

SUNSET COMMISSION DECISIONS



TEXAS STATE BOARD OF BARBER EXAMINERS

TEXAS COSMETOLOGY COMMISSION

May 2004

AGENCY INFORMATION
TEXAS STATE BOARD OF BARBER EXAMINERS

Agency at a Glance

The Texas State Board of Barber Examiners (Board) regulates barbers to protect the health and safety of the public. Regulation of barbers began in 1921, when persons owning or operating barbershops were required to register with the Texas State Board of Health. In 1929, the Legislature expanded the regulation, creating the Texas State Board of Barber Examiners, and establishing licensure for barbers, barbershops, and schools.

The Board's main functions include:

- licensing barbers, manicurists, barber technicians, and barber instructors, and permitting barber schools, barbershops, manicurist shops, and booth rentals;
- administering the state written and practical barbering exams;
- conducting routine inspections and investigating complaints against barbers, barbershops and barber schools; and
- enforcing the Barber Act and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2003, the Board operated with about a \$622,000 budget. All costs are covered by fees collected by the agency.
- **Staffing.** The Board currently has 13 full-time equivalent positions.
- **Licensing.** The Board regulates about 14,600 barbers, manicurists, technicians, students, and instructors, 30 barber schools, about 5,400 shops, and 2,800 booth rentals.
- **Enforcement.** The Board performs routine inspections and investigates consumer complaints, taking enforcement actions when necessary. In fiscal year 2003, the Board reported inspecting about 26,600 entities and 35,900 individuals. The Board received 205 complaints. The Board issued 391 sanctions for barber-related violations.

AGENCY INFORMATION
TEXAS COSMETOLOGY COMMISSION

Agency at a Glance

The Texas Cosmetology Commission (Commission) regulates cosmetologists to protect the health and safety of the public. Regulation of cosmetologists began in 1935, when the Legislature created the State Board of Hairdressers and Cosmetologists. In 1971, the Legislature replaced this Board with the Texas Cosmetology Commission.

To accomplish its mission, the Commission licenses cosmetology operators and other specialists, cosmetology instructors, schools, and salons, and regulates their activities through enforcement.

The Commission's main functions include:

- licensing cosmetology operators, instructors, independent contractors, manicurists, and other specialists, as well as issuing permits to schools and salons;
- administering written and practical exams for prospective licensees;
- conducting inspections and investigating complaints against individual licensees, schools, and shops; and
- enforcing the Cosmetology Act and Commission rules, and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2003, the Commission operated with a budget of about \$2.1 million. The agency covers all costs with licensing fees.
- **Staffing.** The Commission currently has 43 full-time equivalent positions.
- **Licensing and Registration.** The Commission regulates about 165,000 operators, specialists, instructors, and students, 340 schools, and about 24,000 salons.
- **Enforcement.** The Commission performs routine inspections, investigates consumer complaints, and takes enforcement actions when necessary. In fiscal year 2003, the Commission reports it inspected about 29,000 facilities and 55,000 individuals, and received 449 complaints. The Commission issued 7,638 sanctions for cosmetology-related violations.

ISSUES / RECOMMENDATIONS

Issue 1 The Barber Board and the Cosmetology Commission Have Failed to Effectively Carry Out Their Regulatory Duties.

Recommendations

Change in Statute

1.1 Abolish the Texas State Board of Barber Examiners and transfer its functions to the Texas Department of Licensing and Regulation.

Under this recommendation, the State Board of Barber Examiners would be abolished as an independent agency, and its regulatory functions would be transferred to TDLR. The Department would administer all testing and regulatory functions for barbers. The recommendation would align all regulatory provisions in the Barber Act with TDLR's enabling statute, to streamline administration. This recommendation would also remove the Sunset provision in the Barber Act, as it would be subject to TDLR's existing Sunset provision.

1.2 Establish a barber advisory committee to assist TDLR with the regulation of barbering.

This recommendation would create a barber advisory committee at TDLR to advise the Commission on Licensing and Regulation, with the duties described in the textbox, *Recommended Duties of Advisory Committees*. The Commission on Licensing and Regulation, as with all its current advisory committees, would appoint five members to the advisory committee for six-year staggered terms. The membership would include two licensed barbers, one barber school owner, and two barbershop owners. As the committee would be advisory to the all-public Commission, it would not have public members. The presiding officer of the Commission, with approval from the Commission, would appoint one member of the committee as the presiding officer for a two-year term.

Recommended Duties of Advisory Committees

- Recommend rules and standards on technical issues related to the occupations
- Provide advice regarding educational courses and curricula for applicants
- Provide advice regarding examination content
- Educate the Commission on Licensing and Regulation and TDLR staff on issues affecting the industries
- Respond to questions from TDLR's staff and Commission relating to the industries

1.3 Abolish the Texas Cosmetology Commission and transfer its functions to the Texas Department of Licensing and Regulation.

This recommendation would abolish the Cosmetology Commission as an independent agency and transfer its regulatory functions to TDLR. Cosmetologists would continue to be tested and regulated, and TDLR would administer those functions. Under the recommendation, regulatory provisions in the Cosmetology Act would be conformed to TDLR's statutory processes to increase efficiency, however all law specific to the qualifications of cosmetologists would remain. The recommendation would remove the Sunset provision in the Cosmetology Act, since the program would be subject to the Sunset provision that already exists in TDLR's enabling statute.

1.4 Establish a cosmetology advisory committee to assist TDLR with the regulation of cosmetology.

The recommendation would also create a new cosmetology advisory committee at TDLR, to advise the Commission on Licensing and Regulation. The textbox, *Recommended Duties of Advisory Committees*, lists the responsibilities of this new committee. The committee would be composed of five members, including two licensed cosmetologists, one cosmetology school owner, one independent salon owner, and one chain salon owner. As the committee would be advisory to the all-public Commission on Licensing and Regulation, it would not have public members. As with TDLR's current advisory committees, the Commission on Licensing and Regulation would appoint the committee members for six-year staggered terms. The presiding officer of the Commission, with the Commission's approval, would designate one member of the advisory committee as the presiding officer for a two-year term.

Fiscal Implication

Abolishing the independent policymaking bodies and transferring the agencies' functions to the Texas Department of Licensing and Regulation would result in an annual savings of \$124,508 from the Board and \$418,088 from the Commission. Transferring the functions would also result in a reduction of two and one-half full-time equivalents (FTEs) from the Board and a reduction of seven FTEs from the Commission.

Responses

Texas State Board of Barber Examiners Response

Recommendation 1.1: The Board respectfully requests that the Commission not accept the recommendation to transfer the regulatory functions. The Board expresses that it regulates barbers efficiently and effectively, generating sufficient revenue. The Board also expresses concern that TDLR must divide its attention among over 20 professions, and that occupational umbrella agency structures are often highly bureaucratic, under-funded, under-staffed, and unresponsive.

Recommendation 1.2: The Board states that advisory boards are helpful in certain circumstances, but under the TDLR structure they lack the direct authority to set policy or mandate rules and regulations.

Recommendation 1.3: Not applicable to the Board.

Recommendation 1.4: Not applicable to the Board.

(William H. Kuykendall, J.D., Chair, and Glenn Parker, Executive Director - Texas State Board of Barber Examiners)

Texas Cosmetology Commission Response

Recommendation 1.1: Not applicable to the Commission.

Recommendation 1.2: Not applicable to the Commission.

Recommendation 1.3: The Commission does not support this recommendation stating that it does not believe that abolishment of the Commission and transfer to the Texas Department of Licensing and Regulation is in the best interest of the State.

Recommendation 1.4: The Commission does not support this recommendation and states that the Texas Department of Licensing and Regulation may not be as sufficient or effective in handling the unique concerns of the licensees.

(Antoinette F. Humphrey, Executive Director - Texas Cosmetology Commission)

Affected Agency Response

The Texas Department of Licensing and Regulation expresses that if the programs were transferred, and procedures were made consistent with TDLR's, the agency can achieve effective regulation. (William H. Kuntz, Jr., Executive Director - Texas Department of Licensing and Regulation)

Public Response

For

None received.

Against

James Edward Smith, Executive President - Texas Association of Tonsorial Artists, Cedar Hill

John Fields - Texas Barber Association and Texas Association of Tonsorial Artists

Robert W. Gibbs, Jr., Houston

Donald McClain, Tyler

Joe Shirley - Bethel Road Barber Shop, Coppell

Mary W. Russell - Russell Barber Shop, Austin

Bobby Jo Webb, Austin

Opposes Recommendations 1.1 and 1.2 - Coy Harris, President - Hair International, Chapter 215, Mineral Wells; Joe Shepard; W.D. Wagner, C.E.O. - Acres Home College of Barber Design, Houston; Johnny Garcia, President - State Association of Barber Schools, Corpus Christi; William J. Black; Denise Leopard, Malakoff; and Linda Connor, Shop Owner - East End Barber Shop, Austin

Opposes Recommendations 1.3 and 1.4 - Amy Estelle Parker, Director - Professional Association for Cosmetology Association, Austin; Shelton Ogle - Ogle School and Shelton's Salon, Arlington; and Dr. Linda Amerson and Dr. Doris Crawford, Texas State Association and Beauty Culturists League No. 47, Arlington

Modifications

- I. Merge the Texas State Board of Barber Examiners and the Texas Cosmetology Commission into one agency. (Leif Christiansen, Commissioner - Texas Cosmetology Commission, Houston; Dr. Linda Amerson and Dr. Doris Crawford, Vice-Chairman - Texas State Association and Beauty Culturists League No. 47, Arlington; Cathy Neben and Dr. Michael Neben, Houston; Baron Carter- Jenissa Beauty Academy; and Lee Williams and Mack Lewis - Lee's Barber Shop, Dallas)
- Ia. Combine the Texas State Board of Barber Examiners and the Texas Cosmetology Commission into one entity. The policymaking body should consist of 11 members, including one barber school non-accredited owner, one barber school accredited owner, one cosmetology school non-accredited owner, one cosmetology school accredited owner, one licensed barber, one licensed

cosmetologist, one barbershop owner, one cosmetology salon owner, one accountant, one layperson, and a representative from the Texas Education Agency. (Philip D. Lapp, Commissioner - Texas Cosmetology Commission, Weatherford)

Staff Comment: This proposed structure would not provide the one-third public membership standard as set out in the Sunset Across-the-Board recommendations.

- 1b. Merge the Texas Cosmetology Commission and the Texas Board of Barber Examiners as one Commission with equal representation of the barber and cosmetology fields. Put the new Commission on a two-year probation period. Create a voluntary advisory commission consisting of 11 members including two cosmetologists, two barbers, two cosmetology school owners, one barber school owner, two cosmetology salon owners, and two public members with background in the industry. (Ron Jemison, Chairman - Lonestar Cosmetology Association, Inc., Austin; and Charlie Schnabel - Lone Star Cosmetology Association, Inc., Austin)
- 1c. Merge the Texas Cosmetology Commission and the Texas State Board of Barber Examiners into one agency consisting of 11 members, including three licensed barbers, three licensed cosmetologists, three public members, one ex officio member from the Texas Education Agency, and one ex officio member from the Texas Higher Education Coordinating Board. Use the excess funds that have historically been returned to the General Revenue Fund to fund improvements at the new agency. Put the agency on a two-year probation period. (Linda Holcombe, Executive Director - Texas Industrial Vocational Association, Austin)
- 1d. Combine the barber and cosmetology related functions under one agency with two executive administrators. Extend the agency two years to measure the effectiveness. Create an advisory committee of two cosmetology school owners, one barber school owner, two cosmetologists, two barbers, two salon owners, two public members, and one member for the Texas Department of Licensing and Regulation. Require the agency to employ a CFO to produce, compile, and review financial information of the agency. Improve computer technology within a new combined agency to reduce paperwork. (Linda Colwell, President - Lone Star Cosmetology Association, Austin)
- 1e. Merge the two agencies and use the excess money from licensing fees, which has historically gone to the General Revenue Fund, to fund the new agency. (Amy Estelle Parker, Director - Professional Association for Cosmetology Association, Austin)
- 1f. Merge the two agencies and hire a business person. (Shelton Ogle - Ogle Scool and Shelton's Salon, Arlington)
- 1g. Merge the Cosmetology Commission and the Barber Board, with an 11-member commission. Give the new commission two to four years with new commissioners, new staff, and an advisory board. Streamline the agency's office using technology, and hire a Chief Financial Officer that is held accountable to the commission and not to an executive director. (Sharon Gamblin, President - Lone Star Cosmetology Association, Fort Worth)
- 1h. Combine the Board of Barber Examiners and the Texas Cosmetology Commission into one Board titled the Texas Board of Barbers and Cosmetologists which would operate under the current rules and regulation. The Board would consist of not less than nine members representing a cross section of the industries. Appoint a seven-member advisory committee to advise the new Board

and TDLR. Transfer the renewal of all licensees to TDLR. Transfer salon inspections to TDLR or TDH. Outsource the financial management to a private CPA firm. (Erin Colwell, Executive Director - Lone Star Cosmetology Association, Inc., Austin)

2. Abolish the State Board of Barber Examiners and the Texas Cosmetology Commission and transfer the regulation of barbering and cosmetology to the Texas Department of Health. (Dr. Shelley Sekula-Gibbs, M.D., Houston)

Recommended Action: Adopt Recommendations 1.1 through 1.4.

Commission Decision: In lieu of Recommendations 1.1 through 1.4, the Commission adopted the following alternative.

- Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and create a new agency, the Texas Board of Barbering and Cosmetology, to administer the agencies' regulatory functions. Give this new Board a Sunset date of September 1, 2009.
- Require a limited-scope Sunset review of the new agency in the Fall of 2008 to evaluate whether significant progress has been made in addressing problems identified in the previous reviews.
- Require the new Board to be composed of nine members appointed by the Governor:
 - ▶ three public members;
 - ▶ one barber member;
 - ▶ one barbershop owner member;
 - ▶ one barber school owner member;
 - ▶ one cosmetologist member;
 - ▶ one cosmetology salon owner member; and
 - ▶ one cosmetology school owner member.
- Require the Governor to designate a public member to serve as Chair of the Board.
- Require the newly created Board to hire one new executive director to carry out the operations of the agency.

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Issue 1 continued

- Direct the new agency to develop and implement a business improvement plan that demonstrates commitment to and results in significant improvement in the following areas.
 - ▶ Elimination of any backlogs in inspection and enforcement, including resolution of complaints and pending enforcement cases.
 - ▶ Implementation of legislation passed by the 79th Legislature, management recommendations by the Sunset Commission, and recommendations of the State Auditor's Office.
- Require reports on the implementation of the business improvement plan to the Sunset Commission, on a quarterly basis, beginning September 1, 2005.
- Require the State Auditor's Office to monitor the business improvement plan and conduct a follow-up audit to evaluate compliance with its past recommendations.

Issue 2 The Over-Regulation of Barbering and Cosmetology Does Not Protect the Public and Wastes State Resources.

Recommendations

Change in Statute

2.1 Replace full licensure of barbers and cosmetologists with a certification process.

This recommendation would change the regulatory structure for barber and cosmetology individual licensees from licensure and renewal every two years to one-time certification. Certificate holders would still be required to meet all age, education, curriculum, and exam requirements that apply. Current licensees would switch to certification at their next license renewal date after paying a certification fee. Certificates would be valid indefinitely, unless suspended or revoked by the agencies or their successor. Certificate holders would still be subject to all enforcement authority currently available. Eliminating license renewal for cosmetology licensees would result in the elimination of the new mandatory continuing education requirement.

This recommendation would affect all barber and cosmetology individual licenses. All shop and salon licenses, and all booth permits and independent contractor licenses would continue to renew on a biennial basis.

The Barber and Cosmetology Acts would need to be modified to remove authority to charge a renewal fee for individual licenses, though authority to charge a renewal fee for booth permits and shop, salon, and independent contractor licenses would remain. Statute would also be modified to add authority to charge a certification fee.

2.2 Require barber and cosmetology inspection efforts to be risk based, focusing on sanitation violations.

Instead of the agencies' current programs of routine inspections, this recommendation would focus limited resources on inspection of facilities that require the most attention — those that violate sanitation rules. The risk assessment methodology should include a requirement that each facility receives an inspection at least every two years. Inspections upon complaint, and initial inspections of new schools and salons would continue. The cost of all initial inspections should be included in the new establishment's licensing fee. Many other state agencies use risk assessment tools to guide inspections, so several examples exist on which to model inspection approaches.

2.3 Eliminate the barber health certificate requirement.

This recommendation would eliminate an unnecessary burden for licensees by removing the current requirement that barbers, barber technicians, manicurists, and barber instructors must submit a health certificate upon initial licensure and renewal.

2.4 Eliminate barber and cosmetology student permit requirements.

This recommendation would remove the requirement for barber and cosmetology student permits. Instead, individuals wishing to study barbering or cosmetology would independently enroll in school and complete required course hours currently determined by the agencies. The State's first contact with the student would be when the schools document that the student is eligible to sit for the exam. The cosmetology student permit fee includes the exam fee, so statute would need to be modified to establish authority to charge an exam fee.

Fiscal Implication

Reducing the level of regulation for both barbers and cosmetologists by replacing full licensure with certification, focusing inspections, and eliminating student permits would have a positive fiscal impact to the State for two years, saving \$168,475 annually related to the Barber Board and \$410,000 annually related to the Cosmetology Commission by reducing related staff. The recommendations would reduce Board staff by five and one-half and by ten and one-half from the Commission. Two years after implementation, the recommendations would reduce barber annual revenue by \$286,525 and cosmetology annual revenue by \$3,369,000.

Responses

Texas State Board of Barber Examiners Response

Recommendation 2.1: The Board opposes converting licensure to certification stating it will cost the State revenue while lowering the level of protection. The Board also states that licensure establishes a professional standard of conduct that induces licensees to respond better to customer expectations and sanitation rules.

Recommendation 2.2: The Board opposes this recommendation and believes that its current inspection policy focuses inspections and protects the public's health and safety. In combination with Recommendation 2.1, these changes will lead to an explosion of untrained, unlicensed individuals practicing barbering.

Recommendation 2.3: The Board supports this recommendation.

Recommendation 2.4: The Board opposes this recommendation because it believes that student permits allow the agency to track student hours as they progress through school and that the Board collects enough fees from students to cover the cost of regulating students.

(William H. Kuykendall, J.D., Chair, and Glenn Parker, Executive Director - Texas State Board of Barber Examiners)

Texas Cosmetology Commission Response

Recommendation 2.1: The Commission does not support this recommendation and believes that full licensure of cosmetologists represents a thorough approach to protecting public health and safety.

Recommendation 2.2: The Commission supports this recommendation, and states that it does not present a substantial change from current practice except for a decreased emphasis on unlicensed practice.

Recommendation 2.3: Not applicable to the Commission.

Recommendation 2.4: The Commission believes that the Sunset report overlooks the central purpose of student permits, which is to assist the agency in ensuring that students are properly credited with hours at schools and that schools do not illegally credit students with hours when not present on campus.

(Antoinette F. Humphrey, Executive Director - Texas Cosmetology Commission)

Public Response

For

Supports Recommendation 2.2 - Philip D. Lapp, Commissioner - Texas Cosmetology Commission, Weatherford

Supports Recommendation 2.3 - Joe Shirley - Bethel Road Barber Shop, Coppell

Against

Mary W. Russell - Russell Barber Shop, Austin

Bobby Jo Webb, Austin

James Edward Smith, Executive President - Texas Association of Tonsorial Artists, Cedar Hill

Opposes Recommendations 2.1 and 2.4 - Philip D. Lapp, Commissioner - Texas Cosmetology Commission, Weatherford; Leif Christiansen, Commissioner - Texas Cosmetology Commission, Houston; Linda Holcombe, Executive Director - Texas Industrial Vocational Association, Austin; Linda Colwell, President - Lone Star Cosmetology Association, Austin; Joe Shirley - Bethel Road Barber Shop, Coppell; Carla Wright, President - College of Cosmetology, Inc., Killeen; and Baron Carter - Jenissa Beauty Academy

Opposes Recommendation 2.1 - Wendell Peterson, President - National-Interstate Council of State Boards of Cosmetology, Inc., Little Rock, Arkansas; Amy Estelle Parker, Director - Professional Association for Cosmetology Association, Austin; Shelton Ogle - Ogle School and Shelton's Salon, Arlington; Dawn McDonogh, Bastrop; Donald McClain, Tyler; and Linda Connor, Shop Owner - East End Barber Shop, Austin

Opposes Recommendations 2.1, 2.2, and 2.4 - Lone Star Cosmetology Association, Inc., Austin

Opposes Recommendations 2.1 and 2.3 - Joe Shepard

Oppose Recommendation 2.4 - Cosetta Jones - Professional Association for Cosmetology Education, Irving; Vonda M. Hutchings - Professional Association for Cosmetology Education; Charlie Schnabel - Lone Star Cosmetology Association, Inc., Austin; and Karla Harmond, Instructor - Crowley High School, Crowley

Modifications

1. Require all cosmetology licenses to be renewed in the same month of each year. (Lone Star Cosmetology Association, Inc., Austin)

Staff Comment: This modification would not be consistent with the Sunset licensing model. Renewing all 165,000 licensees in a single month would be very burdensome and costly.

2. Require all cosmetology licenses to be renewed online. (Lone Star Cosmetology Association, Inc., Austin)
3. Require cosmetology schools to register and drop students online. (Lone Star Cosmetology Association, Inc., Austin; Cosetta Jones - Professional Association for Cosmetology Education, Irving; Vonda M. Hutchings, Professional Association for Cosmetology Education; and Baron Carter - Jenissa Beauty Academy)

4. Require cosmetology inspections to be random and at least twice a year. (Deborah Winegar - Cosmetology Instructors of Public Schools, Dickinson)
5. Consider online testing for the cosmetology written test. (Linda Holcombe, Executive Director - Texas Industrial Vocational Association, Austin and Karla Harmond, Instructor - Crowley High School, Crowley)

Recommended Action: Adopt Recommendations 2.1 through 2.4.

Commission Decision: Adopted Recommendation 2.2 and 2.3. The Commission also adopted recommendation 2.4 as modified to retain the student permits but require barber and cosmetology schools, not the agency, to maintain student records.

Issue 3 Practical Exams for Prospective Barbers and Cosmetologists are Unnecessary Requirements for Licensure That Do Not Protect the Public.

Recommendation

Change in Statute

3.1 Discontinue use of practical examinations required for licensure of barbers and cosmetologists.

This recommendation would remove the requirement and authority for barber and cosmetology practical exams. Barber and cosmetology students would continue to be required to meet all applicable age, education, and course work requirements before being eligible to sit for the written exam. The requirement for students to pass the written exam before being licensed would continue. This change would apply to all categories of licenses that require exams.

Fiscal Implication

Discontinuing the use of practical exams for both agencies will result in an annual savings of \$4,700 from the Board and \$125,880 from the Commission, reducing the number of FTEs related to cosmetology by three.

Responses

Texas State Board of Barber Examiners Response

Recommendation 3.1: The Board disagrees with this recommendation and expresses that the practical exam proves a student has mastered sanitation issues and that the student has achieved a minimal level of competency in the art of barbering.

(William H. Kuykendall, J.D., Chair, and Glenn Parker, Executive Director - Texas State Board of Barber Examiners)

Texas Cosmetology Commission Response

Recommendation 3.1: The Commission does not support this recommendation, asserting that the practical exam was developed to create a state standard, to ensure consistency in the profession, and to assist with reciprocity.

(Antoinette F. Humphrey, Executive Director - Texas Cosmetology Commission)

Public Response

For

Philip D. Lapp, Commissioner - Texas Cosmetology Commission, Weatherford

Against

Leif Christiansen, Commissioner - Texas Cosmetology Commission, Houston

James Edward Smith, Executive President - Texas Association of Tonsorial Artists, Cedar Hill

Lone Star Cosmetology Association, Inc., Austin

Linda Holcombe, Executive Director - Texas Industrial Vocational Association, Austin

Wendell Peterson, President - National-Interstate Council of State Boards of Cosmetology, Inc., Little Rock, Arkansas

Jim Herring - Lone Star Cosmetology Association and Regional Director, Vogue Colleges, San Antonio

Linda Colwell, President - Lone Star Cosmetology Association, Austin

Jan Exposito - Exposito School of Hair Design, Amarillo

Charlie Schnabel - Lone Star Cosmetology Association, Inc., Austin

W.D. Wagner, C.E.O. - Acres Home College of Barber Design, Houston

Joe Shirley - Bethel Road Barber Shop, Coppell

Karla Harmond, Instructor - Crowley High School, Crowley

Carla Wright, President - College of Cosmetology, Inc., Killeen

Dawn McDonogh, Bastrop

Judy Rodriguez - Lone Star Cosmetology Association, Laredo

Linda Connor, Shop Owner - East End Barber Shop, Austin

Lupe Simpson

Lee Williams and Mack Lewis - Lee's Barber Shop, Dallas

Mary W. Russell - Russell Barber Shop, Austin

Bobby Jo Webb, Austin

Modifications

None received.

Recommended Action: Adopt Recommendation 3.1.

Commission Decision: Adopted Recommendation 3.1.

Issue 4 Transfer Oversight of Private Barber and Cosmetology Schools to the Texas Workforce Commission to Improve Accountability and Ensure Student Protections.

Recommendation

Change in Statute

4.1 Transfer the regulation of private barber and cosmetology schools to the Texas Workforce Commission.

Under this recommendation, the Barber Board and Cosmetology Commission would no longer license the educational aspects of barber or cosmetology schools. Instead, the regulation of approximately 168 private barber and cosmetology schools would transfer to the Workforce Commission, and be subject to the same agency oversight activities as other career schools licensed by TWC. Since TWC statutes already exempt high school and junior college training programs, the regulation of cosmetology programs at these schools would not fall under TWC regulation, but instead would be preserved at the Texas Education Agency and the Texas Higher Education Coordinating Board. To ensure that TWC appropriately integrates currently operating barber and cosmetology schools, the statute should provide that TWC consider licenses for existing schools as renewals.

Under this recommendation, requirements for barbering and cosmetology curricula, course hours, and facility requirements would be retained. As TWC requires of other schools, barber and cosmetology schools would have to certify to TWC that they meet these requirements when applying to TWC for licensure.

Under this recommendation, since schools allow students to perform services on the public as part of their training, schools must maintain a barbershop or salon permit issued by the appropriate licensing agency, as required under current law. This permit would not be a license to operate a school, which would be granted by TWC. Any school applying for a license from TWC would have to certify that it holds a barbershop or salon permit, and TWC would be authorized to revoke the license of a school which does not maintain this permit. The Barber Board and Cosmetology Commission, or their successor agency, would only inspect these schools for barbershop and salon health and safety requirements, as they would for any other facility that provides services to the public.

The Workforce Commission would not maintain student transcripts, student progress reports, or conduct other student-related administrative tasks currently carried out by the Barber Board and Cosmetology Commission. Rather, schools would assume these functions as required under TWC regulation.

Fiscal Implication

Transferring the regulation of barber and cosmetology schools to the Texas Workforce Commission would result in a net increase in barber revenue of approximately \$30,000 per year, and from \$47,000 to \$70,000 per year for cosmetology. The recommendation would reduce the number of FTEs by one-half from the Board and one from the Cosmetology Commission. The Texas Workforce Commission would receive authority for 2.5 FTEs. The cost of these positions would be recovered through fees paid by the schools.

Responses

Texas State Board of Barber Examiners Response

Recommendation 4.1: The Board opposes the recommendation, asserting that it effectively regulates barber schools, though it acknowledges that improvements can be made.

(William H. Kuykendall, J.D., Chair, and Glenn Parker, Executive Director - Texas State Board of Barber Examiners)

Texas Cosmetology Commission Response

Recommendation 4.1: The Commission does not support this recommendation. It expresses that its inspectors, who are licensing cosmetologists, play a vital role in ensuring student hours are properly accredited, and that the program should continue to remain at the Commission.

(Antoinette F. Humphrey, Executive Director - Texas Cosmetology Commission)

Agency Modification

1. Keep the regulation of cosmetology schools at the Cosmetology Commission, and provide the Commission with cease-and-desist authority. (Antoinette F. Humphrey, Executive Director - Texas Cosmetology Commission)

Affected Agency Response

The Texas Workforce Commission (TWC) expresses that if the recommendations are implemented, it will welcome the opportunity to incorporate these schools into its existing structure. The Commission requests that if the programs were transferred that the legislation clearly state that TWC will have the necessary rulemaking authority. Additionally, TWC recommends increasing the number of FTEs transferred from 2.5 FTEs, as recommended in the Sunset Staff Report, to three FTEs. (Diane Rath, Chair, Commissioner Representing the Public; Ron Lehman, Commissioner Representing Employers; and Ronald G. Congleton, Commission Representing Labor - Texas Workforce Commission)

The Texas Education Agency (TEA) expresses that if the agency were required to provide the same type of regulation as the Texas Cosmetology Commission currently provides, it would be outside of TEA's primary mission and would have a cost. (Robert Scott, Chief Deputy Commissioner - Texas Education Agency)

Staff Comment: This recommendation is not intended to increase regulation of high school cosmetology programs by TEA, but rather intends that TEA would continue to oversee cosmetologist programs in high schools as they currently do now.

Public Response

For

Ross Briggs, Houston

Against

Philip D. Lapp, Commissioner - Texas Cosmetology Commission, Weatherford

Jim Herring, Regional Director - Vogue Colleges and member of Lone Star Cosmetology Association, San Antonio

James Edward Smith, Executive President - Texas Association of Tonsorial Artists, Cedar Hill

Lone Star Cosmetology Association, Inc., Austin

Linda Holcombe, Executive Director - Texas Industrial Vocational Association, Austin

Amy Estelle Parker, Director - Professional Association for Cosmetology Association, Austin

Sharon Gamblin, President - Lone Star Cosmetology Association, Fort Worth

Joe Shirley - Bethel Road Barber Shop, Coppell

Donald McClain, Tyler

Mary W. Russell - Russell Barber Shop, Austin

Bobby Jo Webb, Austin

Modification

1. Bring overall standards for schools in line with the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS). (Philip D. Lapp, Commissioner - Texas Cosmetology Commission, Weatherford)

Staff Comment: Currently, schools can voluntarily choose to become accredited by NACCAS, whose standards are more stringent than current state requirements. For example, career school reporting standards, such as completion and job placement rates, would be higher for cosmetology schools than other career schools regulated by the State.

Recommended Action: Adopt Recommendation 4.1.

Commission Decision: The Commission took no action on this recommendation.

Issue 5 Key Elements of Barber and Cosmetology Licensing and Regulation Do Not Conform to Commonly Applied Licensing Practices.

Recommendations

Licensing

Change in Statute

5.1 Authorize provisional barber licenses.

This recommendation would ensure that persons applying for a Texas barbering license who hold a current license from another state would be able to practice while waiting for evaluation of their application. The Barber Act would authorize issuance of a provisional license to an applicant who holds a license substantially equivalent to current requirements, or has passed a recognized examination. The provisional license would be valid until approval or denial of the application, which must be completed within 180 days.

5.2 Remove specific license renewal dates in the Barber Act.

This recommendation would ensure that specific statutory provisions relating to renewal dates do not conflict with the current authority to stagger license renewals. Conforming these statutes will result in greater administrative efficiency and provide more convenient service to licensees.

5.3 Authorize denial of license renewals based on outstanding administrative fines.

This recommendation would provide for clear statutory authority to deny barber and cosmetology license renewals against licensees who do not pay their administrative fines. Making this authority explicit will help ensure fair treatment to all license holders, and ensure licensees have good standing before renewing their licenses.

Management Action

5.4 Eliminate notarization requirements for individuals applying for examinations or licensure.

This recommendation would remove requirements to notarize barber and cosmetology applications and would direct acceptance of applications that are not notarized. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these applications.

Enforcement

Change in Statute

5.5 Require development of a method for violation and complaint trend analysis.

This recommendation would require development of methods for analyzing the sources and types of barber and cosmetology complaints and violations. The agencies, or successor agency, should categorize complaints and violations by types, such as late renewals, late fee payments, unsanitary practices, and others. The agencies, or successor agency, would conduct analysis of complaints and violations looking for trends which need attention, or where technical assistance may help reduce the number of complaints or violations. Developing a method to analyze complaints will provide improved information regarding the nature of complaints, leading to stronger enforcement and greater administrative efficiency.

5.6 Require compilation of detailed statistics on violations and complaints and report annually.

This recommendation would provide a broader picture of the public's problems with barbering and cosmetology by requiring compilation of detailed violation and complaint statistics. These statistics should include:

- the average time to close a complaint or violation from the time the agencies receive the complaint, or write a violation, until resolution of the complaint or violation by final order or sanction;
- the origin, reason, and basis for the complaint or violation;
- the outcome of the complaints or violations including the number dismissed, the reason for dismissal, and the number resulting in disciplinary action;
- the number of non-jurisdictional complaints; and
- the number and type of all open cases at year's end.

5.7 Require adoption of guidelines for informal settlement conferences.

This recommendation would ensure development and adoption of guidelines for barber and cosmetology informal settlement conferences. The guidelines would ensure more fair and consistent treatment of licensees when negotiating the disposition of enforcement actions.

Management Action

5.8 Direct the Commission to remove the requirement that complaints filed with the Commission be notarized.

The Commission, or its successor agency, should accept unnotarized complaints, which would make filing a complaint more convenient for the public.

5.9 Direct the Commission to establish a policy for making only final enforcement information available to the public.

This recommendation would require the Commission, or its successor agency, to establish a policy for making information about only final enforcement actions available to the public. This policy would protect licensees by ensuring that the public does not have access to information about ongoing, and potentially groundless enforcement proceedings.

Administration

Change in Statute

5.10 Direct the Board and Commission to develop a method for responding to and documenting non-jurisdictional complaints.

This recommendation would direct the agencies, or their successor agency, to follow through with non-jurisdictional complaints by sending the complainant a letter closing the complaint, and require the agencies to document their actions when responding to non-jurisdictional complaints. This policy would increase the agencies' administrative efficiency and ensure that the agencies adequately address concerns raised by the public.

5.11 Eliminate fee caps in the Barber Act.

The recommendation would give flexibility to set barber fees at the level necessary to recover program costs as conditions change. The Legislature would maintain control by setting spending levels in the General Appropriations Act.

Fiscal Implication

These recommendations will not have a significant fiscal impact to the State. The recommendations are procedural improvements that should not require additional resources, and some administrative savings from increased efficiencies may occur. The cost of providing provisional licenses would be recovered through fees paid by license applicants. The cost of any database modifications required for compiling statistics on violations and complaints would be recovered through fees paid by licensees.

Responses

Texas State Board of Barber Examiners Response

Recommendation 5.1: The Board acknowledges the merit of this recommendation, provided that appropriations would be made available to allow the agency to update its database system.

Recommendation 5.2: The Board acknowledges the merit of this recommendation.

Recommendation 5.3: The Board acknowledges the merit of this recommendation.

Recommendation 5.4: The Board acknowledges the merit of this recommendation.

Recommendation 5.5: The Board agrees that a more formal approach to recording, reporting, and analysis of complaints can be implemented.

Recommendation 5.6: The Board agrees that a more formal reporting system can be implemented.

Recommendation 5.7: The Board acknowledges the merit of this recommendation.

Recommendation 5.8: Not applicable to the Board.

Recommendation 5.9: Not applicable to the Board.

Recommendation 5.10: The Board states that it currently sends a letter to each complainant when a complaint is closed.

Recommendation 5.11: The Board acknowledges the merit of this recommendation.

(William H. Kuykendall, J.D., Chair, and Glenn Parker, Executive Director - Texas State Board of Barber Examiners)

Texas Cosmetology Commission Response

Recommendation 5.1: Not applicable to the Commission.

Recommendation 5.2: Not applicable to the Commission.

Recommendation 5.3: The Commission supports this recommendation.

Recommendation 5.4: The Commission states that removing notarization requirements can be accomplished by statute.

Recommendation 5.5: The Commission is not opposed to implementing the recommendation if required.

Recommendation 5.6: The Commission supports this recommendation.

Recommendation 5.7: The Commission states it has formal written guidelines for informal settlement conferences.

Recommendation 5.8: The Commission supports this recommendation.

Recommendation 5.9: The Commission supports this recommendation and states that it has implemented this.

Recommendation 5.10: The Commission states that it currently sends a letter to complainants who have filed non-jurisdictional complaints.

Recommendation 5.11: Not applicable to the Commission.

(Antoinette F. Humphrey, Executive Director - Texas Cosmetology Commission)

Public Response

For

Philip D. Lapp, Commissioner - Texas Cosmetology Commission, Weatherford

Supports Recommendation 5.4 - Baron Carter- Jenissa Beauty Academy

Against

James Edward Smith, Executive President - Texas Association of Tonsorial Artists, Cedar Hill

Mary W. Russell - Russell Barber Shop, Austin

Bobby Jo Webb, Austin

Opposes Recommendation 5.11 - Joe Shirley - Bethel Road Barber Shop, Coppel

Modifications

None received.

Recommended Action: Adopt Recommendations 5.1 through 5.11.

Commission Decision: Adopted Recommendations 5.1 through 5.11 and four additional recommendations as follows.

1. Remove requirement that automatically schedules hearings at the State Office of Administrative Hearings for both barber and cosmetology licensees who fail to respond to notices of violations from the agencies.
2. Establish standard time frames and penalties for late license renewal, including requiring a barber or cosmetology licensee delinquent in renewal for one year or more to be reexamined.
3. Standardize language on administrative sanctions to specify a full range of penalties to allow the agencies to probate a suspended license. Require the agencies to have clear probation standards in rule if they use probation as a sanction. These standards should include procedures for imposing appropriate conditions, notifying probationers of those conditions and actions they need to take, and tracking probationers' progress.
4. Update language on complaints to require both agencies to adopt procedures for all phases of the complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public.

ACROSS-THE-BOARD RECOMMENDATIONS

Texas State Board of Barber Examiners	
Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

Texas Cosmetology Commission	
Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Update	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

NEW ISSUES

New Issues

Enforcement

6. Give the Barber Board civil penalty authority and perhaps criminal penalty authority. (William H. Kuykendall, J.D., Chair - Texas State Board of Barber Examiners)

Staff Comment: In the 76th session, the Legislature replaced the Barber Board's civil penalty authority with administrative penalty authority.

7. Allow the Cosmetology Commission to revoke licenses because of non-payment of fines. (Antoinette F. Humphrey, Executive Director - Texas Cosmetology Commission)

Staff Comment: The Cosmetology Commission currently has authority to revoke licenses for any violation of the Cosmetology Act or Commission rules.

8. Require cosmetology salons to post a 1-800 number to make complaints to the Cosmetology Commission. (Robert W. Gibbs, Jr., Houston)

Staff Comment: Licensed cosmetology salons are already required to post a notice notifying consumers where to file a complaint, including the Commission's 1-800 number.

9. Barber enforcement violations should be dealt with at the local level and not at the State Office of Administrative Hearings. (Joe Shirley - Bethel Road Barber Shop, Coppell)

10. Increase the number of cosmetology inspectors. (Deborah Winegar - Cosmetology Instructors of Public Schools, Dickinson and Cathy Neben and Dr. Michael Neben, Houston)

11. Provide more funding for barber inspectors. (W.D. Wagner, C.E.O. - Acres Home College of Barber Design, Houston and Joe Shirley - Bethel Road Barber Shop, Coppell)

Sanitation

12. Raise disinfection standards for cosmetology salons. (Robert W. Gibbs, Jr., Houston)

13. Require cosmeology nail salons to use autoclaves to sanitize instruments. (Patty Ann Abrams and Annie Nguyen - Nails a la Mode, Houston)

14. Require the Texas Department of Health and the Texas Cosmetology Commission to team up to offer a course on sanitation for cosmetology salons. (Cindy Huynh - Owner, Isle PediSpa, Houston)

15. Amend barber and cosmetology law to:
- require licensees to use single-use, disposable cutting instruments or to sterilize cutting instruments in an autoclave;
 - require licensees to disinfect instruments that can't be sterilized in a high-level or intermediate-level disinfectant for 30 minutes before use;
 - require licensees to pass continuing education courses on sterilization and disinfection;
 - specify that licensees' use of credo blades is grounds for administrative fines and license revocation, and require inspectors to confiscate the blades;
 - require licensees to disinfect pedicure tubs between each customer with an intermediate-level, tuberculoidal disinfectant for ten minutes, followed by a solution of bleach and water, and to clean intake screens at the end of each day. (Dr. Shelley Sekula-Gibbs, M.D., Houston)
16. Establish and fund a task force to evaluate the health risks inherent on the practice of barbering and determine the most effective means to address those risks. Task force memberships should include a physician, a nurse, one or more barbers, barbershop owners, barber inspectors, barber school owners, barber school instructors, speciality shop owners, and manicurists. (Joe Shirley - Bethel Road Barber Shop, Coppell)
17. Eliminate the requirement that barbers sanitize their implements by immersing them in boiling water or carbolic acid. (Joe Shirley - Bethel Road Barber Shop, Coppell)
18. Require the Cosmetology Commission to provide more plain language information on sanitation issues. (Cathy Neben and Dr. Michael Neben, Houston)

Examination

19. Require a new combined agency to review the current method of examining students, including administering the written test after a student has completed 1,000 hours of course work, composite score calculation between the written and practical tests, and national testing. (Linda Colwell, President - Lone Star Cosmetology Association, Austin)
20. Permit cosmetology students to take the written exam after completing 1,000 hours of course work. (Jim Herring, Regional Director - Vogue Colleges and member of Lone Star Cosmetology Association, San Antonio)

Staff Comment: At its April 19, 2004 Commission meeting, the Texas Cosmetology Commission voted to implement procedures to allow students to take the exams after they have completed 1,000 hours of training.

21. Institute a cosmetology written and practical exam weighted scoring system. (Jim Herring, Regional Director - Vogue Colleges and member of Lone Star Cosmetology Association, San Antonio)
22. Offer the cosmetology written exam in non-Castilian Spanish. (Della Dunaway - Houston Training Schools, Houston)
23. Give the cosmetology practical exam at satellite sites around the state. (Karla Harmond, Instructor - Crowley High School, Crowley)

Staff Comment: This recommendation would have a fiscal cost for travel and site rental.

24. Update the cosmetology practical exam. (Lupe Simpson)
25. Fund satellite testing sites for cosmetology exams. (Vonda M. Hutchings - Professional Association for Cosmetology Education)
26. Require a third party to administer the cosmetology practical and written exams. (Anonymous e-mail)

Licensing

27. Create an apprenticeship program for cosmetologists. (Leif Christiansen, Commissioner, Texas Cosmetology Commission, Houston)
28. Require continuing education for barbers. (Asell Maxie, Jr. - Houston Barbers Association Chapter 101, Houston and Joe Shepard)
29. Remove the requirement for the Barber Board and Cosmetology Commission to participate in TexasOnline. (Joe Shirley - Bethel Road Barber Shop, Coppell)
30. Create a registry of cosmetology workers at the Cosmetology Commission. (Cindy Huynh, Owner - Isle PediSpa, Houston)
31. Eliminate booth rental permits for barbers. (Joe Shirley - Bethel Road Barber Shop, Coppell)
32. Eliminate the requirement that a barber work for another barber for twelve months before being allowed to have a shop permit. (Joe Shirley - Bethel Road Barber Shop, Coppell)
33. Require signatures on cosmetology licenses for inspectors to check. (Deborah Winegar - Cosmetology Instructors of Public Schools, Dickinson)
34. Create barber apprentice licenses for 18 months. (Lee Williams and Mack Lewis - Lee's Barber Shop, Dallas)

Miscellaneous

35. Increase funding at the Cosmetology Commission. (Jimmie Kay Kennedy, Abilene and Jennifer Davis - Texas Industrial Vocational Association, Austin)
36. Replace current Barber Board members. (Denise Leopard, Malakoff)
37. Expand the regulatory role of the Cosmetology Commission to ensure they have the power to conduct exams and to set minimal standards. (Baron Carter - Jenissa Beauty Academy)
38. Require cosmetology students to report jobs electronically to the Cosmetology Commission. (Baron Carter- Jenissa Beauty Academy)
39. Require cosmetology schools to have financial statements prepared by a CPA. (Baron Carter- Jenissa Beauty Academy)
40. Immediately establish a voluntary standing advisory committee for the cosmetology industry that has an active role for the industry needs. (Jim Herring, Regional Director - Vogue Colleges and member of Lone Star Cosmetology Association, San Antonio)

Recommended Action: Staff makes no recommendations on any of these New Issues.

Commission Decision: Adopted New Issue 13 and New Issue 22 (modified to be a management action directing the agency to offer the cosmetology written exam in non-Castillian Spanish). The Commission also adopted a new management action to direct the agency to focus on sanitation and health risks.