



## BOARD OF BARBERING AND COSMETOLOGY

*Executive Officer: Olivia Guebara (916) 445-7061*

On July 1, 1992, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990), the enabling statutes of the Board of Barber Examiners (BBE) and the Board of Cosmetology (BOC) were repealed and replaced with an enabling act creating the Board of Barbering and Cosmetology (BBC); that act is found at Business and Professions Code section 7301 *et seq.* BBC licenses and regulates persons engaged in the practice of barbering, cosmetology, and electrolysis. The Board is authorized to conduct and administer examinations, adopt regulations governing public health and safety, and discipline persons in violation of its statutes or regulations. BBC represents the first merger of two California regulatory agencies. The Board, which consists of five public members and four members representing the professions, holds meetings at least four times per year.

### MAJOR PROJECTS

**BBC Rulemaking Update.** BBC is still in the process of adopting a comprehensive set of regulations to implement its new enabling act; the proposed regulations consist of thirteen articles in Division 9, Title 16 of the CCR. Article 3 (apprenticeship) and Article 8 (required curricula) have been separated out from the other articles, making a total of three rulemaking packages which BBC is proposing to adopt. [14:2&3 CRLR 41; 14:1 CRLR 34]

In March 1994, the Office of Administrative Law (OAL) disapproved the main regulatory package, consisting of eleven articles dealing with the practices of barbering, cosmetology, and electrology. OAL found that the rulemaking file failed to satisfy the necessity, consistency, and clarity standards of the Administrative Procedure Act (APA); BBC failed to properly notice or identify several forms which were incorporated by reference into the regulations; and BBC failed to follow certain procedural requirements of the APA. [14:2&3 CRLR 41] BBC modified the rulemaking package in response to OAL's findings, and adopted the revised proposal at its June 13 meeting; on September 9, BBC resubmitted the rulemaking file to OAL, where it is pending at this writing.

Also in March 1994, OAL disapproved BBC's proposed adoption of Article 8 (curricula) (sections 951-962), finding that the proposed regulations do not satisfy the APA's clarity standard. [14:2&3 CRLR

41] BBC modified the rulemaking package in response to OAL's findings, and adopted the revised proposal at its June 13 meeting; on September 2, BBC resubmitted the rulemaking file to OAL, where it is pending at this writing.

On May 20, OAL approved BBC's adoption of Article 3 (apprenticeship) (sections 913-925), with the exception of section 913.1, which OAL disapproved on the basis that it failed to meet the necessity, authority, consistency, and clarity standards of the APA; section 913.1 would have allowed BBC to rescind its approval of an apprenticeship program sponsor under certain circumstances. [14:2&3 CRLR 41]

**Report to the Legislature on Tanning Facilities.** AB 310 (Woodruff) (Chapter 521, Statutes of 1993), which became effective January 1, 1994, required BBC to prepare and submit to the legislature a report on tanning facilities by July 1, 1994. [14:2&3 CRLR 42] The report must include the total number of tanning facilities in California, BBC's conclusion regarding whether tanning facilities in BBC-licensed establishments are in substantial compliance with the Filante Tanning Facility Act of 1988, a recommendation as to whether further regulation of tanning facilities is required, and—if further regulation of tanning facilities is required—a recommendation as to which state agency should be granted jurisdiction.

Pursuant to AB 310, BBC reviewed and approved a draft report to the legislature at its August 8 meeting. According to the report, there are 933 tanning salons statewide; however, less than 200 of these tanning facilities are located inside BBC-licensed establishments. Out of 159 tanning facilities surveyed, 77.36% were in substantial compliance with the Filante Tanning Facility Act of 1988, which requires all tanning facilities in the state to post warning signs about the dangers of ultraviolet radiation, have an operator present during services, provide sanitized eyewear to consumers, and receive signed statements from consumers stating they understand the hazards of the service. BBC also found that 20.75% of the salons surveyed were disseminating incorrect information by stating that the tanning devices are safe and free from risk. Also, only 50.40% of the facilities surveyed provide literature to educate consumers as to the potential health risks associated with tanning services.

As a result of its survey findings, BBC recommended further regulation of this industry in the areas of health and safety, disinfection and sanitation, posting of warning signs, educating consumers on the hazards associated with tanning facilities, training personnel to operate the ma-

chinery, and protecting minors from using the facilities. BBC further recommended that the Department of Health Services be granted jurisdiction to regulate this industry; although BBC is authorized to adopt regulations concerning the operation of tanning facilities in BBC-licensed establishments, the Board recognized that the majority of consumers visit facilities outside of its jurisdiction, as such, are unprotected by these regulations.

### LEGISLATION

**Future Legislation.** BBC's Legislation and Regulation Committee has recommended that the Board pursue legislation which would delete the words "for compensation" from Business and Professions Code section 7317, which prohibits the practice of barbering, cosmetology, or electrolysis for compensation without a license. When the language of the 1990 merger bill was drafted, the words "for compensation" were added to this section; prior to 1990, the Board of Cosmetology successfully prosecuted unlicensed individuals without having to prove that compensation was made. Because unlicensed persons found working in salons often claim they are providing services free of charge, BBC claims that it is difficult to prove otherwise without conducting costly undercover operations. Accordingly, BBC may pursue changes to section 7317 to delete the words "for compensation," and to clarify Business and Professions Code section 7318 to exempt from BBC's licensure requirements persons actually providing services for free outside a licensed establishment.

At its June 13 meeting, the Board's Legislation and Regulation Committee discussed a proposal to reduce unlicensed activity, which is the most frequent violation of BBC's statute. The proposed solution would require Board licensees to include their BBC license numbers in all advertising. Because a recent survey of professional associations resulted in very little input on the matter, BBC will not take legislative action on the issue at this time, although it has not formally dropped the subject.

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 41-42:

**SB 2036 (McCorquodale)**, as amended August 26, creates a "sunset" review process for occupational licensing boards within the Department of Consumer Affairs (DCA), requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1997 for BBC; creates a Joint Legislative Sunset Review Committee which



will review BBC's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BBC's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether BBC should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case BBC would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

**AB 3787 (V. Brown)**, as amended August 19, would have directed the Department of Health Services to establish sterilization, sanitation, and safety standards for persons engaged in the business of tattooing, body piercing, or permanent cosmetics, and to distribute those standards to county health departments; required practitioners of tattooing, body piercing, and permanent cosmetics to register with the county in which they practice, obtain a copy of the Department's standards and commit to comply with the standards, provide the county health department with a business address and the address at which the regulated activities are conducted, and pay registration and inspection fees, as specified; required county health departments to annually inspect the locations where tattooing, body piercing, and permanent cosmetics are practiced; and authorized county health departments to impose civil penalties for violation of sanitation standards or failure to register. On September 19, Governor Wilson vetoed this bill, stating that "[t]here is no evidence to suggest there is a public health problem," and that "[n]o case of serious infection resulting from these practices has been reported to the state in recent years."

**SB 1288 (Calderon)**. Existing provisions of the Unruh Civil Rights Act and related provisions prohibit various types of discrimination by business establishments, provide for the civil liability of a person who denies, aids, or incites a denial of these rights or makes any discrimination contrary to these provisions, and set actual damages at a minimum of \$250. As amended August 26, this bill instead provides for actual damages at a minimum of \$1,000. The bill would direct DCA, by June 1, 1995, to provide notice to BBC licensees that California state law prohibits gender-based pricing, as defined. The bill requires DCA, by June 1, 1998, to submit to the legislature, upon request, a summary of the number and subject of any

inquiries or comments by licensees in response to that notice; and, by June 1, 1995, to develop and make available to the public consumer information on the problem of gender-based price discrimination. This bill was signed by the Governor on August 26 (Chapter 535, Statutes of 1994).

**AB 2418 (Speier)**, as amended August 26, would have specifically provided that no seller of goods or services may discriminate, with respect to the price charged for goods or services of similar or like kind, against a person solely because of the person's gender. On September 30, Governor Wilson vetoed this bill, stating that "[d]iscriminatory gender-based pricing practices are illegal in California today" under the Unruh Civil Rights Act; Wilson also claimed that AB 2418 is "deficient because it failed to provide explicitly that businesses do have a right to base prices upon legitimate factors."

**SB 1498 (Hughes)**. Existing law prohibits a licensed cosmetology establishment from employing an unlicensed person who performs or practices cosmetology. As amended August 8, this bill provides that a student extern, as defined, may work at a licensed cosmetology establishment and receive school credit, as provided, for the work. The bill imposes various requirements on the externship program. This bill was signed by the Governor on September 30 (Chapter 1142, Statutes of 1994).

**AB 292 (Polanco)**, as amended August 18, would have required all licensed barbers, cosmetologists, manicurists, and estheticians to complete sixteen hours of continuing education (CE) during each two-year license renewal period. [13:1 CRLR 25] The bill would have provided for BBC approval of CE programs on health and safety topics, and required BBC to adopt regulations establishing standards for the approval of CE courses and for the effective administration and enforcement of its CE requirements. On September 24, Governor Wilson vetoed this bill, stating that the "continuing education requirements proposed by this bill would unnecessarily increase costs for licensees."

**AB 1358 (Karnette)**. Existing law defines the term "employee" for purposes of unemployment insurance and personal income tax withholding. As amended January 14, this bill would have further defined the term "employee" to include booth renters in the cosmetology industry, unless specified conditions and requirements are met that would result in their being considered independent contractors. On September 11, Governor Wilson vetoed this bill. According to Wilson, the Employment Development Department currently

determines, on a case-by-case basis, the employment status of booth renters in the cosmetology industry; "[g]iven the complexity in the possible arrangements between salon owners and cosmetologists, a case-by-case determination would seem to make more sense. These are small businesses that should have the right to determine what arrangements would make their business most economically feasible."

**SCR 28 (Calderon)**, as amended March 3, would have directed the Department of Fair Employment and Housing to conduct an undercover consumer investigation to identify businesses in the dry cleaning and cosmetology professions which practice gender-based price discrimination and take appropriate action to penalize such discrimination. This bill died in committee.

**AB 1392 (Speier)**, as amended August 17, is no longer relevant to BBC.

## RECENT MEETINGS

At its August 8 meeting, BBC announced that, in conjunction with the Department of Consumer Affairs, it will undertake an occupational analysis of barbering, despite little feedback from licensed barbers last year. [14:2&3 CRLR 41]

Also at its August 8 meeting, BBC elected Rosemary Faulkner to serve as president and Daniel Sierras to serve as vice-president.

## FUTURE MEETINGS

October 3 in Los Angeles.  
January 8-9 in Sacramento.

## BOARD OF BEHAVIORAL SCIENCE EXAMINERS

*Interim Executive Officer:*

*Scott Syphax*  
(916) 322-4910 and  
(916) 445-4933

Authorized by Business and Professions Code section 4980 *et seq.*, the eleven-member Board of Behavioral Science Examiners (BBSE) licenses marriage, family and child counselors (MFCCs), licensed clinical social workers (LCSWs), and educational psychologists (LEPs). The Board administers tests to license applicants, adopts regulations regarding education and experience requirements for each group of licensees, and appropriately channels complaints against its licensees. The Board also has the power to suspend or revoke licenses. The Board consists of six public members, two LCSWs, one LEP,