, arranging, curling, and waving hair; applying hair tonics; applying powders, clays, antiseptics, and oils to the scalp, face, or neck; trimming the beard. They cannot provide singeing, relaxing, chemically waving, or dyeing the hair.
- Cosmetologists with a PSP may provide the following: shampooing; cutting, styling, dressing, arranging, curling and waving hair; applying hair tonics; applying powders, clays and oils to the scalp, face or neck; cleaning, massaging, or stimulating the face and neck by means of the hands with the use of cleansing agents, antiseptics, tonics, lotions, or creams; removing hair from the body of any person with tweezers; applying make-up or strip lashes; buffing and filing nails with non-electrical tools; applying and removing nail polish. They cannot provide singeing, relaxing, chemically waving, or dyeing the hair or chemical exfoliation or exfoliation with the use of a tool, machine, or device.
- Estheticians with a PSP may provide the following: cleaning, massaging, or stimulating the face and neck by means of the hands with the use of cleansing agents, antiseptics, tonics, lotions, or creams; applying make-up or strip lashes; removing hair from the body of any person with tweezers. They cannot provide chemical exfoliation or exfoliation with the use of a tool, machine or device.
- Manicurists with a PSP may provide the following: filing and buffing of nails by non-electrical tools; applying and removing nail polish.
- The PSP holder must provide the consumer with a Consumer Notice and a copy of a receipt signed and dated by the consumer.

While the PSP specifics have improved since BBC initially began implementing AB 181, it is still reliant on licensure and still imposes restrictions on individuals providing services that may not negatively impact public health and safety. For example, even with a PSP, an individual could not legally apply makeup to a bride and bridal party at a hotel if they receive compensation, unless they are currently licensed, and unless they additionally register for a PSP.

Staff Recommendation: *BBC should provide the Committees an update on the status of the PSP and when it is expected to be implemented. The Committees may wish to determine whether all services outlined in the PSP are necessary or whether individuals can safely perform some without obtaining a PSP if they are low-risk to a consumer. BBC should inform the Committees whether statutory changes are necessary and provide amendments to the Act to implement the PSP.*

ISSUE #13: (MOBILE UNITS.) Services can be provided in a licensed “mobile unit” but the standards for these may be outdated and updates may be necessary.

Background: BPC Section 7354 defines a mobile unit as a self-contained, self-supporting, enclosed mobile unit which is at least 24 feet in length which is licensed as an establishment for the practice of any occupation licensed by the board. The Act specifies the requirements that a mobile unit must meet in order to obtain licensure, requirements have not been updated in the last 20 years, including many requirements that are not conducive to the operation of a mobile unit today. For example, current law requires a mobile unit to be 24 feet in length but there are many trailers, motorhomes, vans, or other options at much shorter lengths that might serve as acceptable beautification services mobile units. These specific size requirements are significantly larger than even the current requirement for a brick and mortar establishment. Applicants also have to show proof of lease or ownership, copies of city and county permits, and other documentation that may not be necessary to evaluate quality or the ability for someone to have flexibility in how services are provided.

Staff Recommendation: *The Committees may wish to amend the Act to remove unnecessary barriers to mobile unit licensure*

BBC ENFORCEMENT ISSUES

ISSUE #14: (CITATIONS.) A BBC inspection is more likely than not to result in at least some type of citation. The majority of citations are appealed and individuals flood BBC’s Disciplinary Review Committee (DRC) hearings. BBC has explored offering remedial education in lieu of fines, as licensees and licensee advocates have long argued that individuals receive citations for violations they were never even aware of. Does the DRC still make sense? Should BBC update its cite and fine efforts to ensure that individuals are cited for violations impacting consumer safety that the licensee is actually aware of?

Background: The Act provides the authority for the BBC to issue citations and assess administrative fines for violating any BBC rules and regulations. BBC has a fine schedule that consists of 68 violations, with fines for violation ranging from \$50 to \$1000, depending on the violation, for a first offense. Those amounts gradually increase on the second and third offense. While the BBC has set the higher fine amounts for the most egregious violations, such as \$500 for performing an invasive procedure, there are many violations that may not have an impact on consumer safety, for example a \$50-\$150 fine for how clean towels are stored.

BBC maintains that the citation and fine program is its main force of discipline, and violations are often resolved without the need for further follow-up or formal disciplinary action. However, there is no documentation to validate that all of the 68 offenses an individual faces a citation for negatively impact members of the public who receive beautification services. It is unclear how likely consumer safety will benefit if these violations do not occur.

Cite and Fine Program Statistics					
	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18
Establishments Inspected	11,979	13,712	14,346	14,151	11,061
Citations Issued to Establishments	8,257	10,026	10,844	10,437	6,007
Citations Issued to Individuals	6,452	8,140	8,633	8,034	5,842
Total Citations Issued	14,709	18,166	19,477	18,471	12,776
Establishments with No Violations Cited	3,046	2,958	2,832	4,056	2,957

While less than half of establishments are inspected in a given year, each inspection likely results in multiple citations, including to the licensee working in an establishment, an independent contractor licensee utilizing space in an establishment, and the establishment owner. Concerns about the disproportionate impact of BBC inspections and citations on certain licensing populations have remained for many years. Advocates for workers in the nail industry like the California Healthy Nail Salon Collaborative have historically advised that language and cultural barriers can prevent nail salon workers from fully understanding important occupational health and safety information and regulations. During its 2012-13 sunset review, BBC was asked to track specific data on violations for certain licensees to determine if trends exist among licensees for whom language barriers could be at the heart of unintentional violations of the law.

The DRC further adds to questions about BBC’s citation program because most citations are appealed and BBC then, following work necessary to evaluate inspections and issue citations, has to turn around and undertake necessary work through the DRC that often changes the outcome of inspection work. DRC backlogs are always an issue and the circular system of citations and appeals to DRC continues to call into question whether licensees are being cited necessarily.

It would be helpful for the Committees to understand what proportion of inspections result in citations, how many citations are appealed, and what changes BBC believes are necessary to ensure violations of health and safety laws, and laws impacting consumers are followed. It would be helpful for the Committees to determine whether the DRC structure makes sense and whether BBC should update its citations and administrative fine schedule in order to ensure that only necessary violations are acted on.

Staff Recommendation: *BBC should provide information to the Committees about the types of citations and fines issued that stem from potential consumer harm and whether those should be eligible for appeal. The Committees should evaluate whether the DRC remains necessary or if instead BBC should be required to update its administrative fine schedule to be relevant to the intended purpose of protecting the public.*

ISSUE #15: (LICENSEE IN CHARGE.) BBC proposes establishing a “licensee in charge” designation. Is the intent to further consumer protection laws or absolve establishment owners from accountability for the actions in a particular establishment?

Background: BPC Section 7348 states that “an establishment at all times shall be in the charge of a person licensed pursuant to this chapter except an apprentice”. BBC defines “person licensed” as an individual person who holds a cosmetology, barber, manicuring, esthetic or electrology license, as well as the holder of an establishment license. BBC believes that the intent of these laws, which have been in effect for over 20 years, is to ensure that a person who knowledgeable about necessary health and safety regulations is present at all times to ensure public protection. An establishment owner is not required to hold an individual licensee and therefore can be in charge of an establishment without

having undertaken any of the work to become a licensee, including awareness of rules designed to promote safety and sanitation.

BBC's sunset report suggests amending the Act to clarify that a "licensee in charge" can be designated so that an individual who holds an establishment license is not the only person responsible for activities in an establishment. BBC also requests adding clarification about services provided to ensure that only establishments offering certain services need to have a "licensee in charge". BBC cites the example of a massage establishment that occasionally, as BBC notes, offers esthetic services as one that should not be required to have a licensee in charge unless there are esthetic services being provided.

The licensee in charge model is not new. Every pharmacy must have a pharmacist in charge, an individual licensed by the Board of Pharmacy who is specially designated to oversee pharmacy operations. Each pharmacy reports the name of the pharmacist-in-charge, and that person's name is printed on the pharmacy's license. The pharmacist-in-charge of a pharmacy is employed at that location and has legal responsibility for the daily operation of the pharmacy. When a pharmacist takes on the responsibility of being a pharmacist-in-charge, the pharmacist also ensures the pharmacy's compliance with state and federal law, quality assurance responsibilities, and inventory controls. Efforts have been undertaken for a number of years to establish a court reporter in charge model whereby a corporation located in another state would designate a California licensed certified shorthand reporter to be a "reporter-in-charge". The reporter-in-charge would be a full-time employee responsible for the entity's compliance with all state laws and regulations pertaining to the scope of practice of certified shorthand reporters in California. Essentially, if the entity commits an act that would violate the shorthand reporters' practice act, the reporter-in-charge could be subject to discipline by the Court Reporter's Board, regardless of whether that board is able to determine the reporter-in-charge's involvement with the violation. The individual could then be disciplined for actions beyond their control.

Staff Recommendation: *BBC should provide information to the Committees as to whether this model will benefit establishments or the public.*

ISSUE #16: (MANDATORY INSPECTION FOLLOWING LICENSURE.) Is it feasible for BBC to be required to inspect every newly licensed establishment within 90 days of licensure?

Background: BBC is required, through BPC Section 7353 to inspect establishments within 90 days after the issuance of the establishment license. Historically, BBC has not been able to meet this mandate, as BBC prioritizes inspections on establishments for which a complaint has been received or for instances of alleged consumer harm or unlicensed activity. It is unclear if an inspection within 90 days of an establishment license being issued enhances public protection and whether the violations found during one of these initial inspections are comparable to those found when inspections are done related to complaints or legitimate public health concerns.

Staff Recommendation: *In order to ensure that BBC inspection activity is focused on maintaining public, licensee, and consumer health and safety, the Committees should amend the Act to allow BBC to focus its inspection program on harm.*

COVID-19

ISSUE #17: (WHAT EFFECT HAS THE COVID-19 PANDEMIC HAD ON BBC?) Since March 2020, there have been a number of waivers issued through Executive Order which impact licensees and future licensees alike. Are any of these waivers applicable to BBC? Do any waivers warrant an extension or statutory changes? What is BBC doing to address the pandemic?

Background: In response to the COVID-19 pandemic, a number of actions were taken by the Governor, including the issuance of numerous executive orders in order to address the immediate crisis. Many executive orders directly affect the state's healthcare workforce, including a number of licensed professionals under the DCA. However, many of those waivers likely did not affect licensure or renewal requirements for the majority of BBC licenses. In addition, on March 19, 2020, the Governor issued Executive Order N-33-20 which instituted a statewide stay home order for the residents of California. The order impacted not only consumers, but businesses which may not have been deemed essential. The beautification industry was not considered an essential business and were required to close as part of the state of emergency and subsequent stay at home order declaration. On February 23, 2021, the Governor signed SB 94 (Skinner, Chapter 9, Statutes of 2021) into law, which among other provisions, waives renewal fees for all licenses under the BBC that expire in calendar years 2021 and 2022. This fee relief applies to all license renewals – over 560,000 individuals and over 53,000 establishments.

In response to COVID-19, the BBC reported that it established teleworking for employees on March 20, 2020. The BBC reports that as of December 1, 2020, 85 percent of staff telework, while the remainder work in the office and practice social distancing. One of the most heavily impacted aspects of BBC's work has been the ability to offer practical examinations. BBC is currently working on scheduling candidates who applied while facilities were closed and reports that it is currently booked for examinations until the end of July 2021, continuing to maintain its reduced capacity in order to comply with social distancing requirements.

Part of the BBC's enforcement and regulatory oversight includes the BBC's inspection program whose primary role is noted by the BBC for enforcing health and safety regulations. The inspection program conducts inspections through directed, random, initial and targeted inspections of establishments and schools of barbering, cosmetology, and electrology. As a result of the COVID-19, the BBC reports that it had to temporarily restructure its inspection program to address the pandemic. Initially, all inspectors were taken out of the field. Inspectors were tasked with calling establishments to provide information on the current health orders. As establishments began to reopen, inspectors returned to the field on an educational basis only. Inspectors visited establishments but did not conduct inspections. Instead, they offered information on the current health orders and provided a Returning to Work checklist created by the Board. As changes were made to the health orders, which varied from allowing outside services to limited services indoors and then ultimately allowing all services indoors, the inspections process has changed as well. As of December 1, 2020, the BBC notes that inspectors are slowly returning to conducting inspections and only inspect if it is safe to do so (such as when all licensees are following the COVID-19 guidance).

Inspectors are only inspecting for the most egregious violations that may result in consumer harm. Board inspectors have observed that an overwhelming majority of establishments are following the guidance of wearing facial coverings and social distancing. The BBC notes that it has only issued three interim suspension orders for serious violations and five misdemeanor citations for violations of stay at home orders.

In addition to altering the BBC's inspection program, it has provided additional outreach to licensees related to changes and issues affecting the industry as a result of the Pandemic. The BBC reports that it has created and provided to establishments, a "Returning to Work Checklist". The checklist is available to those establishments which are visited by inspectors, as well as emailed to listserv accounts. The BBC has sent various emails to licensees informing them of updates to public health orders and general educational reminders such as the importance of wearing a mask and social distancing. The Board also developed a COVID-19 informational page on its website that includes links to the California Department of Public Health, the U.S. Center for Disease Control, the Department of Consumer Affairs COVID-19 Information, and the BBC's News Release Encouraging Proper Handwashing. In addition, the website provides COVID-19 Information, establishment guidelines, examination information, and school information (<https://www.barbercosmo.ca.gov/covid19.shtml>). The BBC reports that it has translated all of its COVID-19 information into Korean, Spanish, and Vietnamese.

In addition, BBC reports that its staff have participated in various events to help promote the guidance established by the State's Department of Public Health and individual county departments of public health. Those events include:

- Participation in 30 outreach events
- Sent informational emails to 532,212 licensees and interested parties
- Created and distributed a postcard (available in seven languages) to remind individuals to wear a facial covering
- Created and distributed a poster (available in three languages) for establishments to display to remind individuals to wear a face covering.

Lastly, in November, as part of the Governor's Task Force, the Board worked with San Bernardino, Riverside and Los Angeles counties to provide assistance in promoting guidelines that will reduce the spread of COVID-19. In doing so, the Board visited all establishments in San Bernardino County to educate licensees on the importance of encouraging clients to follow health guidance and conducted joint inspections with the Los Angeles Department of Public Health to demonstrate a united front in the industry. The Board plans to continue with outreach and inspections throughout the coming year to help reduce the spread of COVID-19.

The BBC notes that its current health and safety regulations exist to ensure customers are protected when receiving beauty and barbering services. Regulations receive review and approval by the California Department of Public Health prior to adoption. The regulations already include a significant amount of health and safety, sanitation, and disinfection requirements. The BBC believes that the current regulations are enough to reduce the spread of any future pandemic. The BBC's Health and Safety Committee met on December 18, 2020 and to discuss if any guidance measures should be placed into regulations.

Staff Recommendation: *BBC should update the Committees on the impact to licensees and the public stemming from the pandemic and potential future challenges. The BBC should update the Committees on any recommendations from the last Health and Safety Committee Meeting.*

TECHNICAL CHANGES

ISSUE #18: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE ACT AND BBC OPERATIONS.) There are amendments to the Act that are technical in nature but may improve BBC operations and the enforcement of the Barbering and Cosmetology Act.

Background: There are instances in the Barbering and Cosmetology Act where technical clarifications may improve BBC operations and application of the statutes governing BBC's work, including, but not limited to:

- Amending BPC Section 103 to clarify that BBC has authority to reimburse BBC members and Health and Safety Advisory Committee members for travel and per diem.
- Repealing BPC Section 7409 which is obsolete, as BBC updated its administrative fine schedule, set in regulation, to clarify that it cannot waive fines.

Staff Recommendation: *The Committees may wish to amend the Act to include technical clarifications.*

CONTINUED REGULATION OF INDIVIDUALS PROVIDING BEAUTIFICATION SERVICES AND BEAUTIFICATION SERVICES ESTABLISHMENTS BY THE BOARD OF BARBERING AND COSMETOLOGY

ISSUE #19: (CONTINUED REGULATION BY THE BOARD OF BARBERING AND COSMETOLOGY.) Should the licensing and regulation of individuals providing beautification services and beautification services establishments be continued and be regulated by the current BBC membership?

Background: As an organization, BBC functions well, meets metrics typically used to evaluate regulatory agency effectiveness, and lacks many of the structural problems that other boards face. BBC's problems are the Act it is required to administer to enforce and outdated rules it has to uphold.

BBC has continued, largely unchanged, for decades while at the same time, beautification services have evolved significantly and the growth of the beauty industry has exploded. BBC is not able to begin to reconcile its mandatory curriculum and scope of practice framework to sync to the constant developments in this space yet every day, Californians enroll in school and start the myriad necessary steps required to gain entry in the field and to enjoy economic opportunity available to appearance professionals. The vast majority of BBC licensees are women. Huge numbers of licensees are minorities. Immigrants have a pathway to prosperity and viable career options as beautification services professionals. Licensing implies that members of the public who receive services from an individual face serious harm if that individual has not met certain requirements necessary for that license. Barriers to employment are real and, in the case of beautification services professionals in California, the risk to consumers and harm to the public does not appear to justify maintaining status quo.

Staff Recommendation: *BBC should be continued, to be reviewed again on a future date to be determined; however the Committees should consider making with significant modifications to the Act aimed at reducing barriers to entry in the beautification services industry.*