State of Arizona Office of the Auditor General

PERFORMANCE AUDIT

BOARD of COSMETOLOGY

Report to the Arizona Legislature
By Douglas R. Norton
Auditor General
October 1996
Report 96-15

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

DEBRA K. DAVENPORT, CPA
DEPUTY AUDITOR GENERAL

October 16, 1996

Members of the Arizona Legislature

The Honorable Fife Symington, Governor

Ms. Sue Sansom, Executive Director
Board of Cosmetology

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Cosmetology. This report is in response to a May 29, 1995, resolution of the Joint Legislative Audit Committee. The performance audit was conducted pursuant to the provisions of Session Laws 1994, Chapter 52, Section 4.

The report addresses the Board's regulatory function, its compliance with open meeting and public officer statutory requirements, and its fees and license renewal process. While the need to regulate the cosmetology industry is questionable, if the profession is going to be regulated we recommend that the Board narrow its regulatory focus to include only those issues related to protecting the public's health, safety, and welfare. Specifically, the Board should discontinue its use of the practical examination, reduce or eliminate current education and age requirements for licensure, and alter its oversight of cosmetology schools by focusing more on a school's operational and financial viability.

We also recommend that the Board develop procedures to properly disclose and document conflicts of interest board members may have during the course of board meetings. The Board should also completely and accurately document its meeting proceedings. Additionally, we recommend that the Legislature increase public member representation on the Board as a means of increasing consumer protection.

Finally, the Board should reduce the unnecessary fee increases it recently enacted and adopt a biennial license renewal process to reduce costs.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on October 17, 1996.

Sincerely,

Douglas R. Norton
Auditor General

2910 NORTH 44TH STREET • SUITE 410 • PHOENIX, ARIZONA 85018 • (602) 553-0333 • FAX (602) 553-0051

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Board of Cosmetology, pursuant to the provisions of Session Laws 1994, Chapter 52, Section 4 and in response to a May 29, 1995, resolution of the Joint Legislative Audit Committee.

Arizona has regulated the practice of cosmetology since 1929. The Board of Cosmetology consists of 7 members who oversee 34,200 individuals licensed as cosmetologists, nail technicians, aestheticians (persons licensed to practice skin care), and school instructors. The Board also regulates 3,800 licensed salons and 32 cosmetology schools. In addition to its licensure activities, the Board conducts examinations, performs inspections of salons and schools, and investigates complaints.

Board Regulation Should Focus Only on Public Protection (See pages 7 through 12)

In 1983, the Auditor General conducted a performance audit of the Board and determined that regulating cosmetology practice was unnecessary due to the public's ability to adequately evaluate these services, a position that remains unchanged. Nonetheless, since regulation of the industry continues, the Board should narrow its regulatory focus to include only those issues related to protecting public health, safety, and welfare. For example, the Board currently requires licensure applicants to pass a practical examination that focuses more on an applicant's technique rather than assessing knowledge of health and safety procedures. However, applicants already develop and demonstrate their practical skills during training at a board-licensed cosmetology school and in many cases, as a condition of graduation from these schools. Therefore, the Board should discontinue its use of the practical examination.

The Board should also reduce or eliminate current education and age requirements. It currently requires applicants to possess a tenth-grade education or be 23 years of age. However, these requirements are overly restrictive and exceed requirements found in other states. For example, all other states have a lower age requirement than Arizona, and many of them require applicants to be only 16 or 17 years old.

The Board should also alter its oversight of cosmetology schools. Currently, some elements of school oversight are unnecessary, while more serious issues are not addressed by the Board. For example, the Board effectively determines several of the admission requirements for the schools, and keeps and provides student transcripts, which are functions that should be performed by schools. In addition, the Board determines the amount of equipment, such as

filing cabinets, instruction boards, chairs, etc. a school must have. However, the Board does not address schools' operational and financial viability. Similar to the Board for Private Postsecondary Education, the Board of Cosmetology could evaluate school curricula and financial statements, as well as the qualifications of school owners, directors, and faculty, to ensure the stability of cosmetology school operations.

Board Meetings and Member Actions Do Not Comply with Statutes (See pages 13 through 17)

The Board fails to comply with several statutory provisions regarding public officer and open meeting laws. For example, board members are required to disclose any personal or proprietary interest they have in matters before the Board, such as a complaint against a board member's business. However, we documented 11 separate meetings during the past 2 years during which board members did not properly disclose and document such conflicts of interest. By failing to properly disclose and document these conflicts, members appear to personally benefit from board actions. Additionally, in certain instances these actions could be declared null and void if board members did not properly disclose a conflict.

Board members' chronic absenteeism further compromises its actions. There has not been full attendance at a board meeting since September 1994. On average, only 4 of the Board's 7 members typically attend each month. Additionally, 3 members have missed so many meetings they have legally vacated their offices and may have jeopardized some board actions. For example, the Board's public member has missed 17 of 34 meetings since her appointment, with 7 of those absences occurring consecutively between November 1995 and May 1996. Two other board members have missed at least three consecutive board meetings since their appointments.

Finally, board meeting minutes do not completely or accurately document meeting proceedings. In at least two instances, actions reported in board meeting minutes differed from those actually taken by the Board, which may force licensees to comply with disciplinary penalties that differ from those the Board ordered. The Board's preference to conduct rather informal meetings may prevent it from preparing complete and accurate meeting minutes. Further, inconsistent board meeting procedures and conduct obstruct the public's ability to fully understand the Board's actions.

The Board can easily remedy these areas of statutory noncompliance by establishing procedures to properly disclose and document conflicts of interest and accurately document its meetings. Additionally, the Board should adopt procedures for conducting meetings and take steps to fill its current vacated positions.

Board Can Better Serve Public (See pages 19 through 21)

The Board can better serve the public by adding more representatives of the public to the Board, and by making licensee information readily available. Two of the Board's seven members are statutorily required to be free of ties to the cosmetology industry. However, the Board's lone public member has legally vacated her office due to chronic absenteeism, and the other board member who should be free of ties to the industry holds a position with a national commission that accredits most of the State's cosmetology schools. As a result, board actions are currently dominated by industry interests.

The Legislature can increase consumer protection by amending statutes to increase public member representation on the Board. In a 1995 report (#95-13), the Auditor General recommended that public membership should be increased to 50 percent on the licensing boards for all 23 of Arizona's health-related professions. Similar representation would be equally appropriate for the Board of Cosmetology.

Board policies further reduce its effectiveness in protecting the public by preventing consumers from easily obtaining information about the individuals and establishments they patronize. The Board will not release information about licensees over the phone, instead requiring consumers to submit a signed, notarized request form. As a result, consumers must wait from 1 to 36 days for the requested information. To improve consumer access to board information, the Board should provide summary information on complaints and disciplinary action against licensees over the phone and discontinue its use of request forms.

Board Fee Increase and Annual License Renewal Unwarranted (See pages 23 through 25)

The 50 percent fee increases recently enacted by the Board are excessive. The Board asserts that rising expenditures and future capital projects made it necessary to increase fees; however, the Board's large reserve fund balance and adequate revenue growth do not justify these increases. Unless the Board can demonstrate a definite need for a fee increase, it should revisit its administrative rules and reduce fees to their original levels.

The Board's current annual license renewal requirement also places unnecessary burdens on licensees. Biennial renewal would save the Board almost $10,000 in annual postage costs and allow it to reallocate one half of an FTE position to other functions. Changing to biennial licensure would require statutory changes to reflect the expanded renewal period, and to increase the statutory maximum for fees to allow biennial renewal.

Other Pertinent Information
(See pages 27 and 28)

During the audit, we also collected other pertinent information regarding the potential benefits and drawbacks of combining the Board of Cosmetology and the Board of Barbers. Although combining them would yield benefits in terms of cost savings and a simplified regulatory system, both boards and their respective industries prefer to maintain the current regulatory system.

Table of Contents

	Page
Introduction and Background	**1**
Finding I: Board Regulation Should Focus Only on Public Protection	**7**
Background	7
Requirements for Individual Licenses Do Not Focus on Public Health and Safety	7
Focus of School Oversight Should Be Changed	9
Recommendations	12
Finding II: Board Meetings and Member Actions Do Not Comply with Statutes	**13**
Conflicts of Interest Not Disclosed	13
Chronic Absenteeism Jeopardizes Board Actions and Meetings	14
Meetings Not Properly Documented	16
Recommendations	17
Finding III: Board Can Better Serve Public	**19**
Board Needs Additional Public Membership	19
Public Access to Information Impeded by Board Policies	20

Table of Contents (Concl'd)

Page

Finding III: Con't

Recommendations 21

Finding IV: Board Fee Increase and Annual License Renewal Unwarranted 23

Fee Increase Not Justified 23

Annual Licensure Renewal Unnecessary 25

Recommendations 25

Other Pertinent Information 27

Proposal to Combine Boards Previously Discussed 27

Agency Response

Table

Table 1: Board of Cosmetology Statement of Revenues, Expenditures, and Changes in Fund Balance Years Ended or Ending June 30, 1994 through 1997 3

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Board of Cosmetology. This audit was conducted pursuant to the provisions of Session Laws 1994, Chapter 52, Section 4 and in response to a May 29, 1995, resolution of the Joint Legislative Audit Committee.

Board History and Responsibilities

Arizona has regulated the practice of cosmetology since 1929. As originally established by the Legislature, the State Board of Barbers and Cosmeticians licensed cosmeticians and cosmetology schools. Two years later, additional legislation provided for the licensure of salons/shops and school instructors. In 1935, the Legislature created separate barber and cosmetology boards.

According to statute, the Board of Cosmetology's purpose is to ensure that the public is protected from incompetent practitioners of cosmetology. The Board attempts to meet this mandate by establishing minimum qualifications for individual, salon, and school licensure; inspecting salons and schools for compliance with statute and rule; and investigating and resolving complaints. Currently, the Board regulates 34,200 individual licensees, 32 cosmetology schools, and 3,800 salons.

Organization and Staffing

The Board consists of seven members appointed by the Governor for three-year terms. Five of the seven Board members are affiliated with the cosmetology industry. The remaining two members, an educator and a public member, cannot, by statute, represent or be associated with the cosmetology industry or the manufacturing of cosmetology products.

To assist the Board in its oversight efforts, it is appropriated 15.5 FTEs. Under the direction of an Executive Director who reports to the Board, board staff consists of the following departments:

- **Administration (3 FTEs)**—An executive director and two administrative staff direct the Agency and prepare for and conduct mandated monthly board meetings.

- **Operations (5 FTEs)**—Operations processes initial and renewal license applications for individual licensees, salons, and schools. The department also performs accounting, procurement, and record retention functions.

- **Examinations (3 FTEs)**—The examinations department processes all applications for examinations and administers practical and written examinations to individual license applicants.

- **Inspections and Investigations (4.5 FTEs)**—This department conducts routine and special inspections of licensed establishments (schools and salons) at least twice a year. Additionally, it investigates complaints and prepares them for board review.

Budget

The Board receives its legislative appropriation from the Board of Cosmetology Fund. This fund contains revenues derived from the collection of license application and renewal fees, examination application fees, and penalties assessed against licensees. The Board deposits 90 percent of its revenues into the cosmetology fund and the remaining 10 percent of revenues into the general fund.

As shown in Table 1 (see page 3), the Board has accumulated a large fund balance totaling $413,795 at June 30, 1996. However, in recent years, the Board has not generated sufficient revenues to pay its actual expenditures, and has been forced to rely on its reserves. Specifically, over the last three fiscal years, total expenditures have exceeded board-retained revenues by $205,401. As a result, the Board reduced its fund balance from $619,196 to $413,795. However, the majority of this reduction can be attributed to a one-time expenditure of $170,500 to relocate the Board's operations.

Table 1

Board of Cosmetology
Statement of Revenues, Expenditures, and Changes in Fund Balance
Years Ended or Ending June 30, 1994 through 1997
(Unaudited)

	1994 (Actual)	1995 (Actual)	1996 (Actual)	1997 (Estimated)
Revenues (90% of gross revenues) [1]	$612,149	$618,073	$621,223	$939,174
Expenditures				
Personal services	317,014	302,302	303,907	$335,900
Employee related	82,210	74,899	84,164	91,600
Professional and outside services	80,887	79,442	84,231	77,900
Travel, in-state	25,584	22,848	24,790	25,000
Travel, out-of-state	8,673	13,462	6,928	7,700
Equipment	2,230	10,435	1,023	
Other operating	106,688	128,586	296,543 [2]	98,400
Total	623,286	631,974	801,586	636,500
Excess of expenditures over (under) revenues	11,137	13,901	180,363	(302,674)
Fund balance, beginning of year	619,196	608,059	594,158	413,795
Fund balance, end of year	$608,059	$594,158	$413,795	$716,469

[1] As a 90/10 agency, the Board of Cosmetology remits 10 percent of its gross revenues to the General Fund.

[2] Amount includes a one-time charge of $170,500 for relocation.

Source: The Uniform Statewide Accounting System reports for the years ended June 30, 1994 through 1996. The revenues for the year ending June 30, 1997, are an estimate of the Auditor General staff based primarily on the total number of licensees as of June 30, 1996, at the Board's current fee structure, and the expenditures are from the *State of Arizona Appropriations Report* for the year ending June 30, 1997.

Audit Scope and Methodology

Because this audit was not performed under the Sunset law, we did not address the continuing need for the Board of Cosmetology. However, the audit focused on the Board's regulatory function and licensing process, its compliance with open meeting and public officer statutory requirements, the extent to which it can increase public protection, and its fees.

To evaluate the Board's compliance with open meeting and public officer statutory requirements, we attended two board meetings, reviewed minutes and associated documentation from meetings since July 1994, and reviewed member attendance at meetings since July 1993.

To offer recommendations regarding the current level of regulation imposed on licensees, we accompanied inspectors on 11 salon inspections and 1 school inspection; observed 2 written and 3 practical examinations given by the Board to prospective cosmetologists, nail technicians, and instructors; and reviewed documentation required of individuals and schools for licensure. Additionally, various organizations and individuals were contacted, including equivalent Boards of Cosmetology in 14 other states, national cosmetology associations, and national accrediting associations.[1] Prior board reviews including the 1983 Auditor General performance audit report and 1993 House Commerce and Senate Commerce and Economic Development Committee of Reference report and Sunset review were also reviewed. Finally, we analyzed the need for the Board's recent fee increases, compared public member representation on the Board with other boards (both in Arizona and in other states), and reviewed consumer requests for licensee information and the Board's policies for responding to those requests.

Our work also included a review of 524 complaints the Board received in fiscal year 1994-95 to determine the types and disposition of these complaints. Based on a review of the Board's complaint log and files, the Board responds to and reviews the approximately 500 complaints it receives annually in a timely manner (on average, within 3 months). These complaints usually concern unlicensed establishments or individuals, but also allege incompetent practice, unsanitary establishments, or fraud. Additionally, the Board dismisses most of the complaints it receives (65 percent in fiscal year 1994-95). However, for those complaints not dismissed, the Board does not appear to exceed statutory provisions for disciplining licensees.

Our report presents findings and recommendations in four areas. The Board needs to:

- Reduce the level of regulation currently imposed on individual and school licensees.

---

1 We contacted officials from Boards of Cosmetology or Boards of Cosmetologists and Barbers in other states as recommended by the executive directors of the Arizona Board of Cosmetology and the Arizona Board of Barbers. States we contacted were Alaska, Arkansas, California, Colorado, Connecticut, Idaho, Nevada, New Jersey, New Mexico, Ohio, Oregon, Texas, Utah, and Washington.

- Take several steps to ensure compliance with open meeting and public officer statutory requirements.

- Improve its service to the public by increasing the number of public members on the Board and removing barriers that currently limit the public's access to licensee information.

- Reduce its recently enacted licensure fee increases to less-burdensome levels and implement biennial licensure renewal.

We also present Other Pertinent Information (see pages 27 and 28) about the benefits and drawbacks of combining the Board of Cosmetology with the Board of Barbers.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the board members, Executive Director, and staff of the Board of Cosmetology for their cooperation and assistance throughout the audit.

(This Page Intentionally Left Blank)

FINDING I

BOARD REGULATION SHOULD FOCUS ONLY ON PUBLIC PROTECTION

Several of the Board of Cosmetology's licensing requirements focus on issues that do not need regulation, while omitting important issues that could better protect the public. Individual licensure requirements deviating from consumer protection issues should be eliminated. Likewise, the Board should eliminate unnecessary regulation of cosmetology schools and focus its oversight on each school's financial stability and qualifications to provide cosmetology training.

Background

The Auditor General conducted a performance audit and Sunset review of the Board in 1983 to assess the need for regulation and the level at which it was imposed. At that time, we determined that regulating cosmetology practice was unnecessary since the practice of cosmetology failed to pose a significant risk to the public's health and safety. In particular, we argued for discontinued regulation because the public can use instruments and chemical solutions similar to those used in the cosmetology industry, and adequately evaluate cosmetology services. These arguments, presented in 1983, remain unchanged. Nonetheless, because regulation of the cosmetology industry continues, we believe that, at a minimum, the Board's regulatory focus should be narrowed to incorporate issues related only to public health and safety.

Requirements for Individual Licenses Do Not Focus on Public Health and Safety

Several of the Board's individual licensure requirements do not focus on health and safety issues and could be eliminated. For instance, the need for a practical examination is questionable, because it focuses more on an applicant's technique than on knowledge of health and safety procedures. Moreover, age and education requirements are not justified and restrict some people's ability to enter the profession. Eliminating these requirements could reduce costs and increase opportunities to practice cosmetology.

The Board's practical examination unnecessary—The Board's practical examination for licensure contains elements unrelated to its health and safety mandate. Currently, the Board requires license applicants to pass both a national written and practical examination. While the written exam incorporates consumer protection items, the practical exam focuses more on an applicant's techniques rather than assessing knowledge of health and safety procedures. A review of practical exams for various individual licenses reveals several items not related to consumer protection. For example:

- The cosmetologist practical exam contains sections where applicants must demonstrate the ability to comb and style a model's hair and use proper shampooing techniques.
- The nail technician exam requires applicants to massage and oil a model's hand and to apply nail polish to each of the model's fingernails.
- The instructor practical exam determines an applicant's ability to call a class roll and use complete sentences during an oral presentation.

In constrast, other boards, such as the Arizona Board of Nursing, Pharmacy Board, and Medical Radiologic Technology Board of Examiners, require applicants only to pass a national written exam upon graduation from a board-approved school. These professions pose a much greater potential risk to the public's health and safety than do cosmetologists.

Finally, health and safety considerations aside, graduates from cosmetology schools already demonstrate competency in board-licensed schools, and in some cases, as a requirement for graduation. Students' instructional hours vary by course of study. For example, a cosmetology student receives 1,600 hours of instruction, while a nail technician needs only 300 hours. During their schooling, these students not only receive oral and written instruction, but must also demonstrate their abilities through the actual provision of services to clients. While the Board cannot estimate the number of hours a student performs cosmetology services to the public, the Executive Director views students' clinical work as a significant element of their education. In fact, 22 of Arizona's 32 licensed schools require students to complete a "mock" practical exam prior to graduation to demonstrate their cosmetology knowledge and proficiency.

Educational and age requirements too restrictive—In addition to eliminating the practical exam as a licensing requirement, the Board's educational and age requirements for individuals should be eliminated or reduced because they potentially restrict people from practicing cosmetology. Currently, statutes require candidates to complete and receive appropriate credits for at least two years of high school education, or its equivalent, to apply for a license to practice. The Board further specifies in its rules that "tenth grade equivalency involves the completion of 10 high school credits. . ." However, the Board waives these qualifications if an individual is at least 23 years old. According to the Board, such education and age requirements ensure that an individual possesses the " . . .maturity to be serious about completing a vocational program,

and should be able to obtain an education to make a living." The Board's basis for determining that this maturity does not occur before age 23 is not clear.

In comparison to other states, Arizona's education and age requirements are more restrictive. For example, according to the National Cosmetology Association (NCA), 9 states require a ninth-grade education or less, while 4 states have no educational requirements. Additionally, NCA reports that all other states have a lower age requirement than Arizona's. Specifically, 32 states require licensees to be only 16 or 17 years old, while 6 states have no age requirements.

As was noted in 1983, the Board's justification for these education and age requirements appears arbitrary. In 1983, we concluded that the Board could provide no justification for requiring a tenth-grade education, except that it felt individuals should be able to read product labels and follow instructions. Successful completion of the Board's national written examination would ensure that individuals could read and comprehend instructions. The report also indicated that the Board could provide no justification for the age requirement, which was then 18. The Board has since raised this requirement to age 23.

Health and safety focus brings benefits—The Board could realize several benefits by eliminating or reducing the examination, age, and education licensure requirements, and focusing its licensing process on consumer protection. For example, by eliminating a national practical examination, the Board could reduce its contract and personnel costs. The Board presently contracts with the National Interstate Council of State Boards of Cosmetology (NIC) to develop and provide its practical exam. Board projections for fiscal year 1996-97 indicate that eliminating the practical exam would reduce NIC costs by $27,263. Eliminating the practical exam might also result in decreased or reallocated staff positions. Currently, while three staff process applications, proctor, and score the practical exam, fewer individuals would be needed to perform these activities for only a written exam. Moreover, by eliminating or reducing the Board's educational and age requirements, the Board could provide people with increased opportunities to practice cosmetology.

Focus of School Oversight Should Be Changed

In addition to reducing requirements for individual licensees, the Board should refocus its oversight of schools. While the Board currently regulates 32 cosmetology schools in Arizona, much of its oversight focuses on aspects of the educational experience that should be left to the school, and/or students themselves. To better serve students, the Board should ensure that schools are financially stable and qualified to provide the required training.

School oversight focuses on unnecessary items—Several aspects of school oversight focus on issues unrelated to consumer protection. Theoretically, the Board's granting of a license to a cosmetology school acknowledges the instructors' qualifications and abilities to provide adequate training to students. Once it has granted a license to a school, the Board should be

confident that the level of instruction provided to students at the school satisfies licensure requirements. The Board's level of regulation imposed on schools, however, in its routine inspections and monitoring activities, focuses on several items unrelated to consumer protection that should be left to the student to assess or schools to perform. For example:

- **File Review** —Board inspectors routinely review student files to confirm that each student will meet licensure requirements. While this review ensures that students have signed enrollment agreements, inspectors also confirm that students meet the qualifications for licensure including the number of completed training hours, age, and education; factors the Board again verifies at the time of licensure. The Board, by validating this information, places itself in the position of determining whether a student can be admitted to a privately operated school and erroneously assumes that each student desires to become licensed.

- **Equipment Inspection**—The Board also has established minimum equipment standards and inspects against these standards. For example, inspectors ensure that each school has adequate filing cabinets, instruction boards, chairs, tables, and student lockers. Additionally, inspectors record the manufacturer of the products located in each school's stockroom.

- **Certification of Hours**—The Board also maintains responsibility for authenticating the number of instruction hours completed by all students. Consequently, whenever these hours must be confirmed, for reasons such as licensure in another state or school transfer, the Board serves as the only body that can validate such information. However, schools should be responsible for this function. In Arizona's public education and state university systems, each school in the State certifies the completion of its student hours, not a separate state agency.

- **Monthly Reporting of Student Hours**—The Board now requires each school to report monthly on the number of training hours completed by each student at the school. The Board contends that this activity reduces the likelihood that a school would produce fraudulent student hours. However, the Board already licenses and inspects these schools to ensure they meet board requirements; therefore, the requirement to report monthly burdens schools with additional regulation.

The Board should focus on schools' quality and stability—Instead of focusing on the amount of equipment a school owns or recording completed student hours, the Board should focus its efforts on the schools' operational and financial viability. Currently, the Board does not review schools' qualifications to provide cosmetology training, or that of their owners. For instance, a school seeking licensure must pass a building inspection, complete a board application, furnish a $10,000 surety bond, provide a copy of all contract enrollment forms, submit a schedule documenting days of operation, document the name and license number of the school manager, pay the appropriate board fees, and submit a floor plan of the school. The Board does not require information about the school's curriculum, instructors, and

qualifications of its owners. Additionally, the Board does not analyze schools' financial performance to ensure their stability, nor does it assess the potential risk of a school closing and thus, harming its students. Aside from the surety bond, the Board requires no further assurance that cosmetology school students will be able to complete their schooling at the institution they have selected.

Unlike the Board of Cosmetology, Arizona's Board for Private Postsecondary Education (PPSB), which licenses approximately 120 vocational and degree-granting institutions, requires that each school exhibit financial stability and the qualifications to provide training prior to receiving a license. For example, PPSB examines each school's financial statements to verify it possesses adequate resources to operate. This examination of financial statements focuses on the institution's ability to meet its expenditures and earn profits, thus displaying the ability to continue as a business. Finally, PPSB evaluates the resumes and backgrounds of each institution's owner, director, and faculty to substantiate the qualifications of staff involved in school operations. PPSB attempts to conduct these reviews of financial and operational records once every two years for each school under its jurisdiction. According to the PPSB Executive Director, providing this type of oversight ensures that students receive appropriate training and are protected against school closures and fraudulent operations.

While the Board of Cosmetology's Executive Director agrees with the importance of evaluating a school's operational and financial viability, the Board currently lacks the authority and expertise to conduct this type of oversight. The Legislature should consider amending board statutes to require schools to demonstrate financial responsibility and management capability and to maintain a qualified faculty as a condition of licensure. Additionally, the Legislature should consider amending board statutes to provide the Board with authority to focus its oversight activities on these licensure requirements.

Recommendations

1. The Legislature should consider amending A.R.S. §§32-504 and 32-551 to provide the Board with statutory authority to focus its oversight activities on cosmetology schools' operational and financial viability.

2. The Board should discontinue unnecessary requirements for individual licensure by:

   - Abolishing the use of its practical examination, and

   - Eliminating or reducing age and education licensure requirements.

3. The Board should reduce the current level of regulation imposed on schools by:

   - Reducing the scope of its student file review,

   - Requiring schools, rather than the Board, to certify the training completed by students,

   - Discontinuing the requirement that schools submit monthly reports detailing the number of training hours completed by students, and

   - Eliminating minimum equipment standards.

FINDING II

BOARD MEETINGS AND MEMBER ACTIONS DO NOT COMPLY WITH STATUTES

The Board of Cosmetology fails to comply with several statutory provisions regarding public officers and open meetings. For example, although required to disclose conflicts of interest, board members have not properly disclosed or documented any actual or potential conflicts of interest regarding issues that have come before the Board. Likewise, chronic board member absenteeism has resulted in apparent vacancies of office, and has potentially affected the operation of meetings and the validity of many of the Board's actions. Further, the Board's policies prevent it from completely and accurately documenting its meetings, as required by open meeting laws.

Conflicts of Interest Not Disclosed

Although state law requires board members to disclose information regarding actual or potential conflicts of interest, the members have not adequately disclosed this information. Statutes specifically require public officers to fully and openly disclose their personal and proprietary interests in matters before the Board, yet members of the Board of Cosmetology have failed to reveal their interests. To achieve compliance with the law, the Board should implement procedures to ensure its members fully and openly disclose their conflicts of interest.

Statutes require disclosure—As public officers, board members must comply with legal requirements concerning conflicts of interest to ensure agencies render impartial decisions. Statutes require members who find they or their family members have a personal or proprietary interest in a matter before the Board to declare the conflict and remove themselves from consideration of that matter. Board members should disclose conflicts of interest in all instances, even if a member does not participate in a matter due to absence. Board members achieve full disclosure of their conflicts of interest by describing the nature of the conflict in a written or verbal statement on the open meeting record when the matter arises. Additionally, statutes require that the Board keep all statements in a file available for public inspection.

Board in violation of conflict-of-interest laws—Currently, the Board does not comply with requirements to properly disclose and document conflicts of interest. Specifically, Board members have not properly declared conflicts of interest in matters before the Board during 11 separate meetings over the past 2 years. For example, the member who represents school owners did not declare or describe her conflict of interest when the Board considered a

complaint filed against her school at the June 1995 meeting. Board minutes for that meeting do not document that she removed herself from the Board's discussion of the complaint and its subsequent decision to dismiss it. In addition, there is no file at the Board that discloses this interest.

By failing to adequately disclose any potential or actual conflicts of interest, board members appear to take action on matters that could personally benefit them. In addition, board decisions, in certain instances, could be declared null and void if these actions were reached with the participation of a member who did not properly disclose or document a conflict of interest.

Procedures would improve compliance—To ensure that its decisions are impartial, the Board should implement procedures to make it easier to comply with laws pertaining to conflicts of interest. Similar to other regulatory boards, the Board should ensure that members openly and fully disclose any proprietary or personal interests they hold that conflict with the Board's interests. For example, the Governor's Regulatory Review Council (Council) has developed a form which its members complete prior to each meeting that identifies any agenda items creating a conflict of interest for the member and describing the nature of the conflict. Further, the Council Chair announces each member's conflicts into the public record at the beginning of each meeting, and again when that particular issue arises. The Board should also maintain all conflict-of-interest statements in a file available for public review. For instance, in addition to recording conflicts-of-interest statements in meeting minutes, the Council keeps a copy of all conflict forms in a separate public file. Similarly, the Board for Private Postsecondary Education (PPSB) maintains a log of all conflicts of interest declared by its members during its public meetings and files a copy of the meeting minutes to supplement the log.

The Board has recently taken steps to improve its compliance with requirements for disclosing and documenting members' conflicts of interest. It developed and implemented a form that members will use to disclose and document conflicts of interest. The Board plans to retain these statements in a file available for public review.

Chronic Absenteeism Jeopardizes Board Actions and Meetings

Chronic member absenteeism further jeopardizes board actions. In addition to a high overall rate of absence, three members have missed so many meetings that they have legally vacated their offices. As a result, board meetings may have been held without an eligible quorum and many of its actions may have been jeopardized. To address this problem, the Board should track member attendance and seek replacements for vacated positions.

Board members frequently absent—Although state law regarding public officers requires board members to consistently attend board meetings, members of the Board of Cosmetology frequently miss meetings. In fact, absenteeism is so common among board members that full

attendance by all seven members at monthly board meetings has not occurred since September 1994. On average, only four members typically attend the Board's meetings.

In addition to this high overall absenteeism, 3 board members have such poor attendance records that they have legally vacated their offices. According to statute, a public office is automatically deemed vacant after the officer has ceased to discharge duties for 3 consecutive months. Because the duties of the office are discharged at monthly board meetings, this means a board member has vacated the office if he or she misses 3 consecutive meetings. For example, the Board's public member has missed 17 of 34 meetings since her appointment in August 1993, with 7 of those absences occurring consecutively between November 1995 through May 1996. This Board member, due to her work schedule, cannot regularly attend meetings except during summer months. Additionally, 2 other members have both missed at least 3 consecutive meetings since their appointments. One of these Board members has missed one-third of all board meetings held since her appointment, while the other member has missed over 40 percent of the meetings.

While member absences are allowed for illness, none of these members'absences have been excused. Moreover, the Board has not requested replacements for any of these positions. Instead, in the case of the public member, the Board has encouraged her to attend as her schedule allows.

Absenteeism jeopardizes board actions—Vacated board positions may jeopardize the validity of board actions. Because the office has been vacated, the "member" may no longer cast votes as a board member. Therefore, should the Board rely on a holder of a vacated office to constitute a quorum, the meeting could be deemed in violation of open meeting laws because the meeting was not attended and held by a valid quorum. Further, the legal actions taken by the Board at such meetings may be deemed invalid because of the absence of a quorum of qualified board members. Nevertheless, the Board has held four meetings in which a board member who had vacated his or her position constituted a quorum. For example, the public member, who effectively vacated her position in May 1994, attended and participated in two meetings at which her attendance established a quorum. Board minutes for those meetings indicate that she fully participated in board discussions and actions, and in one case, even led the meeting.

Board should monitor attendance—To ensure sufficient attendance to conduct its business, the Board should more actively monitor member attendance and take appropriate action in the event of persistent absences. For example, while the Board regularly takes attendance at its meetings, it does not track the absences of individual members and may be unaware of the frequency of its members' absences. Additionally, although it is the board members' responsibility to consistently attend meetings, the Board should take steps to fill vacant positions when members demonstrate they cannot fulfill their obligations. Finally, the Board should consult with its legal counsel to determine whether it needs to ratify any decisions made with the participation of ineligible members.

Meetings Not Properly Documented

In addition to the issues discussed above, the Board fails to document its meetings in accordance with open meeting laws. Currently, board policies regarding the recording and conduct of meetings inhibit its ability to fully or accurately record its actions. To ensure adequate documentation of its meetings, the Board should adopt procedures to ensure that its meetings and meeting minutes comply with all the requirements of open meeting laws.

Meeting records violate statute—Despite requirements to fully and accurately document every legal action considered at board meetings, the Board does not comply with these provisions. In particular, the Board, by its own policy, only documents in its minutes the final motion resulting from its discussions. In addition, the Board does not retain its audio tapes of meeting proceedings after compiling written minutes, thereby eliminating any full record of action. As a result, these practices can and have resulted in discrepancies between the actions the Board has voted on and those recorded in the meeting minutes. In fact, we attended two board meetings and noticed that in two instances, disciplinary actions against two licensees reported in the written minutes differ from those enacted by the Board.

The Board's preference to conduct rather informal meetings may be keeping it from preparing complete and accurate meeting minutes. As a matter of policy, the Board dispensed with formal meeting procedures so its members could concentrate on the substance of meeting discussions, rather than procedures for holding discussions. However, the lack of protocol may hinder the public's understanding of meeting proceedings. For example, we observed instances in which the Board considered multiple motions at once and passed motions without a vote. In addition, board members repeatedly talked among themselves during open meetings and sometimes emerged from their private discussions to propose legal action. These private discussions give the appearance that the discussions led to the proposed action, and deprive the public of fully understanding how or under what circumstances the Board reaches decisions. Not only does this violate open meeting laws, but it makes it difficult for licensees and the public to understand board meetings and actions.

Procedures would make it easier to conform to statute—To ensure the Board fully complies with all provisions of open meeting law, it should develop procedures to ensure that its written meeting minutes capture all the elements required by statute. Specifically, minutes should include every legal action proposed, discussed, or taken, along with the name of the member who proposed the action. To assist in this effort, the Board should consider preserving the audio tapes of meeting proceedings to supplement its written minutes. Finally, to assist in accurate meeting documentation, the Board should adopt meeting procedures that provide structure and organization. Although the Board prefers to operate its meetings in an informal manner, the implementation of more formal procedures should make it easier for the public to follow and understand its proceedings. For example, the Board can establish procedures for making and amending motions, and taking votes. In addition, the Board can organize its discussions to prevent the potential for simultaneous conversations and private deliberations.

Recommendations

1. The Board should ensure that all members fully and openly disclose their conflicts of interest by requiring members to:

   - Excuse themselves, on the open meeting record, from board discussions or deliberations involving matters with which they have an actual or potential conflict of interest,

   - File a written, signed statement at the time a conflict is discovered, or announce their conflicts on the record during the open meeting, and

   - Maintain a public file that documents the members' written and oral statements of their conflicts of interest.

2. To address problems associated with member absenteeism, the Board should:

   - Track individual member attendance at its meetings, and

   - Request new appointees when members demonstrate they cannot fulfill their obligations as public officers.

3. The Board should consult with its legal counsel regarding the need to ratify any decisions made at meetings at which ineligible members participated.

4. To ensure compliance with open meeting law requirements regarding meeting minutes, the Board should document all legal actions proposed, discussed, or taken, and the names of the individuals who proposed each action. To assist in this effort, the Board might also consider preserving the audio tapes of its meeting proceedings to provide a complete history of its discussions and actions.

5. The Board should adopt more formal procedures for conducting its meetings.

(This Page Intentionally Left Blank)

FINDING III

BOARD CAN BETTER SERVE PUBLIC

The Board of Cosmetology can better serve the public through increasing public representation on the Board and by making information about licensees readily available. Currently, the Board is assigned one public member by statute, potentially restricting the public's input on issues facing the Board. Additionally, administrative barriers impede the public's ability to obtain licensing and qualifications information about the individuals and establishments they patronize.

Board Needs Additional Public Membership

To improve the Board's ability to protect consumers, the Legislature should consider expanding public member representation on the Board. Recent studies cite the importance of increased public membership to consumer protection. However, current statutes limit public representation on the Board, and the members now appointed to those positions provide little or no representation from outside the cosmetology industry.

Increased public membership important to consumer protection—Studies indicate that increased public membership on regulatory boards can better protect consumers. After reviewing several national studies, and interviewing noted experts on regulation, the Auditor General in a 1995 Special Study of Arizona's Health Regulatory System recommended increasing public membership to 50 percent on all health regulatory boards. According to the Auditor General's study, increasing public membership would equalize industry representation on boards and better protect consumers from the problems associated with industry-dominated boards. In particular, the Auditor General found that industry-dominated boards harbor serious deficiencies, including insufficient investigation of consumer complaints, untimely resolution of consumer complaints, and a general disregard for consumers in their regulatory and disciplinary processes.

Some cosmetology boards in other states also have multiple public members. For example, New Mexico includes four public members on its nine-member board, while California's five public members provide its nine-member board with more public than industry representation.

Public representation limited—Despite the Legislature's intent to include some public representation on Arizona's Board, members with ties to the cosmetology industry presently dominate board actions. Currently, statutes require five of the Board's seven members to represent the cosmetology industry. Those five members include two cosmetologists, one manicurist, one instructor, and one school owner. Statutes also designate one additional member to be an educator without relation to the cosmetology industry and another member to represent the public at large.

However, the Board currently lacks true non-industry representation. The individual appointed to the educator position also serves as a member of the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS). Because NACCAS accredits 24 of the 32 cosmetology schools in Arizona, this board member is affiliated with the industry. Although the Executive Director notified the Governor's Office of the potential conflict, the member has not been replaced. Additionally, the individual appointed to the public member position on the Board has legally vacated the office. This board member has missed 17 of 34 monthly meetings since her appointment and 7 consecutive meetings in the past 9 months (see Finding I, pages 7 through 12). Although aware of the problem, the Board has not encouraged a reappointment to the position. As a result, although the Board benefits from the expertise of its industry members, the predominance of these individuals on the Board generates a perception of bias and increases the possibility of conflicts of interest when the Board makes decisions. Therefore, the Board's autonomy and effectiveness in protecting the public may be reduced.

To better protect the public, the Legislature should consider increasing public member representation on the Cosmetology Board to 50 percent. This change in board composition could be achieved without necessarily increasing its size. For example, the Board could eliminate duplicative positions, such as the two cosmetologists now required by statute. Additionally, the Board includes both a school owner and an instructor, and one of these positions could be replaced with a public representative.

Public Access to Information Impeded by Board Policies

The Board's effectiveness in protecting the public is reduced because it prevents consumers from easily obtaining information about the individuals and establishments they patronize. For example, board staff are prohibited from releasing information about its licensees over the telephone. Instead, consumers must submit a signed, notarized request form that details the information requested and the reason for the request. While such requirements do not violate statutes, they create administrative barriers that inhibit timely access to licensee information and may discourage the public from pursuing information. A review of the Board's general correspondence files for the past 2 years reveals that individuals waited from 1 to 36 days for the Board to respond to their requests for licensee information.

Although the Board's Executive Director states that the Board has tried to eliminate the public's obstacles to obtaining complaint and disciplinary information about its licensees, our efforts confirm that significant barriers exist. For example, when we called the Board, we were given different interpretations of its policy. First, staff told us that they could not confirm over the telephone whether an individual was licensed, but to obtain this information, we would need to submit an information request form, which would take 10 days to process. During a subsequent phone call, staff gave us an individual's license status, but told us that if we wanted a summary of a licensee's complaint or disciplinary history, we would again need to submit an information request form.

As a consumer protection agency, the Board of Cosmetology should review its public access policies and evaluate its restrictions to information. The Auditor General's 1995 Special Study of Arizona's Health Regulatory System found that many health boards posed administrative obstacles when the public tried to obtain information about their licensees that were similar to those imposed by the Board of Cosmetology. The study recommended that the health boards provide, over the phone, summary information on complaints and disciplinary actions against licensees. In addition, the study found that the boards should provide disciplinary records to the public without requiring identification or request forms. The Board of Cosmetology should be held to similar standards.

Recommendations

1. The Legislature should consider amending A.R.S. §32-502 to increase public membership on the Board of Cosmetology to 50 percent.

2. The Board should take several steps to enhance its consumer protection role, such as:

   - Providing, over the telephone, license and summary information on complaints and disciplinary actions against licensed professionals, and

   - Providing disciplinary records to the public promptly, without requiring request forms.

(This Page Intentionally Left Blank)

FINDING IV

BOARD FEE INCREASE AND ANNUAL LICENSE RENEWAL UNWARRANTED

The Board's recent fee increase and its annual licensure renewal appear unnecessary. The Board recently increased all licensure fees, despite a $413,795 reserve balance in its fund and inadequate justification for the increase. Also, annual license renewal results in increased board expenses. Consequently, to decrease board costs and burdens on licensees, the Board should reduce its fees to their original amounts and require biennial license renewal.

Fee Increase Not Justified

Even though the Board had not increased its fees for more than a decade, recent fee increases appear excessive. The Board recently raised its fees 50 percent above original amounts despite a large reserve balance and undocumented support for the increase. Therefore, the Board should reduce its fees to their original levels.

Fee increase not justified for several reasons—Citing increasing expenditures and the need to fund future capital projects, the Board recently enacted a fee increase for 44 of its fees.[1] The Board increased each fee by 50 percent, except where constrained by statute. Based on this increase, the Board will generate over $1 million in revenue during fiscal year 1996-97. This represents an increase of $320,000 over what the Board would have generated under its former fee structure.

However, several factors suggest the Board lacked justification for increasing its fees at this time. For example:

- **Large Reserve Fund Balance Exists**—Currently, the Board maintains a reserve balance of $413,795, which covers much of a full year's operating expenditures. As previously noted, the Board has begun to use a small percentage of this reserve to meet its operating expenditures. However, for the past three fiscal years, this amount has averaged $11,600

[1] The new fees became effective July 1, 1996.

annually.[1] If this trend continues, the Board would have sufficient funding in reserve to cover another 35 years of revenue shortfalls before it needed to increase fees.

- **Revenue Growth Expected to Continue**—In addition to the large reserve balance, the Board has enjoyed a steady growth in revenues for the past three years. Between fiscal years 1992-93 and 1994-95, its revenues increased an average of 4 percent annually. While the growth in revenues has not been sufficient to fully cover the Board's expenditures, it expects revenues to grow as the number of individual and salon licenses increases.

- **Fee Increase Yields Tremendous Increase in Revenues**—As previously noted, during fiscal year 1996-97, the Board's 50 percent fee increase will generate over $1 million, an increase of $320,000 over what the Board would have generated under its old fee structure. These projected revenues far exceed the Board's appropriated budget of $636,500 for fiscal year 1996-97.

- **Capital Projects and Future Expenditures Not Quantified**—The Board cites increased expenditures from a recent move to a new location as one reason for increasing fees. As a result of this move, the Board expects its utility and rental costs to increase. The Board also cites future capital projects as a primary reason for increasing fees. The Board has preliminary plans to install a Local Area Network (LAN) computer system and an imaging system to expedite licensure, but only recently developed a cost estimate of $372,000 for the LAN computer system. However, the Board does not plan to begin work on its LAN computer system until fiscal year 1997-98, at which time the Board will have between a $654,000 and $716,000 reserve fund balance. These monies would be more than sufficient to pay for the projected cost of the computer system.

Fees should be reduced to original levels—Until the Board can demonstrate a definitive need for a fee increase, it should revisit its administrative rules and return fees to their original levels. The Board should exhaust its large reserve fund balance and rely on increasing revenues from growth in the number of licensees before placing additional burdens on the regulated community. If the Board is able to justify a need for higher fees based on its recent move, and provide cost estimates for its capital projects, a fee increase may have merit. However, the Board should not impose increased fees until that time.

---

[1] This amount does not include a one-time charge of $170,500 the Board incurred to relocate its operations during fiscal year 1995-96.

Annual License Renewal Unnecessary

The Board's current license renewal requirements also appear burdensome and unnecessary. Statutes now require annual licensure renewal, which results in excess costs and paperwork. Therefore, similar to other regulatory agencies, the Board should implement biennial licensure.

Annual license requirement—Though the Board's statutes mandate annual renewals for individual and establishment licenses, this process results in unnecessary expenditures. Currently, the Board requires individuals to renew licenses on their birthday, and requires establishment license renewals on or before June 30 of each year. There is no reason for annual renewal other than the statutory requirement.

Biennial renewal common and less costly—Unlike the Board of Cosmetology, many other licensing agencies use biennial licensure renewal. For example, several Arizona boards, such as the Barbers, Nursing, Optometry, Osteopathic, and Pharmacy, all require biennial renewal for individual licensees. Likewise, as was recommended in our 1983 report, the Board of Cosmetology could move to biennial licensure renewal and save almost $10,000 annually based on fiscal year 1995-96 postage costs. Additionally, the Board could reallocate one-half of an FTE position, currently dedicated to processing license applications and renewals, to other functions.

However, the Board would need several changes to its statutes before it instituted biennial licensure renewal. In particular, the Legislature would need to amend statutes requiring annual licensure renewal, and change the statutory ceilings on some of the current renewal fees to reflect biennial fees.

Recommendations

1. The Legislature should consider amending A.R.S. §§32-517, 535, 544, and 564 to require biennial licensure renewal for all types of board-issued licenses. In addition, the Legislature should amend A.R.S. §32-507 to appropriately reflect the statutory maximum for biennial renewal fees.

2. The Board should amend its rules to reduce current fees to their original levels effective fiscal year 1997-98 until it can adequately justify the need to increase them.

(This Page Intentionally Left Blank)

OTHER PERTINENT INFORMATION

During the audit, we collected other pertinent information regarding the potential benefits and drawbacks of combining the Board of Cosmetology and the Board of Barbers.

Proposal to Combine Boards Previously Discussed

The Legislature has previously considered the prospect of combining the Board of Cosmetology with the Board of Barbers. In a 1983 performance audit of the Board of Cosmetology, the Auditor General recommended combining the two boards, stating that the occupations they regulated provided many of the same services, they performed identical administrative functions, and that significant cost savings could be realized. However, the Legislature opted to continue the two Boards separately. The Legislature again considered this proposal during a series of 1993 Committee of Reference sunset hearings for the two boards, but after hearing numerous testimonies from barbers opposed to the idea, again decided against combining the Boards. Legislative interest in this proposal continues and, as a result, this audit reviewed the benefits and drawbacks of combining the Board of Cosmetology and the Board of Barbers.

Combining boards could yield several benefits—Our most recent review of this issue reveals that the potential benefits of consolidating the two boards are basically the same as those that existed in 1983. Specifically, a comparison of statutes from both boards revealed many similarities, and virtually no differences in their regulatory functions. For example, both boards require licensees to complete a defined number of training hours and written and practical examinations for licensure; both inspect and process complaints; and both license and inspect salons/shops and schools. The Auditor General suggested in 1983 that these functions could be consolidated by combining the two boards.

Not only would consolidation streamline regulatory functions, but forming one board would simplify the regulatory burden for dually licensed shops and practitioners and potentially create greater opportunities to practice. For a salon/shop to employ both licensed cosmetologists and barbers, it must be licensed by both boards. Currently, approximately 210 salon/shops have dual licenses. However, dual licensure requires separate inspections and the payment of two fees. Additionally, a licensed barber cannot practice in a licensed cosmetology salon, nor can a licensed cosmetologist practice in a licensed barber shop. Therefore, two boards with separate licensure requirements create restrictive barriers to those who wish to practice in the similar fields of cosmetology and barbering.

Combining the two boards would also yield some cost savings. Currently, the Board of Barbers employs 3 FTEs, has an annual budget of approximately $150,000, and licenses 3,400 barbers, 1,050 shops, and 10 schools.[1] The Board of Cosmetology employs 15.5 FTEs, has an annual budget of approximately $635,000, and licenses approximately 34,000 individuals, 2,900 salons, and 32 schools. Both Boards employ an executive director, investigators/inspectors, and clerical staff. By consolidating the Boards, an executive director position could be eliminated. One Board's office space and the associated rents and utilities would also be eliminated. Thus, potential savings are estimated to be between $70,000 to $80,000 annually.

Boards and respective industries against consolidation—While the executive directors of the two Boards acknowledge the potential benefits that could be gained through consolidation, they indicate a preference for maintaining the existing regulatory system. The cosmetology industry appears indifferent to the prospect of a consolidated board, but barbers are particularly passionate in defense of their industry and the need to maintain a separate board. For example, during the 1993 Legislative Committee of Reference Sunset review hearings on the Board of Barbers, numerous barbers testified on behalf of the Board of Barbers and urged the Legislature to continue it as a separate entity. Barbers pointed to the differences between the two professions, alluding to different skills, different techniques, and different philosophies. The desire to maintain a separate identity from cosmetologists and a separate board continues today.

Other states, which have either combined their respective cosmetology and barber boards or have considered the idea, offer insights into the feasibility of a combined board. In our survey of 14 other state cosmetology boards, we found 9 states that have combined cosmetology and barber boards, and the 5 remaining states had at least considered the idea. According to the states that have combined their boards, the primary impetus for consolidation was the many similarities between the two professions. However, in an attempt to reduce resistance to consolidation, 7 of the 9 boards maintain separate licenses for barbers and cosmetologists. For example, Oregon experienced opposition from its regulated community, including barbers who did not want to be licensed as or regulated by cosmetologists, until it decided to issue separate licenses for the two professions in 1995. Additionally, Colorado and New Mexico reported that maintaining separate licenses quelled the two professions' fears of losing their identity, and their resistance to consolidating the boards.

Despite other state efforts to reduce resistance to board consolidation, the executive directors of the Arizona Boards indicated that issuing separate licenses through a combined board would not change barbers' position, or their desire to maintain separate boards.

---

[1] Seven of these ten schools operate out of barber shops, in which some time and equipment is devoted to barber instruction.

Agency Response

(This Page Intentionally Left Blank)

Arizona State
Board of Cosmetology

Sue Sansom, Executive Director

1721 East Broadway • Tempe AZ 85282-1611
Phone (602) 784-4539 • Fax (602) 255-3680

October 9, 1996

Mr. Douglas R. Norton, Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Mr. Norton:

Enclosed are the Agency's written comments to be included in the text of the published performance audit report. The Board accepted these comments at the meeting October 4, 1996.

If I may be of assistance, please contact me.

Sincerely,

Sue Sansom
Executive Director

SS/CA

Encl.

(This Page Intentionally Left Blank)

Reply to the Auditor General's

Revised preliminary report

Arizona State Board of Cosmetology

(This Page Intentionally Left Blank)

Table of Contents

	Page
Finding I	
Background (Reply to page 7)	1
The Board's practical examination unnecessary (Reply to page 8)	2
Educational and age requirements too restrictive (Reply to page 8)	5
School oversight focuses on unnecessary items (Reply to page 9)	6
Finding II	
Board in violation of conflict-of-interest laws (Reply to page 13)	7
Procedures would improve compliance (Reply to page 14)	8
Chronic Absenteeism Jeopardizes Board actions and Meetings (Reply to page 15)	9
Board should monitor attendance (Rely to page 15)	9
Meetings Not Properly Documented (Reply to page 16)	10
Meeting records violate statute (Reply to page 16)	10
Finding III	
Board Needs Additional Public Membership	

Increased public membership important to consumer protection
(Reply to page 19) 11

Public Access to Information Impeded by Board Policies
(Reply to page 20) 12

Finding IV

Fee Increase Not Justified
(Reply to page 23) 13

Annual License Renewal Unnecessary
(Reply to page 24) 13

Attachments

Conflict of Interest form

Public Information Release Policy

Development, Administration, Scoring and Reporting of Credentialing Examinations: Recommendations for Board Members
The Council on Licensure, Enforcement and Regulation

FINDING I

Pages i and 7 through 12

Background

page 7

The Auditor General indicates that Cosmetology should be unregulated because "the public can use instruments and chemical solutions similar to those used in the cosmetology industry, and adequately evaluate cosmetology services." It is also true that the public can use instruments and chemicals similar to those used by a brain surgeon and can evaluate those services. However, both the Board of Medical Examiners and the Board of Cosmetology are necessary when the public's evaluation has determined that licensee is practicing in an unsafe manner and evidence gathered indicates that discipline is necessary. A person needing surgery or desiring bleached hair takes the advice of and trusts the professional recommending such service. When one person is harmed by chemical burns or contacting fungus while being serviced by a licensee and "votes with their feet" by never entering that establishment again, the remaining public is neither protected nor warned that the licensee is an unsafe practitioner.

Requirements for Individual Licenses Do Not Focus on Public Health and Safety

The Board's practical examination unnecessary page 8

The Board considered changing the practical examination requirements, and motioned to reduce the examination to the critical core areas of hair shaping, chemical waving, hair lightning/hair coloring, chemical relaxor, and the recommended core domain area of thermal curling.

Eliminating the practical examination would be in direct disagreement with the Board's mandate to protect public health, safety, and welfare. The examination does not measure technique, but is weighted to measure the practice of safety measures. In fact, the instructions received by the candidates prior to the examination inform them that they will NOT be graded on technique. The application and correct timing of chemical-related services is of utmost importance and is not "technique." The three Nationally Certified Cosmetology Examiners find that, even though a candidate can verbally repeat or write down the correct procedure, in actual practice many safety measures are not complied with. During a practical examination, competency requirements rise to a higher level when performance is on the general public as opposed to one's self.

The Arizona Board uses the National-Interstate Council of State Board of Cosmetology, Inc. (NIC) examination. NIC examinations, both written and practical, are in compliance with the recognized, existing standards of good testing practice. Arguments related to the legal defensibility of the examinations may be organized into three areas. These are validity issues, relevancy issues, and legal issues. In the event that decisions are made that weaken the legal defensibility of the examination used in Arizona, additional issues related to reciprocity emerge. Each of these topics is discussed below.

Validity is the primary basis of legal defensibility for any examination. An overview of the meaning of test validity is included in the enclosed monograph, *Development, Administration, Scoring and Reporting of Credentialing Examinations: Recommendations for Board Members*, provided by the Council on Licensure, Enforcement and Regulation (CLEAR). This monograph is a distillation of recommendations consistent with the *Standards for Educational and Psychological Testing* developed by the American Educational Research Association (AREA), the American Psychological Association (APA), and the National Council on Measurement in Education (NCME) and an adaptation of these standards for the regulatory community.

As noted in the monograph, a valid credentialing examination must measure competencies necessary for safe, effective entry level performance and distinguish between candidates who possess them and those that do not. A link is established, via job analysis, between the content and methodology of the examination and the tasks essential to public safety

that are performed on the job. NIC did such a study, which is the basis for their cosmetology examinations.

A job analysis seeks to identify those elements of knowledge, skill and ability (KSA's) necessary to public protection. This is usually accomplished via formal survey of practitioners including an exhaustive list of possible KSA's.

The data collected from the survey is analyzed to identify those KSA's that are most crucial to public protection. Once identified, a determination is made as to whether each KSA is best measured by a paper and pencil examination or by a performance examination. The outcome of this determination is the specifications for both the written and performance examinations. In other words, the content of both the written and performance examinations focus on those KSA's best measured by that (written or practical test) approach and which have been deemed to be crucial to public protection. Viewed from this perspective, it is clear that neither the written nor the performance test can serve as a surrogate for the other, and it is clear that both are needed to ensure the validity of the assessment.

NIC is presently conducting a new job analysis to identify the elements of knowledge, skills and abilities which are essential to public protection and legal defensibility. Once the tasks required of minimally competent, entry-level practitioners are determined, test specifications will once again be created in order to construct examinations which are consistent with job analysis and with the format of each examination. The job analysis information will help to identify the optimal way to measure each KSA, either through a written or through a performance test.

Relevancy to the industry is critical. The National Cosmetology Association (NCA), the American Association of Cosmetology Schools (AACS), and NIC have signed a position paper officially opposing the elimination of performance examinations in cosmetology. In their considered judgment, such action is a "retrogressive act and detrimental to the best interest of those people seeking cosmetology services and to the protection of their health, safety and welfare."

In other words, NCA, AACS, and NIC through their independent studies, have found that many of the skills and abilities outlined as essential to entry-level practice for the safety of the consuming public can only be reliably evaluated via a performance examination. In cosmetology, those skills have been identified by subject matter experts as the application of potentially harmful chemicals, cutting and shaping of the hair, and decontamination and infection control procedures.

Legal issues relating to the prospect of measuring the necessary competencies without a practical examination are concerns with which the Board has long grappled. We have concluded that eliminating the practical is not a sound practice since our research has indicated that many KSA's essential to public protection can only be measured by a performance test. A decision not to assess candidates on these KSA's would, in our view,

expose the Board to potential liability associated with the unsafe practice of newly licensed individuals.

Further, the NIC's Administrative Committee has promulgated an official policy that prevents them from providing a written test which purports to measure practical performance behavior. As stated above, the concern centers upon the belief that certain skills can best, and perhaps, only be measured with a performance examination.

Reciprocity of licensure with other states is also a concern in the event that Arizona chooses to eliminate performance examination. That is, Arizona residents moving to another state will encounter difficulties in becoming licensed in their new state and may be hampered in their ability to earn their livelihood in their chosen profession. We believe that the Arizona license may cease to be accepted in most states, or at least major reciprocity problems can be expected to arise, if the performance examination is eliminated.

The audit has presented the 23 year age requirement as a prohibition for entrance to cosmetology school; when in fact, there is no minimum age requirement but is intended to be in lieu of the two years of high school educational requirements or its equivalent as defined by A.R.S. §§ 32-510, 511, and 512. The Board believes this actually eliminates restrictive enrollment requirements for the mature student such as returning to high school for additional requirements or passing a G.E.D.

The Board has directed an alteration to the procedures, and the Inspectors will not review all files on each inspection but will focus on new students and randomly select other files. They will continue to review all student files of newly licensed schools for the first two years in order to ascertain compliance of enrollment requirements and will access general information relative to school financial status.

The Board did propose a rule to allow the financial stability and management capability of schools to be scrutinized; however, we were advised that we do not have statutory authority to do so. The Board will continue to operate as the law provides.

The certification of hours by the state's public education and state university systems is not a problem as these entities do not historically go out of business leaving students without access to those records. The experience of the Board has been that Board licensed schools maintain these records for only three to seven years. Some states will not recognize these records unless certified by the Board in that state.

The Board is exploring the possibility of reducing school reporting from monthly to quarterly.

FINDING II

Page ii and 13 through 17

Conflicts of Interest Not Disclosed

Board in violation of conflict-of-interest laws page 13

The Board disagrees with the audit because disclosure and notice to the public and recusal does and has occurred. The Board agrees it has been in violation of the statutory requirement to maintain a file. When the Board was made aware of this requirement, procedures were immediately implemented; and at present the Board is in full compliance.

Attached is a form that is now used for recusals which will be kept for public inspection in a special file as required by law. (This does not take matters of bias into account as the Arizona Agency Handbook, Chapter 8, 8.1, states that bias does not come under the conflict of interest law; and members have recused for bias in at least two instances in the past two years.)

Chronic Absenteeism Jeopardizes Board Actions and Meetings

page 15

The Board has historically been advised by the Attorney General's office that, according to A.R.S. § 38-213(A), the Board members "shall serve at the pleasure of the Governor." We have now been informed otherwise, and have taken actions to notify the Governor of the public member's absences. The public member participated in one meeting after her reappointment in 1995, and the actions taken at that meeting have been reaffirmed by the Board.

Board should monitor attendance page 15

The Board has taken action to maintain a grid-attendance sheet and follow more closely the absences of its members. The Board will, in the future, notify the Governor when a Board member has been absent from three consecutive meetings and that they have, in fact, vacated the office.

Meetings Not Properly Documented

page 16

The Board believes that it does comply with the documentation of its meetings in accordance with open meeting laws.

Meeting records violate statute page 16

Although the audit states that the Board does not fully and accurately document every legal action considered at board meetings, A.R.S. § 38-431.01(B)(4) states that "An accurate description of all legal action proposed, discussed **OR** taken . . ." (emphasis added) shall be included in the minutes. The Board complies with this law by recording each action that is taken by the Board and feels that long minutes with several motions made but not carried are confusing to the public reading and tracking the minutes. This law also requires written minutes **OR** a recording be taken. The Board records the meetings only as a backup to the written minutes and erases them upon ratification of the written minutes, an action not in violation of the law and, in fact, suggested by the Attorney General's office during Open Meeting Law training.

The Board prefers a more relaxed meeting atmosphere which allows for a complete hearing of all sides of an issue. The public is not obstructed from following the meetings as they are afforded every opportunity to ask questions; and the Board attempts to explain its actions to the public, if necessary. An explanation of the action taken and what recourse the licensee has is given to the licensee involved after the vote is taken. The Board has never received a complaint that the meeting was not understood or that the due process of the licensee was violated.

The Board members will be encouraged to abstain from private deliberations during the meetings.

FINDING III

Pages iii and 19 through 21

Board Needs Additional Public Membership

Increased public membership important to consumer protection page 19

The Board has never been accused of bias in an action taken; and in fact, has saved the state thousands of dollars each year because they are used as subject matter experts. In the past, Board members have been disciplined when brought before the Board on a complaint. The Board does not believe that an instance can be cited wherein they "protected their own" and failed to protect the public within the boundaries of the law. Both instances cited by the Auditor General wherein other states had more public members showed that those states also had more board members than Arizona has.

Public Access to Information Impeded by Board Policies

page 20

The Board's policy regarding disseminating information to the public is attached. This policy was informally in place in early 1996; however, it may not have been fully understood by all staff members. Confusion was caused by the move and new rule and fee implementation which tended to overwhelm staff. Staff has now been fully informed, and each member has a copy of this policy.

FINDING IV

Pages iii and 23 through 25

Fee Increase Not Justified

Page 23

The fee increase recently enacted is capped by statute and the increase was approved by the Governor's Regulatory Review Council (GRRC). The last fee increase was in 1984 which included a workable plan that would support the regulation for ten years. Sound budget practice by the Board prevented the need for an increase for 13 years. This plan worked well during 1984 - 1997; therefore, the decision was made to continue this plan by imposing fewer increases. In addition, the Board has a need to become Year 2000 compliant, implement a Local Area Network as the AS400 mini computer becomes obsolete (to be phased out by December, 1997), cover increased examination costs, and add additional office space as the Board is crowded and understaffed. The Auditor General indicated that revenues will grow as the number of licenses increases, but so will costs as more-and-more services are required by the public.

Increases were capped at 50 percent; however, most renewals increased less than $8 per individual.

Annual License Renewal Unnecessary

page 24

The Board does not oppose biennial licensure.