

**SUNSET REVIEW:
EVALUATION OF THE
STATE BOARD OF BARBERS AND THE
STATE BOARD OF COSMETOLOGISTS**



DEPARTMENT OF LEGISLATIVE SERVICES
OCTOBER 2009

**Sunset Review: Evaluation of the
State Board of Barbers and
the State Board of Cosmetologists**

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

October 2009

Primary Staff for This Report

Michael C. Rubenstein
Jody Sprinkle

Other Staff Who Contributed to This Report

Laura McCarty
Mindy McConville

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
90 State Circle
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Director

October 30, 2009

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the State Board of Barbers and the State Board of Cosmetologists as required by the Maryland Program Evaluation Act. This evaluation process is more commonly known as “sunset review” because the agencies subject to review are usually subject to termination; typically, legislative action must be taken to reauthorize them. Last year, DLS conducted preliminary evaluations of both boards. Statute requires the Legislative Policy Committee (LPC) to decide whether an entity should be waived from full evaluation based on the recommendations contained in the preliminary evaluation. LPC determined that the boards should both undergo full evaluation, primarily to examine the boards’ finances and staffing levels and their complaint resolution process.

This report has been prepared to assist the committees designated to review the boards – the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee – in making their recommendations to the full General Assembly. The boards are scheduled to terminate on July 1, 2011.

DLS finds that the boards are effective in processing licensing applications, but they lack sufficient staff to adequately administer their shop inspection programs and complaint resolution processes. To address those deficiencies, DLS recommends that the boards be special funded, that the cosmetology licensure and renewal fees be raised, and that the additional funds generated by the fee increase be used to create at least three new regular staff positions. Under the scenario we propose, all licensing revenue would be paid into the special fund, but fines, interest, and revenues in excess of 25% of operating costs would accrue to the general fund. The recommendation is predicated on the belief that a robust and stable inspection and citation program will generate more fine revenue, which will partially offset lost general fund revenue from licensing fees. We also recommend that the Department of Labor, Licensing, and

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Regulation (DLLR) develop better systems for tracking and processing consumer complaints, which too often do not move swiftly to resolution. DLS also recommends that the boards develop and implement plans to improve their apprenticeship programs, which do not adequately prepare apprentices for the licensing examinations and do not hold delinquent sponsors accountable for negligent supervision. Last, DLS recommends specific statutory and regulatory changes to clarify inconsistent or outdated provisions.

With the additional resources and improved tracking systems, DLS believes that the boards can do a better job of regulating their respective industries and protecting consumers from injury and poor service from unlicensed or inadequately trained barbers and cosmetologists. We therefore recommend that the boards' termination dates be extended by 10 years to July 1, 2021, and that the board report to the evaluation committees on or before October 1, 2011, regarding the implementation status of the nonstatutory recommendations contained in this report. In the event that the special funding and related recommendations are not accepted; however, DLS remains concerned that the boards will not have adequate resources to carry out their statutory duties. In that event, we recommend that the boards' termination dates be extended only five years to July 1, 2016, with the boards moving directly to a full evaluation.

Finally, we would like to acknowledge the cooperation and assistance provided by both boards, their combined staff, and by DLLR throughout the review process. The boards were provided with draft copies of the report for factual review and comment prior to its publication; their written comments are included as an appendix to this report. In addition, draft legislation to implement the recommended statutory changes is included as an appendix.

Sincerely,

Warren G. Deschenaux
Director

WGD/MCR/mlm

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Executive Summary

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the State Board of Barbers and the State Board of Cosmetologists, which are both scheduled to terminate July 1, 2011. DLS finds that there is a continued need for regulation of the barbering and cosmetology industries by the State but has identified areas in which the boards could improve their performance.

Within the past 18 months, the Department of Labor, Licensing, and Regulation (DLLR) successfully completed a search for a new executive director for both boards, thereby filling a long-term vacancy that was hampering the boards' ability to improve their service to licensees and the public. The new executive director has been proactive in addressing persistent problems, most notably the significant backlog of unresolved complaints. DLS recognizes the positive changes that the boards have implemented thus far; however, many areas in need of improvement still exist, and addressing those areas likely requires additional financial and personnel resources. The findings and 16 recommendations of this evaluation are summarized below.

All three sunset evaluations conducted since 1995 have noted persistent vacancies among the two consumer member positions established by statute for each board. The difficulty in filling consumer positions on the boards continues today. Until recently, the State Board of Cosmetologists had a consumer vacancy for over a year, and the other consumer member is serving beyond her two-term limit until a replacement is named. The State Board of Barbers also has

had a prolonged consumer position vacancy that persists. Reducing the number of consumer members from two to one would be consistent with membership on at least half of other state barber and cosmetology boards and would maintain a consumer presence on both boards.

Recommendation 1: Statute should be amended to replace one consumer board member with an industry member on each board.

Board regulations require that licensees attach a photo to their license and display the license at their workstations any time they are working. DLLR's central licensing system does not attach photos to licenses. Instead, licensees are responsible for attaching a picture to their own licenses. The absence of any seal, embossment, or lamination on the licenses increases the potential for fraud by making it easy for licensees to swap pictures, thereby allowing unlicensed individuals to use the license. Failure to attach a picture to a license is a common violation found during inspections.

Recommendation 2: DLLR's Division of Occupational and Professional Licensing should begin exploring options for attaching photos to licenses in a secure manner and report to the appropriate standing committees of the General Assembly on the feasibility of attaching licensee photos to licenses no later than October 1, 2011. In the meantime, the State Board of Barbers and the State Board of Cosmetologists should consider measures to increase licensee compliance with the photo requirement, including the possibility of assessing stiffer penalties, such as license suspension, for violations.

The boards should report to the appropriate standing committees of the General Assembly on their plan to increase compliance no later than October 1, 2010.

Rules governing inspection procedures are different for barbershops and beauty salons. Barbershops must be inspected prior to being granted a permit, but salons do not have to be. For barbershops, statute authorizes inspectors to enter at any time during business hours to determine the sanitary condition of the shop but provides no further guidance. For salons, statute requires the owner or lessee to accompany the inspector during the inspection and then sign and receive a copy of the inspection report upon completion of the inspection.

Recommendation 3: Statute should be amended by MHEC to require inspections of beauty salons prior to granting them permits. In addition, statute should be amended to conform the procedures for inspecting barbershops to the procedures for inspecting beauty salons so that inspectors have one set of rules to follow.

With improvements made to the boards' web sites, complainants can now submit complaints online, which precludes a signature. In practice, the boards have not enforced the requirement that complaints be signed, and although they now track anonymous complaints, they take no action on them. The State Board of Barbers and the State Board of Cosmetologists are the only two DLLR boards that still have a statutory requirement that complaints be signed.

Recommendation 4: Statute should be amended to repeal, as obsolete, the requirement that complaints be signed.

However, statute should specify that complaints should be in writing and include the name of, and contact information for, the complainant.

The boards' current recordkeeping system does not alert staff when important milestones in the complaint resolution process are not met. The absence of adequate tracking has contributed to the backlog of complaint cases that remain open, some more than four years after they were originally received. A DLS review of open cases found that some either should have been closed or should have progressed further through the complaint process than they had. Also, the boards do not monitor whether licensees who are assessed fines by the boards actually pay their fines in a timely manner.

Recommendation 5: DLLR's Division of Occupational and Professional Licensing should develop a tracking system to alert staff when milestones are not met. To the extent feasible, the system should also track nonpayment of fines, and the boards should consult with the Central Collection Unit to develop an appropriate timeframe after which unpaid fines should be referred for collection.

Based on their respective meeting schedules and the average duration of formal hearings, the two boards can hold a combined maximum of 32 formal hearings each year to assess penalties against licensees who violate statutory or regulatory rules. This is wholly insufficient to handle the volume of complaints and disciplinary actions considered by the boards in a given year, and is significantly responsible for the large number of unresolved cases.

Recommendation 6: The boards should explore alternatives to formal hearings to

resolve complaints and violations, with particular attention given to the use of consent orders and citations. The boards should also delegate authority to the executive director to conduct panel reviews in the absence of one or more board members, using guidelines established by the respective boards. The delegation of authority should specify that all staff recommendations regarding the disposition of cases are subject to final approval by the respective boards at their regular meetings.

Chapters 479 and 481 of 1991 eliminated separate licensing requirements for barbering and cosmetology instructors, while also transferring authority to regulate schools and training programs to the Maryland Higher Education Commission (MHEC) and the Maryland State Department of Education (MSDE). Qualifications for private career school instructors in barbering and cosmetology schools are now aligned with MHEC's requirements for other trade schools. Instructors must have at least two years of practical experience in order to provide instruction in a private career school. However, MSDE guidelines allow only master barbers or senior cosmetologists to provide instruction in public school programs.

Recommendation 7: Regulations should be amended by MHEC to require that instructors at private career schools be either master barbers or senior cosmetologists, which is already the case in public school programs.

According to board members and MHEC staff, the boards play little if any role in reviewing proposed curricula at private barbering and cosmetology schools, despite the statutory requirement that MHEC and

MSDE approve school curricula subject to consultation with the boards. MHEC relies on an independent advisor to review proposed curricula in cosmetology prior to giving its approval. MHEC staff also noted that neither board has established detailed curriculum guidelines for schools. Currently, board regulations only list the topics to be covered by licensing exams, which serve as de facto standards. Moreover, the list lacks sufficient detail, including the relative attention that should be given to each subject.

Recommendation 8: Statute should be amended to require the boards to establish and periodically update clear and detailed curriculum standards through regulation based on current standards of practice that MHEC and MSDE can use in reviewing proposed curricula.

Cosmetologists have more skills and knowledge to master than do barbers, and that is appropriately reflected in the number of required hours for schooling (1,500 vs. 1,200). However, the apprenticeship program requires more hours of training from prospective barbers than from cosmetologists (2,250 vs. 2,080).

Recommendation 9: Regulations should be amended to increase the hours of training for cosmetology apprentices under the program to at least 2,800 hours.

Under current law, the term of the initial cosmetology apprentice license requires at least one license renewal to satisfy the training requirements. With a longer initial term, most cosmetology apprentices should be able to complete their apprenticeships without having to renew their licenses.

Recommendation 10: Statute should be amended to increase the initial term of the cosmetology apprentice license to two years, consistent with the hourly requirements of the program. Renewals should be limited to one two-year renewal option. The one-year period for limited practice apprenticeship should be retained, with one renewal.

An increasing number of licensees have English as their second language (ESOL), which has been cited as one of the causes of lower pass rates on the theory portion of the licensing examination for both apprentices and students. Various attempts have been made to make accommodations for ESOL applicants. However, accommodations need to be balanced with maintaining the integrity of the examination.

Recommendation 11: The boards should review their policies regarding examinations and applicants who have English as their second language as the significant number of such applicants, and the issues related to understanding the examination, may be contributing to lower pass rates. The State Board of Cosmetologists has disallowed the use of translators while the State Board of Barbers still allows this accommodation; however, neither board allows extra time for ESOL applicants. The boards should review the fairness of their policies while maintaining the integrity of the examinations and implement any changes that mitigate language barriers to the examinations.

Progress reports filed in a timely manner by the master barber or senior cosmetologist are required for an apprentice to take the examination for full licensure. If a monthly report is not received by the board within 90 days of the training period being reported, the board may decide to not give credit for

the purported training. During the evaluation, members of the DLS team became aware of numerous instances in which apprentices received no credit for their training because their sponsors did not submit progress reports in a timely fashion. Currently, there are no penalties for noncompliance by the sponsor, nor are there benefits for complying.

Data provided by the vendor who administers the licensing examinations for the boards indicates that pass rates for apprentices are significantly below those of other licensure candidates. Board staff believes that many apprentice sponsors do not spend time teaching apprentices the knowledge and skills they need to pass the theory portion of the licensing examination.

Recommendation 12: The State Board of Barbers and the State Board of Cosmetologists should develop a plan to improve the apprenticeship program. The plan should aim to improve the oversight of apprentices and their sponsors, increase the pass rates on the licensing examination, and reduce the number of apprentices applying to renew or restart licensure. In developing the plan, the boards should consider the items specified in this report. The boards should have an approved plan in place and should provide that plan to the appropriate standing committees of the General Assembly no later than October 1, 2010. If the boards fail to implement a comprehensive plan, consideration should be given to eliminating the apprenticeship programs due to their lack of effectiveness.

Licensing and renewal fees for cosmetologists are set in statute at \$25, whereas similar fees for barbers are left to the discretion of the State Board of Barbers (currently \$50). The fees for barber licenses

are comparable to the licensing fees in other states, while cosmetology license fees are among the lowest.

There is no functional rationale for the discrepancy in the fee amount between barbers and cosmetologists. The boards' staff provides the same level of service and regulation. The only difference is a statutory one. Allowing both boards the regulatory authority to set fees will allow a greater degree of flexibility in responding to changes in the industry, enforcement needs, and budgetary needs.

Recommendation 13: Statute should be amended to give the State Board of Cosmetologists the same regulatory fee-setting authority as the State Board of Barbers. The board should exercise its new fee-setting authority to increase the licensing fee for cosmetologists (and other practitioners) to \$50, again to be consistent with fees paid by barbers. An increase in this fee is also consistent with the amount of additional responsibilities that are recommended in this review, such as increasing staff, expanding the hearing process, and implementing new programs and technology.

Given the increase in the number of licensees and the backlog in processing complaints and violations, current staffing levels are insufficient. Complaints have increased over 300% from fiscal 2004 to 2009. Also, staff has not been able to keep pace with the increase in the number of routine inspections, which increased from 1,800 in fiscal 2007 to 9,500 in fiscal 2009. Board staff has not grown at all to keep pace with these trends. The existing staff can only prioritize inspection duties. There is no staff member who can track the routine inspection schedules, nor is there a staff member to keep pace with processing complaints.

Staffing is also insufficient if the boards expect to be able to implement the citation program authorized by statute in 2005. The program, while expected to improve enforcement and generate fine revenue, will also necessitate additional work by staff.

Recommendation 14: Statute should be amended to establish a shared special fund for the State Board of Barbers and the State Board of Cosmetologists, funded with licensing fees, to operate the activities of the boards. All licensing fees should be deposited into the newly created fund. However, fine revenue, interest earnings, and balances in excess of 25% of spending should accrue to the general fund.

The special funding of the barber and cosmetology boards is intended as a means to increase staff to a level that will allow the boards to keep pace with the workload and improve service to licensees and the public. Special funding the boards without an increase in personnel and related expenditures will only serve to maintain a balance of 25% of operating expenditures in the fund.

Recommendation 15: The boards should increase the number of staff members to reflect the number of licensees and current workload levels. The additional staff is recommended to eliminate paperwork backlogs, implement the citation program, improve the apprenticeship program, track routine inspections, coordinate fraud investigations, staff board meetings, and respond to all licensees in a timely manner. Given the recommended special funded status of the boards and a recommended increase in cosmetology licensing fees, the boards should have sufficient funds for at least three

additional staff members and a full complement of inspectors. Consideration should be given to adding two inspectors to full-time staff in order to provide supervision and training for the remaining per-diem inspectors. The Department of Budget and Management should grant waivers of the hiring freeze to accommodate the new positions.

Recommendation 16: Statute should be amended to extend the termination dates of the State Board of Barbers and the State Board of Cosmetologist by 10 years to July 1, 2021. In addition, the boards should report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee on or before October 1, 2011, regarding the status of the nonstatutory recommendations contained in this report.

Recommendation 16 is contingent on the adoption of recommendations 13 through 15, which are intended to address the most pressing challenges confronting the two boards. If those recommendations are not adopted, DLS remains concerned that board finances and staffing will remain insufficient to address the current backlog of complaints and to adequately regulate the growing number of licensees. Therefore, if recommendations 13 through 15 are not adopted, DLS instead recommends that the termination dates for both boards be extended only to July 1, 2016, and that the boards go directly to full evaluation in 2014.

Chapter 1. Introduction

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-400 *et seq.* of the State Government Article), which establishes a process also known as “sunset review.” Enacted in 1978, the Maryland Program Evaluation Act requires the Department of Legislative Services (DLS) to periodically evaluate certain State entities according to a statutory schedule. The entities reviewed are usually subject to termination unless the General Assembly takes action to reauthorize them. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the entity must be enacted. Otherwise, a full evaluation of the organization is completed the subsequent year.

The State Board of Barbers and the State Board of Cosmetologists are two of about 70 entities currently subject to evaluation. Each last underwent full evaluation as part of sunset review in 1989. Ensuing legislation, Chapters 479 and 481 of 1991, respectively, extended the boards’ termination dates from July 1, 1991, until July 1, 1996, and made many significant changes to the boards’ structure, authority, and operation. The legislation also required the Department of Fiscal Services (the predecessor to DLS) to evaluate the effects of those changes on the barbering and cosmetology industries by October 1, 1995. An interim report was issued in October 1995, and subsequent legislation extended the termination dates for both boards to July 1, 2001. A combined preliminary evaluation of both boards was conducted in November 1998, resulting in a waiver from full evaluation; subsequent legislation extended both termination dates to July 1, 2011. In advance of the statutory expiration date, separate preliminary evaluations of the two boards were conducted in 2008, and both recommended that DLS carry out a full evaluation of each board.

As was the case with the 1995 interim report and the 1998 preliminary evaluation, this report combines the required full evaluations of the State Board of Barbers and the State Board of Cosmetologists into one report for two main reasons. First, the issues raised by the separate preliminary evaluations conducted in 2008 are virtually identical for the two boards. These include:

- board revenues consistently exceeding expenditures;
- insufficient staffing to carry out board responsibilities;
- frequent and persistent board vacancies and the possibility of merging the two boards;
- low pass rates on licensing exams; and
- ineffective apprenticeship programs.

Second, although the two boards remain distinct entities, they share the same staff, including inspectors. Therefore, DLS determined that a combined evaluation was warranted. When differences between the two boards exist, they are noted in the text, and implications of those differences are reflected in any relevant recommendations.

Cosmetology Is a Growth Industry, but Barbering Is Stagnant

Historically, barbering and cosmetology were distinguished primarily by the gender of their clientele, but today they are headed in opposite directions. Traditionally, the main services provided by both professions involved shampooing, cutting, and styling hair. Over time, however, the increasing diversity of cosmetology-related services has prompted rapid growth in that profession nationally while barbering appears to have stagnated. According to the U.S. Bureau of Labor Statistics (BLS), there were approximately 825,000 barbers, cosmetologists, and other personal appearance workers nationwide in 2006. Of those, only 60,000 were barbers (7.2%). While BLS projects that the overall personal appearance industry will expand by 14% between 2006 and 2016, barbering is expected to grow by just 1% over that period. The most rapid growth is expected to be among makeup artists (40%), skin care specialists (34%), and manicurists (28%). It is not known what effect, if any, the subsequent recession may have had on those projections.

Recent trends in State licensing of barbers and cosmetologists generally reflect national trends. The number of new cosmetologist licenses issued has increased steadily from 1,475 in fiscal 2005 to 1,809 in fiscal 2008 before dropping to 1,616 in fiscal 2009. By contrast, the number of new barber licenses has dropped steadily, from 261 in fiscal 2005 to 203 in fiscal 2008, before leveling off in fiscal 2009. A 2007 Job Demand Survey by the National Accrediting Commission of Cosmetology Arts and Sciences found that salon owners in the State expected to hire almost 7,000 new employees over the next 12 months. Moreover, 79% of salon owners in the State who attempted to hire new employees said they were not able to find properly trained candidates, indicating that the demand for services exceeds the available supply of qualified service providers.

Barbering and cosmetology are considered highly transient professions, with immigrants comprising a disproportionately large sector of the workforce. According to BLS, almost one-third (31%) of cosmetologists and 19% of barbers in the United States work part time; combined, roughly one in seven have variable schedules. BLS also notes that turnover in both professions is high. In Maryland, the Governor's Workforce Investment Board found that 24% of employees in the personal care industry (which includes barbering and cosmetology) were immigrants, compared with 15% for the State's workforce. Based on anecdotal evidence gathered during this evaluation, most of those immigrants are Southeast Asian, many with limited proficiency in English. Both the transient nature of the professions and the high proportion of immigrant workers present unique challenges to the State boards charged with regulating barbers and cosmetologists, as described in later chapters.

Boards Have Similar Responsibilities and Structures

The State Board of Barbers and the State Board of Cosmetologists are 2 of 22 regulatory boards within the Division of Occupational and Professional Licensing in the Department of Labor, Licensing, and Regulation (DLLR). The State Board of Barbers was established by Chapter 226 of 1904, and the State Board of Cosmetologists was established by Chapter 282 of 1935. Both boards are charged with (1) protecting the public from physical harm caused by tools and chemicals by licensing individuals practicing barbering and cosmetology; and (2) ensuring the sanitary condition of shops and schools. Chapters 479 and 481 of 1991 transferred responsibility for overseeing and regulating barbering and cosmetology schools, both public and private, to the Maryland State Department of Education (MSDE) and the Maryland Higher Education Commission (MHEC), respectively. However, the boards continue to be responsible for ensuring that schools abide by standards for sanitation, and they advise both education agencies regarding school curricula. **Appendix 2** summarizes statutory changes affecting either or both boards since the preliminary evaluation in 1998.

As defined by statute, the practice of barbering means, for compensation:

- cutting, razor cutting, styling, relaxing, body waving, shampooing, or coloring the hair;
- shaving or trimming the beard;
- massaging the face;
- designing, fitting, or cutting a hairpiece; or
- performing other similar procedures on the hair, beard, face, or hairpiece of an individual.

Statute defines the practice of cosmetology as, for compensation:

- arranging, bleaching, cleansing, coloring, curling, cutting, dressing, singeing, permanent waving, or waving hair;
- performing any other similar procedure intended to beautify, clean, or embellish the hair;
- arching or dyeing eyebrows;
- dyeing eyelashes;
- providing esthetic services, which means:
 - cleansing, exercising, massaging, stimulating, or performing any other similar procedure on the skin or scalp by electrical, mechanical, or other means;
 - applying alcohol, cream, lotion, astringent, or cosmetic preparation; or
 - removing superfluous hair by the use of a depilatory, tweezers, or wax; or
- providing nail technician services, which means:
 - manicuring or pedicuring nails; or
 - applying or maintaining artificial nail enhancement products.

Board Structures

The State Board of Barbers consists of seven members appointed by the Governor with the advice of the Secretary of Labor, Licensing, and Regulation. Five of the members must be master barbers who have practiced in the State for five continuous years prior to their appointment, and two must be consumers. Members serve staggered five-year terms and may not serve more than two consecutive terms, although they continue to serve until a successor is appointed. Currently, one consumer position is vacant after two other long-term vacancies were filled in September 2009. Members are entitled to a reasonable fee set by the board for each day in which they are engaged in official duties; however, as is the case with all but one of the DLLR boards, board members do not receive any compensation, regardless of statutory authority. They are also entitled to reimbursement for expenses. The board meets quarterly.

The State Board of Cosmetologists also has seven members appointed by the Governor with the advice of the Secretary of Labor, Licensing, and Regulation. Four members must be licensed cosmetologists who have practiced for at least five years prior to their appointment; one member must be an owner or educator affiliated with a private cosmetology school; and two must be consumers. Members serve staggered three-year terms and may not serve more than two consecutive terms, although they continue to serve until a replacement is found. One consumer member position remained vacant for over a year before being filled in September 2009. The other consumer member, who also serves as board chair, is serving beyond her second term until a replacement is named. Members are entitled to a reasonable fee set by the board for each day in which they are engaged in official duties; however, in practice, boards members do not receive any compensation. They are entitled to reimbursement for expenses. The board meets monthly.

As noted earlier, the boards share staff, which consists of four positions: an executive director; an assistant director; and two clerical staff who administer regular and reciprocal licensing, the apprenticeship program, complaint processing, and inspections. A requirement that the executive director be either a licensed master barber or senior cosmetologist was repealed during the 2009 legislative session, although the current executive director is a master barber. Early in fiscal 2010, the boards lost a fifth position of board secretary that had been vacant for several months; that position was transferred to another unit to be a special funded position. Twelve regional part-time inspectors work on a per-diem basis.

At this time, there is no compelling reason to consider merging the two boards. Certainly, the overlapping nature of services provided by their licensees, the shared staffing for both boards, and the relatively low volume of activity for the State Board of Barbers compared to that of the State Board of Cosmetologists provide a basis for considering a merger. However, members of both boards continue to view their professions as distinct from the other because barbering, unlike hair styling, makes frequent use of straight blades for shaving and trimming hair, whereas cosmetology involves a wider range of services than just hair cutting or styling. From a fiscal and operational perspective, many of the potential fiscal and administrative benefits that could be achieved by merging the two boards have already been achieved by

combining their staff. With only quarterly meetings and a relatively small number of agenda items, the marginal burden placed on staff to prepare for State Board of Barbers meetings is minimal.

Every evaluation report submitted in the last 20 years has noted frequent and persistent vacancies among the consumer members on the two boards. The difficulty in filling consumer positions on the boards continues today. Until recently, the State Board of Cosmetologists had a consumer vacancy for over a year, and the other consumer member is serving beyond her two-term limit until a replacement is named. The State Board of Barbers also has had a prolonged consumer vacancy that persists. A DLS review of other states' boards found that slightly more than half (26) of all states have fewer than two consumer members on their boards. Therefore, replacing a consumer member on each board with an industry member would (1) maintain a consumer presence on the boards; (2) be consistent with membership on other state boards; and (3) alleviate the difficulty in filling those positions.

Recommendation 1: Statute should be amended to replace one consumer board member with an industry member on each board.

Research Activities

To complete this evaluation, DLS staff collected data from a wide array of sources, including:

- reviewing State statutes and regulations regarding the barbering and cosmetology industries;
- collecting national and state data on barbering and cosmetology from federal and state agencies and national trade organizations;
- interviewing board members and staff from DLLR, the Office of the Attorney General, MHEC, and MSDE;
- attending multiple board meetings and reading minutes of past board meetings;
- analyzing license, financial, complaint, and inspection data;
- accompanying an inspector during inspections of eight salons and barbershops;
- extracting data from open and closed complaint files; and
- researching the regulation of barbers and cosmetologists in other states.

Report Organization

This chapter provides a summary of the sunset review process, an overview of the personal appearance industry, a description of the State Board of Barbers and the State Board of Cosmetologists, and a list of research activities undertaken to complete the evaluation. **Chapter 2** examines issues related to the boards' major functions, namely licensure, inspections, and complaint processing. **Chapter 3** reviews oversight and performance of barber and cosmetology schools and apprentice programs. **Chapter 4** discusses the boards' finances, staffing, and fees. Relevant recommendations are found throughout each chapter.

As supplements to the report, **Appendix 1** contains a roster of the current members of the boards. **Appendix 2** contains legislative changes related to both boards since 1998. **Appendix 3** contains draft legislation to implement the statutory recommendations contained in the report. The State Board of Barbers and the State Board of Cosmetologists reviewed a draft of the report and provided written comments included as **Appendix 4**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the published version of the report.

Chapter 2. Core Functions: Licensure, Inspections, and Complaints

Boards Regulate More than 50,000 Licensees

The State Board of Cosmetology issues four types of professional licenses, three types of apprentice licenses, and two types of shop owner permits, as shown in **Exhibit 2.1**. The four professional licenses include senior cosmetologist and cosmetologist as well as “limited practice” licenses for estheticians and nail technicians. The limited practice licenses allow licensees to provide only the services included in the statutory definition of esthetic services and nail technician services, respectively. The board also awards apprentice licenses for cosmetologists, estheticians, and nail technicians, and permits to shop owners for full-service salons and limited-practice salons (typically nail salons). The State Board of Barbers issues two professional licenses (master barber and barber), an apprentice license, and a barbershop owner permit, also shown in Exhibit 2.1. A licensed cosmetologist, esthetician, nail technician, or barber who also owns a shop must have both a professional license and a shop permit. Shop owners are not required to have a professional license if they do not personally provide service to customers. In all, the Department of Labor, Licensing, and Regulation (DLLR) reports that the boards had 52,533 licensees in fiscal 2009. All professional licenses and shop permits are subject to staggered biennial renewal.

Regulations require that licensees attach a photo to their license and display the license at their workstations any time they are working. DLLR’s central licensing system does not attach photos to licenses. Instead, licensees are responsible for attaching a picture to their own licenses. The absence of any seal, embossment, or lamination on the licenses increases the potential for fraud by making it easy for licensees to swap pictures, thereby allowing unlicensed individuals to use the license. Failure to attach a picture to a license is a common violation found during inspections.

Recommendation 2: DLLR’s Division of Occupational and Professional Licensing should begin exploring options for attaching photos to licenses in a secure manner and report to the appropriate standing committees of the General Assembly on the feasibility of attaching licensee photos to licenses no later than October 1, 2011. In the meantime, the State Board of Barbers and the State Board of Cosmetologists should consider measures to increase licensee compliance with the photo requirement, including the possibility of assessing stiffer penalties, such as license suspension, for violations. The boards should report to the appropriate standing committees of the General Assembly on their plan to increase compliance no later than October 1, 2010.

Exhibit 2.1
Licensure and Permit Activity (New and Renewal)
Fiscal 2005-2009

	<u>Type</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Senior Cosmetologist	New	110	123	120	161	143
	Renewal	3,687	3,630	3,590	3,676	3,628
Cosmetologist	New	1,475	1,495	1,603	1,809	1,616
	Renewal	8,710	9,682	9,354	10,525	10,484
Esthetician	New	234	294	315	349	334
	Renewal	816	861	996	1,093	1,170
Nail Technician	New	529	463	156	457	362
	Renewal	3,439	3,695	3,460	3,734	3,652
Salon Owner (full-service)	New	627	716	687	751	641
	Renewal	1,240	1,377	1,245	1,537	1,442
Salon Owner (limited-practice)	New	182	153	140	119	80
	Renewal	213	238	234	252	264
Cosmetology Apprentice	New	618	579	454	522	498
	Renewal	238	243	245	223	225
Master Barber	New	30	37	36	55	46
	Renewal	1,550	1,149	1,411	1,172	1,364
Barber	New	261	238	227	203	207
	Renewal	910	861	1,023	1,029	1,179
Barbershop Owner	New	165	148	136	154	133
	Renewal	448	372	422	386	438
Barber Apprentice	New	147	158	138	155	158
	Renewal	0	2	0	3	4
Total	New	4,378	4,404	4,012	4,735	4,218
	Renewal	21,251	22,110	21,980	23,630	23,850

Note: Because of staggered biennial renewals, annual totals shown in the exhibit do not sum to the total number of licensees and permit holders but to the number of such licenses and permits issued each year.

Source: Department of Labor, Licensing, and Regulation

Prospective barbers, cosmetologists, nail technicians, and estheticians in Maryland may choose between two pathways to licensure – completing an educational program at an approved public or private barbering or cosmetology school, or training as an apprentice. Upon completing either pathway, all candidates must pass a licensing examination administered by their respective boards which includes both a written theory portion and a hands-on practical portion. However, senior cosmetologists and master barbers must pass only another theory examination, which then allows them to mentor an apprentice. **Exhibit 2.2** summarizes the criteria for qualifying for each type of professional license.

Exhibit 2.2 Qualifications for Licensure

<u>License Type</u>	<u>Qualifications</u>
Cosmetologist	Must be at least 17 years of age and have completed the ninth grade or the equivalent. Applicant must submit proof of completion of 1,500 hours of training in an approved cosmetology school or 24 months as a registered apprentice in a licensed salon, with at least 20 hours of training each week during the apprenticeship (minimum of 2,080 total hours). Must pass theory and practical examinations.
Senior Cosmetologist	Must have at least two years experience as a licensed cosmetologist. Must pass theory examination.
Esthetician	Must be at least 17 years of age and have completed the ninth grade or the equivalent. Applicant must submit proof of completion of 600 hours of training in an approved cosmetology school or 12 months as a registered esthetician apprentice in a licensed salon, with at least 20 hours of training each week during the apprenticeship (minimum of 1,040 total hours). Must pass theory and practical examinations.
Nail Technician	Must be at least 17 years of age and have completed the ninth grade or the equivalent. Applicant must submit proof of completion of at least 250 hours of training in an approved cosmetology school or at least eight months as a registered nail technician apprentice in a licensed salon, with at least 20 hours of training each week during the apprenticeship (minimum of 700 total hours). Must pass theory and practical examinations.
Barber	Applicant must submit proof of completion of at least 1,200 hours of training in an approved barbering school or at least 2,250 hours within two years as a registered barber apprentice, including at least 30 hours of training each week during the apprenticeship. Must pass theory and practical examinations.
Master Barber	Must have at least 15 months experience as a licensed barber. Must pass theory examination.

Note: Prospective cosmetology licensees may take the written examination prior to completing schooling if they have already completed a minimum number of hours, as prescribed by statute.

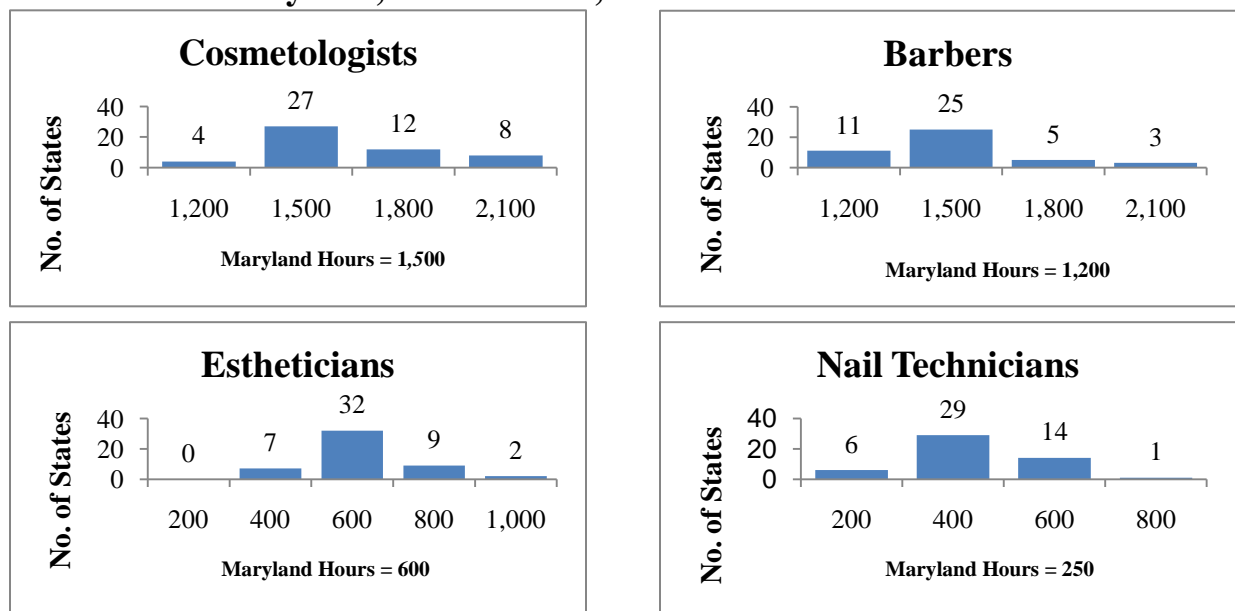
Source: Annotated Code of Maryland, Business Occupations and Professions, Titles 4 and 5; Code of Maryland Regulations, Title 9.

Both boards are authorized to waive an individual licensed to practice in any other state from the licensing exam requirement if the individual (1) otherwise meets the statutory qualifications; and (2) became licensed in another state after passing an exam that is at least equivalent to the Maryland exam. In these cases, a candidate for an exam waiver must provide a sealed endorsement from the state in which he or she is currently licensed confirming licensure in that state and pay an endorsement fee to the appropriate board. Board staff confirms all endorsements received from other states, typically by conducting searches on other boards' web sites. **Chapter 3** describes the apprenticeship programs administered by both boards in greater detail.

Licensure Requirements Generally Consistent with Other States

Almost all states and the District of Columbia require candidates for licensure who pursue the education pathway to complete a minimum number of clock hours of classroom instruction and practice. Maryland's education requirements are summarized in Exhibit 2.2. **Exhibit 2.3** shows that the education requirements for Maryland licensure all fall within the range of requirements found in other states. For cosmetologists and estheticians, the education requirements match those of at least half the states and the District of Columbia. For barbers and nail technicians, the education requirements tend to be on the low end of their respective ranges but still fall within the mainstream.

Exhibit 2.3
Range of Education Prerequisites for Licensure
in Maryland, Other States, and the District of Columbia



Note: Data on the requirements for barbers was not available from seven states, including some that do not license barbers; data on estheticians and nail technicians was not available from one state.

Source: National Interstate Council of State Boards of Cosmetology; other state board web sites.

Licensing Fraud Has Become More Prevalent

The State Board of Cosmetologists in particular has encountered a greater level of licensing fraud in recent years. A major fraud case uncovered by board staff in 2006 resulted in 46 license revocations, all by consent orders initiated by the board. The case arose when board staff noticed a large volume of requests for reciprocal licenses by individuals claiming to be licensed in Pennsylvania. At the time, the board allowed candidates for reciprocal licenses to provide notarized certifications of licensure from another state. Staff members noticed that most if not all of the applicants could not speak English when they appeared at the board's front desk, and their notarized documents were all notarized by the same individual. When staff began to verify the validity of the Pennsylvania licenses, all were found to be fraudulent. As a result, the board instituted a new policy, still in effect, so that it accepts only sealed license certifications directly from licensing bodies in other states. The board has also made confirmation of licensure in other states a regular part of the reciprocal licensure procedure, which has made reciprocal licensing a more labor-intensive process.

The board is currently pursuing an investigation of potential fraud involving a cosmetology school in a neighboring state. Board staff is working with counterparts in that state to investigate whether applicants for licensure in Maryland actually completed their education at the school in question. Many of the applicants who claim to have attended the school and have come to the board requesting licensure also do not speak English, raising questions about whether they could have successfully completed an English language curriculum. Results of the investigation are pending.

In part because both of these fraud cases have involved collaborating with licensing bodies in other states, the investigations have occupied a great deal of staff time and resources. The consent orders for the Pennsylvania fraud case alone took several weeks to complete. Together, these cases indicate that the boards may require additional resources in the future to combat fraud.

Routine Inspections Serve Important Enforcement Role

State law requires the State Board of Barbers to inspect new barbershops prior to granting them permits and authorizes the State Board of Cosmetologists to do the same. It also authorizes both boards to inspect salons and barbershops at any time during business hours. Consistent with their limited authority over barbering and cosmetology schools (see **Chapter 3**), the boards inspect schools only to ensure that they abide by sanitation requirements. In addition to new shop inspections, the boards inspect licensed salons and barbershops under four circumstances:

- routine inspections conducted on a rotating schedule;
- inspections following receipt of a consumer complaint;
- follow-up inspections after a board imposes sanctions on a shop or salon; and
- board-requested inspections.

Routine inspections investigate shop compliance with all aspects of State law governing their operation, including whether each shop:

- has a valid permit;
- complies with all sanitation requirements;
- employs only licensed professionals who properly display their licenses;
- performs only procedures within the relevant scope of practice; and
- possesses or uses any banned substances or equipment.

Therefore, the routine inspection program is a valuable tool in the boards' efforts to enforce laws designed to protect the health and safety of the public. Any violations found during routine or board-directed inspections are subject to a maximum fine of \$300 for all violations cited on a single day as shown in **Exhibit 2.4**. Fraud committed by unlicensed individuals is subject to a maximum fine of \$1,000.

The boards employ part-time per-diem inspectors to conduct inspections. The inspectors are organized by region and receive daily allowances of \$93, subject to budgetary appropriation. Rules governing inspection procedures are different for barbershops and beauty salons. For barbershops, statute authorizes inspectors to enter at any time during business hours to determine the sanitary condition of the shop but provides no further guidance. For salons, statute requires the owner or lessee to accompany the inspector during the inspection and then sign and receive a copy of the inspection report upon completion of the inspection. Inspectors send copies of their inspection reports to the boards, which are then entered into a recordkeeping system. Reports that include violations are subject to panel reviews (described below) to determine their final disposition.

Recommendation 3: Statute should be amended to require inspection of beauty salons prior to granting them permits. In addition, statute should be amended to conform the procedures for inspecting barbershops to the procedures for inspecting beauty salons so that inspectors have one set of rules to follow.

In each of fiscal 2008 and 2009, board inspectors conducted approximately 4,000 routine inspections and found more than 500 violations each year. With approximately 3,200 salon and barbershop permits, the boards averaged slightly more than one routine inspection for each permitted establishment. That falls short of the boards' goals that each shop be inspected at least three times a year, which was adopted when the boards were fully funded and had approximately 20 inspectors.

Exhibit 2.4
Citation Schedule for Barbering and Cosmetology Violations

\$50 Penalty

- Failure to meet various, specified sanitary or cleanliness standards (failure to wash hands, absence of hot or cold running water, etc.)

\$100 - \$150 Penalty

- Presence of an animal
- Improper storage or disinfection of implements
- No photo on license

\$300 Penalty

- Operating without a license/permit or beyond the scope of a license
- Improper removal of corns, calluses
- Sale of used hairpieces

Formal Hearing

- Unauthorized services or performance of services by operator with infectious disease
- Interference with inspector
- Improper procedure for cut or blood-related incidents
- Use of certain prohibited devices

Note: Statute also authorizes the boards to impose a civil penalty of \$1,000 for any violation of Title 4 or Title 5 of the Business Occupations and Professions Article. A criminal penalty of up to \$100 or 30 days imprisonment or both is also authorized but rarely imposed.

Source: Code of Maryland Regulations

Routine Inspection Program Fraught with Problems

Funding for the inspection program has fluctuated significantly since the preliminary evaluation in 1998, hampering its effectiveness. The 1998 report noted that the boards employed 20 inspectors on a part-time basis. Within a few years of that report, funding for the inspection program had been cut so drastically that at one time the boards employed just two inspectors. As a result, the routine inspection program was scaled back dramatically to focus on new shop inspections and consumer complaints. The number of inspections conducted annually dropped steadily from about 9,500 in fiscal 2003 to about 1,800 in fiscal 2007. Board staff believes that at least some of the increased complaint volume and number of violations encountered in recent years can be attributed to the routine inspection program being scaled back during those four years.

Gradually, funding for the inspection program was restored through fiscal 2009, allowing the boards to hire more inspectors. Two inspectors were hired during the course of this evaluation, but in the process the board lost two other inspectors, one to illness and another was relieved of his position, leaving the total number of inspectors at 10. Moreover, during the latest round of cost containment measures adopted by the Board of Public Works in August 2009, fiscal 2010 funding for the inspection program was reduced by \$61,000, or two-thirds of the boards' inspection budget. As a result, the routine inspection program has been suspended again, and the boards will conduct only new shop, complaint, and board-requested inspections.

Besides inconsistent funding, the board has insufficient staff to properly implement and oversee the routine inspection program. The rapid increase in the number of inspectors and resultant inspections has not been accompanied by an increase in staff to manage and process inspection reports. One staff member manages the entire inspection program but also has some responsibility for processing mailed renewal forms and managing the processing of complaints. As a result, the inspection coordinator prioritizes incoming inspection reports. Inspections performed in response to a complaint and routine inspections that find violations receive priority treatment and are entered into the tracking system when they are submitted by inspectors. However, a backlog has formed of routine inspections that did not find violations; during visits to the office, members of the research team observed multiple stacks of routine inspection reports awaiting entry into the tracking system. Consequently, board staff could not provide definitive data on the number of times each licensee has been inspected on an annual basis.

Limited staffing also means that the board does not exercise sufficient control and oversight of the inspection schedule. Rather, the inspectors are responsible for keeping track of their respective routine inspection schedules within their assigned regions. They submit their inspection reports as they complete them, but since many are not logged into the tracking system in a timely fashion, the board cannot track whether routine inspections are being conducted in a consistent manner across regions. Moreover, the tracking system does not flag shops that have not been inspected within given timeframes. Without access to up-to-date data on routine inspections, neither the boards nor the Department of Legislative Services (DLS) can assess the program's implementation and effectiveness.

The evolving and expanding nature of the cosmetology industry also poses unique challenges for the inspection program. Prior to 1991, licensed barbers and cosmetologists could practice only in licensed beauty salons or barbershops or, under limited circumstances, in a patron's home, making enforcement a relatively straightforward endeavor. Chapter 481 of 1991 allows cosmetologists to practice in nursing homes or hospitals as long as they are sponsored by a beauty salon and the patron is a customer of the salon. Chapter 441 of 1999 adds assisted living and hospice facilities to the list of permissible service delivery locations. Finally, Chapter 470 of 2007 allows licensed cosmetologists, nail technicians, and estheticians to provide services, under specified circumstances, in medi-spas,¹ a new service delivery model that

¹The term "medi-spa" is commonly used in the cosmetology industry but is not referenced in statute. Instead, § 5-605 of the Business Occupations and Professions Article authorizes licensees to provide services in "a facility in which beautification-oriented medical services, authorized by the Department of Health and Mental Hygiene, are provided."

provides a combination of cosmetic and medical services (for example, Botox treatments). Since neither hospitals, nursing homes, assisted living facilities, hospice facilities, nor medi-spas are licensed by the board, the board has no authority to inspect those facilities or to administer sanctions against the owners if sanitation or service violations occur.

Citation Program Delayed Yet Again

In 2005 the General Assembly authorized the boards' inspectors to issue citations to licensees for certain violations. The citation program was designed to reduce the number of cases referred for both informal and formal hearings by allowing inspectors to assess fines against shop owners when they found minor violations during routine inspections. Under the program, the respondent who was assessed a fine would have the option of sending a payment or requesting a hearing before the appropriate board. Licensees who fail to pay or contest the penalty associated with the citation within 60 days may face license suspension or revocation. As noted above, the maximum fine for all violations cited against an establishment in a single day is \$300, with limited exceptions. The expectation was that most establishments would choose to pay the relatively small fines rather than take time away from their business to contest them. As with all other fine revenue collected by the boards, fine revenue generated by the citation program accrues to the general fund.

Implementation of the program was delayed repeatedly due to technical issues with various aspects, but the latest delay is connected directly to the suspension of the routine inspection program. DLLR initially hoped to implement an electronic citation system, but practical and technical problems with that system prompted DLLR to cancel that plan, which accounts for some of the delay. DLLR then decided to use a paper-based citation program instead and expected to implement the program in October 2009. Toward that end, DLLR had developed a schedule of fines, citation forms, and an online payment system with links on both boards' web sites. However, with the suspension of the routine inspection program, the citation program has also been delayed again because there is no mechanism for inspectors to assess fines. In the absence of the citation program, the boards have lost an important component of their efforts to reduce the number of violations referred for formal or informal hearings.

Complaints Point to Need for Continued Oversight

State law requires both boards to process complaints they receive regarding services provided by a shop or licensee, as long as the complaint is in writing, signed by the complainant, and delivered to the executive director. Although the boards continue to receive complaints by regular mail, most complaints now come through e-mail or the boards' web sites, which include links to a template that complainants can use. Consequently, the requirement that complaints be signed, unique to these two boards among the 22 administered by DLLR, is obsolete. The boards are not authorized to award damages to a complainant, but they may investigate the complaint and assess penalties against a licensee, including reprimands, fines, suspension, or revocation of their license. All sanctions imposed against licensees are posted on the boards' web sites. The number of complaints received by each board is roughly proportional to the number of licensees, meaning that the State Board of Cosmetologists receives the vast majority of complaints.

A stark reminder of the potential for injury in the personal appearance industry occurred during the course of this evaluation when a salon customer in Maryland suffered serious burns over much of her body because the acetone in which she was soaking her nails was overheated and caught fire. **Exhibit 2.5** shows that the volume of complaints received by both boards has steadily increased. It also presents data on the nature of those complaints. Noticeably absent from the data provided by the boards is any indication of whether the complainant claimed to have suffered an injury.

To supplement the data provided by the boards on the nature of the complaints they receive, DLS staff reviewed board files of both open and closed complaints over the last four years. Due to the sheer volume of cases, staff examined a sample of cases by reviewing every fifth file. Of the 133 cases reviewed, 85 stemmed from consumer complaints (the remainder were violations found during routine inspections). Of those 85 complaint cases, 11 (13%) involved reported injuries to the complainant, including scalp and finger burns and skin infections. Although the number of reported injuries is admittedly fairly small, DLS believes it points to the continued potential for serious injury and therefore justifies continued regulation of the barbering and cosmetology professions.

Exhibit 2.5
Cosmetology and Barber Complaint History
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Complaints Received	76	109	134	212	204	308
<u>Type of Complaint</u>						
Operating without a License	36	54	52	79	80	176
Operating outside Scope of License	12	7	18	16	13	19
Sanitation	18	45	44	54	72	61
Dissatisfaction with Service	7	7	17	32	29	25
Fraud/Monetary	1	2	3	7	8	9
<u>Board Action</u>						
Dismissed – Unsubstantiated	64	104	96	138	78	67
Dismissed – Other	9	1	6	2	0	0
No Disposition/Still Under Investigation	0	2	26	59	95	226
Formal Hearing	1	0	6	3	9	5
Informal Hearing	0	0	0	2	13	1
Consent Order	2	2	0	8	9	9

Notes: In fiscal 2009, the boards changed their complaint tracking procedure to include anonymous complaints, which are dismissed without further action. Fiscal 2009 data includes 38 board-referred complaints; all prior-year data encompasses only consumer complaints.

A complaint may include more than one type; therefore, the total number of complaints in a fiscal year may not correspond to the numbers listed below the total.

Dismissed complaints include those that were not within the boards' jurisdiction.

Source: State Board of Cosmetologists and State Board of Barbers

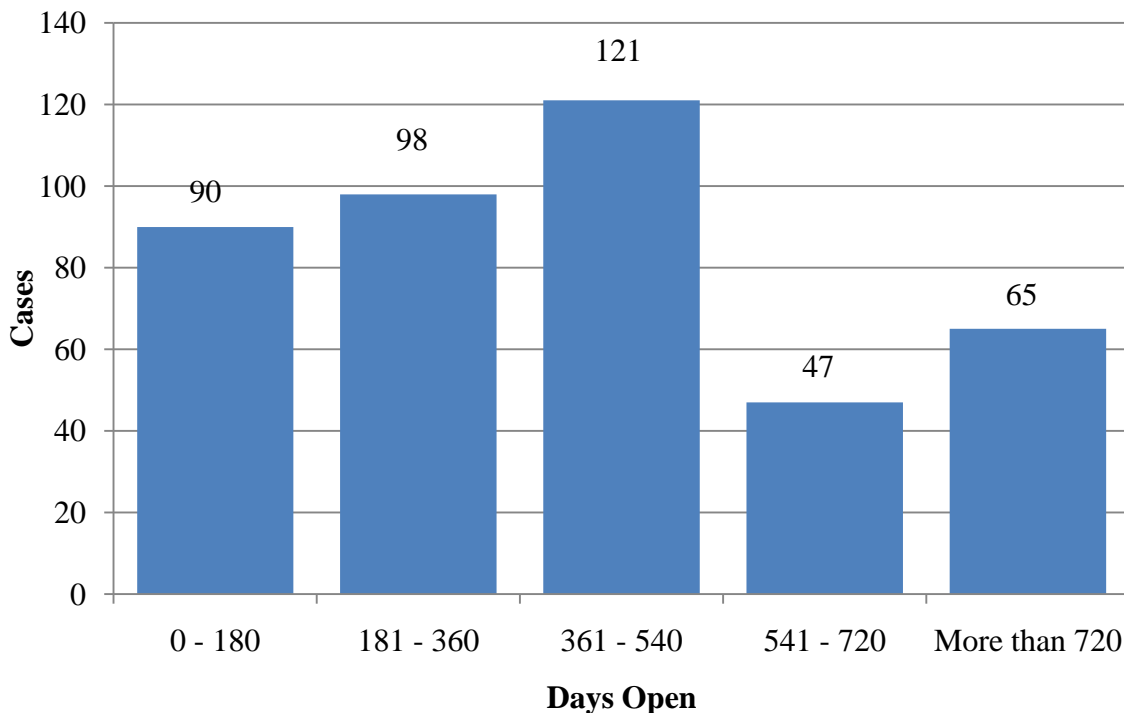
With improvements made to the boards' web sites, complainants can now submit complaints online, which precludes a signature. In practice, the boards have not enforced the requirement that complaints be signed, and although they now track anonymous complaints, they take no action on them. The State Board of Barbers and the State Board of Cosmetologists are the only two DLLR boards that still have a statutory requirement that complaints be signed.

Recommendation 4: Statute should be amended to repeal, as obsolete, the requirement that complaints be signed. However, statute should specify that complaints should be in writing and include the name of, and contact information for, the complainant.

Complaint Backlog Is Persistent and Intractable

A performance measure established by the Division of Occupational and Professional Licensing under the Managing for Results system states that complaints will be closed within 180 days of their receipt, but both boards fall well short of that objective. Based on recent history, complaints that proceed to either formal or informal hearings can take between one and two years to reach final disposition – if they ever do. Based on information provided by the State Board of Cosmetologists, there were 421 open complaints as of May 11, 2009. **Exhibit 2.6** shows that more than half of those cases had been open for at least a year, and 65 had been open for two or more years. DLS review of case files found that, for the 53 closed cases examined, the average length of time from initial receipt of the complaint to case closure was 281 days. The shortest elapsed time to closure was 21 days and the longest was 1,139 days. Only 10 of the 53 closed cases were closed in less than 180 days. The remainder of this section addresses the multiple reasons for the persistent backlog.

Exhibit 2.6
Duration of Active Complaint Cases for the State Board of Cosmetologists
May 2009



Source: Department of Labor, Licensing, and Regulation; Department of Legislative Services

Complaint Process Has Multiple Bottlenecks

After receiving a complaint, staff first determines which, if any, board has jurisdiction over the matter. If the complaint is submitted anonymously or deals only with quality of service issues, the appropriate board may dismiss the complaint with no further action. Otherwise, the board notifies the respondent of the complaint by certified mail and invites the respondent to respond to the complaint. The case is assigned to an inspector, who is supposed to conduct an inspection within two weeks of receiving the assignment. Upon receiving the response and the inspection report, the complaint is forwarded to an internal panel review to determine the next step. The panel typically consists of at least one board member, one staff member, and an Assistant Attorney General. At most, panels meet monthly and have the option of recommending that the complaint be dismissed, scheduled for either a formal or informal hearing, or referred for a consent order. Panels also determine the disposition of violations found during routine inspections. Prior to taking any final action against a licensee, the appropriate board must give the licensee the opportunity to have a hearing before it. Both boards conduct their own hearings rather than referring cases to the Office of Administrative Hearings (OAH). The legislation authorizing the citation program expressly forbids the boards from referring citation appeals to OAH.

Formal and informal hearings differ in several respects. Informal hearings are not legal proceedings and cannot involve or lead to any formal sanctions against the respondent. Instead, they represent verbal reprimands for licensees who commit minor infractions. The boards view them as educational opportunities to remind licensees about their responsibilities. The number of informal hearings varies for each meeting but typically range between two and six. Upon completion of the informal hearing, the case is considered closed. Respondents who do not appear for an informal hearing are subject to formal proceedings.

Formal hearings are official legal proceedings and must follow procedures established in the State's Administrative Procedure Act. They include court reporters, and respondents may be represented by legal counsel. Respondents have the option of requesting a board-furnished translator; meeting minutes show frequent use of translators for formal hearings, as well as several instances where formal hearings had to be cancelled because the respondent had not requested a translator but was not fluent in English. Unlike informal hearings, at the conclusion of the formal hearing, the board may vote on possible sanctions, which represent the board's final action. Final actions are then subject to judicial review. Because formal hearings tend to take about two or three hours to complete (often due to the additional time required to provide simultaneous translations for respondents who do not speak fluent English), each board typically schedules no more than two formal hearings per meeting. Given their respective meeting schedules, the maximum number of formal hearings that can be held in a given year is 24 for the State Board of Cosmetologists and 8 for the State Board of Barbers.

Efforts to Clear Complaint Backlog Underway, but Barriers Remain

After a prolonged vacancy, DLLR hired a new executive director for both boards, who has held office for about a year. The new executive director has made clearing the complaint backlog a priority but has met with mixed success. Based on DLS review of staff procedures and board policies, it is unlikely that the backlog can be cleared without significant changes. The barriers to clearing the backlog fall into two major categories: lack of adequate processes for tracking the progress of individual complaints and structural barriers.

Steps taken to date represent a good beginning to address the complaint backlog. Upon taking office, the executive director launched a complete review of every open case, requiring each one to be categorized and color-coded based on the reason it remained open. He also initiated a weekly meeting with the Assistant Attorney General responsible for presenting cases before the boards to review the entire backlog and prioritize cases that could be closed. In May 2009, he sought authority from the State Board of Cosmetologists to allow that board and legal staff to conduct panel reviews without the presence of a board member and to conduct informal hearings on behalf of the board; the board granted him authority to conduct panel reviews only for violations found during routine inspections, but not for complaint cases. The board meeting minutes reflect that, upon further discussion, he withdrew his request for authority to conduct informal hearings.

Inadequate Tracking of Complaints

However, DLS review of case files found numerous instances where cases have remained open only because their status has not been tracked. The review found cases that could have progressed through the review process, or even been closed, but remained open because:

- the board either did not receive a response to the certified notification letter sent to the respondent, which would have triggered a panel review, or the certified letter was returned undeliverable – in either case, there was no indication in the file of an effort to follow-up with or locate the respondent;
- either initial or follow-up inspections requested by the board were not conducted; and
- complaint inspections found no violations, but the cases never moved to panel review for dismissal.

With respect to the inspections, the review found that 35 of 85 complaint cases were awaiting inspections beyond the two-week timeframe given inspectors to complete requested inspections. For files that had completed inspections, the average elapsed time between the complaint being received and the inspection being completed was 75 days, not including three cases that took more than a year to be inspected.

Another example of inadequate tracking relates to the payment of fines. The boards do not monitor whether respondents who are assessed fines by the boards actually pay their fines in a timely manner. Instead, they rely on the licensing system to enforce the payment of fines because licensees with unpaid fines may not renew their licenses. With biennial renewal of licenses, however, this means that fines may go unpaid for up to two years. Moreover, although unpaid fines can be referred to the State's Central Collection Unit, board staff acknowledges that, in the absence of payment tracking, unpaid fines are not referred for collection.

The boards' current recordkeeping system does not alert staff when important milestones in the complaint resolution process are not met (*e.g.*, respondent replies are not received, inspections are not conducted, panel reviews are not scheduled). The absence of adequate tracking has contributed to the backlog of complaint cases that remain open, some more than four years after they were originally received.

Recommendation 5: DLLR's Division of Occupational and Professional Licensing should develop a tracking system to alert staff when milestones are not met. To the extent feasible, the system should also track nonpayment of fines, and the boards should consult with the Central Collection Unit to develop an appropriate timeframe after which unpaid fines should be referred for collection.

Structural Barriers to Clearing Backlog

Even if the boards are able to resolve the issues related to the tracking of complaint cases, there are several structural barriers to clearing the significant backlog. First, the panel reviews occur, at most, once a month. Since the departure of the board secretary, who was responsible for scheduling panel reviews, and the subsequent loss of her position, board staff concedes that panel reviews have been occurring even less frequently. The biggest challenge is scheduling time for a board member to be present so that the panel review can proceed. The delegation of authority to the executive director to conduct panel reviews for cosmetology-related cases stemming from routine inspections may partially address this issue, but additional action may be warranted with respect to complaint cases.

Second, the boards and the Office of the Attorney General (OAG) have limited capacity to process cases that move to formal hearings. As noted above, with their current meeting schedules, together the boards have the capacity to hold a maximum of 32 formal hearings and 192 informal hearings each year. With routine inspections reporting over 500 violations a year and complaints generating as many as 200 cases each year, the boards simply do not have the ability to handle that volume through the hearing process. The citation program was designed to alleviate the burden by bypassing the hearing process and allowing for direct payment of fines to the boards, but it has been suspended indefinitely due to fiscal constraints. Even with the suspension of the routine inspection program, complaints and board-requested inspections potentially generate too many cases to be handled through the hearing process, especially if a large number go to formal hearings. When the routine inspections resume, they will again exacerbate the boards' capacity to resolve violations. Even if responsibility for formal hearings were delegated to another entity (the Office of Administrative Hearings or a board hearing

officer, for instance) to increase the volume of cases heard, OAG staff indicates that an increase in the volume of formal hearings would strain its staffing resources.

Third, the boards occasionally must cancel formal and informal hearings due to the absence of a translator. Although board correspondence with respondents involved in formal hearings explains that, if requested, a board can provide a translator, some respondents with limited proficiency in English have appeared before the boards without requesting a translator. In other cases, requested translators have not appeared for a hearing. In one instance, a hearing had to be cancelled when the translator left in the middle because he reported that he did not feel “comfortable” with the proceedings. Being forced to cancel scheduled hearings has further contributed to the backlog of cases.

The preliminary evaluations recommended that this full evaluation examine the boards’ concerns with the quality of translation services stemming from the incidents described above. Based on discussions with board members and staff, those issues have largely been resolved through direct communication with the vendor who provides translation services under a State contract. Legal staff in OAG noted a distinct improvement in the quality of translation services provided during the past year. Hearings observed by DLS staff during the course of this evaluation that included translation services proceeded smoothly, albeit slowly. Translation services are not currently offered for informal hearings.

The inherent limitation on the number of formal hearings that the boards can hold in a given year make them an inefficient mechanism for resolving complaints and violations. Statute specifies only that the boards must give licensees an *opportunity* for a hearing prior to a final action being taken. Although the boards cannot control the number of licensees that opt for a hearing to contest a potential penalty, DLS believes that, for cases where the likely penalty is only a fine, many licensees would opt to pay the fine rather than take time to contest a board action. This is the premise behind the citation program, and likely is a valid premise as long as the maximum fine remains \$300 for all violations found on a given day.

Recommendation 6: The boards should explore alternatives to formal hearings to resolve complaints and violations, with particular attention given to the use of consent orders and citations. The boards should also delegate authority to the executive director to conduct panel reviews in the absence of one or more board members, using guidelines established by the respective boards. The delegation of authority should specify that all staff recommendations regarding the disposition of cases are subject to final approval by the respective boards at their regular meetings.

In recent years, the boards have relied more heavily on consent orders as an alternative to formal hearings, and many licensees have opted to sign the orders rather than proceed with formal hearings. With additional staff, the boards can make greater use of consent orders to limit the number of formal hearings. This would reserve the boards’ time to address more serious violations that could lead to suspension or revocation through the formal hearing process.

Chapter 3. Preparation of Barbers and Cosmetologists

Boards Have Limited Authority Over Schools

Chapters 479 and 481 of 1991 transferred most of the boards' authority to regulate schools and training programs to the Maryland Higher Education Commission (MHEC) and the Maryland State Department of Education (MSDE). MHEC regulates private barbering and cosmetology schools, and MSDE regulates public school programs that are offered through school districts' career and technology education (CTE) programs. The boards did retain authority over sanitary conditions in public and private career schools and continue to conduct inspections of those facilities. Statute also reserves an advisory role for the boards with respect to the approval of school curricula, with final authority for approving curricula resting with MHEC or MSDE as appropriate.

The 1991 legislation also eliminated separate licensing requirements for barbering and cosmetology instructors. Instead, qualifications for private career school instructors in barbering and cosmetology schools are now aligned with MHEC's requirements for other trade schools. Instructors must have at least two years of practical experience in order to provide instruction in a private career school. However, MSDE guidelines allow only master barbers or senior cosmetologists to provide instruction in public school programs.

Recommendation 7: Regulations should be amended by MHEC to require that instructors at private career schools be either master barbers or senior cosmetologists, which is already the case in public school programs.

Private Career Schools Can Be Expensive and Transient

Exhibit 3.1 provides a profile of the private career schools that offered programs in barbering, cosmetology, nail technology, and esthetics in 2008; some institutions offered programs in more than one field.

MHEC reports that it receives an average of one or two new school applications each year. To be approved, schools must pay to MHEC a nonrefundable application fee of \$300 and submit:

- a detailed description of the school's proposed program;
- a financial statement;
- a projection of anticipated revenues;
- a complete list of instructors and their qualifications;
- a plan for maintaining a drug- and alcohol-free workplace; and
- a performance bond or irrevocable letter of credit.

MHEC conducts a site visit of every school that applies for approval and submits the applicant's proposed curriculum to a private consultant for review to ensure that it complies with State and industry standards. Since 1995, 18 private barbering and beauty schools have been approved by MHEC, and 17 schools have closed. However, 26 of the 34 barbering and cosmetology schools operating in 2008 were approved more than 10 years ago.

Exhibit 3.1
Private Career Schools Approved by MHEC as of 2008

	<u># Programs</u>	<u>Tuition Range</u>	<u>Completion Rate</u>	<u>Employment Rate</u>	<u>2008 Enrollment</u>
Barbers	7	\$4,830-16,300	57%	51%	474
Cosmetologists	27	\$5,050-18,945	52	57	3,515
Nail Technicians	15	\$1,850-3,576	86	51	85
Estheticians	7	\$7,400-12,316	88	47	370

Source: Maryland Higher Education Commission

With tuition rates for barbering and cosmetology training starting at about \$5,000 and ranging as high as almost \$19,000, tuition at private career schools can be a barrier to entry into the professions for many individuals. Of the total programs listed, 20 cosmetology schools and 1 barbering school qualify to receive federal financial aid. Students who attend other schools must pay their own way, although the State does offer limited opportunities for financial assistance.

The concentration of barbering and cosmetology schools in central Maryland is also an obstacle for individuals outside of the Baltimore and Washington areas. **Exhibit 3.2** shows the geographic distribution of private career schools in barbering and cosmetology. Aspiring barbers and estheticians outside of the Baltimore-Washington metropolitan region have no schooling options, and prospective cosmetologists and nail technicians have only limited options outside of that area.

Exhibit 3.2
Geographic Distribution of Private Career Schools

	<u>Suburban Washington</u>	<u>Baltimore Region</u>	<u>Southern Maryland</u>	<u>Eastern Shore</u>	<u>Western Maryland</u>
Barbers	4	3	0	0	0
Cosmetologists	10	10	2	1	4
Nail Technicians	3	7	1	1	3
Estheticians	2	5	0	0	0

Source: Maryland Higher Education Commission

Public School Programs Run Smoothly

MSDE reports that, during the 2007-08 school year, 1,273 students participated in cosmetology CTE programs in 17 school districts and 66 students participated in barbering CTE programs in 2 school districts. Of the 392 seniors in cosmetology programs, 384 completed the programs (98%) and were eligible to take the licensing examination. Of the 25 seniors in barbering programs, 24 completed the programs (96%). MSDE does not track the pass rates on the licensing examinations for graduates of CTE programs.

CTE programs in cosmetology are more evenly distributed throughout the State than private career schools, with 17 school systems offering training programs. This includes four school systems on the Eastern Shore and three in Western Maryland. However, only two schools systems (Baltimore City and Prince George's County) offer CTE programs in barbering.

MHEC Oversight of Private Career Schools Includes Complaint Resolution, but Complaints Are Few

Beyond the initial application process, which includes an on-site inspection, MHEC does not have a system of regular inspections of schools, although sanitation inspections are conducted by the boards. Schools submit annual reports with their financial, attendance, completion, and subsequent employment records, which are then made available to the public. They also provide MHEC with updated personnel records any time there is a change of instructors. Schools that enroll veterans (43%) or qualify for federal financial aid undergo more rigorous oversight by MHEC or the federal government.

Student complaint volume for the private career schools is low. Over the past three years, MHEC has averaged 22 student complaints each year. Most of the complaints involve schools' failure to provide refunds to students who do not complete the program, or their failure to adequately track students' instructional time. MHEC notifies schools of complaints lodged against them and requests a response to the charges. Based on the information received from both parties, MHEC staff resolves the complaint and notifies both parties. There is currently no backlog of unresolved complaints.

Boards' Role in Curriculum Approval Is Limited

According to board members and MHEC staff, the boards play little if any role in reviewing proposed curricula at private barbering and cosmetology schools, despite the statutory requirement that MHEC and MSDE approve school curricula with board advice. One board member could not recall reviewing a proposed curriculum in the last five years. Earlier evaluations confirmed that, in the past, the boards played an active and valued role in reviewing curricula. The 1995 interim evaluation, for instance, noted that, "...relations [between MHEC and the boards] are good. MHEC always consults with the appropriate regulatory authority in setting curriculum for schools it regulates. The boards have approved detailed curriculums submitted by MHEC...."

MHEC staff confirmed a preference to have State agencies with expertise in particular areas review proposed curricula. However, staff has concerns that the State Board of Cosmetologists in particular may have a conflict of interest because, by statute, one member of the board represents an existing private career school. As a result, MHEC relies on an independent advisor to review proposed curricula in cosmetology prior to giving its approval. MHEC staff also noted that neither board has established detailed curriculum guidelines for schools. Currently, board regulations only list the topics to be covered by licensing exams, which serve as de facto standards. However, the list lacks sufficient detail, including the relative attention that should be given to each subject.

Recommendation 8: Statute should be amended to require the boards to establish and periodically update clear and detailed curriculum standards through regulation based on current standards of practice that MHEC and MSDE can use in reviewing proposed curricula.

Also, both MHEC and MSDE should ensure that the boards are given ample opportunity to review curricula being offered by new schools/programs applying for approval. The boards' advisory role can be a valuable tool in ensuring that school curricula keep pace with new developments in the hair and skin care industries. As long as neither board retains final authority for approving curricula, any potential or perceived conflict of interest by the State Board of Cosmetologists should be mitigated. To the extent that concerns about the State Board of Cosmetologists' objectivity persist, the school representative on the board may elect to recuse

himself/herself from the curriculum review while still being available to colleagues to answer questions.

Apprenticeship Program Lacks Accountability

Most licensees enter the industry by graduating from an accredited school of cosmetology or barbering. However, an alternative to licensure is available through the apprentice barber and cosmetologist programs. An individual without access or resources to afford barbering or cosmetology school may instead become a licensed apprentice under the guidance and sponsorship of a master barber or senior cosmetologist. This program allows the apprentice a practical learning environment and a source of income while providing services for the sponsor and the permitted shop.

Requirements

A person may be registered as a barber or cosmetology apprentice if the person (1) is at least 16 years old; (2) has secured a sponsorship of a permitted salon or shop; and (3) has been approved by the respective board. However, the more specific requirements of the apprentice license differ between the barber and cosmetologist boards.

Barber Apprentice

The initial term for the barber apprentice license is two years with the option of one two-year renewal with board approval. During the license period, the apprentice must complete at least 2,250 hours of practice under the direct supervision of a master barber as prescribed by statute. Periodic reports must be filed with the board detailing the apprentice's progress. A master barber may supervise only one apprentice, and no more than three apprentice barbers may work in one shop. The shop cannot charge a fee for an operation performed entirely by an apprentice.

Cosmetology Apprentice

Unlike the two-year term of the initial barber apprentice license, the initial term of the cosmetology apprentice expires on the first October 31 after its effective date. However, in order to qualify for full licensure, statute requires that the apprentice complete two years of study under a licensed senior cosmetologist. Additionally, the Code of Maryland Regulations includes a provision that the apprentice must train for at least 20 hours per week for not less than 24 months, but not more than 36 months. This equates to a requirement of at least 2,080 hours of training; which is less than the barber apprentice requirements. This is inconsistent with the requirements for those going through a school route to licensure, where prospective cosmetologists must complete more hours of study than future barbers.

The term of the initial license, combined with the training requirement, necessitates at least one license renewal. Statute allows for two such renewals (one-year term) with board approval. However, in practice, the board issues initial apprentice licenses for a full-year term instead of adhering to the statutory term, which expires on the first October 31 after the effective date. The regulations also include provisions for an esthetician apprenticeship and a nail technician apprenticeship with similar but less rigorous requirements than the cosmetology apprenticeship. Apprentices in the two limited-practice categories must be supervised by either a senior cosmetologist or a limited practice licensee with at least two years of experience. Like the barber apprentice, the sponsor must file periodic reports with the board detailing the apprentice's progress.

The required hours for training under the apprenticeship program should reflect the same difference in required hours for students who attend educational programs. Cosmetologists have more skills and knowledge to master than do barbers, and that is appropriately reflected in the number of required hours for schooling (1,500 vs. 1,200). However, the apprenticeship program requires more hours of training from prospective barbers than from cosmetologists (2,250 vs. 2,080).

Recommendation 9: Regulations should be amended to increase the hours of training for cosmetology apprentices under the program to at least 2,800 hours.

Recommendation 10: Statute should be amended to increase the initial term of the cosmetology apprentice license to two years, consistent with the hourly requirements of the program. The one-year period for limited practice apprenticeship licenses should be retained, with one renewal.

Oversight of Apprentice Progress Is Problematic

The success of individual apprentices is heavily influenced by the guidance and responsibility of the master barbers and senior cosmetologists participating in the program. It is incumbent on the master barber or senior cosmetologist to prepare the apprentice for the licensing examination by instructing the apprentice on the theory and practice of barbering and cosmetology, and also to report periodically on the progress of the apprentice.

The regulations specifically require the master barber or senior cosmetologist to (1) ensure that the apprentice receives the required theory and practical training; (2) ensure that the apprentice receives at least 20 (cosmetology) or 30 (barber) hours of training each week; (3) file a monthly report with the board stating the progress of the apprentice; and (4) advise the board, in writing, when an apprenticeship is discontinued. After having completed the required hours of apprenticeship, the apprentice may take the exam for full licensure.

Progress reports filed in a timely manner by the master barber or senior cosmetologist are required for the apprentice to take the examination for full licensure. If a monthly report is not received by the board within 90 days of the training period being reported, the board may decide

to not give credit for the purported training. However, the boards provide no notice to the apprentice that such a report has not been received from the sponsor. There is no internal tracking of progress reports by the board until such time that the apprentice applies to take the full licensure examination. Staff members can provide this information to the board on a case-by-case basis but do not have the resources to monitor the progress of all apprentices. Instead, the onus to file timely reports is solely on the sponsors, not staff or the apprentices. There are no penalties for noncompliance by the sponsor, nor are there benefits for complying.

There are numerous requests for both renewal and restarts of apprenticeship licenses due to failure to meet the training commitments during the initial license term. Often, the licensees and their sponsors claim to not have been aware of the requirements. For example, at the July 13, 2009 State Board of Barbers meeting, there were three requests for apprenticeship restarts. Each applicant was applying for a third apprenticeship license. The overriding reason, among many, that the candidates had not completed previous apprenticeships was their failure to understand the requirements and lack of communication with sponsors. No sponsors attended the meeting. In fact, there is no accountability for the sponsors at any part of the process. All three applications were denied by the board.

At the September 2009 meeting of the State Board of Cosmetologists, the board heard an appeal from an apprentice who had been denied any credit for her two-year apprenticeship because her sponsor had waited until the end of the apprenticeship to submit her hours instead of submitting them monthly. The board denied her request for credit and advised her to wait six months and restart her apprenticeship. Again, the sponsor was not present for the meeting.

Examinations

As mentioned earlier, applicants for a license or limited license must pass an examination, which consists of a theory and practical portion. The examinations are conducted by a third-party vendor and all examination fees are paid directly to that vendor. The boards appear satisfied with the current vendor, but they have expressed an interest, when time permits, to collaborate with the vendor on some examination questions.

The preliminary evaluation of the boards conducted by the Department of Legislative Services (DLS) in 2008 reported some concerns regarding low pass rates, particularly on the theory portion of the examination. **Exhibit 3.3** shows the pass rates for each license from fiscal 2004 through 2009. There are minimal signs of improvements in pass rates; in fact, many pass rates fell in fiscal 2009. However, pass rates improved for senior cosmetologists, reaching a six-year high. The pass rates for the esthetician license are consistently the highest. Conversely, it appears that the pass rates for the barber license have consistently been the lowest.

Exhibit 3.3
Pass Rate for Cosmetology and Barber Licensing Examinations
Calendar 2004-2009

<u>Type</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Cosmetologist						
Practical	92%	93%	92%	90%	88%	84%
Theory	43%	47%	48%	47%	48%	46%
Senior Cosmetologist						
Theory	52%	56%	51%	57%	51%	59%
Esthetician						
Practical	100%	97%	99%	99%	98%	99%
Theory	69%	68%	68%	72%	70%	68%
Nail Technician						
Practical	96%	94%	95%	92%	91%	83%
Theory	49%	47%	51%	61%	58%	49%
Barber						
Practical	90%	86%	81%	85%	87%	86%
Theory	41%	42%	48%	47%	46%	47%
Master Barber						
Theory	45%	55%	46%	48%	57%	64%

Source: Thomas Prometric (exam vendor)

Upon further analysis, it appears that the low pass rate is primarily driven by the low scores of participants in the apprenticeship program. For example, in 2009, the practical and theory pass rates for barbers who went through the apprenticeship program were 72% and 32% respectively. This compares to 86% and 47% for all applicants. Similarly, the 2009 pass rate for cosmetologists who went through the apprentice program was 52% for the practical portion and 30% for the theory portion – significantly lower than the pass rates for all applicants for the cosmetologist license at 84% and 46%.

The apprenticeship program is certainly less structured than the school environment, which can be detrimental to the instruction of theory. Emphasis on textbooks and other written resources is limited in the shop environment.

An increasing number of licensees have English as their second language (ESOL), which has been cited as one of the causes of lower pass rates on the theory portion of the examination for both apprentices and for students. Various attempts have been made in the past to make accommodations for ESOL applicants. However, accommodations need to be balanced with maintaining the integrity of the examination. As such, the State Board of Cosmetologists disallowed the use of personal translators for applicants. All applicants are allowed translation dictionaries if the books are first mailed into the examination vendor for inspection prior to the examination. The State Board of Barbers still allows the use of translators.

There are very few barriers to entry to the apprenticeship program. The fee for the license is only \$10, and the apprentice is paid by the salon or shop for their services. The low barrier to entry may encourage those who are not as serious about a future career in barbering or cosmetology to become apprentices. This may contribute to a low pass rate. An increase in the fee should be considered.

Recommendation 11: The boards should review their policies regarding examinations and applicants who have English as their second language as the significant number of such applicants, and the issues related to understanding the examination, may be contributing to lower pass rates. The State Board of Cosmetologists has disallowed the use of translators while the State Board of Barbers still allows this accommodation; however, neither board allows extra time for ESOL applicants. The boards should review the fairness of their policies while maintaining the integrity of the examinations and implement any changes that mitigate language barriers to the examinations.

Orientation Program Has Been Attempted

Given the number of restarts and the low examination pass rates of apprentices, the boards recognize the limitations of the program. However, there remains a need for an alternative to the school option, which can sometimes be cost prohibitive to prospective barbers or cosmetologists. To combat an apparent misunderstanding of legal requirements, the boards recently held optional orientation programs for apprentices and their sponsors. The goal of the orientation was to explain what is expected of each participant and provide information about the necessary resource materials. Each board held one orientation in the past year with mixed results. After reaching out to over 100 new apprentice applicants, no barber apprentice candidates expressed interest and only a limited number of cosmetology apprentice candidates participated.

A mandatory orientation is under consideration by the boards. This would ensure that each apprentice and sponsor is fully informed of the statutory and regulatory requirements as well as what is necessary to pass the examinations. With the cooperation of other divisions

within the Department of Labor, Licensing, and Regulation, it may be possible for some of the orientations to be handled regionally. To accommodate licensees, orientations could be held at the boards' offices in Baltimore or at the department's other regional offices across the State. It is anticipated that this information would lower the number of restart applications and would increase the examination pass rates. Additionally, before granting multiple restarts, the boards would be aware that licensees participated in the orientation and cannot claim ignorance of their responsibilities.

Recommendation 12: The State Board of Barbers and the State Board of Cosmetologists should develop a plan to improve the apprenticeship program. The plan should aim to improve the oversight of apprentices and their sponsors, increase the pass rates on the licensing examination, and reduce the number of apprentices applying to renew or restart licensure. In developing the plan, the boards should consider (1) implementing a mandatory orientation program for sponsors and apprentices as a condition for licensure; (2) instituting accountability measures for sponsors who do not submit apprentice hours in a timely manner and limiting future apprentices for those sponsors whose apprentices do not pass the relevant licensure examination; (3) increasing the apprentice license fee to encourage the application of only those with serious intentions of fulfilling service requirements and passing the examination; (4) instituting a system for tracking submission of apprentice hours, possibly including requiring inspectors to verify monthly reporting during routine inspections; and (5) developing any other strategies that would improve the program. The boards should have an approved plan in place and should provide that plan to the appropriate standing committees of the General Assembly no later than October 1, 2010. If the boards fail to implement a comprehensive plan, consideration should be given to eliminating the apprenticeship programs due to their lack of effectiveness.

Chapter 4. Finances, Staffing, and Fees

The State Board of Barbers and the State Board of Cosmetologists are funded by general fund appropriations. Revenues are generated by license, renewal, and inspection fees as well as inspection fines, which are credited to the general fund. Examination fees are paid to the vendor; the boards do not receive any revenue from exams.

Exhibits 4.1 and **4.2** show the fiscal history of the boards of barbers and cosmetologists from fiscal 2004 to 2009. Direct expenditures represent those funds required for the boards' daily activities such as issuing licenses, responding to inquiries, and conducting inspections. Revenue includes monies from fines and fees.

Exhibit 4.1 Fiscal History of the State Board of Cosmetologists Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Direct Expenditures	\$513,274	\$726,149	\$462,951	\$399,459	\$405,246	\$493,263**
Indirect Expenditures	170,363*	360,463	272,165	296,659	287,537	263,620
Total Expenditures	684,087	1,086,612	735,116	696,118	692,783	756,883
Revenues	895,460	881,702	935,997	910,388	883,946	1,039,052
Excess Revenue/(Gap)	\$213,373	(\$204,910)	\$200,881	\$214,270	\$191,163	\$282,169

*Reflects cost allocation of services provided to the board by the Division of Occupational and Professional Licensing.

**Includes direct legal expenditures beginning in fiscal 2009. Revenues include fines and licensing fees.

Note: Indirect expenditures were not calculated prior to fiscal 2005. Indirect expenditures in fiscal 2004 only reflect cost allocation of services provided to the board by the Division of Occupational and Professional Licensing. Indirect expenditures from fiscal 2005 to 2008 reflect both cost allocation and other indirect costs.

Source: Department of Labor, Licensing, and Regulation

Direct expenditures increased in fiscal 2009 because the department began to account for the related services of the Division of Occupational and Professional Licensing's legal unit within the direct expenditures of the boards. Indirect expenditures consist of administrative costs at the divisional level including the central licensing unit, a central telephone unit, and much of

the information technology costs. Also included are departmental-level expenditures attributable to the board such as personnel services, budget services, and general services. As shown, it is clear that, even accounting for indirect costs, the boards' revenues consistently exceed expenditures. This excess revenue benefits the State's general fund.

Exhibit 4.2
Fiscal History of the State Board of Barbers
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Direct Expenditures	\$62,283	\$77,846	\$60,428	\$87,866	\$64,126	\$68,612**
Indirect Expenditures	39,325*	62,777	36,480	49,894	42,537	37,250
Total Expenditures	101,608	140,263	96,908	137,760	106,663	105,862
Revenues	187,777	223,923	192,143	218,450	203,210	221,858
Excess Revenue/(Gap)	\$86,169	\$83,660	\$95,325	\$80,690	\$96,547	\$115,996

*Reflects cost allocation of services provided to the board by the Division of Occupational and Professional Licensing.

**Includes direct legal expenditures beginning in fiscal 2009. Revenues include fines and licensing fees.

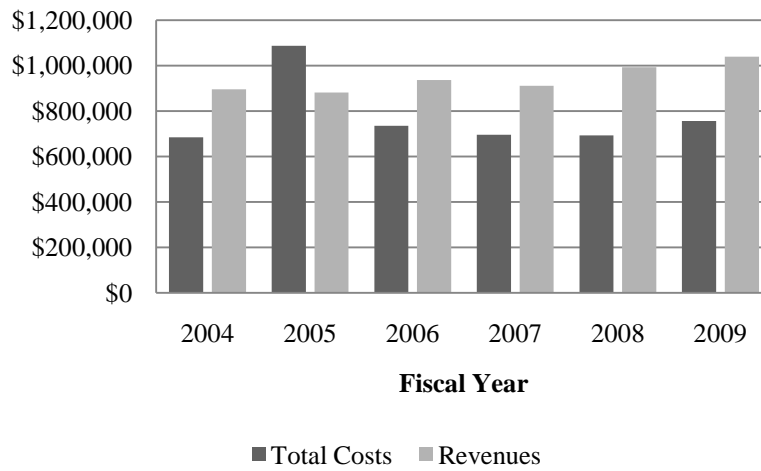
Note: Indirect costs were not calculated prior to fiscal 2005. Indirect expenditures from fiscal 2005 to 2008 reflect both cost allocation and other indirect costs. Revenues include fines and licensing fees.

Source: Department of Labor, Licensing, and Regulation

With some exceptions, revenues generally have grown, due largely to the increase in the cosmetology industry and to a smaller extent due to a recent focus by the board on inspections and fine issuance. In fiscal 2008, the boards collected just over \$2,000 in fines. In fiscal 2009, collections rose to just under \$18,000. The citation program was expected to significantly increase fine revenue.

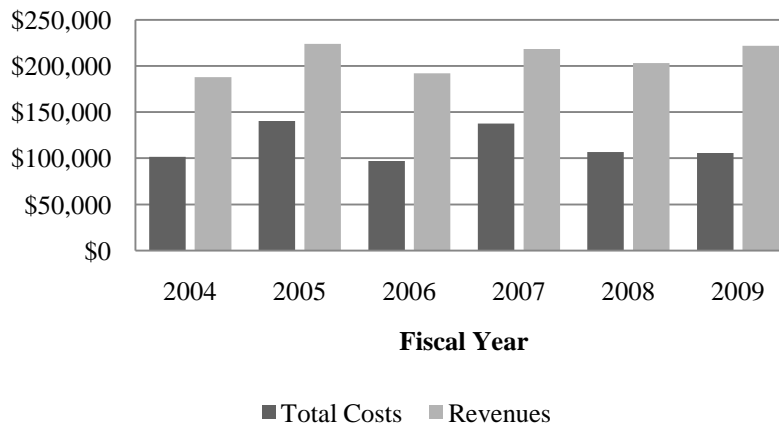
Exhibits 4.3 and **4.4** graphically show the extent to which revenues exceed expenditures each year. In recent years, the revenue of the barber board doubled its expenditures. Under the cosmetology board, revenues generally exceeded expenditures by between 30 to 40%. The exception is fiscal 2005, when the revenue gap was almost \$205,000 because the department implemented electronic licensing and had higher information technology costs than usual. In large part, the magnitude of excess revenues has been related to the lower staffing levels in recent years.

Exhibit 4.3
State Board of Cosmetologists
Revenues and Expenditures
Fiscal 2004-2009



Source: Department of Labor, Licensing, and Regulation

Exhibit 4.4
State Board of Barbers
Revenues and Expenditures
Fiscal 2004-2009



Source: Department of Labor, Licensing, and Regulation

Licensing Fees Are Relatively Low

Revenues are consistently in excess of expenditures despite relatively low fees. Current fees charged by the boards are shown in **Exhibit 4.5**. In 1991 the State Board of Barbers was authorized to set fees by regulation, but it has not made any changes since 1992. The initial and renewal license fees for the State Board of Cosmetologists are set in statute and have not changed since 1997; however, the board raised the examination fees in 2003, following the selection of a new examination vendor. Similarly, a new vendor contract has recently been put in place and a \$5 increase in examination fees is pending for both boards. Examination fees are set in regulations and are collected directly by the examination vendor.

Exhibit 4.5
Licensing and Examination Fees
State Board of Cosmetologists and
State Board of Barbers

<u>License Type</u>	<u>Original Fee</u>	<u>Renewal Fee</u>	<u>Reinstatement Fee</u>	<u>Examination Fee*</u>
Cosmetologist	\$25	\$25	\$25	\$75
Senior Cosmetologist	25	25	25	45
Esthetician	25	25	25	75
Nail Technician	25	25	25	75
Owner – Full-service Salon	50**	50	N/A	N/A
Owner – Limited-practice Salon	50**	50	N/A	N/A
Cosmetology Apprentice***	10	10	N/A	N/A
Barber	50	50	50	75
Master Barber	50	50	50	45
Barbershop Owner	50**	50	N/A	N/A
Barber Apprentice	10	10	N/A	N/A

*A \$5 increase in examination fees is pending.

**Owners must also pay a \$150 pre-opening inspection fee.

***Cosmetologist, Esthetician, and Nail Technician

Notes: The board also charges a \$25 fee to certify the licensing, registration, or permit status and qualifications of licensees. Examination fees are paid directly by the applicant to the testing vendor. An examination fee is required to retake a portion of an examination.

Source: Laws of Maryland; Code of Maryland Regulations 09.22.01.13 and 09.16.01.08

These fees are among the lowest of those occupations and professions regulated by the department. The fees for barber licenses are, however, comparable to the licensing fees in other states, while cosmetologist license fees are among the lowest. Based on the available data, the fees in other states range from a \$10 apprentice license to a \$200 shop license.

There is no functional rationale for the discrepancy in the fee amount between barbers and cosmetologists. Board staff provides the same level of service and regulation. The only difference is a statutory one. Legislation must be introduced to change the fee for cosmetology licensure, while only a regulatory amendment is required for a change in barber licensure fees. Allowing both boards the regulatory authority to set fees will allow a greater degree of flexibility in responding to changes in the industry, enforcement needs, and budgetary needs.

Recommendation 13: Statute should be amended to give the State Board of Cosmetologists the same regulatory fee-setting authority as the State Board of Barbers. The board should exercise its new fee-setting authority to increase the licensing fee for cosmetologists (and other practitioners) to \$50, again to be consistent with fees paid by barbers. An increase in this fee is also consistent with the amount of additional responsibilities that are recommended in this review, such as increasing staff, expanding the hearing process, and implementing new programs and technology.

Staffing Is Insufficient for Workload

While technically the boards are considered to have their own budgets, in practice, staff and other resources are shared. In fiscal 2009, staff for both boards consisted of two administrators, three clerical positions (including one supervisor), and per-diem inspectors. However, during fiscal 2010 cost containment, one of the clerical positions, the vacant board secretary, was transferred to another division within the department. The size of the administrative staff has not increased since the 1998 evaluation. The previous preliminary evaluation indicated a significant reduction in board staff from the last full sunset evaluation in 1989; that reduction corresponded with a lower workload due to the narrowing of the board's regulatory authority over schools and the implementation of third-party testing. Also, the recent introduction of online license renewals has reduced some of the boards' paperwork.

Nevertheless, given the increase in the number of licensees and the backlog in processing complaints and violations, current staffing levels are insufficient. Complaints have increased over 300% from fiscal 2004 to 2009. Also, as was mentioned in **Chapter 2**, staff has not been able to keep pace with the increase in the number of inspections over the past few years. The existing staff can only prioritize inspection duties. There is no staff member who can track the routine inspection schedules nor is there a staff member to keep pace with processing complaints.

Staffing is also insufficient if the boards expect to be able to implement the citation program. The program, while expected to improve enforcement and generate fine revenue, will also necessitate additional work by the staff. The transfer of the board secretary position will only serve to exacerbate the issue. Staff also is low when compared to the other boards and commissions under the division's purview. **Exhibit 4.6** shows each of the Division of Occupational and Professional Licensing boards' full-time and contractual staff and the number of licensees in fiscal 2009.

Exhibit 4.6
Division of Occupational and Professional Licensing
Staff and Licensees

	<u>Full-time Staff</u>	<u>Contractual Staff</u>	<u>Licensees</u>
Examining Engineers	1	1	6,419
Real Estate Appraisers	2	1	5,220
Master Electricians	1	0	4,943
Plumbing	1	0	13,729
Precious Metals and Gems	0	0	404
Architects	1	0	6,087
Land Surveyors	0	0	1,003
Professional Engineers	1	1	19,470
Accountancy	2	3	19,745
Foresters	0	0	192
Maryland Pilots	0	0	65
Landscape Architects	0	0	982
Home Improvement	17	1	19,690
Real Estate	15	3	49,455
State Athletic Commission	1	0	600
HVACR	2	0	17,245
Interior Designers	0	0	317
Cemetery Oversight	4	0	1,346
Barbers	0	0	6,272
Cosmetologists	4	0	46,261

Note: Not included are two boards which are new to the department and not yet implemented in fiscal 2009. Inspectors for barbers and cosmetologists are not considered full-time or contractual staff; staff for both boards is allocated to the State Board of Cosmetologists. Some other boards do include inspectors as full-time staff.

Source: Department of Labor, Licensing, and Regulation

The boards of barbers and cosmetologists have combined licensees greater than any other board. The Real Estate Commission has similar levels of licensees but claims 15 full-time staff and 3 contractual staff. Conversely, the Board of Public Accountancy has comparable staff levels to barbers/cosmetologists; however, it has less than half the number of licensees. It is difficult to make direct comparisons to other boards because of the nature of the particular regulation involved. For example, some boards require continuing education of their licensees whereas the barber and cosmetology boards do not. Other boards include inspection staff within full-time staff; again the barber and cosmetology boards do not. However, it is worth noting that, based on this workload indicator, the level of staff for the regulation of barbers and cosmetologists compares unfavorably to other boards within the Department of Labor, Licensing, and Regulation.

Given the need for a board secretary and the gaps in inspection and complaint processing, at least three additional full-time staff members are needed – at an estimated cost of about \$135,000.

Boards Are Candidates for Special Funding

Units of government are considered special funded when a dedicated revenue source is generated for the purpose of operating that unit. Regarding occupational and professional licensure, special funding ensures that the fees contributed by the industry's licensees are dedicated to regulating that industry. Industry members are often advocates of special funding because it is assured that fees paid will go directly to the enforcement and elimination of bad or unfair practices in the field. Of the department's 22 professional and occupational boards, 10 are special funded. The special funded boards represented 45% of licensees in fiscal 2009.

Because general funds are limited and because the barber and cosmetology boards are straining to keep pace with the enforcement and licensing demands, they are good candidates for special funding. Many general funded boards operate at a loss, especially when including indirect costs. However, as shown above, the barber and cosmetology boards consistently earn excess revenues.

The special funding of the barber and cosmetology boards should be used as a means to increase staff to a level that will allow the boards to eliminate backlogs, maintain enforcement standards, provide timely licensure, and advance the citation program. Special funding the boards, without an increase in personnel and related expenditures, will only serve to create a fund balance that would have otherwise gone to the general fund. If, for example, the boards began special funding in fiscal 2004, a combined fund balance of over \$1.5 million would have accrued by the end of fiscal 2009.

It is true that special funding the boards would result in a loss to the general fund. However, all fine revenue would continue to accrue to the general fund. There have been modest increases in fine revenue due to the use of consent orders. Additionally, it is expected that with a

fully functioning citation program, fine revenue will continue to grow and accrue to the general fund. Budgetary impact could also be mitigated by allowing interest earnings and fund balances in excess of 25% of expenditures to be credited to the general fund each year.

As mentioned above, the department is increasingly relying on special funds, rather than general funds, to support its professional and occupational licensing. For example, some of the issues facing the barber and cosmetology boards are similar to those that faced the department's design boards (boards of Interior Design, Architects, Land Surveyors, Professional Engineers, and Landscape Architects). Chapter 227 of 2003 amended statute to special fund the design boards and allowed those five boards to equalize fees, expand staff and other resources, and improve the level of service to licensees.

Recommendation 14: Statute should be amended to establish a shared special fund for the State Board of Barbers and the State Board of Cosmetologists, funded with licensing fees, to operate the activities of the boards. All licensing fees should be deposited into the newly created fund. However, fine revenue, interest earnings, and balances in excess of 25% of spending should accrue to the general fund.

Recommendation 15: The boards should increase the number of staff members to reflect the number of licensees and current workload levels. The additional staff is recommended to eliminate paperwork backlogs, implement the citation program, improve the apprenticeship program, track routine inspections, coordinate fraud investigations, staff board meetings, and respond to all licensees in a timely manner. Given the recommended special funded status of the boards and a recommended increase in cosmetology licensing fees, the boards should have sufficient funds for at least three additional staff members and a full complement of inspectors. Consideration should be given to adding two inspectors to full-time staff in order to provide supervision and training for the remaining per-diem inspectors. The Department of Budget and Management should grant waivers of the hiring freeze to accommodate the new positions.

Chapter 5. Conclusion – Boards’ Regulatory Function Continues to Be Important, but Their Lack of Resources Hampers Efforts

The Department of Legislative Services (DLS) finds that continued regulation of the barbering and cosmetology industries is important to the public’s welfare and safety. However, the boards would better perform this necessary role with additional resources. In fact, the current resources are so strained that the boards’ efforts at regulation and enforcement were described as “almost futile” by a departmental staff member familiar with the boards’ responsibilities.

In conducting this evaluation, DLS found board members and staff to be proactive and responsive. Licensing, complaint, inspection, and disciplinary functions are attended to as well as can be expected given the limited resources. Additionally, DLS found that the apprenticeship program serves an important purpose in providing an alternative to licensure for those unable to attend barbering or cosmetology schools. However, the lack of sufficient resources is endangering the success of the boards’ functions. Significant backlogs in inspection and complaint processing are accruing and administrative bottlenecks hamper disciplinary actions. Further, the apprenticeship program is inadequately monitored.

The boards’ licensees consistently provide enough annual revenue in fees and fines to fund a staff sufficient to clear backlogs, track inspections, and maintain a fully operational citation program. The recommendations contained in this report seek to allow the boards to access this funding to bolster enforcement efforts and streamline and improve administrative functions.

Overall, DLS finds that the boards have a good regulatory foundation and, with the recommended improvements, should continue to serve their roles in protecting the interests of the public and the licensees. Therefore, DLS recommends that the boards’ termination dates be extended for 10 years. In the interim, the boards should report on their implementation of the nonstatutory recommendations included in this report and continue to work with the General Assembly to improve oversight and regulation of the barbering and cosmetology industries.

Recommendation 16: Statute should be amended to extend the termination dates of the State Board of Barbers and the State Board of Cosmetologists by 10 years to July 1, 2021. In addition, the boards should report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee on or before October 1, 2011, regarding the status of the nonstatutory recommendations contained in this report.

The recommendation for a 10-year extension is predicated on adoption of recommendations 13 through 15, which would enable the boards to have sufficient staffing. If those recommendations are not adopted, DLS instead recommends a five-year extension, with the boards going directly to full evaluation.

Appendix 1. Board Membership and Staff

State Board of Barbers

John Oscar Gatton, Sr., President
Morgan Jay Crossney, Secretary
Derick L. Ausby, Sr.
Lawrence Avara
Guy Eugene Flynn, Esquire
Marvin T. Lee
Vacant (Public Member)

State Board of Cosmetologists

Marie S. Wallace, Chair
Sharon E. Bunch
Clairee Britt-Cockrum
Phillip S. Mazza
Carmel D. Owens
Maxine Sisserman
Ellen M. Trujillo

Shared Board Staff

Robert Wood, Executive Director
Brian Logan, Assistant Executive Director
Karen Riley, Supervisor of Inspectors
Roxanne Johnson, Apprenticeship Program Coordinator

Appendix 2. Major Legislative Changes Since 1998 Evaluation

Affecting the State Board of Barbers

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
1999	328	Extends the termination date of the board by 10 years to July 1, 2011.
2001	187	Authorizes the board to impose civil penalties against nonlicensees for practicing without a license.
2005	392	Authorizes board inspectors to issue citations to, and impose civil penalties on, licensees and permit holders for violations of laws and regulations.
2006	306	Authorizes the board to reinstate an expired barbershop permit, subject to a fee and satisfaction of renewal requirements.
2009	467	Repeals the requirement that the executive director of the State Board of Cosmetologists be either a licensed senior cosmetologist or master barber.

Affecting the State Board of Cosmetologists

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
1999	388	Prohibits the use of methyl methacrylate liquid monomer as a nail acrylic in beauty salons.
	405	Extends the termination date of the board by 10 years to July 1, 2011.
	441	Expands the settings for the practice of cosmetology to include hospitals, nursing facilities, and hospices.
	455	Increases the hours of instruction required to obtain a nail technician and esthetician license.
	487	Allows the board to ban the use of lasers in beauty salons.
2001	187	Authorizes the board to impose civil penalties against nonlicensees for practicing without a license.
	264	Creates a temporary license for a person to practice cosmetology under supervision of a senior cosmetologist for two years only.
2003	125	Alters the examination requirements for a cosmetology license.

2005	392	Authorizes board inspectors to issue citations to, and impose civil penalties on, licensees and permit holders for violations of laws and regulations.
2006	306	Authorizes the board to reinstate an expired salon permit, subject to a fee and satisfaction of renewal requirements.
2007	470	Allows licensed estheticians and nail technicians to provide services in specified medical facilities.
2008	18	Eliminates the regulation and licensing of makeup artist services.
2009	467	Repeals the requirement that the executive director of the State Board of Cosmetologists be either a licensed senior cosmetologist or master barber.

Source: Laws of Maryland

Appendix 3. Draft Legislation

Bill No.: _____
Requested: _____
Committee: _____

Drafted by: Goodman
Typed by: Alan
Stored – 11/02/09
Proofread by _____
Checked by _____

By: **Leave Blank**

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Barbers and State Board of Cosmetologists – Sunset Extension**
3 **and Revisions**

4 FOR the purpose of continuing the State Board of Barbers and the State Board of
5 Cosmetologists (boards) in accordance with the provisions of the Maryland
6 Program Evaluation Act (sunset law) by extending to a certain date the
7 termination provisions relating to the statutory and regulatory authority of the
8 boards; altering the membership composition of the boards; requiring the boards
9 to adopt certain regulations regarding certain curriculum standards; altering
10 the requirements for the renewal of certain licenses issued by the boards;
11 repealing a requirement that certain complaints be signed by a complainant;
12 requiring certain complaints to contain certain information; altering the
13 procedures for the inspection of certain barbershops, beauty salons, and
14 cosmetology schools; providing that an individual may renew a certain
15 apprentice registration one time; repealing the requirement that certain
16 apprentice barbers take a certain examination at a certain time and authorizing
17 the renewal of a certain apprentice registration based on the failure of a certain
18 examination; requiring the State Board of Cosmetologists to reimburse certain
19 inspectors for certain expenses under the Standard State Travel Regulations;
20 authorizing the State Board of Cosmetologists to set certain licensing fees;
21 requiring the boards to pay certain fees to the State Comptroller; requiring the
22 Comptroller to distribute certain fees into a certain fund; requiring the boards

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 to pay certain fines into the General Fund of the State; establishing a State
2 Barbers and Cosmetologists Boards' Fund as a special, nonlapsing fund in the
3 Department of Labor, Licensing, and Regulation; requiring the Fund be used for
4 certain purposes; providing for the administration of, auditing of, and
5 distribution of money from the Fund; requiring the boards to submit certain
6 reports to certain committees of the General Assembly on or before certain
7 dates; defining certain terms; making certain stylistic and technical changes;
8 providing for a delayed effective date for certain provisions of this Act; and
9 generally relating to the authority of the State Board of Barbers and the State
10 Board of Cosmetologists.

11 BY repealing and reenacting, with amendments,
12 Article – Business Occupations and Professions
13 Section 4–202(a), 4–206, 4–207, 4–310, 4–314(d), 4–405, 4–511(a) and (e),
14 4–512, 4–702, 5–202(a), 5–205, 5–208, 5–311, 5–314(c), 5–405, 5–509(d),
15 5–520, and 5–702
16 Annotated Code of Maryland
17 (2004 Replacement Volume and 2009 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Business Occupations and Professions
20 Section 4–314(c) and 5–509(a)
21 Annotated Code of Maryland
22 (2004 Replacement Volume and 2009 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article – State Government
25 Section 8–403(a)
26 Annotated Code of Maryland
27 (2009 Replacement Volume)

28 BY repealing and reenacting, with amendments,
29 Article – State Government
30 Section 8–403(b)(9) and (14)
31 Annotated Code of Maryland
32 (2009 Replacement Volume)

33 BY adding to

1 Article – Business Regulation
2 Section 2–106.7 and 2–106.8
3 Annotated Code of Maryland
4 (2004 Replacement Volume and 2009 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Business Occupations and Professions**

8 4–202.

- 9 (a) (1) The Board consists of 7 members.
- 10 (2) Of the 7 members of the Board:
- 11 (i) [5] 6 shall be master barbers; and
- 12 (ii) [2] 1 shall be A consumer [members] MEMBER.
- 13 (3) The Governor shall appoint the members with the advice of the
14 Secretary.

15 4–206.

16 (a) (1) In addition to any powers set forth elsewhere, the Board may adopt
17 any regulation to carry out this title.

18 (2) (i) The Board shall establish reasonable fees for examinations,
19 licensing, licensing renewal, reinstatement, certification, applications, preopening
20 inspections, per diem fees for Board members, compensation for inspectors appointed
21 by the Board, and any other service performed by the Board necessary to carry out the
22 provisions of this title.

23 (ii) Except for examination fees which the Board shall establish
24 in amounts not to exceed the costs of the required examinations, the fees established
25 by the Board shall be set in a manner that will produce funds sufficient to cover the

1 actual direct and indirect costs of regulating the barber industry in this State in
2 accordance with the provisions of this title.

3 (iii) The total cost of regulating the barber industry in this State
4 in accordance with the provisions of this title may not be more than the revenues
5 generated by the fees established under subparagraph (i) of this paragraph.

6 (B) (1) THE BOARD SHALL ADOPT REGULATIONS THAT ESTABLISH
7 DETAILED CURRICULUM STANDARDS FOR USE BY THE STATE BOARD OF
8 EDUCATION OR THE MARYLAND HIGHER EDUCATION COMMISSION IN
9 APPROVING APPLICATIONS FOR INSTRUCTION IN THE PRACTICE OF BARBERING
10 AT PUBLIC SCHOOLS OR PRIVATE CAREER SCHOOLS.

11 (2) THE CURRICULUM STANDARDS ESTABLISHED UNDER
12 PARAGRAPH (1) OF THIS SUBSECTION SHALL:

13 (I) INCORPORATE MODERN METHODS AND PRACTICES OF
14 BARBERING;

15 (II) INCLUDE A REFERENCE TO EACH TOPIC AND THE
16 EMPHASIS OF EACH TOPIC REQUIRED OF A COMPREHENSIVE BARBERING
17 CURRICULUM; AND

18 (III) BE REVIEWED AND UPDATED PERIODICALLY AS
19 DETERMINED BY THE BOARD.

20 [(b)] (C) In addition to any duties set forth elsewhere, the Board shall
21 administer and enforce this title.

22 4-310.

23 (A) THE INITIAL TERM OF A LICENSE IS 2 YEARS.

24 [(a)] (B) [Unless a] A license EXPIRES ON THE DATE SET BY THE BOARD
25 UNLESS THE LICENSE is renewed for [a 2-year] AN ADDITIONAL term as provided in
26 this section[, the license expires on the first May 31 that comes:

27 (1) after the effective date of the license; and

1 (2) in an odd-numbered year].

2 **[(b)] (C)** At least 1 month before a license expires, the Board shall mail to
3 the licensee, at the last known address of the licensee:

4 (1) a renewal application form; and

5 (2) a notice that states:

6 (i) the date on which the current license expires;

7 (ii) the date by which the Board must receive the renewal
8 application for the renewal to be issued and mailed before the license expires; and

9 (iii) the amount of the renewal fee.

10 **[(c)] (D)** Before a license expires, the licensee periodically may renew it for
11 an additional 2-year term, if the licensee:

12 (1) otherwise is entitled to be licensed;

13 (2) pays to the Board a renewal fee established by the Board in
14 accordance with § 4-206 of this title; and

15 (3) submits to the Board a renewal application on the form that the
16 Board provides.

17 **[(d)] (E)** The Board shall renew the license of and issue a renewal certificate
18 to each licensee who meets the requirements of this section.

19 **[(e)** The Secretary may determine that master barber licenses issued under
20 this subtitle shall expire on a staggered basis.]

21 4-314.

22 (c) The Board shall commence proceedings under this section on a complaint
23 to the Board by a member of the Board or any person.

- 1 (d) (1) A complaint shall:
- 2 (i) be in writing;
- 3 (ii) [be signed by the complainant] **INCLUDE THE NAME AND**
4 **NECESSARY CONTACT INFORMATION OF THE INDIVIDUAL FILING THE**
5 **COMPLAINT, AS DETERMINED BY THE BOARD;**
- 6 (iii) state specifically the facts on which the complaint is based;
- 7 (iv) be submitted to the Executive Director of the Board; and
- 8 (v) be served on the person to whom it is directed:
- 9 1. personally; or
- 10 2. by certified mail, return receipt requested, bearing a
11 postmark from the United States Postal Service, to the person's last known address as
12 shown on the Board's records.
- 13 (2) If service is made by certified mail, the person who mails the
14 document shall file with the Board verified proof of mailing.
- 15 (3) If a complaint is made by any person other than a member of the
16 Board, the complaint shall be made under oath by the person who submits the
17 complaint.
- 18 4-405.
- 19 (a) (1) The initial term of registration as an apprentice barber is 2 years.
- 20 (2) [Before the initial term of registration as an apprentice barber
21 expires, the apprentice barber shall take the journey barber examination.
- 22 (3) If an apprentice barber fails the journey barber examination, the]
23 **AN** apprentice barber may renew the apprentice barber registration **[1] ONE** time
24 **[with the approval of the Board].**

1 (b) The [1 time] **ONE-TIME** renewal of an apprentice barber registration [is
2 effective until the first May 31 that comes:

3 (1) after the first renewal is issued; and

4 (2) in an odd-numbered year] **EXPIRES ON THE DATE SET BY THE**
5 **BOARD.**

6 (c) At least 1 month before registration as an apprentice barber expires, the
7 Board shall mail to the apprentice barber, at the last known address of the apprentice
8 barber:

9 (1) a renewal application form; and

10 (2) a notice that states:

11 (i) the date on which the current registration as an apprentice
12 barber expires;

13 (ii) the date by which the Board must receive the renewal
14 application for the renewal to be approved, issued, and mailed before the registration
15 expires; and

16 (iii) the amount of the renewal fee.

17 **(D) BEFORE THE REGISTRATION OF AN INDIVIDUAL EXPIRES, THE**
18 **INDIVIDUAL MAY RENEW IT FOR AN ADDITIONAL TERM IF THE INDIVIDUAL:**

19 **(1) OTHERWISE IS ENTITLED TO BE REGISTERED;**

20 **(2) PAYS TO THE BOARD A RENEWAL FEE ESTABLISHED BY THE**
21 **BOARD IN ACCORDANCE WITH § 4-206 OF THIS TITLE; AND**

22 **(3) SUBMITS TO THE BOARD A RENEWAL APPLICATION ON THE**
23 **FORM THAT THE BOARD PROVIDES.**

1 [(d)] (E) The Board shall renew the apprentice barber registration of and
2 issue a renewal certificate to each apprentice barber who meets the requirements of
3 this section.

4 [(e) The Board may determine that apprentice barber licenses issued under
5 this subtitle shall expire on a staggered basis.]

6 4-511.

7 (a) The Board may adopt regulations to ensure that each barber school
8 approved by the State [Department] **BOARD** of Education or the Maryland Higher
9 Education Commission is operated in a sanitary manner.

10 (e) (1) A complaint shall:

11 (i) be in writing;

12 (ii) [be signed by the complainant] **INCLUDE THE NAME AND**
13 **NECESSARY CONTACT INFORMATION OF THE INDIVIDUAL FILING THE**
14 **COMPLAINT, AS DETERMINED BY THE BOARD;**

15 (iii) state specifically the facts on which the complaint is based;

16 (iv) be submitted to the Executive Director of the Board; and

17 (v) be served on the person to whom it is directed:

18 1. personally; or

19 2. by certified mail, return receipt requested, bearing a
20 postmark from the United States Postal Service, to the person's last known address as
21 shown on the Board's records.

22 (2) If service is made by certified mail, the person who mails the
23 document shall file with the Board verified proof of mailing.

1 (3) If a complaint is made by any person other than a member of the
2 Board, the complaint shall be made under oath by the person who submits the
3 complaint.

4 4-512.

5 (a) (1) With the approval of the Secretary, the Board may appoint
6 inspectors to conduct inspections.

7 (2) An inspector serves at the pleasure of the Board.

8 (3) Subject to the State budget, each inspector is entitled to:

9 (i) reasonable compensation as determined by the Board for
10 each day on which the inspector is engaged in the duties of the inspector's
11 appointment; and

12 (ii) reimbursement for expenses under the Standard State
13 Travel Regulations.

14 (b) (1) **THE BOARD SHALL INSPECT BARBERSHOPS.**

15 [[1]] (2) The Board or an inspector shall inspect each barbershop
16 before [it] **THE BARBERSHOP:**

17 (i) initially opens for business;

18 (ii) opens for business at a new location; or

19 (iii) continues business under a new owner.

20 [[2]] (3) A barbershop that remodels and reopens with the same
21 owner is not subject to the inspection requirement of this subsection.

22 (c) (1) The Board or an inspector may enter and inspect a [barbershop or]
23 barber school **APPROVED BY THE STATE BOARD OF EDUCATION OR THE**
24 **MARYLAND HIGHER EDUCATION COMMISSION** at any time during business hours
25 to determine the sanitary condition of the [barbershop or] barber school.

1 (2) If, during an inspection of a [barbershop or] barber school, an
2 inspector finds an unsanitary condition, the inspector promptly shall report the
3 condition to the Board.

4 **(D) (1) A BARBERSHOP SHALL ALLOW AN INSPECTOR, ON
5 PRESENTATION OF CREDENTIALS, TO ENTER AND INSPECT THE FACILITY AT
6 ANY TIME DURING BUSINESS HOURS.**

7 **(2) DURING INSPECTION OF A BARBERSHOP, THE OWNER,
8 LESSEE, OR MANAGER OF THE BARBERSHOP SHALL ACCOMPANY THE
9 INSPECTOR.**

10 **(E) (1) AN INSPECTOR SHALL MAKE AN INSPECTION REPORT AFTER
11 AN INSPECTION AND GIVE A COPY TO THE INDIVIDUAL WHO ACCOMPANIED THE
12 INSPECTOR DURING THE INSPECTION.**

13 **(2) THE INDIVIDUAL SHALL SIGN THE INSPECTION REPORT FOR
14 THE BARBERSHOP TO ACKNOWLEDGE RECEIPT OF A COPY OF THE REPORT.**

15 4-702.

16 Subject to the evaluation and reestablishment provisions of the Maryland
17 Program Evaluation Act, this title and all regulations adopted under this title shall
18 terminate and be of no effect after July 1, [2011] **2021**.

19 5-202.

20 (a) (1) The Board consists of seven members.

21 (2) Of the seven members of the Board:

22 (i) [four] **FIVE** shall be licensed cosmetologists;

23 (ii) one shall be affiliated with a private cosmetology school as
24 an educator or owner; and

25 (iii) [two] **ONE** shall be A consumer [members] **MEMBER**.

1 (3) The Governor shall appoint the members with the advice of the
2 Secretary.

3 5-205.

4 (a) In addition to any duties set forth elsewhere, the Board shall adopt:

5 (1) bylaws for the conduct of its proceedings;

6 (2) regulations for qualification and examination of applicants for
7 licenses, registration, and permits and issuance of licenses, certificates of registration,
8 and permits;

9 (3) regulations to govern the conduct of persons regulated under this
10 title;

11 (4) regulations to govern sanitation and safety in practicing
12 cosmetology, including regulations that establish precautions to prevent the spread of
13 infectious and contagious diseases; and

14 (5) regulations to govern the direct supervision of the operation of
15 limited practice beauty salons.

16 (b) (1) [Subject to paragraph (4) of this subsection, the] **THE** Board shall
17 establish reasonable fees for **LICENSING, LICENSING RENEWAL**, examinations,
18 reinstatements, certifications, applications, preopening inspections, per diem fees for
19 Board members, compensation for inspectors appointed by the Board, and for any
20 other service performed by the Board necessary to carry out the provisions of this title.

21 (2) Except for the examination fees which the Board shall establish in
22 amounts not to exceed the costs of the examinations, the fees established by the Board
23 shall be set in a manner that will produce funds sufficient to cover the actual direct
24 and indirect costs of regulating the cosmetology industry in the State in accordance
25 with the provisions of this title.

1 (3) The total cost of regulating the cosmetology industry in the State
2 in accordance with the provisions of this title may not be more than the revenues
3 generated by the fees established under paragraph (1) of this subsection.

4 [(4) The Board shall require a \$25 fee for the licensure or renewal of
5 licensure of cosmetologists, senior cosmetologists, estheticians, and nail technicians.]

6 **(C) (1) THE BOARD SHALL ADOPT REGULATIONS THAT ESTABLISH**
7 **DETAILED CURRICULUM STANDARDS FOR USE BY THE STATE BOARD OF**
8 **EDUCATION OR THE MARYLAND HIGHER EDUCATION COMMISSION IN**
9 **APPROVING APPLICATIONS FOR INSTRUCTION IN THE PRACTICE OF**
10 **COSMETOLOGY, THE PROVISION OF ESTHETIC SERVICES, AND THE PROVISION**
11 **OF NAIL TECHNICIAN SERVICES AT PUBLIC SCHOOLS OR PRIVATE CAREER**
12 **SCHOOLS.**

13 **(2) THE CURRICULUM STANDARDS ESTABLISHED UNDER**
14 **PARAGRAPH (1) OF THIS SUBSECTION SHALL:**

15 **(I) INCORPORATE MODERN METHODS AND PRACTICES FOR:**

16 **1. PRACTICING COSMETOLOGY;**

17 **2. PROVIDING ESTHETIC SERVICES; AND**

18 **3. PROVIDING NAIL TECHNICIAN SERVICES;**

19 **(II) INCLUDE A REFERENCE TO EACH TOPIC AND THE**
20 **EMPHASIS OF EACH TOPIC REQUIRED OF A COMPREHENSIVE CURRICULUM IN**
21 **THE APPROPRIATE LICENSING AREA; AND**

22 **(III) BE REVIEWED AND UPDATED PERIODICALLY AS**
23 **DETERMINED BY THE BOARD.**

24 5-311.

25 **(A) THE INITIAL TERM OF A LICENSE IS 2 YEARS.**

1 **[(a)] (B)** **[Unless a] A license EXPIRES ON THE DATE SET BY THE BOARD**
2 **UNLESS THE LICENSE** is renewed for **[a 2-year] AN ADDITIONAL** term as provided in
3 this section[, the license expires on the first October 31 that comes:

4 (1) after the effective date of the license; and

5 (2) in an odd-numbered year].

6 **[(b)] (C)** At least 1 month before a license expires, the Board shall mail to
7 the licensee, at the last known address of the licensee:

8 (1) a renewal application form; and

9 (2) a notice that states:

10 (i) the date on which the current license expires;

11 (ii) the date by which the Board must receive the renewal
12 application for the renewal to be issued and mailed before the license expires; and

13 (iii) the amount of the renewal fee.

14 **[(c)] (D)** Before a license expires, the licensee periodically may renew it for
15 an additional 2-year term, if the licensee:

16 (1) otherwise is entitled to be licensed;

17 (2) pays to the Board a renewal fee established by the Board in
18 accordance with § 5-205 of this title; and

19 (3) submits to the Board a renewal application on the form that the
20 Board provides.

21 **[(d)] (E)** The Board shall renew the license of and issue a renewal certificate
22 to each licensee who meets the requirements of this section.

23 **[(e)]** The Secretary may determine that licenses issued under this subtitle
24 shall expire on a staggered basis.]

1 (f) (1) If an individual who, on or before September 30, 1999, holds a
2 limited license to provide esthetic services files an application to renew the license, the
3 Board shall grant a waiver of the requirement for completion of hours of instruction
4 under § 5-305(c)(3)(ii) of this subtitle that are in addition to the hours of instruction
5 required on or before that date.

6 (2) If an individual who, on or before September 30, 1999, holds a
7 limited license to provide manicuring services files an application to renew the license,
8 the Board shall grant a waiver of the requirement for completion of hours of
9 instruction under § 5-305(d)(3)(ii) of this subtitle that are in addition to the hours of
10 instruction required on or before that date.

11 5-314.

12 (c) (1) The Board shall commence proceedings under this section on a
13 complaint to the Board by a member of the Board or any person.

14 (2) A complaint shall:

15 (i) be in writing;

16 (ii) [be signed by the complainant] **INCLUDE THE NAME AND**
17 **NECESSARY CONTACT INFORMATION OF THE INDIVIDUAL FILING THE**
18 **COMPLAINT, AS DETERMINED BY THE BOARD;**

19 (iii) state specifically the facts on which the complaint is based;

20 (iv) be submitted to the Executive Director of the Board; and

21 (v) be served on the person to whom it is directed:

22 1. personally; or

23 2. by certified mail, return receipt requested, bearing a
24 postmark from the United States Postal Service, to the person's last known address as
25 shown on the Board's records.

1 (3) If service is made by certified mail, the person who mails the
2 document shall file with the Board verified proof of mailing.

3 5-405.

4 **(A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (G) OF THIS**
5 **SECTION, THE INITIAL TERM OF REGISTRATION AS AN APPRENTICE IS 2 YEARS.**

6 **[(a)] (B)** Unless registration as an apprentice is renewed for [a 1-year] **ONE**
7 **ADDITIONAL 2-YEAR** term as provided in this section, the registration expires on the
8 [first October 31 after its effective] date **SET BY THE BOARD.**

9 **[(b)] (C)** At least 1 month before the registration of an individual expires,
10 the Board shall mail to the individual, at the last known address of the individual:

11 (1) a renewal application form; and

12 (2) a notice that states:

13 (i) the date on which the current registration expires;

14 (ii) the date by which the Board must receive the renewal
15 application for the renewal to be issued and mailed before the registration expires; and

16 (iii) the amount of the renewal fee.

17 **[(c)] (D)** Before the registration of an individual expires, the individual
18 [periodically] may renew it for an additional term, if the individual:

19 (1) otherwise is entitled to be registered;

20 (2) pays to the Board a renewal fee established by the Board in
21 accordance with § 5-205 of this title; and

22 (3) submits to the Board a renewal application on the form that the
23 Board provides.

1 [(d)] (E) [An] EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (G)
2 OF THIS SECTION, AN individual registered as an apprentice may renew the
3 registration only [twice] ONE TIME FOR A 2-YEAR TERM.

4 [(e)] (F) The Board shall renew the registration of and issue a renewal
5 certificate to each individual who meets the requirements of this section.

6 [(f)] (G) A [limited practice apprentice] registration AS AN APPRENTICE
7 FOR ANY LIMITED PRACTICE OF COSMETOLOGY expires 12 months after the date of
8 its issuance unless[, in the discretion of the Board,] the limited practice apprentice
9 registration is [extended] RENEWED FOR ONE 1-YEAR TERM.

10 5-509.

11 (a) The Board may adopt regulations to ensure that each cosmetology school
12 approved by the State Board of Education or the Maryland Higher Education
13 Commission is operated in a sanitary manner.

14 (d) The Board shall commence proceedings to assess a penalty under this
15 section on a complaint to the Board by a member of the Board or any person.

16 (1) A complaint shall:

17 (i) be in writing;

18 (ii) [be signed by the complainant] INCLUDE THE NAME AND
19 NECESSARY CONTACT INFORMATION OF THE INDIVIDUAL FILING THE
20 COMPLAINT, AS DETERMINED BY THE BOARD;

21 (iii) state specifically the facts on which the complaint is based;

22 (iv) be submitted to the Executive Director of the Board; and

23 (v) be served on the person to whom it is directed:

24 1. personally; or

1 (b) Except as otherwise provided in subsection (a) of this section, on or before
2 the evaluation date for the following governmental activities or units, an evaluation
3 shall be made of the following governmental activities or units and the statutes and
4 regulations that relate to the governmental activities or units:

5 (9) Barbers, State Board of (§ 4–201 of the Business Occupations and
6 Professions Article: July 1, [2010] 2020);

7 (14) Cosmetologists, State Board of (§ 5–201 of the Business
8 Occupations and Professions Article: July 1, [2010] 2020);

9 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
10 read as follows:

11 **Article – Business Occupations and Professions**

12 4–207.

13 (A) (1) The Board shall pay all [money] LICENSING FEES collected under
14 this title [into the General Fund of the State] TO THE COMPTROLLER.

15 (2) THE COMPTROLLER SHALL DISTRIBUTE THE LICENSING FEES
16 TO THE STATE BARBERS AND COSMETOLOGISTS BOARDS’ FUND ESTABLISHED
17 IN § 2–106.7 OF THE BUSINESS REGULATION ARTICLE.

18 (B) THE BOARD SHALL PAY ALL FINES COLLECTED UNDER THIS TITLE
19 INTO THE GENERAL FUND OF THE STATE.

20 5–208.

21 (A) (1) The Board shall pay all [money] LICENSING FEES collected under
22 this title [into the General Fund of the State] TO THE COMPTROLLER.

23 (2) THE COMPTROLLER SHALL DISTRIBUTE THE LICENSING FEES
24 TO THE STATE BARBERS AND COSMETOLOGISTS BOARDS’ FUND ESTABLISHED
25 IN § 2–106.7 OF THE BUSINESS REGULATION ARTICLE.

1 (G) FOR ANY FISCAL YEAR BEGINNING ON OR AFTER JULY 1, 2011, ANY
2 BALANCE IN THE FUND AT THE END OF THE FISCAL YEAR IN EXCESS OF 25% OF
3 THE ACTUAL EXPENSES OF OPERATING THE BOARDS FOR THAT FISCAL YEAR
4 REVERTS TO THE GENERAL FUND OF THE STATE.

5 (H) THE LEGISLATIVE AUDITOR SHALL AUDIT THE ACCOUNTS AND
6 TRANSACTIONS OF THE FUND AS PROVIDED IN § 2-1220 OF THE STATE
7 GOVERNMENT ARTICLE.

8 2-106.8.

9 (A) IN THIS SECTION, "BOARDS" MEANS THE STATE BOARD OF
10 BARBERS AND THE STATE BOARD OF COSMETOLOGISTS.

11 (B) IN CONSULTATION WITH THE BOARDS, THE SECRETARY SHALL
12 ANNUALLY CALCULATE THE DIRECT AND INDIRECT COSTS ATTRIBUTABLE TO
13 THE BOARDS.

14 (C) BEGINNING ON JULY 1, 2011, EACH OF THE BOARDS SHALL
15 ESTABLISH FEES BASED ON THE CALCULATIONS PROVIDED BY THE SECRETARY
16 UNDER THIS SECTION.

17 SECTION 3. AND BE IT FURTHER ENACTED, That the State Board of
18 Barbers and the State Board of Cosmetologists shall submit, in accordance with
19 § 2-1246 of the State Government Article, to the Senate Education, Health, and
20 Environmental Affairs Committee and the House Economic Matters Committee:

21 (a) on or before October 1, 2010, a report on the boards' plan to increase
22 licensee compliance with the license photograph regulation as set forth in
23 Recommendation 2 contained in the Sunset Review of the State Board of Barbers and
24 the State Board of Cosmetologists published by the Department of Legislative Services
25 in October 2009 and a copy of the boards' plan to improve the apprentice programs;
26 and

27 (b) on or before October 1, 2011, an interim report on the boards' actions
28 concerning the nonstatutory recommendations contained in the Sunset Review of the
29 State Board of Barbers and the State Board of Cosmetologists published by the

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1 Department of Legislative Services in October 2009, including a description of the
2 boards' progress on implementing the plans required under subsection (a) of this
3 section.

4 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
5 take effect July 1, 2011.

6 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in
7 Section 4 of this Act, this Act shall take effect July 1, 2010.

Appendix 4. Written Comments of the Boards

DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
ALEXANDER M. SANCHEZ, Secretary

Division of Occupational and Professional Licensing
Stanley J. Botts, Commissioner

DLLR Home Page • <http://www.dllr.state.md.us>
DLLR E-mail • op@dllr.state.md.us

October 28, 2009

Warren G. Deschenaux, Director
Department of Legislative Services
Office of Policy Analysis
90 State Circle
Annapolis Maryland 21401

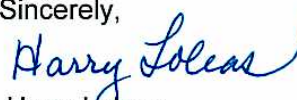
Dear Mr. Deschenaux:

Pursuant to your request of October 13, 2009, I am taking the opportunity to provide a written response from the Boards of Barbers and Cosmetologists and the Department regarding the draft sunset evaluation report forwarded to us for review and comment. The Boards' comments are referenced by recommendation number.

In the evaluation we are requested to report to the General Assembly regarding several issues, with three separate reporting dates in July 2010, October 2010 and October 2011. We respectfully request you consider a single reporting date in October 2010 for items due next year.

We appreciate the professional manner in which Michael Rubenstein and Jody Sprinkle conducted the review. Please feel free to contact me if you have any questions or concerns regarding our response.

Sincerely,



Harry Loleas
Deputy Commissioner

cc: Alexander Sanchez, Secretary
Leonard Howie, Assistant Secretary
Elizabeth Williams, Senior Operating Officer
Stanley Botts, Commissioner
Jackie Lichter, Director of Legislative & Regulatory Affairs
Chairman and Members of the Board of Barbers
Chair and Members of the Board of Cosmetologists
Robert Wood, Executive Director

500 N. CALVERT STREET, 3rd FLOOR
BALTIMORE, MD 21202-3651



TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE

Keeping Maryland Working and Safe

Response from Boards of Barbers & Cosmetologists and the Department of
Labor, Licensing and Regulation (DLLR)
To Draft October 2009 Sunset Evaluation Report
Prepared by the Department of Legislative Services

Recommendation 1: Statute should be amended to replace one consumer board member with an industry member on each board.

Agency Response: Board staff surveyed the Boards of Barbers and Cosmetologists to determine their view on the recommendations in this report. It was the majority consensus of responding Board Members to disagree with the recommendation that one of the consumer slots be re-designated as an industry position. The Department concurs with this view.

Although there have been periodic problems in finding and maintaining two consumer members on the Boards, we believe that the consumer point of view is extremely valuable on these Boards, as almost every Marylander frequently uses the services of barbers or cosmetologists. A consumer perspective needs to be available in all aspects of the Boards' activities related to the qualification, licensure and regulation of these practitioners, as well as oversight of beauty salons and barber shops. Moreover in a regulatory model where members of an industry typically constitute a majority of Board membership, two consumer members are an important check and balance on the industry majority. The Boards and the Department will heighten efforts to recruit consumers to serve as members.

Recommendation 2: DLLR's Division of Occupational and Professional Licensing should begin exploring options for attaching photos to licenses in a secure manner, and report to the appropriate standing committees of the General Assembly on the feasibility of attaching licensee photos to licenses no later than October 31, 2011. In the meantime, the State Board of Barbers and the State Board of Cosmetologists should consider measures to increase licensee compliance with the photo requirement, including the possibility of assessing stiffer penalties, such as license suspension, for violations. The boards should report to the appropriate standing committees of the General Assembly on their plans to increase compliance no later than July 31, 2010

Agency Response: DLLR maintains a single, web based licensing system for the Divisions of Occupational and Professional Licensing and Financial Regulation, allowing for the printing of a license within 24 hours of the submittal of a web based original or renewal application. Individuals are provided both a wall and wallet card licensing document. The system does not currently accommodate the use of photographs. The Department and the Boards are pleased to explore options and costs for the secure attachment of photographs to licenses and report to the General Assembly by October 31, 2011. The Boards will further consider measures to increase licensee compliance

with the photo requirement and report to the appropriate standing committees on plans for increased compliance by July 31, 2010.

Recommendation 3: Statute should be amended to conform the procedures for inspecting barbershops to the procedures for inspecting beauty salons so that inspectors have one set of rules to follow.

Agency Response: The Boards will take the opportunity to thoroughly review inspection protocols and recommend a single set of rules for inspectors to follow.

Recommendation 4: Statute should be amended to repeal the requirement that complaints be signed as obsolete. However, statute should specify that complaints should be in writing and include the name of, and contact information for, the complainant.

Agency Response: It was the majority consensus of responding Board members to support this recommendation and the Department concurs.

Recommendation 5: DLLR's Division of Occupational and Professional Licensing should develop a tracking system to alert staff when milestones are not met. To the extent feasible, the system should also track nonpayment of fines, and the boards should consult with the Central Collection Unit to develop an appropriate timeframe after which unpaid fines should be referred for collection.

Agency Response: The State Real Estate Commission will shortly be piloting new complaint management software for the Division of Occupational and Professional Licensing, which will include dynamic query and measurement features and will provide the capabilities in this recommendation. The Division will ensure that the Boards of Cosmetologists and Barbers establish a collection protocol, which will provide for the referral of unpaid fines to Central Collection after three attempts at collection (initial order and two follow up letters).

Recommendation 6: The boards should explore alternatives to formal hearings to resolve complaints and violations, with particular attention given to the use of consent orders and citations. The boards should also delegate authority to the executive director to conduct panel reviews in the absence of one or more board members, using guidelines established by the respective boards. The delegation of authority should specify that all staff recommendations regarding the disposition of cases are subject to final approval by the respective boards at their regular meetings.

Agency Response: The Boards and the Department concur with this recommendation. The Boards have been working with the Office of the Attorney General to facilitate an expedited consent order process consistent with the recommendation. The citation program was near implementation until the August 2009 round of cost containment required that the Boards' inspection program be limited to pre-licensing and complaint related inspections. The suspension of routine inspections may have the unintended

consequence of assisting the Boards in addressing the backlog because the number of new case filings will be greatly constrained. With respect to the delegation of authority to the Executive Director, the Real Estate Commission model, although statutory in nature, may provide guidance to the Boards in developing a case disposition consent agenda for Board meetings. The Boards concur that with appropriate guidance, the Executive Director could be delegated reasonable authority to review and make certain decisions with respect to pending cases.

Recommendation 7: Regulations should be amended to require that instructors at private career schools be either master barbers or senior cosmetologists, which is already the case in public school programs.

Agency Response: The Boards concur with this recommendation. However this regulatory action is not under the purview of the Boards.

Recommendation 8: Statute should be amended to require the boards to establish and periodically update clear and detailed curriculum standards through regulation based on current standards of practice that MHEC and MSDE can use in reviewing proposed curricula.

Agency Response: The Boards will consider a more explicit and detailed set of curriculum standards, including recommendations involving the relative attention to be paid to each subject. As the evaluation notes, the role of the Boards in the process is advisory and not directive.

Recommendation 9: Regulations should be amended to increase the hours of training for cosmetology apprentices under the program to at least 2,800 hours.

Recommendation 10: Statute should be amended to increase the initial term of the cosmetologist apprentice license to two years, consistent with the hourly requirement of the program. Renewals should be limited to one two-year renewal option.

Agency Response to 9 and 10: The Board of Cosmetologists supports the change proposed in recommendation nine. It defers its final view on recommendation number ten until the full Board has had an opportunity to review the recommendation at its November meeting.

Recommendation 11: The boards should review their policies regarding examinations and applicants who have English as their second language as the significant number of such applicants, and the issues related to the understanding the examination, may be contributing to lower passing rates. The State Board of Cosmetologists has disallowed the use of translators while the State Board of Barbers still allows this accommodation; however, neither board allows extra time for ESOL applicants. The boards should review the fairness of their policies while maintaining the integrity of the examinations and implement any changes that mitigate language barriers to the examination.

Agency Response: The Boards will conduct the requested review of policies regarding examinees that have English as a second language (ESL), including consideration of whether additional time should be granted to ESL applicants. It should be noted that the difference between Board policies regarding the use of interpreters for the theory examination is driven by the statutory language in the Maryland Barbers Act in this regard.

Recommendation 12: The State Board of Barbers and the State Board of Cosmetologists should develop a plan to improve the apprenticeship program. The plan should aim to improve the oversight of apprentices and their sponsors, increase the pass rates on the licensing exam, and reduce the number of apprentices applying to renew or restart licensure. In developing the plan, the boards should consider (1) implementing a mandatory orientation program for sponsors and apprentices as a condition for licensure; (2) instituting accountability measures for sponsors who do not submit apprentice hours in a timely manner and limiting future apprentices for those sponsors whose apprentices do not pass the relevant licensure exam; (3) increasing the apprentice license fee to encourage the application of only those with serious intentions of fulfilling service requirements and passing the examination; (4) instituting a system for tracking submission of apprentice hours, possibly including requiring inspectors to verify monthly reporting during routine inspections; and (5) developing any other strategies that would improve the program. The boards should have an approved plan in place by October 1, 2010. If the boards fail to implement a comprehensive plan, consideration should be given to eliminating the apprenticeship program due the lack of effectiveness.

Agency Response: The Boards commit to a thorough review of the operation of the apprentice program, including consideration of the suggested changes in Recommendation 12. It will look to implement the changes that can be accomplished within their own authority to promulgate regulations. The impact of cost containment and staff reductions has been very consequential with regard to the Boards' ability to monitor apprentice progress and address sponsor deficiencies. The use of inspectors to follow up with salons is premised on a funded statewide routine inspection program. Electronic reporting solutions and a dedicated staff person for the apprentice program are again premised on an adequate level of funding.

Recommendation 13: Statute should be amended to give the State Board of Cosmetologists the same regulatory fee-setting authority as the State Board of Barbers. The board should exercise its new fee-setting authority to increase the licensing fee for cosmetologists (and other practitioners) to \$50, again to be consistent with fees paid by barbers. An increase in this fee is also consistent with the amount of additional responsibilities that are recommended in this review, such as increasing staff, expanding the hearing process, and implementing new programs and technology.

Recommendation 14: Statute should be amended to establish a shared special fund for the State Board of Barbers and the State Board of Cosmetologists, funded with licensing fees, to operate the activities of the boards. All licensing fees should be deposited into the newly created fund. However, fine revenue, interest earnings, and the balances in excess of 25% of spending should accrue to the general fund.

Recommendation 15: The boards should increase the number of staff members to reflect the number of licensees and current workload levels. The additional staff is recommended to eliminate paper work backlogs, implement the citation program, improve the apprenticeship program, track routine inspections, coordinate fraud investigations, staff board meetings, and respond to all licensees in a timely manner. Given the recommended special funded status of the boards and a recommended increase in cosmetology licensing fees, the boards should have sufficient funds for at least three additional staff members and a full complement of inspectors. Consideration should be given to adding two inspectors to full-time staff in order to provide supervision and training for the remaining per-diem inspectors. The Department of Budget and Management should grant waivers of the hiring freeze to accommodate the new positions.

Agency response to Recommendations 13, 14 & 15: These recommendations seek to address the issue of adequate funding for the Boards, focusing on Special Funding, fee setting authority and increased staffing. Both Boards support the concept of receiving special fund status. DLLR, over the last decade has supported the use of special funding for its regulatory Boards and so testified in connection with the five design professional boards, the Real Estate Commission and the Board of Public Accountancy. In each of these instances the program has been able to address operational needs and enhance services to both consumers and licensees. The model used in creating the Design Board Special Fund is especially instructive in allowing the aggregation of expenses of multiple Boards and the equalization of fees where Boards offering similar services are involved.

However, these recommendations come at a time of extraordinary fiscal and budgetary constraints. Given the anticipated loss to the General Fund, the Department simply cannot support this recommendation at this time. We nonetheless continue to view special funding as an important tool in addressing the needs of our regulatory programs and would consider it at a time and in a manner that does not have the sort of budgetary and general fund consequences which are currently evident.