

South Carolina Board of Cosmetology

Board Recommendation:

The Board discussed multiple issues and made many good recommendations, including broadening the types of courses allowed for continuing education, eliminating continuing education requirements, allowing alternative instructors and training, allowing temporary permits for schools, allowing online continuing education, eliminating the county licensure requirement under S.C. Code Reg. § 35-5(G), allowing students to test prior to completing the required 1,500 required education hours, and eliminating the inactive status established in S.C. Code § 40-13-250; however, the Board did not reach a consensus on any of these issues.

Public Comments:

Likewise, there were numerous comments from the public regarding many issues, including broadening the courses allowed for continuing education (CE), allowing alternative instructors and training, allowing all online continuing education, keeping CEs generic in nature, sanctioning CE providers when not in compliance, not limiting the number of CE providers, allowing schools to test on-site, and allowing students to obtain more than 8 hours of training a day.

Agency Recommendations:

Last year, the Agency recommended repealing the Cosmetology Practice Act and abolishing the Cosmetology Board in its 2012 Regulatory Report. As an alternative, the Agency recommended sanitation and health inspections be conducted by DHEC. See the relevant portions of the Agency's 2012 Regulatory Report attached hereto as Appendix B. For the reasons stated in that report, the Agency recommendation remains the same. Last year, however, no legislative action resulted from that report. In the event the Cosmetology Practice Act and accompanying regulations are not repealed, the Agency recommends scaling back the extent of regulation. To that end, the Agency recommends the following:

ISSUE 1: Barber and Cosmetology Boards Merger

Recommendation: The Agency recommends the combination of the State Board of Cosmetology and the State Board of Barber Examiners.

Justification: Combining the two Boards will reduce the complexity of the licensing scheme for licensees and the redundancy in having separate boards.

The scope of practice of the two professions is similar. A cosmetologist's practice is broader than a barber's in only three respects: (1) the application of chemicals to the hair; (2) the application of facials; and (3) work on parts of the body other than the face and neck, to include legs, feet, arms, and hands. The Barber Practice Act, however, includes the licensure of a master hair care specialist, who may apply chemicals and perform manicures. See S.C. Code §§ 40-7-20 and 40-7-260. A barber assistant may give shampoos and manicures. See S.C. Code § 40-7-280.

Because of the overlap in practices, the two Boards should be combined, the licensing structure condensed, and the two practice acts simplified. Twelve other states have combined the two practices: Alabama, Delaware, Hawaii, California, Maine, Missouri, New Hampshire, New Mexico, New York, Oregon, Vermont, and Virginia.

ISSUE 2: Hours for Licensure

Recommendation: The Agency recommends amendment of S.C. Code § 14-13-230 to reduce the number of hours required for licensure for cosmetologists, estheticians, and nail technicians.

Justification: Reducing the hours to obtain a cosmetologist, esthetician, or nail technician license will make it easier financially for those interested in the profession to gain the skill necessary to enter the job market. In addition, it will reduce the amount of student debt for new cosmetologists.

For licensure, a cosmetologist must obtain 1,500 hours, estheticians must obtain 450 hours, and nail technicians must obtain 300 hours, all at a Board-approved school. According to testimony by industry representatives before the Senate LCI Subcommittee, each student must spend \$16,000 to \$20,000 in order to obtain the necessary education. Cosmetologists will say they learn not only the “art of hair, skin, and nails” but take classes in “client safety, sanitation/infection control procedures, physiology, myology, anatomy, and countless other sciences.”¹ However, most people style their own hair every day and commercial hair dyes are sold to the public for home use at beauty supply stores. Nail technicians essentially paint finger and toenails and apply artificial nails. Estheticians practice skin care. These are functions that many people perform at home without any training.

The cosmetology lobby has been successful nationally, and in South Carolina, championing the need for a high number of educational hours, but the hour requirements are excessive when compared to other professions. For example, according to the South Carolina Department of Health and Environmental Control, an Emergency Medical Technician (EMT) can be licensed with 200 hours of education. An EMT is authorized to work on airways, ventilation, and oxygenation, perform CPR and defibrillation, immobilize for spinal injuries, administer medications, maintain non-medicated IVs, assist with childbirth, and monitor blood glucose and blood pressure, in addition to other things. However, one is required to take 300 hours to acquire the necessary skill to perform manicures and pedicures under the current regulatory scheme.

Further, a paramedic can be licensed with 1,000 hours of education. A licensed paramedic may do all the same things as an EMT, as well as perform intubation,

¹See www.change.org/petitions/south-carolina-governor-nikki-haley-stop-the-deregulation-of-cosmetology-barbering-and-other-related-fields

cardiac monitoring, venous blood sampling, and blood chemistry analysis. Yet, it takes 1,500 hours to learn how to style and dye hair.

Although South Carolina's requirements are in line with some other states, the Agency still believes they are excessive. There are other states that require fewer hours. Florida and New Jersey, for example, require 1,200 hours for licensure as a cosmetologist. Florida requires 240 hours to become a licensed nail technician and 260 hours for an esthetician. Pennsylvania requires 1,250 hours for cosmetology, 200 hours for nail technicians, and 300 hours for estheticians. Virginia requires 1,500 hours for cosmetology, but only 150 hours for nail technicians.

In addition, as will be discussed in the next section, some states permit licensure through apprenticeship for applicants, with no formal coursework required.

ISSUE 3: Apprenticeship Track

Recommendation: The Agency recommends amendment of the Cosmetology Practice Act to allow apprenticeship as an alternative avenue to licensure.

Justification: Other professions in South Carolina, such as barbers and auctioneers, permit licensure through an apprenticeship. Additionally, other states, including Maryland, Georgia, Michigan and California, allow apprenticeships for cosmetology. An apprenticeship allows the interested person to gain on-the-job training and skill, without requiring the person to pay as much as \$20,000 to attend cosmetology school.

ISSUE 4: Inspections

Recommendation: The Agency recommends that S.C. Code § 40-13-290 and part of S.C. Code Reg. § 35-20(A) (2)-(3), which permit salon inspections, be repealed.

Justification: Eliminating the requirement for salon inspections will reduce the time and expense associated with unannounced inspections. In addition, there is little evidence that inspections protect the health or welfare of the citizens of South Carolina.

Last year, the Agency spent \$419,449 to conduct 8,751 inspections of salons and cosmetology schools. Most of the salon inspections yielded a high percentage of unlicensed practice in the nail technician industry. In addition, although some salons were found to be out of compliance with the lengthy sanitation regulations, none of the issues found resulted in any verified public harm. Of the 8,751 inspections, 23 cases involved sanitation, 41 cases involved unlicensed practice, and 74 cases arose against salons and salon managers for allowing unlicensed persons to practice. Ultimately, it seems that the Agency primarily inspects for unlicensed practice.

Although LLR licenses physicians, dentists, optometrists, physical therapists, nurses and other healthcare professionals, neither the Agency nor any other State agency is statutorily authorized to randomly inspect the private practices of these professionals to

ensure sanitary conditions for patients.² Thus, in South Carolina, we spend more than \$400,000 a year inspecting salons and schools, but not a penny to inspect dental³ or medical practices for general sanitation conditions. Surely, if the Legislature has decided inspections of medical and dental offices are unnecessary where teeth are cleaned, cavities are filled, gynecological exams are performed, children are examined, and shots are administered, inspections of cosmetology salons are equally unnecessary.

The Agency does want to make a note regarding school inspections. In order for students to have access to federal loans for funding, the U.S. Department of Education requires State oversight of schools. If the State is going to require formal training to become a licensed cosmetologist, nail technician or esthetician, the Agency recommends keeping school inspections.

ISSUE 5: Booth Renters

Recommendation: The Agency recommends deleting “a rental booth” from the definition of “salon” found in S.C. Code § 40-13-20(1).

Justification:

A cosmetologist, nail technician, or esthetician must, with very few exceptions, practice their trade in a licensed salon. Within one salon, the State requires a number of licenses: one for the salon; one for each cosmetologist, esthetician, or nail technician practicing within the salon; and one for each booth renter within the salon. A booth renter is one who rents space from a salon owner, but is not employed by the salon. This licensing scheme creates redundancies.

There is no “booth renter” license clearly outlined within the Cosmetology Practice Act. The Board has interpreted the definition of a salon, “a building or any place, or part of a place or building including, but not limited to a rental booth, in which cosmetology is performed . . .,” to require a booth renter to be licensed separately as a salon, essentially a salon within a salon. Again, the booth renter’s license is in addition to the cosmetology, nail, or esthetician’s license held by the booth renter.

Each of the 3,681 booth renters within the state must pay a \$100 fee for each booth rented, resulting in \$368,100 in revenue to the Agency every two years. Booth renters are inspected simultaneously with the salon of which they are a part. Of the booth rental

² DHEC inspects X-ray equipment contained within a medical or dental practice, but does not inspect other aspects of the practice or for general sanitation conditions. S.C. OSHA has the authority to inspect to ensure employees are provided a safe and healthy worksite free of hazards which may cause injuries and illnesses to workers, but does not inspect to ensure patient safety.

³ If passed, S. 0407 will require inspections of dental offices; however, there is no current inspection requirement.

inspections conducted last year, only 3 individuals were cited, all for unlicensed practice. Not one booth renter was cited for a sanitation issue.

Whether a cosmetologist works as an employee or rents a booth at a salon does not impact the health, safety, or welfare of the people of South Carolina, and therefore, should not involve the State. The Board of Cosmetology licenses the salon, so it makes little sense to license a booth renter who happens to work in the licensed salon as a salon owner.

ISSUE 6: Continuing Education

A. Reduce Continuing Education Requirements

Recommendation: The Agency recommends amendment of S.C. Code Reg. § 35-23(A) to reduce the amount of continuing education requirements.

Justification: Currently, S.C. Code Reg. § 35-23 requires cosmetologists, nail technicians, and estheticians to complete 12 hours of continuing education “during the preceding licensing year.” The Board interprets this to mean twelve hours of credit are required every two years. Despite the difference in hours required for initial licensure as a cosmetologist, nail technician, or esthetician, the regulations require 12 hours for all of these professions. Continuing education requirements are expensive and take licensees away from their jobs. One member of the public commented that continuing education is worthless, people sleep during the courses, and those who are interested in learning will pursue education regardless of the requirements. Other states require less. Georgia, for example, requires only five hours every two years.

B. Reduce Many of the Continuing Education Program Requirements

Recommendation: The Agency recommends significantly scaling back the continuing education program requirements.

Justification: S.C. Code Reg. § 35-24 requires, among other things, that education programs provide adequate space and chairs, curtail smoking while a program is ongoing, require two forms of identification before admittance, including one government issued form of identification, and a monitor be on duty at all times. The Agency is unaware of any other profession that micro manages its continuing education programs to this extent.

C. Permit Continuing Education Carryover

Recommendation: The Agency recommends amendment of S.C. Code Reg. § 35-23(A) to allow licensees to carry hours forward to the next renewal period.

Justification: Many other professions afford licensees this opportunity. Carrying credits to the next renewal cycle is efficient because it allows licensees to plan and budget more effectively. It is cost effective for the licensee and time effective

for the businesses employing them. A licensee should not be forced to lose credits that were paid for because the hours are not permitted to carry over into the next renewal cycle.

D. Continuing Education Exemption

Recommendation: The Agency recommends amendment of S.C. Code § 40-13-250 to permit a licensee who achieves exemption status to: 1) not have to prove the status every renewal period; 2) provide that exemption status cannot be lost once it is achieved; and 3) seek exemption status as soon as the licensee becomes eligible, rather than waiting until the next renewal cycle.

Justification: S.C. Code § 40-13-250 provides exemptions to the continuing education requirements for licensees who: (1) have held a license for 15 years and are 60 years old; or (2) have held a license for 30 years and are at least 50 years old.

The Board takes the position that a licensee must show proof of the exemption requirements at each renewal cycle. Proof of initial qualification for the exemption should be sufficient. The Board's requirement is burdensome on both the licensee and the Agency.

The Board also believes that if a licensee is late renewing, or allows the license to lapse for a short time, the exemption is lost, regardless of the reason, including illness, family, or financial. This makes little sense. A change in the statute will prevent the unduly harsh punishment of a licensee who is eligible for exemption and who has decades of experience, but who has allowed a lapse in licensure to occur. In addition, the Board takes the position that a licensee must achieve the necessary milestone, either via age or years practiced, then complete continuing education requirements, and, finally, apply for the exemption at the next renewal cycle. The recommended amendment will allow for a more common sense approach and will ease the financial burden on licensees who have to pay to receive 12 hours of continuing education credit when they have become eligible for exemption. The proposed amendment also rewards members of the profession who have gained significant industry knowledge and who have contributed to the industry over the course of an extended career.

ISSUE 7: Equipment Requirements

Recommendation: The Agency recommends that much of S.C. Code Reg. § 35-2, which specifically identifies a cosmetology school's required items, be repealed.

Justification: The building requirements provide that a cosmetology school must have one teacher's desk and chairs, one file for records, one blackboard or dry eraser board, three shampoo bowls, eight hair dryers, etc. These requirements are too specific, burdensome and arbitrary. It is unreasonable that a school could be out of compliance because it has seven hair dryers and no teacher's desk. These requirements reflect over regulation. The State does not need to decide what belongs in a cosmetology

classroom. School operators should be able to identify items needed to furnish a classroom.

ISSUE 8: Board Approval of School Rules

Recommendation: The Agency recommends that S.C. Code Reg. § 35-10(H)(1), which requires Board approval of any change in school rules or regulations, be repealed.

Justification: Again, this is simply over regulation. Schools operate independently of the Board and should be able to change school rules or policies as the school operators see fit. Moreover, a proposed modification's adoption may be unnecessarily delayed by the Board's meeting schedule.

ISSUE 9: Instructor License

Recommendation: The Agency recommends amendment of S.C. Code § 40-13-310 to delete any reference to the Board being able to set forth minimum qualifications for an instructor's license and repeal accompanying regulations. S.C. Code Reg. §§ 35-4, 35-8, 35-9, and 35-23(D).

Justification: These regulations require instructors to complete 750 hours of instructor training, in addition to the 1,500 hours required to be a cosmetologist. The Agency can think of no other profession that licenses its instructors separately from the profession itself. For example, the State does not issue separate physician instructor and physician licenses. The medical schools hire instructors they deem qualified and fit to teach medical students. In addition, the Board requires 24 hours of continuing education every two years for an instructor's license. The separate instructor's license and continuing education requirement impose a financial burden and time constraint for those interested in teaching. It also limits the pool of applicants from which schools can hire. School operators should be able to determine whom they believe is best qualified to teach their students.

At a minimum, the portion of Regulation S.C. Code Reg. § 35-4 requiring an instructor to be a licensed cosmetologist should be repealed. Cosmetology students are required to study, among subjects, things, anatomy, dermatology, public relations, salesmanship, and psychology. Based on the current regulation, a medical doctor would be precluded from teaching an anatomy class without first obtaining both a cosmetology and an instructor's license.

ISSUE 10: Apparel Requirement

Recommendation: The Agency recommends that S.C. Code Reg. § 35-20(G) (1), which currently requires that the uniform and attire of a licensee assisting a customer be "clean and appropriate at all times," be repealed.

Justification: Cleanliness and appropriateness of attire, while important, are issues to be addressed in the workplace between the employee and employer. Additionally, these are issues that will be addressed by consumers as they manifest their desire to have

services provided by sanitary and well-dressed licensees. State regulation of this aspect of the profession is unnecessary.

**** Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***