



**DEPARTMENT OF CONSUMER AFFAIRS**  
 CALIFORNIA BOARD OF ACCOUNTANCY  
 2000 EVERGREEN STREET, SUITE 250  
 SACRAMENTO, CA 95815-3832  
 TELEPHONE: (916) 263-3680  
 FACSIMILE: (916) 263-3675  
 WEB ADDRESS: <http://www.cba.ca.gov>



**CALIFORNIA BOARD OF ACCOUNTANCY  
 PUBLIC MEETING NOTICE FOR THE LEGISLATIVE COMMITTEE,  
 ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE, MOBILITY  
 STAKEHOLDER GROUP, COMMITTEE ON PROFESSIONAL CONDUCT, AND  
 CALIFORNIA BOARD OF ACCOUNTANCY MEETINGS**

- DATE:** Thursday, May 19, 2016      **CALIFORNIA BOARD OF ACCOUNTANCY MEETING**  
**TIME:** 9:00 a.m.  
 The California Board of Accountancy will recess to convene committee meetings and to take a lunch break
- DATE:** Thursday, May 19, 2016      **LEGISLATIVE COMMITTEE MEETING**  
**TIME:** 11:30 a.m.  
 Or upon recess of the California Board of Accountancy Meeting
- DATE:** Thursday, May 19, 2016      **ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE MEETING**  
**TIME:** 12:00 p.m.  
 Or upon adjournment of the Legislative Committee Meeting
- DATE:** Thursday, May 19, 2016      **MOBILITY STAKEHOLDER GROUP MEETING**  
**TIME:** 2:00 p.m.
- DATE:** Thursday, May 19, 2016      **COMMITTEE ON PROFESSIONAL CONDUCT MEETING**  
**TIME:** 3:00 p.m.  
 Or upon adjournment of the Mobility Stakeholder Group Meeting
- DATE:** Thursday, May 19, 2016      **CALIFORNIA BOARD OF ACCOUNTANCY MEETING WILL RECONVENE**  
**TIME:** 4:00 p.m. to 5:00 p.m.  
 Or upon adjournment of the Committee on Professional Conduct Meeting
- DATE:** Friday, May 20, 2016      **CALIFORNIA BOARD OF ACCOUNTANCY MEETING**  
**TIME:** 9:00 a.m. to 1:30 p.m.

**PLACE: Hilton Los Angeles Airport  
5711 West Century Boulevard  
Los Angeles, CA 90045  
Telephone: (310) 410-4000**

Enclosed for your information is a copy of the agendas for the Legislative Committee, Enforcement Program Oversight Committee, Mobility Stakeholder Group, Committee on Professional Conduct, and California Board of Accountancy meetings on May 19-20, 2016. For further information regarding these meetings, please contact:

Corey Riordan, Board Relations Analyst  
(916) 561-1716 or [cfriordan@cba.ca.gov](mailto:cfriordan@cba.ca.gov)  
California Board of Accountancy  
2000 Evergreen Street, Suite 250  
Sacramento, CA 95815

An electronic copy of this notice can be found at <http://www.dca.ca.gov/cba/calendar.shtml>

The meeting is accessible to individuals who are physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Corey Riordan at (916) 561-1716, or email [cfriordan@cba.ca.gov](mailto:cfriordan@cba.ca.gov), or send a written request to the California Board of Accountancy Office at 2000 Evergreen Street, Ste. 250, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



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**CBA MISSION:** To protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards

**DEPARTMENT OF CONSUMER AFFAIRS**  
**CALIFORNIA BOARD OF ACCOUNTANCY**

**MEETING AGENDA**

**May 19, 2016**

**9:00 a.m. – 5:00 p.m.**

**May 20, 2016**

**9:00 a.m. – 1:30 p.m.**

**Hilton Los Angeles Airport**  
**5711 West Century Boulevard**  
**Los Angeles, CA 90045**  
**Telephone: (310) 410-4000**

**Important Notice to the Public**

All times indicated, other than those identified as “time certain,” are approximate and subject to change. Agenda items may be discussed and action taken out of order at the discretion of the California Board of Accountancy President. Agenda items scheduled for a particular day may be moved to another day to facilitate the California Board of Accountancy’s business. The meeting may be cancelled without notice. For verification of the meeting, call (916) 561-1716 or access the California Board of Accountancy’s website at <http://www.cba.ca.gov>.

**Thursday,  
 May 19, 2016**

Call to Order, Roll Call, Establishment of Quorum, and Opening Remarks (**Katrina Salazar, President**).

**9:00 a.m. –  
 11:30 a.m.**

- I. Petition Hearings.
  - A. Vispi B. Shroff – Petition for Reinstatement of Revoked Certificate.
  - B. Inger A. Sullenger, License No. 88971 – Petition for Termination of Probation.
  - C. Troy M. Christiansen, License No. 125158 – Petition for Reduction of Penalty.

D. Closed Session. Pursuant to Government Code Section 11126(c)(3), the California Board of Accountancy Will Convene into Closed Session to Deliberate on Disciplinary Matters (Petitions for Reinstatement of Revoked Certificate, Termination of Probation, and Reduction of Penalty).

Return to Open Session.

11:30 p.m. –  
4:00 p.m.

The California Board of Accountancy will recess to convene committee meetings and to take a lunch break.

4:00 p.m. –  
5:00 p.m.

II. Report of the President (**Katrina Salazar**).

A. Discussion Regarding the California Board of Accountancy’s Webcast and Closed Captioning of its Meetings.

B. Update on the California Board of Accountancy’s Communication and Outreach.

1. Communication on the Release of the Next Version of the Uniform Certified Public Accountant Examination.

C. Developments Since the February 2015 United States Supreme Court Decision: North Carolina State Board of Dental Examiners v. Federal Trade Commission (**Kristy Schieldge, Department of Consumer Affairs, Attorney III**).

D. Discussion on the California Little Hoover Commission Hearings Regarding Occupational Licensing (**Matthew Stanley, Information and Planning Officer**).

E. Department of Consumer Affairs Director’s Report on Departmental Activities (**DCA Representative**).

Friday,  
May 19-20, 2016

9:00 a.m. –  
9:15 a.m.

III. Report of the Vice-President (**Alicia Berhow, Vice-President**).

A. Recommendations for Appointment(s)/Reappointment(s) to the Enforcement Advisory Committee.

B. Recommendations for Appointment(s)/Reappointment(s) to the Qualifications Committee.

C. Recommendations for Appointment(s)/Reappointment(s) to the Peer Review Oversight Committee.

9:15 a.m. –  
9:25 a.m.

IV. Report of the Secretary/Treasurer (**Michael Savoy, Secretary/Treasurer**).

- A. Fiscal Year 2015-16 Third Quarter Financial Statement and Governor's Budget.
- 9:25 a.m. – 9:30 a.m.**
- V. Report of the Executive Officer (**Patti Bowers, Executive Officer**).
    - A. Update on the Relocation of the California Board Accountancy's Office.
    - B. Update on Staffing.
    - C. Discussion Regarding Conducting California Board of Accountancy Meetings at Colleges and Universities.
    - D. Discussion Regarding the Option of Changing the July 2016 California Board of Accountancy Meeting to Two Days.
    - E. Discussion Regarding the American Institute of Certified Public Accountants' Paper Regarding the Proposed Evolution of Peer Review Administration.
- 9:30 a.m. – 9:40 a.m.**
- VI. Report on the Enforcement Advisory Committee, Qualifications Committee, and Peer Review Oversight Committee.
    - A. Enforcement Advisory Committee (**Joseph Rosenbaum, Chair**).
      - 1. Report of the May 5, 2016, Enforcement Advisory Committee Meeting Activities.
    - B. Qualifications Committee (**Jenny Bolsky, Chair**).
      - No Report.
    - C. Peer Review Oversight Committee (**Robert Lee, Chair**).
      - 1. Report of the May 6, 2016, Peer Review Oversight Committee Meeting Activities.
- 9:40 a.m. – 9:55 a.m.**
- VII. Report of the Enforcement Chief (**Dominic Franzella, Enforcement Chief**).
    - A. Enforcement Activity Report.
- 9:55 a.m. – 10:05 a.m.**
- VIII. Report of the Licensing Chief (**Gina Sanchez, Licensing Chief**).
    - A. Licensing Activity Report.

10:05 a.m. –  
10:50 a.m.

IX. Committee Reports.

A. Committee on Professional Conduct (**Leslie LaManna, Chair**).

1. Report of the May 19, 2016, Committee on Professional Conduct Meeting.
2. Discussion and Possible Action to Consider California Board of Accountancy Policy Objectives Resulting from the United States Department of Labor's Review of Audits Performed for Employee Benefit Plans Covered Under the Employee Retirement Security Act of 1974.

B. Enforcement Program Oversight Committee (**Kathleen Wright, Chair**).

1. Report of the May 19, 2016, Enforcement Program Oversight Committee Meeting.
2. Revision Schedule for the Disciplinary Guidelines and Model Orders (**Written Report Only**).
3. Discussion and Possible Action Regarding Review of Proposed Changes to the Disciplinary Guidelines and Model Orders (Title 16, California Code of Regulations Section 98).

C. Legislative Committee (**Deidre Robinson, Chair**).

1. Report of the May 19, 2016, Legislative Committee Meeting.
2. Update, Discussion, and Possible Action on Legislation on Which the California Board of Accountancy Has Taken a Position or is Monitoring.
  - A. Recommendation to Maintain the California Board of Accountancy's Current Position (Assembly Bill (AB) 507, AB 1566, AB 1707, AB 1939, AB 2560, AB 2859, ACR 131, Senate Bill (SB) 1251, SB 1348, SB 1155, SB 1445, and SB 1479).
  - B. Recommendation of Possible Action to Change the California Board of Accountancy's Position (AB 2853).
  - C. Bills Being Monitored by the California Board of Accountancy (AB 1868, AB 1887, AB 1949, AB 2421, AB 2423, AB 2701, AB 2843, SB 1130, SB 1195, SB 1444, and SB 1448).

3. Consideration of Positions on Newly Included Legislation.

A. SB 1195 – Professions and vocations: board actions: competitive impact.

4. Legislative Items for Future Meeting. The California Board of Accountancy may discuss other items of legislation in sufficient detail to determine whether such items should be on a future California Board of Accountancy meeting agenda and/or whether to hold a special meeting of the California Board of Accountancy to discuss such items pursuant to Government Code section 11125.4.

D. Mobility Stakeholder Group (**Jose Campos, Chair**).

1. Report of the May 19, 2016, Mobility Stakeholder Group Meeting.
2. Mobility Stakeholder Group Decision Matrix and Stakeholder Objectives (**Written Report Only**).
3. Timeline for Activities Regarding Determinations to be Made Pursuant to Business and Professions Code Section 5096.21.
4. Discussion Regarding the Assessment of the National Association of State Boards of Accountancy's Process for Evaluating and Information Gathered Regarding Washington's and Arizona's Accountancy Board Operations.
5. Discussion and Possible Action Regarding the Findings of the National Association of State Boards of Accountancy Related to Business and Professions Code Section 5096.21(c).
6. Discussion Regarding the National Association of State Boards of Accountancy's Activities and CPAVerify.
7. Discussion Regarding Proposed Agenda Items for the Next Mobility Stakeholder Group Meeting.

10:50 a.m. –  
10:55 a.m.

X. Acceptance of Minutes.

A. Minutes of the March 17-18, 2016, California Board of Accountancy Meeting.

- B. Minutes of the March 17, 2016, Committee on Professional Conduct Meeting.
- C. Minutes of the March 17, 2016, Legislative Committee Meeting.
- D. Minutes of the March 17, 2016, Enforcement Program Oversight Committee Meeting.
- E. Minutes of the March 17, 2016, Mobility Stakeholder Group Meeting.

**10:55 a.m. –  
11:00 a.m.**

- XI. Other Business.
  - A. American Institute of Certified Public Accountants.
    - 1. Report on Public Meetings of the American Institute of Certified Public Accountants Attended by a California Board of Accountancy Representative.
  - B. National Association of State Boards of Accountancy.
    - 1. Report on Public Meetings of the National Association of State Boards of Accountancy Attended by a California Board of Accountancy Representative.

**11:00 a.m. –  
11:05 a.m.**

- XII. Closing Business.
  - A. Public Comments.\*
  - B. Agenda Items for Future California Board of Accountancy Meetings.

**11:05 a.m. –  
1:30 p.m.**

- XIII. Closed Session.\*\*
  - A. Pursuant to Government Code Section 11126(c)(3), the California Board of Accountancy Will Convene Into Closed Session to Deliberate on Disciplinary Matters (Stipulated Settlements, Default Decisions, and Proposed Decisions).

- B. Pursuant to Government Code Section 11126(e), the California Board of Accountancy Will Meet In Closed Session to Receive Advice from Legal Counsel on Litigation (David Greenberg v. California Board of Accountancy, Los Angeles County Superior Court, Case No. BS155045; David B. Greenberg v. California Board of Accountancy, Orange County Superior Court, Case No. 30-2015-00809799-CU-WM-CJC.; David B. Greenberg v. California Board of Accountancy, Orange County Superior Court, Case No. 30-2015-00809802-CU-WM-CJC.; and David Greenberg v. Erin Sunseri, et al., U.S. District Court, Southern District of Florida, Case No. 15-CV-80624.).

Return to Open Session.

Adjournment

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the California Board of Accountancy are open to the public. While the California Board of Accountancy intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources or technical difficulties.

\*Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the California Board of Accountancy prior to the California Board of Accountancy taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the California Board of Accountancy, but the California Board of Accountancy President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the California Board of Accountancy to discuss items not on the agenda; however, the California Board of Accountancy can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).

\*\*Action may be taken on any item on the agenda. The day, time, and order of agenda items, including closed session, are subject to change at the discretion of the California Board of Accountancy President and may be taken out of order.



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**CALIFORNIA BOARD OF ACCOUNTANCY (CBA)  
 LEGISLATIVE COMMITTEE**

**MEETING AGENDA**

**Thursday, May 19, 2016**

**11:30 a.m.**

**Or Upon Recess of the California Board of Accountancy Meeting**

**Hilton Los Angeles Airport  
 5711 West Century Boulevard  
 Los Angeles, CA 90045  
 Telephone: (310) 410-4000**

**Important Notice to the Public**

All times indicated, other than those identified as "time certain," are approximate and subject to change. Agenda items may be discussed and action taken out of order at the discretion of the LC Chair. The meeting may be cancelled without notice. For verification of the meeting, call (916) 561-1716 or access the CBA's website at <http://www.cba.ca.gov>.

	<b><u>CBA Item #</u></b>
Call to Order, Roll Call, and Establishment of Quorum ( <b>Deidre Robinson, Chair</b> ).	
I. Approve Minutes of the March 17, 2016, Legislative Committee Meeting.	X.C.
II. Update, Discussion, and Possible Action on Legislation on Which the California Board of Accountancy Has Taken a Position or is Monitoring ( <b>Nooshin Movassaghi, Legislative Analyst</b> ).	IX.C.2.A.-C.
A. Recommendation to Maintain the California Board of Accountancy's Current Position (AB 507, AB 1566, AB 1707, AB 1939, AB 2560, AB 2859, ACR 131, Senate Bill 1251, SB 1348, SB 1155, SB 1445 and SB 1479).	
B. Recommendation of Possible Action to Change the California Board of Accountancy's Position (AB 2853).	
C. Bills Being Monitored by the California Board of Accountancy (AB 1868, AB 1887, AB 1949, AB 2421, AB 2423, AB 2701, AB 2843, SB 1130, SB 1195, SB 1444, and SB 1448).	

- III. Consideration of Positions on Newly Included Legislation (Nooshin Movassaghi). IX.C.3.
  - A. SB 1195 – Professions and vocations: board actions: competitive impact. IX.C.3.A.
- IV. Legislative Items for Future Meeting. The California Board of Accountancy may discuss other items of legislation in sufficient detail to determine whether such items should be on a future California Board of Accountancy meeting agenda and/or whether to hold a special meeting of the California Board of Accountancy to discuss such items pursuant to Government Code section 11125.4 (Nooshin Movassaghi). IX.C.4.
- V. Public Comments.\*
- VI. Agenda Items for Next Meeting.

#### Adjournment

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the California Board of Accountancy are open to the public. While the California Board of Accountancy intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources or technical difficulties.

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**DEPARTMENT OF CONSUMER AFFAIRS  
 ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE**

**MEETING AGENDA**

**May 19, 2016**

**12:00 p.m.**

**Or Upon Adjournment of the Legislative Committee Meeting**

**Hilton Los Angeles Airport  
 5711 West Century Boulevard  
 Los Angeles, CA 90045  
 Telephone: (310) 410-4000**

**Important Notice to the Public**

All times indicated, other than those identified as "time certain," are approximate and subject to change. Agenda items may be discussed and action taken out of order at the discretion of the Enforcement Program Oversight Committee Chair. The meeting may be cancelled without notice. For verification of the meeting, call (916) 561-1716 or access California Board of Accountancy's website at <http://www.cba.ca.gov>.

	<b><u>CBA Item #</u></b>
Call to Order, Roll Call, Establishment of Quorum, and Opening Remarks ( <b>Kathleen Wright, Chair</b> ).	
I. Approve Minutes of the March 17, 2016, Enforcement Program Oversight Committee Meeting.	X.D.
II. Revision Schedule for the Disciplinary Guidelines and Model Orders ( <b>Written Report Only</b> ).	IX.B.2.
III. Discussion and Possible Action Regarding Review of Proposed Changes to the Disciplinary Guidelines and Model Orders (Title 16, California Code of Regulations Section 98) ( <b>Dominic Franzella, Enforcement Chief</b> ).	IX.B.3.
IV. Public Comments.*	
V. Agenda Items for Next Meeting.	

## Adjournment

Action may be taken on any item on the agenda. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Enforcement Program Oversight Committee are open to the public.

\*Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Enforcement Program Oversight Committee prior to the Enforcement Program Oversight Committee taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Enforcement Program Oversight Committee. Individuals may appear before the Enforcement Program Oversight Committee to discuss items not on the agenda; however, the Enforcement Program Oversight Committee can take no official action on these items at the time of the same meeting. (Government Code section 11125.7(a))

California Board of Accountancy members who are not members of the Enforcement Program Oversight Committee may be attending the meeting. However, if a majority of members of the full board are present at the Enforcement Program Oversight Committee meeting, members who are not Enforcement Program Oversight Committee members may attend the meeting only as observers.



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**CALIFORNIA BOARD OF ACCOUNTANCY  
 MOBILITY STAKEHOLDER GROUP**

**MEETING AGENDA**  
**Thursday, May 19, 2016**  
**2:00 p.m.**

**Hilton Los Angeles Airport**  
**5711 West Century Boulevard**  
**Los Angeles, CA 90045**  
**Telephone: (310) 410-4000**

**Important Notice to the Public**

All times indicated, other than those identified as "time certain," are approximate and subject to change. Agenda items may be discussed and action taken out of order at the discretion of the Mobility Stakeholder Group Chair. The meeting may be cancelled without notice. For verification of the meeting, call (916) 561-1716 or access the California Board of Accountancy's website at <http://www.cba.ca.gov>.

	<b><u>CBA Item #</u></b>
Call to Order, Roll Call, Establishment of Quorum, and Opening Remarks ( <b>Jose A. Campos, Chair</b> ).	
I. Approval of Minutes of the March 17, 2016, Mobility Stakeholder Group Meeting.	X.E.
II. Mobility Stakeholder Group Decision Matrix and Stakeholder Objectives ( <b>Written Report Only</b> ).	IX.D.2.
III. Timeline for Activities Regarding Determinations to be Made Pursuant to Business and Professions Code Section 5096.21. ( <b>Matthew Stanley, Information and Planning Officer</b> ).	IX.D.3.
IV. Discussion Regarding the Assessment of the National Association of State Boards of Accountancy's Process for Evaluating and Information Gathered Regarding Washington's and Arizona's Accountancy Board Operations ( <b>Matthew Stanley</b> ).	IX.D.4.

- V. Discussion and Possible Action Regarding the Findings of the National Association of State Boards of Accountancy Related to Business and Professions Code Section 5096.21(c) **(Matthew Stanley)**. IX.D.5.
- VI. Discussion Regarding the National Association of State Boards of Accountancy's Activities and CPAverify **(Matthew Stanley)**. IX.D.6.
- VII. Discussion Regarding Proposed Agenda Items for the Next Mobility Stakeholder Group Meeting **(Matthew Stanley)**. IX.D.7.
- VIII. Public Comments.\*

### Adjournment

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## CALIFORNIA BOARD OF ACCOUNTANCY COMMITTEE ON PROFESSIONAL CONDUCT

### MEETING AGENDA

Thursday, May 19, 2016  
 3:00 p.m.

Or Upon Adjournment of the Mobility Stakeholder Group Meeting

Hilton Los Angeles Airport  
 5711 West Century Boulevard  
 Los Angeles, CA 90045  
 Telephone: (310) 410-4000

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- |  | <u><b>CBA Item #</b></u> |
|--|--------------------------|
| Call to Order, Roll Call, Establishment of Quorum, and Opening Remarks ( <b>Leslie LaManna, Chair</b> ).   |                          |
| I. Approve Minutes of the March 17, 2016, Committee on Professional Conduct Meeting.   | X.B.                     |
| II. Discussion and Possible Action to Consider California Board of Accountancy Policy Objectives Resulting from the United States Department of Labor's Review of Audits Performed for Employee Benefit Plans Covered Under the Employee Retirement Security Act of 1974 ( <b>Matthew Stanley, Information and Planning Officer</b> ). | IX.A.2.                  |
| III. Public Comments.*   |                          |
| IV. Agenda Items for Next Meeting.   |                          |
| Adjournment  |                          |

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the California Board of Accountancy are open to the public. While the California Board of Accountancy intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources or technical difficulties.

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**CBA Item II.A.**  
May 19-20, 2016

## **Discussion Regarding the California Board of Accountancy's Webcast and Closed Captioning of its Meetings**

**Presented by:** Corey Riordan, Board Relations Analyst

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### **Purpose of the Item**

The purpose of this agenda item is to provide the California Board of Accountancy (CBA) with an opportunity to discuss the webcast and scheduled closed captioning of CBA meetings.

### **Consumer Protection Objectives**

The CBA will provide real-time closed captioning of its CBA meetings to help ensure the CBA is in compliance with the Americans with Disabilities Act (ADA), which requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities.

### **Action(s) Needed**

No specific action is required on this agenda item.

### **Background**

To help ensure the CBA is in compliance with the ADA requirements, the CBA's Legal Counsel has recommended that the CBA provide closed captioning for their webcasted meetings. Legal Counsel requested that the CBA begin captioning with the May 2016 CBA meeting.

### **Comments**

The CBA, in collaboration with the DCA Equal Employment Opportunity Office, has arranged for West Coast Captioning to provide real-time closed captioning for the CBA meetings. West Coast Captioning will listen to the CBA meeting via telephone and the transcription will be visible on the live webcast of the meeting on the CBA website.

To ensure the clear transcription, it is recommended that individuals speak directly into the microphone and only one person speak at a time.

## **Discussion Regarding the California Board of Accountancy's Webcast and Closed Captioning of its Meetings**

Page 2 of 2

### **Fiscal/Economic Impact Considerations**

The cost for providing real-time closed captioning for the May 2016 CBA meeting is currently included in the CBA's annual pro rata fees paid to the DCA for support services. If it is determined by DCA that the CBA is required to continue with closed captioning and add captioning to past CBA meetings, staff will explore if the DCA's current contract can be amended to include this service or if the CBA will need to pursue a separate contract.

### **Recommendation**

No action is needed by the CBA.

### **Attachment**

None.



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**CBA Item II.B.**  
May 19-20, 2016

## **Update on the California Board of Accountancy's Communication and Outreach**

**Presented by:** Katrina L. Salazar, CPA, President

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### **Purpose of the Item**

The purpose of this agenda item is to provide the California Board of Accountancy (CBA) with an opportunity to discuss its outreach and communication efforts.

### **Consumer Protection Objectives**

Effective outreach and communication by the CBA ensures that CBA applicants and licensees are informed of the CBA's requirements and activities leading to qualified licensees, which protects consumers. It ensures that consumers are aware of the CBA's mission and role.

### **Action(s) Needed**

No specific action is required on this agenda item.

### **Background**

One of my top priorities for this year is to increase the outreach and communication efforts of the CBA. The CBA has always had an eye towards outreach, but this year I want to increase our efforts to reach out to our stakeholders. I have directed staff to secure opportunities for the CBA to present its message to our stakeholder groups: consumers, licensees, students, and the Legislature.

### **Comments**

The following is a listing of outreach and communications efforts that will have occurred prior to the CBA's May 2016 meeting.

- **California Society of Certified Public Accountants (CalCPA) Council Meeting**  
I spoke to the leadership of CalCPA in Sacramento regarding the CBA's objectives and priorities for 2016. This group of approximately 150 CPAs were gathered in Sacramento as a part of CalCPA's Legislative Day.
- **Korea Daily Interview**  
Vice-President Alicia Berhow, who serves as the CBA Ambassador, did an interview with this Korean language newspaper based in Los Angeles. The topics ranged from the CBA's Attest Study to using the CBA's License Lookup

## Update on the California Board of Accountancy's Communication and Outreach

Page 2 of 5

feature for selecting a tax preparer. While the article has not yet been published, the reporter has maintained contact with staff and continued asking other questions. Building relationships with the media is an important part of any outreach plan.

- National Association of State Board of Accountancy (NASBA) Legal Conference  
Travel was approved for the CBA's Enforcement Chief to attend this conference in Tucson, Arizona. He presented information regarding how the CBA investigates Department of Labor referrals.
- University of Southern California (USC)  
Vice-President Berhow and staff went to USC to present information on the examination and licensure process to a group of approximately 85 accounting students. Due to the number of questions, the host had to end the session as another class needed the room. The students filled out several question/comment cards which staff replied to by email.
- Social Media Emphasis  
Staff have increased the use of social media including a week devoted to committee recruitment and a week devoted to the next version of the Uniform CPA Examination (CPA Exam). The response to the next version of the CPA Exam posts was outstanding, with three of those Tweets being listed on Great California Government Tweets, a website that daily lists the top 50 Tweets from State entities.
- Legislative Outreach  
The CBA has gone before legislative committees and testified on bills on which the CBA has taken a position. At a recent hearing on the CBA-sponsored bill, Assembly Bill 2560, I had the opportunity to meet with the author of the bill, Assemblyman Jay Obernolte, to personally thank him for authoring the bill for the CBA.
- California State University (CSU), Fullerton  
Staff presented information on the examination and licensure process and the next version of the CPA Exam to a group of accounting students on the first day of this two-day event. On the second day, Vice-President Berhow and staff spoke with the faculty of the accounting department providing an overview of the educational requirements and information on the next version of the CPA Exam. This event was so well received, CSU, Fullerton has already invited the CBA back during its Fall semester.
- Financial Literacy Fair  
The CBA hosted a booth at a Department of Business Oversight-sponsored Financial Literacy Fair. The Executive Officer, staff, and I were on hand for two hours, and our booth was set up to allow consumers to check their CPA's license

## Update on the California Board of Accountancy's Communication and Outreach

Page 3 of 5

online and to subscribe to E-News or the CBA's social media accounts. We were able to discuss our mission of consumer protection and hand out informational materials to the attendees. I even had the opportunity to meet California State Controller, Betty Yee.

- Accounting Day 2016

This event in San Diego will be held May 16, 2016, subsequent to the mailout of the meeting materials for the CBA's May 2016 meeting. This annual gathering of accounting professionals, including CPAs, is a conference that includes a series of breakout sessions. Vice-President Berhow will be speaking at one of the sessions on the CBA's license renewal process.

We are off to a great start, but I want to ensure that outreach remains a primary focus going forward. The following is a list of planned items for the remainder of the year.

- Launch of CBA Redesigned Website

The new design includes an emphasis on Outreach and Communications through a new section dedicated to it. After launch, staff will be working on a "Consumer Education" page. This page will be exclusively for outreach to consumers and will eventually contain articles, videos, and other information related to consumers. This page will provide a flexible and growing platform allowing the CBA to add or change information as necessary.

- NASBA Regional Meetings

Out-of-State Travel Requests have been prepared, and are currently under review, so that I may travel to both the NASBA Western and Eastern Regional Meetings to discuss the CBA's comparison of other states' enforcement programs to the NASBA Guiding Principles of Enforcement.

- Golden Gate University – Braden Leadership Speaker Series

This fall, the CBA has been invited to participate in Golden Gate University's Braden Leadership Speaker Series. This is a 15-week speaker series on business leadership in which various leaders share advice and expertise with students, alumni and the SF Bay Area community at large. The organizers have requested that the CBA discuss the licensing process, provide personal insights, and answer students' questions.

- So You Want to be a CPA?

This annual collaboration with CalCPA is a presentation and live webcast to students throughout California. This year, the event will be held at the University of California, Davis. It is tentatively scheduled for September.

- CSU, East Bay

Although a date has yet to be set, CSU, East Bay has indicated it is interested in hosting a presentation by staff on the examination and licensure process.

## Update on the California Board of Accountancy's Communication and Outreach

Page 4 of 5

- As previously requested by the CBA, staff will continue to add various presentations to the new Speaker Bank for future use by CBA Members.
- Staff will explore interview opportunities with local media to discuss the CBA's mission, verifying a license and the CBA's priorities.
- Staff will be working with NASBA to create short, informational videos for licensees and consumers. These videos will be posted to YouTube and on the CBA website.
- Staff will be working with the State Controller's Office, Franchise Tax Board, the Board of Equalization, and the Department of Business Oversight on ways to assist each other reach mutual stakeholders through social media and through link exchanges on the websites.
- Going forward, staff will continue to work with outside entities such as DCA, NASBA, and CalCPA on identifying various outreach opportunities.

In planning future outreach activities, staff will be looking at target audiences and the message provided to each. Target audiences and messages for the CBA include the following:

- **Consumers**  
Consumer messages include financial literacy, check the license, the difference between being authorized and qualified to perform services, and the importance of asking about peer review.
- **The Profession**  
The messages to the profession include renewal information, compliance issues, mandatory reporting, peer review and submitting the PR-1 form, and continuing education.
- **Students**  
The primary message to students that is most relevant to them is the process of obtaining their CPA license. The CBA will continue its successful outreach efforts to students at colleges and universities and will explore opportunities for reaching out to high school students as well.
- **Legislature**  
The message to the Legislature will continue to be the CBA's position on legislation and how the CBA can assist individual members' constituents. The CBA will continue its practice of conducting individual meetings with legislative offices when needed to advance the CBA's agenda or to welcome incoming members.

**Update on the California Board of Accountancy's Communication and Outreach**  
Page 5 of 5

As outreach is one of my top priorities, I thought it important to provide this update during the President's Report portion of the CBA's May 2016 meeting. Going forward, the normal outreach report (**Attachment**) will return to the Executive Officer's Report portion of the meeting.

**Fiscal/Economic Impact Considerations**

There are no fiscal/economic impact considerations.

**Recommendation**

Staff does not have a recommendation on this agenda item.

**Attachment**

Communications and Outreach Report



# Communications and **OUTREACH**

Attachment

[www.cba.ca.gov](http://www.cba.ca.gov)

May 2016

## Outreach Priority

This year, President Katrina L. Salazar, CPA, has identified outreach and communications as one of her highest priorities. This communications and outreach report will be brief as President Salazar will be highlighting the CBA's efforts during her President's Report at the CBA's May 2016 meeting.

The following are among the accomplishments she will cover in her report.

The CBA hosted a booth at a Department of Business Oversight-sponsored Financial Literacy Fair. The booth was set up to allow consumers to check their CPA's license online and to subscribe to E-News or the CBA's social media accounts. President Salazar had the opportunity to meet State Controller Betty Yee during the event (pictured).

Travel was approved for the CBA's Enforcement Chief to attend the NAS-BA Legal Conference in Tucson, Arizona. He presented information regarding how the CBA investigates Department of Labor referrals.

Vice-President Alicia Berhow, serving as the CBA Ambassador, and staff presented information on the examination and licensure process to University of Southern California accounting students in early April, and staff repeated the presentation to California State University, Fullerton students in mid-April. In addition, Vice-President Berhow and staff spoke with the faculty of the accounting department at Fullerton providing an overview of the educational requirements and information on the next version of the Uniform CPA Examination.



## Social Media Success

Staff continue to increase the use of social media. Recently, a week was devoted on LinkedIn to committee recruitment to attract new applicants for the CBA's vacant committee positions on the Qualifications, Enforcement Advisory, and Peer Review Oversight Committees.

Another week was devoted to the next version of the CPA Exam on Facebook and Twitter. The American Institute of CPAs has released information about the CPA Exam, and staff reposted it on the CBA website. Some of the information was shared on social media. The response to these posts was outstanding, with three of the CBA's Tweets being listed on Great California Government Tweets, a website that daily lists the top 50 Tweets from State entities. There is clearly interest in more information on this topic, and staff has incorporated the information into its university outreach talking points.



### News Release

April 12, 2016

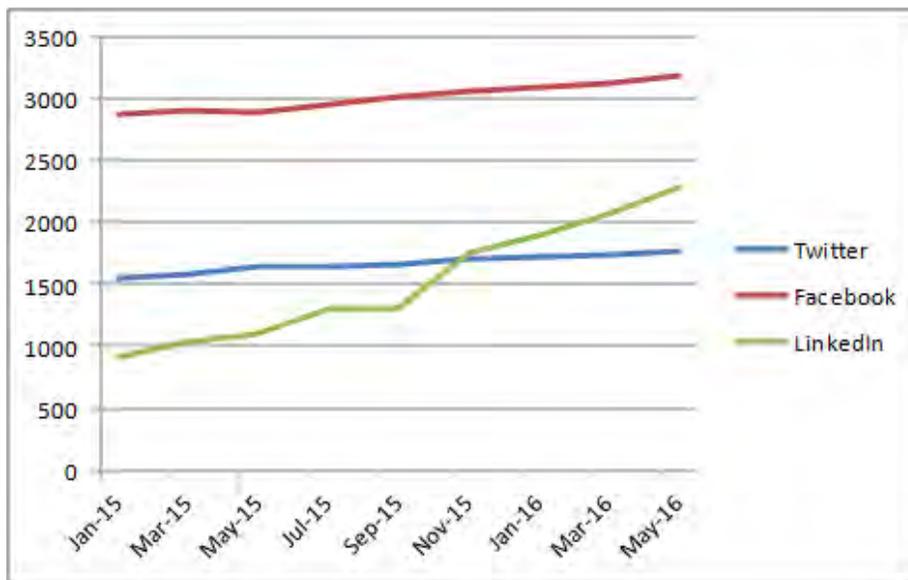
Department of Labor Speaker Heard and California's Attest Requirement Study Reviewed at California Board of Accountancy Meeting

## Outreach Opportunities

Staff have identified several outreach opportunities in the coming months. Among the opportunities, President Salazar has been invited to speak at the NASBA Western and Eastern Regional Meetings in June. Staff have prepared out-of-state travel requests, which are now under review, to ensure her ability to attend.

In addition, Golden Gate University has invited the CBA to participate in its Braden Leadership Speaker Series. This is a 15-week class offered by the university that is also open to the public. This speaker series, on business leadership, features various leaders sharing advice and expertise with students, alumni and the SF Bay Area community at large. The organizers have requested that the CBA discuss the licensing process, provide personal leadership insights, and answer students’ questions.

## Social Media Growth



**SOCIAL MEDIA**

-  3,187
-  2,286
-  1,769
-  128

## E-News

E News Subscriptions	Total
Consumer Interest	4,610
Examination Applicant	3,006
Licensing Applicant	3,650
California Licensee	9,720
Out-Of-State Licensee	2,433
Statutory/Regulatory	7,904
CBA Meeting Information & Agenda Materials	3,771
Update Publication	7,501
<b>Total Subscriptions</b>	<b>42,595</b>
<b>Total Subscribers</b>	<b>13,832</b>



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**CBA Item II.B.1.**  
May 19-20, 2016

## **Communication on the Release of the Next Version of the Uniform Certified Public Accountant Examination**

**Presented by:** Matthew Stanley, Information and Planning Officer

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### **Purpose of the Item**

The purpose of this agenda item is to provide the California Board of Accountancy (CBA) with an update on communications and outreach surrounding the release of the next version of the Uniform Certified Public Accountant Examination (CPA Exam).

### **Consumer Protection Objectives**

The CBA's legislative mandate is to regulate the public accounting profession, primarily through its authority to license qualified applicants who have successfully passed the CPA Exam, with the protection of the public as its highest priority.

### **Action(s) Needed**

No specific action is required on this agenda item.

### **Background**

On April 4, 2016, the American Institute of Certified Public Accountants (AICPA) released details regarding the next version of the CPA Exam that will launch on April 1, 2017.

The next version of the CPA Exam is based on a practice analysis, an extensive research project overseen by the AICPA's Board of Examiners, which included input from key stakeholders across the accounting profession. It is also based on input received from state boards of accountancy when it was released as an exposure draft in 2015. The CBA's comments (**Attachment 1**) were among those considered. The resulting product of this process maintains the strong commitment of the profession to protect the public interest.

The CPA Exam will remain composed of the four existing sections – Auditing and Attestation (AUD), Business Environment and Concepts (BEC), Financial Accounting and Reporting (FAR) and Regulation (REG).

## Communication on the Release of the Next Version of the Uniform Certified Public Accountant Examination

Page 2 of 3

The following are among the changes to the next version of the CPA Exam:

- Increased assessment of higher-order cognitive skills that include, but are not limited to, critical thinking, problem solving, and analytical ability.
- Additional task-based simulations will be included, which are an effective way to assess higher-order skills.
- New exam blueprints containing approximately 600 representative tasks across all four CPA Exam sections will replace the Content Specification Outline (CSO) and Skill Specification Outline (SSO). These blueprints are more robust than the CSO and SSO, identifying content knowledge linked directly to representative tasks performed by newly licensed CPAs.
- Total CPA Exam testing time will increase from 14 to 16 hours – four sections at four hours each.

To increase candidate convenience, there will be a 10-day extension of the testing window each quarter into the usual non-testing months of March, June, September and December. The 10-day extension will not be available during the initial launch testing window in June 2017, as additional time will be required to analyze exam results and set new passing scores. In addition, administration of the new exam will include a 15-minute standardized break during each section that will not count against a candidate's testing time. Any combination of passing current CPA Exam sections and passing next CPA Exam sections (within the 18-month window following passing one section) will count toward licensure.

### **Comments**

To assist CPA Exam applicants and future CPAs, the CBA has been proactive in providing information regarding the release of the next version of the CPA Exam, which was announced by the AICPA on April 4, 2016.

The CBA has launched a multi-faceted approach to inform applicants regarding what to expect with the next version of the CPA Exam.

First, the CBA has placed the following information on the home page of its website and the login page where CPA Exam applicants can start the online application process:

- Core Message Points regarding the Next Version of the Uniform CPA Examination (**Attachment 2**)
- Frequently Asked Questions regarding the Next Version of the Uniform CPA Examination (**Attachment 3**)

## **Communication on the Release of the Next Version of the Uniform Certified Public Accountant Examination**

Page 3 of 3

An E-News notification was issued to those individuals who have subscribed to receive email notifications of examination-related information.

To drive traffic to the new information, a social media campaign was launched. The posts were viewed by over 5,750 people, and potentially reached thousands more through Shares and re-Tweets. Three of the Tweets were listed on Great California Government Tweets, a website that daily lists the top 50 Tweets from State entities.

The CBA also participated in two outreach events during April, one at the University of Southern California and one at California State University, Fullerton. At both outreach events, questions were asked and information was shared regarding the release of the next version of the CPA Exam.

An article has been prepared for inclusion in the next edition of UPDATE, which is scheduled to be released over the summer.

It is important that both current and future CPA Exam candidates are aware of the changes to enable them to successfully navigate the CPA Exam process and complete their journey to CPA licensure.

### **Fiscal/Economic Impact Considerations**

There are no fiscal/economic impact considerations.

### **Recommendation**

Staff does not have a recommendation on this agenda item.

### **Attachments**

1. CBA Comment Letter – dated November 20, 2015
2. Next Version of the Uniform CPA Examination – Core Message Points
3. Next Version of the Uniform CPA Examination – Frequently Asked Questions



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November 20, 2015

**Attachment 1**

Board of Examiners  
American Institute of Certified Public Accountants  
100 Princeton South, Suite 200  
Ewing, NY 08628

To Whom It May Concern:

The California Board of Accountancy (CBA) reviewed and discussed the American Institute of Certified Public Accountants' (AICPA) Exposure Draft titled, *Maintaining the Relevance of the Uniform CPA Examination* (Exposure Draft) during its November 19, 2015 meeting. Overall, the CBA is in support of the analysis and conclusions as presented in the Exposure Draft and which will be included in the next version of the Uniform CPA Examination (CPA Exam).

The CBA's mission is to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards. The CPA Exam is the initial entry point of becoming a certified public accountant, and as such it is critical that the CPA Exam be comprehensive and relevant to test for entry level competency. The CBA supports the efforts of the AICPA and Board of Examiners (BOE) in this important endeavor.

Provided below are areas where the CBA had significant discussion and we would ask that the AICPA consider as it finalizes the changes to the next version of the CPA Exam.

- The CBA is in agreement with the increased testing of higher order skills. CPAs will benefit from this format of testing as it will prepare them for recognizing issues, identifying errors, challenging assumptions, and applying both professional judgment and skepticism. Further, advances and increased use of technology require new CPAs to perform at a more advanced level earlier in their career.
- The CBA is in support of the increase and addition of task-based simulations throughout the CPA Exam as it will test higher order skills. The CBA further supports maintaining the testing of written communications skills in the Business, Environment, and Concepts (BEC) section of the CPA Exam.
- The CBA would support taking steps as necessary to minimize any test score release delays to avoid any negative impact to candidates.

- The CBA is questioning if the removal of Employee Retirement Income Security Act content is necessary; however, the CBA is supportive of the inclusion of the substitute content.
- The CBA didn't identify a significant amount of content focused on fraud; however, it did identify that there was some fraud content included throughout the Auditing section.

The CBA also discussed changes to the test administration model and will be exploring those further as it gets closer to the release of the next version of the CPA Exam in 2017. Additionally, based on proposed changes in the test administration model regarding retesting a failed section in the same window and increasing the overall timeframe to pass the CPA Exam, the CBA would need significant lead time to implement any changes as these are presently items that are included in regulation.

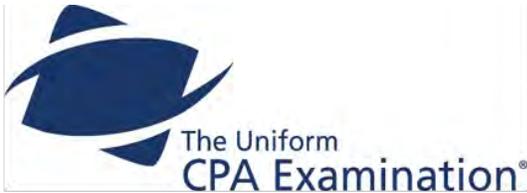
The CBA is supportive of the AICPA and BOE's ongoing efforts to ensure the CPA Exam is a valid examination and believes it is critical that state boards of accountancy, including the CBA, take an active oversight role on proposed changes to the CPA Exam as well as the test administration. The CBA welcomes the ongoing opportunity to work with the AICPA and BOE as it continues its work on the next version of the CPA Exam.

Sincerely,

A handwritten signature in black ink that reads "Katrina Salazar". The signature is written in a cursive, flowing style.

Katrina Salazar, CPA, President  
California Board of Accountancy

c: National Association of State Boards of Accountancy  
Members, California Board of Accountancy



**Next Version of the  
Uniform CPA Examination**  
*Launching April 1, 2017*

**Core Message Points**

For more information:

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Thomas Kenny – [tkenny@nasba.org](mailto:tkenny@nasba.org)



# Next Version Exam Launches April 1, 2017

## Executive Summary

Evolving the Uniform CPA Examination (“Exam”) is necessary and critical to continue the Exam’s alignment with professional practice, reflecting the needs of today’s profession and the work of newly licensed CPAs. Advances in technology and outsourcing have greatly impacted the accounting profession and affected the knowledge and skills required of newly licensed CPAs.

Pursuant to policy and to maintain the Exam’s relevance, reliability and defensibility, the AICPA initiated a rigorous research project to identify how the Exam should evolve to better assess CPA candidates. This initiative included the participation of myriad stakeholders connected to the profession who contributed their essential insight and feedback. The result of the in-depth research is the foundation of what has become the next version of the Exam, launching on April 1, 2017.

Within this document you will find key information regarding all aspects of the AICPA’s development of the next Exam as well as details about its design and administration, which will be announced on April 4, 2016.

## Background

### The Evolving Accounting Profession

Ongoing transformation in the business world and advancements in technology have affected the accounting profession, changing the required knowledge, skills and professional responsibilities of newly licensed certified public accountants (CPAs). These professionals are required to perform more advanced tasks and contribute to increasingly complex projects earlier in their accounting careers. Professional content knowledge remains fundamental to protecting the public interest, but newly licensed CPAs must also possess:

- Higher-order cognitive skills, including critical thinking, problem solving and analytical ability, as well as professional skepticism
- A thorough understanding of professional and ethical responsibilities
- A strong understanding of the business environment and processes
- Effective communication skills

To remain relevant to a dynamic profession and current with the real-world demands on newly licensed CPAs, the Exam must continue to evolve to:

- Remain current, relevant, reliable, legally defensible and aligned with professional practice so that it may continue to fulfill its role in protecting the public interest.
- Provide reasonable assurance to state boards of accountancy that individuals who pass the Exam possess the minimum level of technical knowledge and skills necessary for initial licensure.

The evolution of the Exam requires comprehensive input from key stakeholders directly connected with the profession.

## Research

In early 2014, the AICPA began an in-depth **practice analysis**, a rigorous, broad and inclusive research project, to identify the knowledge and skills required of today's newly licensed CPAs. The practice analysis was overseen by the AICPA Board of Examiners (BOE) and its sponsor group, sponsor advisory group, content committee and its subcommittees, and others.

### Who contributed to the practice analysis?

The practice analysis collected input from a wide variety of stakeholders who share an interest in preserving the strength and mission of the profession:

- State boards of accountancy
- State CPA societies
- Accounting firms and members in business & industry
- Educators and review course providers
- Regulators and standard setters

The practice analysis was conducted in cooperation with National Association of State Boards of Accountancy (NASBA), which provided critical support and input.

### How was feedback collected?

- Focus groups
- Interviews
- Meetings
- [Invitation to Comment](#)
- Nationwide survey of newly licensed CPAs and supervisors of newly licensed CPAs
- [Exposure Draft: Maintaining the Relevance of the Uniform CPA Examination](#)

Overall, the research demonstrated that the profession supports the initiative to make meaningful changes to the Exam, to operationalize the testing of higher-order skills and to align more closely with the types of tasks regularly performed by today's newly licensed CPAs.

### How was the research used?

The AICPA's research informed its proposal for the next version of the Exam as presented in the [Exposure Draft: Maintaining the Relevance of the Uniform CPA Examination](#).

- The Exposure Draft is the culmination of in-depth research, critical analysis of data, best practices in test development and the collective thinking of leaders in the profession.
  - Opened for public comment September 1 – November 30, 2015
  - Provided stakeholders a final opportunity to review and offer feedback on the AICPA proposal for the next Exam
- Feedback was used to finalize the design, content and structure of the next Exam.

## Exam Design

The results of the in-depth research, which included a call for a greater assessment of higher-order cognitive skills, drove changes to the design of the next Exam.

### Exam Structure

- The Exam remains structured by the four existing sections
  - Auditing and Attestation (AUD)
  - Business Environment and Concepts (BEC)
  - Financial Accounting and Reporting (FAR)
  - Regulation (REG)
- The Exam will have an increased emphasis on testing higher order skills that include, but are not limited to, critical thinking, problem solving, analytical ability and professional skepticism.
- Total Exam testing time increases from 14 to 16 hours (four sections – four hours each).
- To test a combination of knowledge and higher order skills, more Task-Based Simulations (TBSs) will be used in all four sections.
  - Most effective way to assess higher order skills
  - TBSs added to BEC for the first time
  - TBSs on the next Exam will feature increased background material and data that will require candidates to determine what information is or is not relevant to the question (reflects actual practice).
- Each section will have a blueprint illustrating the content knowledge and skills that will be tested on the Exam, which are linked directly to the tasks that are representative of the work of a newly licensed CPA.
- Writing continues to be assessed in the BEC section.

### Exam Blueprints

New Exam blueprints will replace the current Content Specification Outlines (CSOs) and Skill Specification Outlines (SSOs) for each section. These blueprints contain approximately 600 representative tasks across all four Exam sections, which identify the content knowledge and related skills required of newly licensed CPAs.

- Blueprints were developed by an experienced group of CPAs, psychometricians and content subcommittee subject matter experts and further supported by survey results.
- Blueprints provide candidates with greater clarity in the presentation of content, skills and related representative tasks that will be tested on the Exam.
- Blueprints apprise educators about the knowledge and skills candidates will need to function as newly licensed CPAs.

### Exam Time/Standardized Break

- Total Exam testing time increases from 14 to 16 hours (four sections – four hours each)
  - Important to provide sufficient testing time for candidates, specifically in relation to the increased use of TBSs
  - Increase of one hour each to BEC and REG
  - AUD and FAR were evaluated to have sufficient time at four hours each.
- With the launch of the next Exam, one standardized 15-minute break will be offered to candidates during each section.
  - Standardized break does not count against testing time

- o Standardized break will be offered approximately midway through each section
  - o Candidate may decline the break
- Optional breaks between testlets, which do count against candidates' testing time, will continue in the next Exam consistent with current practice.

### Item Distribution

Section	Multiple Choice Questions (MCQ)	Task-Based Simulations (TBSs)	Written Responses
AUD	72	8 – 9	N/A
BEC	62	4 – 5	3
FAR	66	8 – 9	N/A
REG	76	8 – 9	N/A

- Scoring weights for AUD, FAR and REG will be approximately 50% MCQ/50% TBS.
- Scoring weights for BEC will be approximately 50% MCQ, 35% TBS and 15% Written Response.

## Exam Administration

Changes to the design of the Exam will impact elements of its administration.

### Transition Policy

- State boards of accountancy, NASBA and the AICPA have agreed that any combination of passing current Exam sections and passing next Exam sections (within the 18-month window following passing one section) will count toward licensure.

### Cost

- Implementation of the Exam in 2017 will necessitate a cost increase resulting from the additional hour in candidate seat time for each of the BEC and REG sections.
- Information on Exam fees is available from the National Association of State Boards of Accountancy (NASBA) and boards of accountancy.

### 10-Day Extension of Test Window

- Responding to candidate feedback requesting additional days of testing, the AICPA, NASBA, and Prometric (test delivery partner) will extend each quarter's testing time by 10 days into the traditional dark months – additional 40 testing days added annually.
- The 10-day extension will be implemented in 2016 Q2 – a fortuitous time, as candidates are predicted to accelerate their testing in 2016 in advance of the launch of the next Exam in 2017.
- The extension will not be available during the first test window when the Exam launches in 2017 Q2 due to time required for analyzing score validity and accuracy.

## Standard Setting/Score Release

Any time the Exam undergoes significant changes, candidate performance must be statistically validated. Scoring validity/accuracy is essential to the Exam remaining legally defensible. Consistent with Exam launches in the past, there will be a delay in the release of scores following the close of the initial testing window (second quarter of 2017). Scores will be released once, approximately 10 weeks after the close of the testing window. For the third and fourth quarters of 2017, scores for all candidates will be released once, approximately 10 days after the close of each testing window. The delay in score releases for the Q2, Q3 and Q4 testing windows provides sufficient time to statistically validate candidate performance on the next Exam. After the score hold of the first three testing windows of the next Exam, the existing average 20-day score release timeline will be restored.

Test Window	AICPA / Board of Examiners Review Exam Performance Data / Set Passing Score	Approximate Release Date of Candidate Scores
2017 Q2	10 weeks*	August 14
2017 Q3	10 days	September 22
2017 Q4	10 days	December 22

*\*New passing score will be set during this timeframe*

## Score Reporting

- The design and content of the candidate's score report have not yet been determined.

For other questions related to the content of the Exam, please visit the AICPA [website](#).

For other questions related to the administration of the Exam, please visit the NASBA [website](#).

## Top 10 Next Exam Talking Points



The next Exam launches on **April 1, 2017**.



In-depth, inclusive **research informed changes** to the next Exam.



Testing time moves from **14 to 16 hours**.



There will be a **greater focus on testing higher-order cognitive skills**.



The Exam **remains structured by the four sections** of AUD, BEC, FAR and REG.



**More informative blueprints** replace CSOs/SSOs.



One **15-minute break per section will be introduced** that won't count against testing time.



Responsive to candidate feedback, **each quarter of testing will be extended by 10 days**.



Candidates **may pass a combination** of the current version of the Exam and the next version to qualify for licensure.



The Exam remains **adherent to psychometric and testing standards**.



## Next Version of the Uniform CPA Examination

### Frequently Asked Questions

#### When will the next Exam launch?

The next Exam will launch on April 1, 2017 (the 2017 Q2 testing window).

#### How many sections will the next Exam include?

The next Exam will include four sections:

- Auditing and Attestation (AUD)
- Business Environment and Concepts (BEC)
- Financial Accounting and Reporting (FAR)
- Regulation (REG)

#### How many hours is the next Exam?

Each section of the Exam will be four hours in length with a total testing time of 16 hours.

#### Am I permitted to take a break during the next Exam?

Yes. With the launch of the next Exam, candidates will be automatically offered a standardized, 15-minute break approximately midway through each section, which may be accepted or declined. This break will not count against testing time. In addition to the standardized break, optional breaks between testlets, which do count against candidates' testing time, will continue in the next Exam consistent with current practice.

#### What do you mean higher order skills will be assessed to a greater extent?

Testing higher-order cognitive skills will largely be accomplished by including additional task-based simulations (TBSs) on the Exam and increasing the background material and data in a TBS that will require candidates to determine what information is or is not relevant to the question. In connection with testing higher order skills, the Exam will utilize a skills-based framework consistent with the revised Bloom's Taxonomy, which is further supported by the Exam blueprints. Please see the Exam blueprints below for further discussion of the content, skills and representative tasks.

#### What are the Exam blueprints?

Exam blueprints have been created for each of the Exam's four sections, replacing the Content Specification Outline (CSO) and Skill Specification Outline (SSO). The blueprints provide greater clarity in the presentation of content, skills and related representative tasks that may be tested on the Exam. The blueprints contain approximately 600 representative tasks across all four sections, which are aligned with content and related skills required by newly licensed CPAs.

## What types of items will appear on the next Exam?

Candidates will be assessed on a variety of content using multiple-choice questions (MCQs), task-based simulations (TBSs) in all four sections (including Document Review Simulations (DRS) discussed below). The BEC section will also include three written responses.

## How are the items distributed on the next Exam?

Scoring weights for AUD, FAR and REG will be approximately 50% MCQ / 50% TBS while scoring weights for BEC will be approximately 50% MCQ, 35% TBS and 15% Written Response.

Section	Multiple Choice Questions (MCQ)	Task-Based Simulations (TBSs)	Written Responses
AUD	72	8 – 9	N/A
BEC	62	4 – 5	3
FAR	66	8 – 9	N/A
REG	76	8 – 9	N/A

## Will the Document Review Simulation (DRS) be included on the next Exam?

Beginning with the 2016 Q3 testing window (July 1, 2016), the current Exam will use a new simulation item type known as the Document Review Simulation (DRS) in the AUD, FAR and REG sections. The DRS will continue to be used after the launch of the next Exam where it will be added to the BEC section as well. Candidates may experience the DRS in the Exam [sample tests](#).

## Will there be additional testing time during the year?

Beginning in with the 2016 Q2 testing window (April 1, 2016), each quarters' window will be expanded by 10 days into the traditional dark months. (e.g. the 2016 Q2 window will now close on June 10). This additional testing time was a response to candidate feedback requesting additional days of testing. This 10-day extension will not be offered during the 2017 Q2 testing window when the next Exam launches.

## Will I still get credit for passing sections of the current Exam after the next Exam launches?

NASBA, boards of accountancy, and the AICPA have agreed that any combination of passed current Exam sections and passed next Exam sections will count toward licensure. All candidates will take the next Exam sections beginning in the second quarter of 2017. Thus, any sections passed prior to the launch of the next Exam in the second quarter of 2017 will count toward licensure requirements (subject to the 18-month rule) going forward.

## How soon will I get my scores with the next Exam?

The changes in the Exam will not impact the existing average 20-day score release timeline on an ongoing basis. However, consistent with Exam launches in the past, there will be a delay in the release of scores following the close of the initial testing window (second quarter of 2017). This delay is

expected to be 10 weeks after the close of the window. For the third and fourth quarters of 2017, scores for all candidates will be released approximately 10 days after the close of the testing window in order to statistically validate candidate performance on the Exam. In the first quarter of 2018, it is expected that the existing average 20-day rolling score release timeline will resume.

<b>Test Window</b>	<b>AICPA / Board of Examiners Review Exam Performance Data / Set Passing Score</b>	<b>Approximate Release Date of Candidate Scores</b>
<b>2017 Q2</b> April 3 – May 31, 2017	<b>10 weeks*</b>	<b>August 14</b>
<b>2017 Q3</b> July 1 – September 10, 2017	<b>10 days</b>	<b>September 22</b>
<b>2017 Q4</b> October 1 – December 10, 2017	<b>10 days</b>	<b>December 22</b>

*\*New passing score will be set during this timeframe*

### **What kind of information will be provided on the score report?**

The design and content of the candidate's score report have not yet been determined.

### **How do I appeal my score under the next Exam?**

The score review and appeal process remains the same under the next Exam. Information may be found [here](#).

### **How much will it cost to take the next Exam?**

Implementation of the Exam in 2017 will necessitate a cost increase resulting from the additional hour in candidate seat time for each of the BEC and REG sections. Information on Exam fees is available from the National Association of State Boards of Accountancy (NASBA) and boards of accountancy.

For other questions related to the content of the Exam, please visit the **AICPA** [website](#).

For other questions related to the administration of the Exam, please visit the **NASBA** [website](#).



**DEPARTMENT OF CONSUMER AFFAIRS**  
CALIFORNIA BOARD OF ACCOUNTANCY  
2000 EVERGREEN STREET, SUITE 250  
SACRAMENTO, CA 95815-3832  
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**CBA Item II.D.**  
May 19-20, 2016

## **Discussion on the California Little Hoover Commission Hearings Regarding Occupational Licensing**

**Presented by:** Matthew Stanley, Information and Planning Officer

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### **Purpose of the Item**

The purpose of this agenda item is to provide the California Board of Accountancy (CBA) with an update and an opportunity to discuss the Little Hoover Commission (Commission) hearings regarding occupational licensing.

### **Consumer Protection Objectives**

The CBA's legislative mandate is to regulate the public accounting profession, primarily through its authority to license, with the protection of the public as its highest priority.

### **Action(s) Needed**

No specific action is required on this agenda item.

### **Background**

The Commission is an independent State oversight agency that was created in 1962, which investigates State government operations and – through reports, recommendations and legislative proposals – promotes efficiency, economy and improved service. By law, the Commission is bipartisan, composed of five citizen members appointed by the Governor, four citizen members appointed by the Legislature, two Senators and two Assembly members.

The Commission selects study topics that come to its attention from citizens, legislators and other sources. The Commission's role differs in three distinct ways from other State and private-sector bodies that analyze state programs:

- Unlike fiscal or performance audits, the Commission's studies look beyond whether programs comply with existing requirements, instead exploring how programs could and should function in today's world.
- The Commission produces in-depth, well-documented reports that serve as a factual basis for crafting effective reform legislation.
- Based on its reports, the Commission follows through with legislation to implement its recommendations, building coalitions, testifying at hearings and providing technical support to policy makers.

## Discussion on the California Little Hoover Commission Hearings Regarding Occupational Licensing

Page 2 of 4

In December 2015, the CBA received a letter (**Attachment 1**) from the Commission regarding its two upcoming public hearings regarding occupational licensing. The letter stated that the focus of the hearings would be “on the impact of occupational licensing on upward mobility and opportunities for entrepreneurship and innovation for Californians, particularly those of modest means.” The Commission would also be examining the connection between licensing and the underground economy, a topic that it has studied as recently as 2015. Finally, it would be exploring “the balance between protecting consumers and enabling Californians to enter the occupation of their choice.”

On February 4, 2016 the Commission held the first of two public hearings on occupational licensing at the State Capitol which was discussed at the CBA’s March 2016 meeting. At that meeting, the CBA determined not to send a comment letter and instructed staff to attend the March 30, 2016 Commission hearing and report at the May 2016 meeting on the outcome.

### **Comments**

On March 30, 2016 the Commission held its second hearing in Culver City, CA. The agenda for this hearing outlines the key topics and key witnesses (**Attachment 2**). A recording of the hearing can be viewed at the Little Hoover Commission website: <http://www.lhc.ca.gov>. The following is the list of topics and individuals who testified either in person or in writing:

#### *The Licensees’ Perspective*

- Jane Schroeder, Regulatory Policy Specialist, California Nurses Association (CNA) (**Attachment 3**).  
Ms. Schroeder testified regarding the CNA’s focus on patient safety and improving the health of Californians. She further testified that the CNA recognizes licensure is crucial to protecting patients and ensuring healthy communities.
- Myra Irizarry Reedy, Government Affairs Director, Professional Beauty Association (PBA) (**Attachment 4**).  
Ms. Reedy testified the PBA believes licensing establishes accountability and provides the consumer with a resolution process overseen by the State. In addition, the PBA believes that upward mobility and entrepreneurship are positively impacted by licensing laws. Further the PBA supports reform efforts that include national standards regarding education hours, one national test, continuing education, license mobility and a return to the basic reasoning for licensing which includes sanitation, health, and safety.

#### *Why an Industry Wants to be Licensed*

- Deborah Davis, President & CEO, Deborah Davis Design (**Attachment 5**).  
Ms. Davis testified as a follow-up to what she perceived as incorrect information regarding her profession at the February 4, 2016 hearing. She stated consumers often confuse and interchangeably use the terms “interior designer” and “interior

## Discussion on the California Little Hoover Commission Hearings Regarding Occupational Licensing

Page 3 of 4

decorator.” She further encouraged the Commission to consider adding to the list of professionals, interior designers as licensees in California.

### Licensing Former Offenders

- Michelle Natividad Rodriguez, Senior Staff Attorney, National Employment Law Project (**Attachment 6**).  
Ms. Rodriguez testified regarding the barriers to occupational licensing for people with conviction records. She summarized her findings that employment barriers exact a heavy toll in unemployment and economic losses, but jobs turn lives around and the State should reduce the barriers to occupational licensing.
- CT Turney, Senior Staff Attorney, A New Way of Life Reentry Project (**Attachment 7**).  
Ms. Turney testified that if the premise of licensure is that some types of work require increased regulation for the protection of the public, then it stands to reason that restrictions on licensing based on past conviction should be tailored to only disqualify those applicants who would currently pose a meaningful threat to the public if they held the license in question. In other words, if the person does not pose a meaningful threat to the public at present, they should not be denied the license.

### Licensing Immigrants

- Jose Ramon Fernandez-Pena, MD, MPA, Associate Professor, Health Education, San Francisco State University, Policy Chair, IMPRINT; Director, Welcome Back Initiative (**Attachment 8**).  
Dr. Fernandez-Pena’s testimony focused on the impact the State’s occupational licensing processes have on immigrant health professionals. His testimony was based on the experience of his Welcome Back Initiative experience accrued over the past 15 years working with immigrant health professionals.

### Licensing Veterans and Military Spouses

- Laurie Crehan, Ed.D., Regional State Liaison, Southwest, Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy (**Attachment 9**).  
Dr. Crehan testified that the Department of Defense is asking licensing boards to accept military education, training, or experience that is substantially equivalent to the requirements mandated by the state for obtaining a license. California addresses this issue of licensure in Business and Professions Code section 35.

### The Role of the Department of Consumer Affairs in Occupational Licensing

- Tracy Rhine, Chief Deputy Director, Department of Consumer Affairs (DCA) (**Attachment 10**).  
Ms. Rhine testified that from DCA’s perspective, licensing plays a critical role in ensuring consumer protection. First, if a licensee violates any part of their practice act the board can work to educate the licensee and help to prevent

## **Discussion on the California Little Hoover Commission Hearings Regarding Occupational Licensing**

Page 4 of 4

future violations. If issues persist, or violations are severe enough, disciplinary action can be taken against the licensee including, fines, citations, or license revocation. Taking disciplinary action is the ultimate authority a board has to restrict or remove bad actors and protect consumers.

The next step, typically, would be for the Commission to prepare a report on its findings, which may include suggested legislation. If such a report is released, staff will provide it to CBA members.

### **Fiscal/Economic Impact Considerations**

There are no fiscal/economic impact considerations.

### **Recommendation**

Staff does not have a recommendation on this agenda item.

### **Attachments**

1. Letter from the Little Hoover Commission
2. Little Hoover Commission Public Hearing Agenda for March 30, 2016
3. Ms. Jane Schroeder's Testimony
4. Ms. Myra Irizarry Reddy's Testimony
5. Ms. Deborah Davis' Testimony
6. Ms. Michelle Natividad Rodriguez's Testimony
7. Ms. CT Turney's Testimony
8. Dr. Jose Ramon Fernandez-Pena's Testimony
9. Dr. Laurie Crehan's Testimony
10. Ms. Tracy Rhine's Testimony



# LITTLE HOOVER COMMISSION

December 11, 2015

Pedro Nava  
*Chairman*

Loren Kaye  
*Vice Chairman*

David Beler

Anthony Cannella  
*Senator*

Jack Flanigan

Chad Mayes  
*Assemblymember*

Don Perata

Sebastian Ridley-Thomas  
*Assemblymember*

Richard Roth  
*Senator*

David Schwarz

Jonathan Shapiro

Sumi Soun

Carole D'Elia  
*Executive Director*

Ms. Patti Bowers  
Executive Officer, California Board of Accountancy  
2000 Evergreen St., Suite 250  
Sacramento, CA 95815

Dear Ms. Bowers:

The Little Hoover Commission has begun a review of occupational licensing in California. To commence its review, the Commission has scheduled a public hearing on **February 4, 2016, in Room 437 of the State Capitol in Sacramento.** The Commission plans a second hearing on this topic in March 2016 and also may decide to hold advisory meetings on the subject or other opportunities for public input.

The number of individuals who must meet government-established criteria to practice a given occupation has grown rapidly in the last half century. In the 1950s, fewer than five percent of workers nationwide were required to hold licenses to practice their professions; by 2008, that number had increased to 29 percent of workers nationwide, according to economists Morris Kleiner and Alan Kreuger. Approximately 21 percent of California's 19 million-member workforce is licensed. Proponents of occupational licensing maintain that these regulations are necessary to protect the health and safety of consumers. Critics contend that the regulations at times go beyond consumer protection and unjustifiably restrict competition.

The focus of the Commission's review is on the impact of occupational licensing on upward mobility and opportunities for entrepreneurship and innovation for Californians, particularly those of modest means. The Commission also will examine the impact of occupational licensing on the cost and availability of services provided by licensed practitioners to consumers. The Commission also will assess the connection between occupational licensing regulations and the underground economy. The Commission will explore the balance between protecting consumers and enabling Californians to enter the occupation of their choice.

Any recommendations that you or your staff could provide the Commission on this topic, as well as any experts of whom we should be aware, would be appreciated.

If you have any questions, please contact Carole D'Elia, executive director, or Krystal Beckham, project manager. They can be reached by phone at (916) 445-2125 or by email at [carole.d'elia@lhc.ca.gov](mailto:carole.d'elia@lhc.ca.gov) and [krystal.beckham@lhc.ca.gov](mailto:krystal.beckham@lhc.ca.gov).

Sincerely,

Pedro Nava  
Chairman

c: Members, California Board of Accountancy

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## Little Hoover Commission

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## AGENDA

Public Hearing on Occupational Licensing

Wednesday, March 30, 2016

Mike Balkman Council Chambers, City Hall, 9770 Culver Blvd.  
Culver City, CA

The hearing will be video recorded. When it is available to view, a link will be provided here.

*Written testimony is linked below.*

### **Public Hearing: 9:30 a.m.**

#### *Opening Remarks*

#### *The Licensees' Perspective*

- **Jane Schroeder**, Regulatory Policy Specialist, California Nurses Association
- **Myra Irizarry Reddy**, Government Affairs Director, Professional Beauty Association

#### *Why an Industry Wants To Be Licensed*

- **Deborah Davis**, President & CEO, Deborah Davis Design

#### *Licensing Former Offenders*

- **Michelle Natividad Rodriguez**, Senior Staff Attorney, National Employment Law Project
- **CT Turney**, Senior Staff Attorney, A New Way of Life Reentry Project

### **Break for Business Meeting and Lunch: 11:30 a.m. – 12:30 p.m.**

#### *Licensing Immigrants*

- **José Ramón Fernández-Peña**, MD, MPA, Associate Professor, Health Education, San Francisco State University; Policy Chair, IMPRINT; Director, Welcome Back Initiative

#### *Licensing Veterans and Military Spouses*

- **Laurie Crehan**, Ed.D., Regional State Liaison, Southwest, Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy

#### *The Role of the Department of Consumer Affairs in Occupational Licensing*

- **Tracy Rhine**, Chief Deputy Director, Department of Consumer Affairs

#### *Public Comment*

## **BUSINESS MEETING AGENDA**

Wednesday, March 30, 2016  
City Hall, Cathedral Room  
9770 Culver Blvd., 3rd Floor  
Culver City, CA 90232

The Commission will consider the agenda items listed below at approximately 11:30 a.m. The precise time will vary depending upon the testimony of witnesses and will be determined at the discretion of the chair. Members of the public will have an opportunity to make comments about Commission agenda items during the meeting.

- Election of Officers
- Business Meeting Minutes from February 4 and March 3, 2016
- Subcommittee Reports and Project Selection
- Implementation
- Reports from the California State Auditor's Office

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**Testimony of Jane Schroeder  
Regulatory Policy Specialist  
California Nurses Association**

**Prepared for the Little Hoover Commission  
Los Angeles, California  
March 30, 2015**

Chairman Nava, Vice Chairman Kaye, and members of the Little Hoover Commission, thank you for the opportunity to present testimony about the importance of occupational licensing and the role state licensing boards can play in promoting opportunities for upward mobility that do not jeopardize public safety.

The California Nurses Association (CNA) represents over 90,000 Registered Nurses (RNs) in California. CNA members see themselves first and foremost as patient advocates and understand that effective patient advocacy must extend beyond the bedside and into the broader communities in which we live. For this reason, CNA has a long history of engaging with state agencies and policy makers on matters involving public health and patient safety. As a labor union focused on patient safety and improving the health of Californians, CNA recognize that licensure is crucial to protecting patients and ensuring healthy communities.

**THE VALUE OF OCCUPATIONAL LICENSING GENERALLY:**

The purpose of occupational licensing boards is to protect public health and safety by ensuring minimum standards of competency. Licensing is critical in industries in which incompetent or negligent practitioners can inflict serious harm on individual consumers or on the public at large. However, licensing is also critical in industries in which it is difficult for consumers to understand, interpret, or obtain information on the quality of services available to them, leaving them vulnerable to exploitation. Often these two situations overlap, as is the case with the health care industry, in which the consequences of professional negligence or incompetence have life or death implications, and the highly technical nature of the work makes it extremely difficult for consumers to evaluate the quality of the services available to them.

In many situations, the provider or seller is capable of knowing the quality of his service or product, but the buyer is not. This phenomenon, known as “informational asymmetry,” refers to situations in which service providers have large advantages over consumers with respect to information.<sup>1</sup> This phenomenon is typical in industries where professional services require a high degree of technical knowledge or skill. In such industries, determining whether a professional is meeting minimum standards can itself require specialized expertise. For example, it is difficult for a patient to ascertain the exact quality of a physician's services. The Supreme Court made reference to this power imbalance when it stated that:

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<sup>1</sup> Akerloff, George. A., The Market for "Lemons", Quality Uncertainty and the Market Mechanism, Quarterly Journal of Economics, Vol. 84, No. 3 (Aug.,1970), pg. 488-500

[T]he quality of professional services tends to resist either calibration or monitoring by individual patients or clients, partly because of the specialized knowledge required to evaluate the services, and partly because of the difficulty in determining whether, and the degree to which, an outcome is attributable to the quality of services (like a poor job of tooth-filling) or to something else (like a very tough walnut).<sup>2</sup>

In that case, the Court concluded that the “existence of such significant challenges to informed decision-making by the customer for professional services” justifies government intervention in protecting patients.<sup>3</sup> Licensure, a government intervention which establishes minimum quality standards, is extremely beneficial for protecting consumers in markets which are characterized by informational asymmetry.<sup>4</sup> As the economist H. E. Leland has pointed out:

If there were no licensing standards, "doctors" could range from those who are highly qualified to those who are "quacks." Doctors know their own abilities...Patients, on the other hand, have difficulty in distinguishing the relative qualities of physicians.<sup>5</sup>

Without minimum quality standards consumers in asymmetric markets face an impossible burden of evaluating their choices with dire and potentially life-threatening consequences.

By reducing the uncertainty regarding quality in asymmetric markets, licensing can also promote market stability.<sup>6</sup> As the economist George Akerloff describes, “the presence of people who wish to pawn bad wares as good wares tends to drive out the legitimate business.”<sup>7</sup> Consider the case of physicians. Without licensing, both highly qualified physicians and totally unqualified quacks are free to market themselves as “doctors.” Economist H.E. Leland writes that in such a situation:

Doctors (or potential doctors) with above-average opportunities elsewhere may not be willing to remain in (or enter) the market, since the price they receive will reflect the lower average quality of service. Their withdrawal from the market lowers the average quality of medical services, the price falls, and further erosion of high-quality physicians occurs...the market may degenerate until only quacks are practicing medicine.<sup>8</sup>

The notion that the impact of licensing regimes is to drive up wages and drive out competition has been refuted by a recent study out of the University of Vermont and University of California, Riverside. The study examined the licensure of registered nurses and found that the shift from certification to licensure had a minimal effect on wages and no affect whatsoever on participation, meaning that it did not result in fewer people joining the profession.<sup>9</sup> Insofar as there was an effect on wages, the benefits accrued mostly to minority workers, whose wages rose faster after the advent of licensing than they did not for non-minority workers.<sup>10</sup> Taken as a whole, the results of the study

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<sup>2</sup> *California Dental Association v. Federal Trade Commission*, 526 U.S. 756 (1999)

<sup>3</sup> This particular case concerned government regulation protecting patients from false, misleading, or irrelevant information in the advertising of professional services, but the justification carries to licensing as well.

<sup>4</sup> Leland, H.E. Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards", *Journal of Political Economy*, 87, 1328-1346

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> Akerloff, The Market for "Lemons"

<sup>8</sup> Leland, Quacks, Lemons, and Licensing

<sup>9</sup> Law, Marc T., and Mindy S. Marks. "From Certification to Licensure: Evidence from Registered and Practical Nurses in the United States, 1950-1970." *The European Journal of Comparative Economics* 10, no. 2 (May 1, 2013): 177.

<sup>10</sup> *Ibid*

were consistent with the public interest theory of occupational licensing, which posits that by providing a guarantor of quality, occupational licensing gradually increases the demand for professional services and thus increases participation in the profession.<sup>11</sup> These findings refute the assertion that licensing inevitably leads to increased wages and restricted competition, which was made to the Little Hoover Commission at the hearing on February 4<sup>th</sup>.

#### THE STATE'S ROLE IN PROTECTING THE PUBLIC:

In markets characterized by informational asymmetry, in which it is extremely difficult for consumers to monitor the quality of the services available to them, the state is in the best position to protect consumers from harm. Outside of occupational licensing, other societal checks, such as the filing of malpractice lawsuits, voluntary certification, and mechanisms from the private sector, are woefully inadequate in protecting consumers from incompetent and unethical practitioners.

The fundamental problem with malpractice lawsuits and other civil suits as a means of protecting consumers and weeding out incompetent practitioners is that they are inherently *reactive* rather than *proactive*. In order to file a lawsuit, a consumer must have already been harmed by the negligent or incompetent actions of the practitioner, sometimes with tragic results. By contrast, the bulk of what licensing boards do is *proactive*—they work to ensure that professionals who are inadequately trained or otherwise not competent to practice safely cannot enter the profession until they are ready. The work of licensing boards is to prevent harm from occurring in the first place, not just to remedy harm once it's already occurred. Furthermore, unlike the investigations and prosecutions undertaken by occupational licensing boards, which are paid for by licensing and application fees, malpractice lawsuits can put a strain on public resources, overburdening an already crowded court system.

Additionally, when opponents of licensure argue that consumers should seek protection and redress through courts, they are severely underestimating the financial and social capital necessary to pursue justice through the court system. People in the low and middle-income brackets face high barriers to obtaining justice in civil proceedings, including the financial burden of paying for a lawyer and missing work to attend legal proceedings. By contrast, anyone can file a complaint with a licensing board. For example, if a patient believes their nurse acted negligently, incompetently, or engaged in illegal activities related to their professional responsibilities, the patient can easily submit a complaint form to the Board of Registered Nursing (BRN) at no personal expense. The BRN will conduct an investigation of all complaints over which it has authority.<sup>12</sup> The right of individuals to pursue civil action against practitioners pales in comparison to the ease and accessibility of the board complaint process, which enables members the public to advocate for their own safety.

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<sup>11</sup> *Ibid*

<sup>12</sup> The Board can only investigate RNs who are licensed by the Board, applicants for licensure, or individuals who hold themselves out to the public as RNs. The Board can only investigate complaints that, if found to be valid, are violations of the Nursing Practice Act or other Board-adopted regulations. Complaints involving allegations not within the jurisdiction of this Board will be referred to other agencies which may be better able to assist the complainant. Allegations not within the authority of the Board include fee/billing disputes, general business practices, personality conflicts, and providers licensed by other boards/bureaus. Find more information on the BRN's complaint process at <http://www.rn.ca.gov/enforcement/complaint.shtml#who>.

Another solution commonly put forth as an alternative to licensure is a system of credentialing or voluntary certification, usually by private certification agencies. This purported societal check is also wholly inadequate for protecting health care consumers.

In testimony presented to the Little Hoover Commission on February 4, 2016, Professor Morris Kleiner wrote that certification is preferable to licensure because “it gives consumers more choices for the kinds of services they need. It gives consumers the right to choose the level of quality they think is appropriate for them rather than having members of an occupation decide what is the level of skill that is necessary for consumers.”<sup>13</sup> In other words, Professor Kleiner posits that some consumers might “choose” lower quality services, ostensibly in order to take advantage of a lower price. When you pick it apart, this argument is actually rather disturbing. As mentioned above, in industries that require a high degree of technical knowledge and skill, consumers are at a severe disadvantage when it comes to information. In the health care industry, for instance, consumers are typically unable to gauge the quality of services available to them or to determine what “level of skill is necessary” to correct a given problem or treat a given condition. Thus, a consumer who “chooses” to receive low quality health care is unlikely even to realize they are making such a choice.

Furthermore, it is crucially important to realize that consumers don’t always get to *choose* who their providers will be. This is often the case in the health care industry. When a person calls 911 and gets transported to the hospital, they do not choose which paramedic will arrive to pick them up, which nurses will provide care at the ER, or which physician will make a diagnosis. Often in health care, you simply get what you get. The consumer is in a vulnerable position in these circumstances and benefits from the state setting and administering standards for minimum competency.

This lack of meaningful choice is especially true for low-income and under-served communities. A patient attending a free clinic has little to no “choice” in who will be their health care provider. Given the scarcity of doctors accepting Medi-Cal patients, recipients increasingly have little to no choice in their provider. Were we as a society to do away with mandatory minimum qualifications and replace it with a system in which patients “choose” low-quality care, it is not unreasonable to contend the resulting system will be one in which wealthy people receive high quality care from competent practitioners, and the poor are forced to accept low quality care from unregulated, self-appointed “practitioners.” The resulting system would be a disaster for low-income and marginalized Californians, which directly conflicts with the stated goals of this Commission.

Opponents of occupational licensure have also proposed consumer-review systems and other accountability mechanisms out of the private industry as an alternative to licensure. These mechanisms are riddled with problems and cannot possibly be trusted to protect consumers. At the Little Hoover Commission hearing on February 4, Professor Kleiner cited the consumer review systems used by apps like Uber, Lyft, and Airbnb. The irony of referencing these systems as a viable means of protecting the public is that these same companies are consistently accused of allowing incompetent, negligent, and criminally dangerous people to interact with customers, sometimes with tragic results. Websites like WhosDrivingYou.Org compile lists of safety incidents involving Uber and Lyft drivers, including attacks, kidnappings, and a chillingly long list of sexual harassment and rape.<sup>14</sup>

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<sup>13</sup> Testimony of Professor Morris Kleiner, Presented to the Little Hoover Commission, February 2, 2016.

<sup>14</sup> For more information, follow the links at <http://www.whosdrivingyou.org/rideshare-incidents>.

The idea that a voluntary customer review system can adequately protect consumers from harm is even more outrageous when one recalls the above-mentioned “informational asymmetry.” In industries that involve a high degree of technical skill, it is not always possible for a consumer to know whether the care they received was adequate or met minimum standards. If a health care professional misses a diagnosis, the patient may not suffer the results for several years. If they prescribe the wrong treatment and the patient suffers, the patient may believe they are suffering from the underlying condition, and not from the improper treatment. Likewise, if an electrician rewires a house with faulty wiring, the house may not catch fire right away, but burn down several years later. In the mean time the consumer is none the wiser; she may even write a glowing review.

Finally, consumer-review systems from the private industry are characterized by rampant corruption, including a thriving marketplace for fake reviews.<sup>15</sup> Companies like Yelp! have been accused of manipulating their ratings systems in order to sell advertising—effectively extorting businesses by offering them higher ratings if they pay for more ads.<sup>16</sup> In fact, the Ninth Circuit Court of Appeals recently ruled that Yelp! has the right to continue engaging in these practices, despite the fact that it harms businesses and consumers alike.<sup>17</sup> This no doubt, is the kind of “protection” we can expect from the private sector. The state is infinitely better equipped to provide meaningful protections against negligence, incompetence, and abuse.

#### **THE VALUE OF PROFESSIONAL MEMBERS ON OCCUPATIONAL LICENSING BOARDS AND THE IMPLICATIONS OF *NORTH CAROLINA DENTAL*:**

The fact that monitoring the safety and quality of services tends to require specialized knowledge and skill is precisely why most regulatory boards include professional members—because they are better equipped to examine the highly technical matters that boards regulate and to make decisions about competency, safe practice, and professional conduct in their respective fields.

In California, some boards have a majority of public members, while others have a majority of professional members. Given the highly technical nature of the healing arts professions, it is typical for professional members to outnumber public members on those boards, though not by a lot. The Board of Registered Nursing, for example, is composed of four public members and five registered nurses. The professional members represent different areas of practice, including two direct-patient care nurses, an advanced practice nurse, a nurse administrator, and a nurse educator.<sup>18</sup>

Following the recent Supreme Court decision in *North Carolina Board of Dental Examiners versus Federal Trade Commission (NC Dental)*, there has been speculation about the implications of that decision on California’s licensing boards. I understand that it is not the intention of the Commission to focus on this issue. However, I have been asked to briefly elaborate on my comments at the

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<sup>15</sup>Tuttle, Brad, *9 Reasons Why You Shouldn’t Trust Online Reviews*, Time Magazine, at <http://business.time.com/2012/02/03/9-reasons-why-you-shouldnt-trust-online-reviews/>.

<sup>16</sup>Egelko, Bob, *Yelp can manipulate ratings, court rules*, SFGate, at <http://www.sfgate.com/news/article/Yelp-can-give-paying-clients-better-ratings-5731200.php>.

<sup>17</sup> *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1137 (9th Cir. 2014)

<sup>18</sup>BPC § 2702(c)

Commission’s Feb 4, 2016 hearing, in which I stated that *NC Dental* does not require a reconstitution of licensing board membership or any other radical changes to occupational licensing.

*NC Dental* established that professional licensing boards on which a “controlling number” of decision makers are “active market participants” are immune from antitrust actions as long as they act pursuant to clearly articulated state policy to replace competition with regulation and their decisions are actively supervised by the state.<sup>19</sup>

*NC Dental* did *not* establish a bright-line test for determining what constitutes “active state supervision.” Instead, the standard is “flexible and context-dependent,” meaning that it must be established on a case-by-case basis.<sup>20</sup> The opinion did clarify, however, that adequate state supervision does *not* require day-to-day involvement or micromanagement of the board’s operations and decisions.<sup>21</sup> All that is required for that the oversight mechanisms in place provide “realistic assurance that a private party’s anticompetitive conduct promotes state policy, rather than merely the party’s individual interests.”<sup>22</sup>

In reviewing the state oversight mechanisms in place for California’s occupational licensing boards, the California Attorney General opined that board members can “act with reasonable confidence” when pursuing the bulk of their functions, including disciplinary decisions and the promulgation of regulations.<sup>23</sup>

The AG’s opinion also reminds us to consider this issue in light of two key facts: First, even if board members do not have state action immunity, that does not in any way mean that there has been or is more likely to be an antitrust violation.<sup>24</sup> Second, most actions taken by licensing boards do not implicate federal antitrust laws to begin with.<sup>25</sup> In other words, California does not need to be “brought into compliance” with *NC Dental*. One person who testified at the LHC hearing on February 4 stated that California is currently “in violation” of *NC Dental*. That is simply not true.

One thing that is clear is that radical changes to board composition are neither a necessary nor effective response to *NC Dental*. For one thing, the opinion did not establish with certainty what proportion of public to professional members would guarantee state-action immunity for board members in antitrust actions.<sup>26</sup> As the AG notes: “As long as the legal questions raised by *North*

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<sup>19</sup> *North Carolina State Bd. of Dental Examiners v. F.T.C.* (2015) 547 U.S. \_\_\_, 135 S. Ct. 1101

<sup>20</sup> *North Carolina Dental*, 135 S.Ct. at p. 1116.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> The former is characterized by due process procedures, availability of administrative mandamus review, and participation of state actors such as board executive officers, investigators, prosecutors, and administrative law judges. The latter requires public notice, written justification, Director review, and review by the Office of Administrative Law. See, Attorney General’s Opinion 15-402 (Sept. 10, 2015) at p 8

<sup>24</sup> *Id.* at 8

<sup>25</sup> *Id.* at 8

<sup>26</sup> The *NC Dental* decision specifically declined to establish what constitutes a “controlling number.” Some have speculated that a majority of professional members is a “controlling number.” However, the court did not use the term “majority,” although it would have been simple enough to do so. As the dissenting opinion in *NC Dental* points out, this omission may indicate that the Court meant to “leave open the possibility that something less than a majority might suffice in particular circumstances.” *North Carolina Dental*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J.).

*Carolina Dental* remain unresolved, radical changes to board composition are likely to create a whole new set of policy and practical challenges, with no guarantee of resolving the immunity problem.”<sup>27</sup>

The AG also spoke to the public policy advantages of staffing boards with professionals as evidence for why changes to board composition would *not* be the most effective response to *NC Dental*:

The combination of technical expertise, practiced judgment, and orientation to prevailing ethical norms is probably impossible to replicate on a board composed entirely of public members. Public confidence must also be considered. Many consumers would no doubt share the sentiments expressed by Justice Breyer during oral argument in the *North Carolina Dental* case: “[W]hat the State says is: We would like this group of brain surgeons to decide who can practice brain surgery in this State. I don’t want a group of bureaucrats deciding that. I would like brain surgeons to decide that.”<sup>28</sup>

There are other, far less radical solutions to the state immunity problem, such as implementing minor improvements to the current indemnification scheme for board members and providing training to board members on antitrust concepts.<sup>29</sup> These relatively simple tweaks should be pursued in lieu of a radical overhaul of board composition, which would entail a loss of the expertise and resources that help the boards achieve their public protection goals.

#### **CNA’S ROLE IN WORKING WITH STATE LICENSING BOARDS TO PROMOTE UPWARD MOBILITY AND INCREASE DIVERSITY WITHIN THE NURSING PROFESSION:**

State licensing boards can—and often do—play an integral role in ensuring that there are pathways to competency and participation in the profession which, at the same time, are protective of public safety. A person wishing to become an RN in California may choose from three types of board-approved pre-licensure nursing programs: a Bachelor of Science in Nursing (BSN), which takes 4 years and is offered at many state universities and private colleges, an Entry Level Masters Program in Nursing (ELM), which is designed for adults who already have a baccalaureate degree in another field, and an Associate Degree in Nursing (ADN), which takes 2-3 years and is offered at many community colleges, making it an attractive option for many lower-income people. The BRN will also issue licenses to nurses who have pursued one of two alternative routes to licensure, including the LVN to RN 30-Unit Option,<sup>30</sup> and an option for military corpsmen that allows them to sit for the licensure exam if they have completed RN level education and clinical experience.<sup>31</sup>

The LVN to RN 30-Unit Option is an 18-24 month program of study through which a licensed vocational nurse (LVN) can quickly meet the requirements to sit for the RN licensure exam.<sup>32</sup> The option was “designed as a career ladder for California LVNs wishing to become registered nurses.”<sup>33</sup> This is a *non-graduate* option for obtaining RN licensure, meaning it does not require an additional

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<sup>27</sup> Attorney General’s Opinion 15-402 (Sept. 10, 2015) at p 11

<sup>28</sup> *Id.* at p 10

<sup>29</sup> For a more comprehensive discussion of these alternatives, please see Section IV of Attorney General Opinion No. 15-402, beginning on page 15.

<sup>30</sup> 16 CCR §1429.

<sup>31</sup> BPC, §2736(b); 16 CCR §1418.

<sup>32</sup> 16 CCR §1429.

<sup>33</sup> <http://www.rn.ca.gov/careers/steps.shtml>.

degree, making it much less expensive and more accessible to low-income people.<sup>34</sup> The BRN has the responsibility of approving the courses required for the 30-Unit Option, thus ensuring that these programs, while providing opportunities for upward mobility, are also protective of patient safety.<sup>35,36</sup>

As a labor union, CNA has consistently advocated for expanded access to the profession and opposed attempts to erect barriers to practice that are not necessary for patient safety. To understand our interest in these issues, it helps to have some historical background on CNA. Prior to the early 1990s, CNA was affiliated with the American Nurses Association (ANA). ANA has long pushed for baccalaureate degrees to be required for entry into the nursing profession.<sup>37</sup> When CNA disaffiliated from ANA and direct care nurses took over the leadership roles in the organization, CNA began focusing on expanding access to the profession as a front and center issue. Since that time, the union has openly and consistently supported the LVN to RN 30-unit option, the associate's degree option, and other alternative pathways into the nursing profession.

CNA has taken an active role in working with the legislature and the BRN to increase diversity and opportunities for upward mobility within the nursing profession. One of several examples is SB 1245 (Kuehl)—legislation CNA sponsored in 2004 requiring the Chancellor of the California State University, in consultation with the BRN, to expand the Entry Level Master's (ELM) programs in nursing. In sponsoring this legislation, CNA's goal was to increase access to the nursing profession, particularly for low-income people. At the time, RN programs in California were filled to capacity, making it difficult for people to enter the profession. Many of the students applying to the Associate's Degree Nursing (ADN) programs already had a baccalaureate degree in another subject. Thus, applicants with no prior degrees were competing with baccalaureate students for limited positions in ADN programs. By offering an alternative route for students with baccalaureate degrees, spaces were freed up for low-income students without prior degrees whose only opportunities for a nursing education might be through the community college system.<sup>38</sup>

Another way CNA has worked with the legislature and the BRN to increase diversity in the nursing profession is by advocating for funding for nursing scholarship programs. CNA provided strong support to SB 358 (Figueuroa) in 2003, which increased the biennial license renewal fee<sup>39</sup> collected

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<sup>34</sup> Nurses who pursue this route should be aware that it is unique to California. Licensing boards in other states do not recognize this option and will not grant them RN licensure.

<sup>35</sup> 16 CCR §1429.

<sup>36</sup> Similarly, the Vocational Nursing Practice Act allows for an alternative path to licensure for LVNs based on equivalent education or experience. Often referred to as "the equivalency method," this option allows applicants to sit for the LVN licensure exam if they can provide documentation of 51 months of paid general duty inpatient bedside nursing experience in a clinical facility and completion of a 54-theory-hour pharmacology course. The equivalency method permits unlicensed individuals who have had extensive inpatient bedside nursing care experience, plus a limited amount of formal education, to demonstrate that they have acquired sufficient basic nursing knowledge to be eligible for the licensure examination. Similar to the LVN to RN 30-unit option, people who pursue a vocational nursing license through this route will not be able to practice as an LVN in other states. See, BPC § 2873; 16 CCR § 2516(b).

<sup>37</sup>Smith, T., (October 5, 2009) "A Policy Perspective on the Entry into Practice Issue" OJIN: The Online Journal of Issues in Nursing Vol. 15 No. 1.

<sup>38</sup> A second reason for sponsoring this legislation was to increase the availability of faculty qualified to teach in the ADN programs, thus expanding access to those programs and to the profession more generally. At the time, a shortage of nurse faculty was having the effect of limiting access to the profession. The goal of this legislation was to quickly generate a larger pool of RNs with advanced degrees who would be eligible to become nursing educators, particularly in associate's degree programs at community colleges, which typically require faculty to have master's degrees in lieu of a doctorate. After this legislation was passed into law, CNA continued to actively advocate for funding for the Entry-Level Masters Degree programs in the budget proposal the following year.

<sup>39</sup> SB 358 increased the biennial fee from \$5 to \$10

from RNs for the RN Education Program within the Health Professions Education Foundation (HPEF), which provides loans and scholarships to nursing students. HPEF is the “state's only non-profit foundation statutorily created to encourage persons from underrepresented communities to become health professionals and increase access to health providers in medically underserved areas.”<sup>40</sup>

CNA also sponsored the original legislation that created the California RN Education Program within the HPEF (formerly the Minority Health Professions Education Foundation).<sup>41</sup> This bill established that the scholarships would be designated for persons from demographically underrepresented groups or persons who agreed to work after graduation in underserved areas of the state. CNA sponsored this legislation with the explicit goal of encouraging students from underrepresented minority groups to enroll in nursing, thus increasing diversity in the profession.<sup>42</sup> The BRN was in full support of this legislation.<sup>43</sup>

CNA believes that alternative routes to licensure are critical to maintaining and enhancing diversity in nursing and to enabling low-income people to access the profession. That is why we have consistently advocated for policies that expand these options and taken a firm stance against those which would ratchet up the requirements for entry to the profession. Incidentally, this is one of the main reasons CNA opposes Compact Licensure, discussed in more detail below.

#### **OPPORTUNITIES TO ASSESS THE IMPACT OF BRN REGULATIONS ON LOW-INCOME AND MINORITY APPLICANTS:**

The BRN is statutorily required to collect, analyze, and publish workforce data from its licensees to be used for future workforce planning. Amongst other information, the Board collects data on the race, ethnicity, gender, and languages of its licensees.<sup>44</sup> In order to do this, the Board administers a biennial RN workforce survey and convenes a Nursing Workforce Advisory Committee. In addition, the BRN has commissioned various studies on the subject on diversity, including a 2012 study from UCSF titled “The Diversity of California’s Registered Nursing Workforce”<sup>45</sup> These studies and surveys have been used to guide decision making to ensure that it is geared towards enhancing diversity in the profession and increasing access to culturally competent care.

There are also regular opportunities to assess the impact of board regulations on low-income and minority applicants and to provide input on possible improvements. When the Board considers proposing regulations, it conducts pre-notice public discussions before commencing the formal rulemaking process. These meetings are very well attended, with members of the public and representatives from stakeholder groups from across the ideological spectrum. As an example, the BRN is currently hosting public discussions concerning potential regulations to update the standards for Nurse Practitioners (NPs). After reviewing the initial draft, CNA became concerned that the

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<sup>40</sup> [http://www.oshpd.ca.gov/HPEF/About\\_Us.html](http://www.oshpd.ca.gov/HPEF/About_Us.html)

<sup>41</sup> Senate Bill No. 1267 (Maddy), 1988.

<sup>42</sup> Bill Analysis, Senate Bill No. 1267 (Maddy, 1988), Assembly committee on Health, p.2

<sup>43</sup> *Id.* at p. 4

<sup>44</sup> BPC § 2717

<sup>45</sup> Renae Waneka, MPH and Joanne Spetz, PhD, *The Diversity of California’s Registered Nursing Workforce*, 2012, at <http://www.rn.ca.gov/pdfs/schools/diversity.pdf>.

requirement for all NPs to be nationally certified would discourage upward mobility. CNA expressed these concerns in a letter to the Board dated August 31, 2015.<sup>46</sup>

The BRN has held three public hearings on this subject so far, and CNA has continued to express concerns and engage in healthy dialogue with board members and stakeholders who disagree. Hearings like these provide ample opportunity to assess the impact of board regulations on low-income and minority applicants and provide input on possible improvements. CNA and other groups have used the workforce and diversity data published by the Board in order to advocate for policy that enhances upward mobility and the Board has been responsive to those concerns.

#### **RN MOBILITY AND THE NURSING LICENSURE COMPACT:**

All 50 states require RNs to be licensed in order to practice.<sup>47</sup> Obtaining a license typically requires passing a licensure examination and meeting certain state-specific education and “good character” requirements. All 50 states, however, use the same licensing exam: the National Council Licensure Examination (NCLEX-RN). Once a nurse is licensed in one jurisdiction, applying for licensure in another state is streamlined by a process called endorsement (otherwise known as reciprocity). When a nurse applies for licensure by endorsement, the second state bases its licensure decision upon verification of licensure in the original state and upon meeting any additional licensure requirements that go beyond those of the original state. California uses the process of endorsement to screen applicants with current and active RN licensure in another U.S. state or Canada.

In addition to the process of endorsement, which makes it simpler to move between states, California also has several provisions to streamline the process for spouses or domestic partners of military personnel, who may face barriers to employment due to frequent moves. Starting in 2013, each licensing program under the Department of Consumer Affairs is required to expedite the licensure process for spouses and domestic partners of active members of the Armed Forces who are assigned to a duty station in California, provided that they hold a current, active, and unrestricted license in another jurisdiction.<sup>48</sup> In addition to expedited licensure, legislation enacted during the 2014 Session (AB 186, Maienschein) requires certain boards, including the BRN,<sup>49</sup> to issue temporary licenses for such applicants, which expire after 12 months or upon issuance of an expedited license.<sup>50</sup> This is an excellent example of how specific problems of access can be solved without abandoning the entire licensing scheme and the public protection it provides.

Another model for nurse licensure is the Nurse Licensure Compact (NLC), a system whereby member states agree to recognize licenses held by nurses in other compact states. Nurses in a compact state

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<sup>46</sup> In this letter, CNA made the following statement: The requirement that all NPs must be credentialed by a national accreditation agency will make it significantly more costly and cumbersome for NPs to practice in California...This added expense will likely discourage RNs from becoming NPs, inhibit upward mobility for nurses from lower economic backgrounds, and discourage diversity in the field.

<sup>47</sup> <http://www.nursinglicensure.org/articles/rn-licensing.html>

<sup>48</sup> BPC § 115.5.

<sup>49</sup> This requirement applies to registered nurses licensed by the Board of Registered Nursing, vocational nurses and psychiatric technicians licensed by the Board of Vocational Nursing and Psychiatric Technicians of the State of California, speech-language pathologists and audiologists licensed by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, veterinarians licensed by the Veterinary Medical Board, all licensees licensed by the Board for Professional Engineers, Land Surveyors, and Geologists, and all licenses issued by the Medical Board of California.

<sup>50</sup> BPC § 115.6.

thus receive a single “multi-state” license from their home state, which enables them to practice temporarily in other compact states.

CNA is against the Nurse Licensure Compact for three key reasons: (1) joining the compact would severely inhibit California’s ability to protect the public from harm; (2) joining the compact would restrict opportunities for upward mobility by eliminating alternative pathways to licensure; and (3) adoption of the compact does not actually result in increased nurse mobility.

*(1) Joining the NLC would severely inhibit California’s ability to protect the public from harm:*

Joining the NLC would undermine public safety by restricting California’s authority to set standards that apply to *all* nurses practicing in the state, limiting California’s ability to require criminal history checks, and prohibiting California from knowing who is practicing in the state at any given time.

Once in the Compact, states must agree to recognize the licenses granted to RNs in other compact states. However, a compact nurse is only required to meet the qualifications for licensure in her home state, not necessarily the state where she practices.<sup>51</sup> This is significant because the standards for qualification vary widely from state to state. Consider, for example, the standards for continuing education. Nine of the current compact states do not require any continuing education whatsoever.<sup>52</sup> California, by contrast, requires 30 hours of continuing education every two years.<sup>53</sup> If California joined the compact, it would have to recognize the licenses of nurses from the nine states that require no continuing education. In a field that evolves as quickly as healthcare, continuing education is critical to maintaining competency and safe practice. Thus, joining the Compact would jeopardize California’s ability to protect patients by undermining continuing education requirements.

Joining the compact would also restrict California’s ability to do criminal background checks and monitor the criminal activity of nurses practicing in the state. The original compact language<sup>54</sup> did not require fingerprinting or criminal background screening of applicants for RN licensure.<sup>55</sup> By contrast, California law requires fingerprints and criminal background checks for all applicants.<sup>56</sup> Any nurses who applied for licensure in California before fingerprinting was required or for whom fingerprints are no longer on file must submit fingerprints as a condition of license renewal, which occurs biennially.<sup>57</sup> This ensures that there are fingerprints on record for *all* nurses working in California. The Department of Justice uses the fingerprint data to report any criminal activity of a licensee directly to the Board.<sup>58</sup>

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<sup>51</sup> Nurse Licensure Compact (2015), Article III(c)(1), at [https://www.ncsbn.org/NLC\\_Final\\_050415.pdf](https://www.ncsbn.org/NLC_Final_050415.pdf).

<sup>52</sup> Arizona, Colorado, Idaho, Maine, Maryland, Missouri, South Dakota, Tennessee, and Wisconsin have no continuing education requirements for RNs seeking to renew their license. See, <http://www.nursingworld.org/MainMenuCategories/Policy-Advocacy/State/Legislative-Agenda-Reports/NursingEducation/CE-Licensure-Chart.pdf>.

<sup>53</sup> BPC § 2811.5; 16, CCR § 1451(b).

<sup>54</sup> In order to join the Nurse Licensure Compact, states are required to enact the Model NLC Legislation without any material differences. The original Model NLC Legislation was adopted in November 6, 1998 and is the Model Legislation currently enacted in 25 states. It will now be superseded by the Model Legislation adopted May 4, 2015.

<sup>55</sup> Nurse Licensure Compact, Final Version, November 6, 1998, at [https://www.ncsbn.org/Nurse\\_Licensure\\_Compact.pdf](https://www.ncsbn.org/Nurse_Licensure_Compact.pdf)

<sup>56</sup> BPC § 144.

<sup>57</sup> 16, CCR § 1419 (b).

<sup>58</sup> The Board may take disciplinary action against a licensed nurse or deny an application for licensure if the nurse has been conviction of a felony or of any offense “substantially related to the qualifications, functions, and duties of a registered nurse.” 16, CCR § 2761(f)

The revised Model NLC Legislation does require all applicants to submit fingerprints and undergo criminal background checks.<sup>59</sup> However, this new requirement applies only to nurses seeking licensure *for the first time*, meaning that any compact nurse who currently holds or is renewing her multi-state license will *not* have to meet this requirement unless it happens to be required by her home state. At least six states currently in the compact do not conduct criminal background checks or require fingerprints.<sup>60</sup> The original compact language was promulgated in 1998 and the revised language came out in 2015. This means that any nurse who has been licensed in the last 17 years in a compact state that does not require fingerprinting would be free of this requirement.

The fingerprinting requirement is essential to the BRN's ability to protect the public. Criminal history may not be relevant to a person's fitness for certain professions. Nurses, however, have intimate contact with patients in their most vulnerable state. The licensing board must be able to consider whether an applicant's criminal history or ongoing criminal activity poses a danger to patients.

Joining the compact would mean that nurses working in the same state would be held to different standards. Take, for example, a nurse from Colorado and a nurse from California. If California joined the Compact, nurses from Colorado would be able to practice here despite the fact that they are not required to engage in *any* continuing education at all and, if licensed before 2015, are not required to undergo a criminal background check or submit fingerprints to the DOJ. A nurse from California, even if she were to practice in Colorado, would be required to submit fingerprints, undergo a criminal history check, and engage in at least 30 hours of continuing education every two years.

Furthermore, by joining the Compact, California would lose the right to even know who was practicing nursing in the state at any given time. The compact denies states the authority to require compact nurses to notify the licensing board when they enter the state to practice. This creates several problems. First, the Board would have no means of knowing if a potentially dangerous nurse entered California to practice, which would hinder the board's ability to protect the public. Second, it would limit California's ability to capture nursing workforce data and estimate workforce needs, including needs related to diversity and cultural competence.

*(2) Joining the compact would diminish opportunities for upward mobility:*

Contrary to the intention of this commission, joining the Nurse Licensure Compact would have the effect of reducing access to the nursing profession for low-income Californians and limiting opportunities for upward mobility. As mentioned above, in order to join the Compact, California would be required to enact the 2015 NLC Model Legislation, which sets specific qualification standards for nurse licensure. With regards to education, the Model Legislation dictates that, in order for an applicant to obtain a multistate license, she must have **graduated** from a board-approved RN prelicensure education program.<sup>61</sup> While this may seem innocuous, the key word here is "graduated." The alternative routes to licensure discussed above, including the 30-Unit LVN-to-RN option and the military experience option, are *non-graduate* programs. Nurses who take advantage of those routes to licensure have not "graduated from a board-approved program," and so they would be ineligible for licensure under the Compact. In addition to the alternative routes that

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<sup>59</sup> Nurse Licensure Compact (2015), Article III(b)

<sup>60</sup> The six states are: Colorado, Maine, Montana, Nebraska, Virginia, and Wisconsin.

<sup>61</sup> Nurse Licensure Compact, Model Legislation, (c)(2)(i), at [https://www.ncsbn.org/NLC\\_Final\\_050415.pdf](https://www.ncsbn.org/NLC_Final_050415.pdf)

California already recognizes, joining the Compact would restrict the state's ability to implement new and innovative paths to RN licensure that do not require formal (and expensive) degrees.

(3) *Evidence suggests that adoption of the NLC does not actually make nurses more mobile:*

Ostensibly, The Nursing Licensure Compact was created in order to provide greater mobility for nurses and to improve access to nursing care in general. And yet there are several indications that joining the NLC does not actually increase nurse mobility. First, it is important to keep in mind that compact licensure does not allow for completely unencumbered movement across state lines. The NLC permits a nurse to hold only one active compact license at a time in her primary state of residence.<sup>62</sup> A licensee may pursue a *temporary* working assignment in another state using her multi-state license, but if she needs to relocate permanently she must actually apply for licensure by endorsement in the new state of residence, just as she would under the current regime.

Furthermore, the NLC has been in various stages of implementation for the last 15 years,<sup>63</sup> and yet there is actually no evidence that it has led to greater nurse mobility or increased labor supply. A recent study from 2015 examines data on over 1.5 million nurses and finds that adoption of compact licensure has had **no effect** on a variety of labor market outcomes such as labor force participation, employment levels, hours worked, earnings, and likelihood of working across state lines.<sup>64</sup> This null effect persisted even for nurses living near a border between two compact states—exactly the nurses who were expected to be most impacted by the adoption of compact licensure.<sup>65</sup>

Given how weak the links are between compact licensure and nurse mobility, we must look more deeply at some of the other motivations behind compact licensure, including the promotion of telemedicine. The *Findings and Declaration of Purpose* section of the NLC Model Legislation speaks just as much to nurse mobility as it does to the expansion and proliferation of telemedicine.<sup>66</sup> Compact agreements allow the practice of nursing across state lines using information technology. Telemedicine is frequently used to enhance the profits of health care companies by limiting access to in-person care. Compact licensure allows major health care companies to outsource the provision of certain health care services to states where providers are less regulated and lower paid. When you take a closer look at compact licensure, it is not a stretch to conclude that it has less to do with increasing mobility for nurses and more to do with outsourcing jobs out of California and enhancing profit for health care companies at the expense of patient care.

Adopting compact licensure requires the state to forfeit its ability to set high standards for safety and care of its citizens as well as its flexibility to create alternative pathways to competency that encourage diversity and upward mobility. This is a lot to give up, especially considering that evidence suggests that there is *no* benefit in terms of enhancing nurse mobility and labor supply.

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<sup>62</sup> Nurse Licensure Compact (2015), Article IV(b), at [https://www.ncsbn.org/NLC\\_Final\\_050415.pdf](https://www.ncsbn.org/NLC_Final_050415.pdf).

<sup>63</sup> The NLC was first implemented by Maryland in 1999. Nine of the 25 compact states had implemented the NLC by 2000, and 17 states had implemented the NLC by 2005.

<sup>64</sup> Christina DePasquale and Kevin Strange, "Labor Supply Effects of Occupational Regulation: Evidence from the Nurse Licensure Compact," 2015, at <http://www-personal.umich.edu/~kstange/DePasqualeStangeSept2015.pdf>

<sup>65</sup> *Ibid.*

<sup>66</sup> NLC (2015) Article I(a)(3)-(4). ("3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation; 4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex").

State of California  
Little Hoover Commission

Occupational Licensing Hearing  
Wednesday, March 30, 2016  
Culver City, CA

Testimony of Myra Y. Irizarry Reddy  
Director of Government Affairs and Industry Relations  
Professional Beauty Association (PBA)



March 30, 2016

Chairman Pedro Nava, Vice Chairman Loren Kaye and Honorable Members of the Little Hoover Commission, thank you for the opportunity to speak to you on behalf of the Professional Beauty Association (PBA) and licensed beauty professionals throughout the United States regarding occupational licensing for cosmetologists.

I serve as the Government Affairs Director for the Professional Beauty Association (PBA). Prior to joining PBA, I served on the staff for Members of our U.S. Congress, the California State Assembly, and the Texas House of Representatives. I understand the challenges and the task you have accepted as you review the importance of occupational licensing.

### **Professional Beauty Association (PBA)**

The Professional Beauty Association (PBA) is a national nonprofit 501(c)(6) trade association. PBA is the only trade association that represents all segments of the professional beauty industry including manufacturers, distributors, salon and spa business owners, and licensed beauty professionals.

PBA's roots began in 1904 when forty-seven men came together to form the Beauty and Barber Supply Institute. BBSI and several separate organizations changed and merged throughout the years, culminating in 2010 when a merger completed the goal to bring all segments of the professional beauty industry together under PBA.

PBA's mission is to elevate, unify and serve the beauty industry and the professionals that improve people's lives by providing education, scholarships, charitable outreach, government advocacy, events and professional networking opportunities.

PBA's charitable outreach efforts include the Disaster Relief Fund established in 1951, the Look Good Feel Better Program (partnered with the American Cancer Society and the Personal Care Products Council) established in 1989, and Cut It Out: Salons Against Domestic Abuse established in 2004.

### **Licensed Beauty Professionals and Services**

Licensed beauty professionals are trained to provide an array of professional beauty services that include utilizing chemicals to treat and or color hair, manicures and pedicures, facials, hair removal and waxing, eye lash extensions, hair extensions, hair straightening/curling, cutting, styling, and skin and hair analysis and product recommendations.

Licensed beauty professionals work in a variety of environments that include but are not limited to a salon, spa, resort, medical office, and medical spa.

Different types services may include the use of sharp objects, lasers, razors, professional grade chemicals, and hot wax. Complications associated with these services can occur and include the following examples:

Chemical burns due to chemical exfoliation, waxing, or misuse of professional grade products.

Infections due to lack of disinfecting tools and surfaces, not following universal precautions, and cross contamination of products.

Types of infections that can spread within a salon environment include ring worm, folliculitis, lice, fungal infections, staph infections, strep throat, Hepatitis B or Hepatitis C, HIV, and athlete's foot, severe acute respiratory syndrome (SARS), herpes simplex virus/human papillomavirus (HSV/HPV), and methicillin-resistant staphylococcus aureus (MRSA).

Contact dermatitis due to lack of proper client analysis, cross contamination of products, poor treatment application and poor choice of products.

Irritation and damage to eyes due to improper draping and protection procedures, misuse of products, untrained application of lash extensions, untrained brow waxing procedure, and poor application of cosmetic eye products.

Tearing of skin due to improper waxing procedures, overuse of acidic chemicals and overly abrasive exfoliation techniques.

Allergic reaction to hair color, hair straightening, or hair curling treatments resulting in skin and scalp burns, rashes, hair breakage, and hair loss.

Nail infections and nail loss due to improper use of chemicals and filing to disinfect tools including pedicure and manicure instruments and bowls.

Waxing regularly exposes private body parts that can easily be damaged if the incorrect technique is used, not to mention the psychological effects of being improperly draped or handled unprofessionally. Proper client interaction in regards to physical touch is extremely important and necessary to maintain a professional and appropriate environment for treatments and services.

Without mandatory requirements supporting health and safety standards, infections and misuse of chemical compounds will lead to an increase risk of injuries to consumers. Most of the above mentioned risks include unforeseen reactions with the multiple chemicals that a licensed professional and client have regular exposure to in a salon or

spa environment. Education in the proper use of all chemicals and the required state inspection for compliance is essential to maintain a high level of safety.

### **Licensing versus Overregulation**

PBA believes licensing establishes accountability and provides the consumer with a resolution process overseen by the state. Licensed professionals that are trained graduates and have passed a state licensing exam are held accountable for the health and safety standards required by the state while providing services to consumers. Licensed beauty professionals must also comply with OSHA and EPA regulations. Because so many services provided by beauty professionals include the use of chemicals, sharp objections, and physical touch between the professional and client, PBA believes licensing for these professionals should remain a mandatory requirement of the state. However, PBA does not believe that any overregulation associated with licensing of beauty professionals should continue and suggests that requirements that prove to be above and beyond supporting health and safety standards should not be regulated. Examples of overregulation include requirements for a manager's license, a master level license, or additional requirements that do not support specific health and safety standards required by the state.

### **Health and Safety Regarding Beauty Products**

There are not any over the counter devices, chemical peels, or skin care products that can provide the same results as a professional facial treatment due to the percentage of active chemical ingredients, cosmetic delivery systems, and strength of the device used. Mass market products require no complex directions or skin analysis to be performed before use and are designed for cumulative effect in order to reduce complications. Home use products are sold to consumers with different ingredients and or at much lower concentration level of chemicals.

In addition to over the counter skin care and chemical hair treatments, artificial nails were also included among the number of products marketed to consumers. Artificial nails are produced by the reaction of monomers with polymers to form a new polymer. There is about a five to ten-minute window to allow this chemical mixture to be formed into the exact shape needed to be glued onto the nail. The liquid monomers are very thin and very irritating if it comes into contact directly with the skin. A brush is used and is dipped into the liquid and then the powdered polymer. Home use kits were unsuccessful due to the skills and training required for correct, safe application and desired results.

Professional products are manufactured for licensed trained professionals and require a license in order to purchase the products. Professional use only products often require a number of steps to apply and effectively treat the consumer. The licensee has the ability to recognize when the product is too strong and how to stop its action before there is permanent damage. Further there must be adequate ventilation systems in place and constantly monitored to ensure the safety of the licensed professionals and their clients.

## **The Courts**

Alternative dispute resolution is often preferred in lieu of a costly and timely litigation process in the courts. Beauty professionals will bear the costs, their professional liability insurance deductibles will be exhausted sooner and the cost of premiums will increase. The high standard of professional competence, assured through licensing, is an essential safeguard in reducing incidents of personal injury in the practice of cosmetology. Reducing claims and consequently litigation, including frivolous lawsuits, is an objective of the courts.

A rise in lawsuits against untrained unlicensed individuals in the beauty industry could act as a significant barrier for entry into this profession, and overburden our justice system by transferring the work load from an agency that is intimate with the industry on every front to the courts.

Eliminating the testing and licensing requirement for the cosmetology profession will have the unwanted effect of increasing disputes and claims for personal injury thereby also disparaging the profession. Additionally, the professional beauty industry is regulated and inherently provides for both accountability and dispute resolution. The California Board of Barbering and Cosmetology provides a consumer complaint process, which enables dispute resolution. This current method of resolution reduces the volume of lawsuits and provides for accountability.

## **Upward Mobility and Entrepreneurship**

California has experienced a 48% increase in licensed barber and cosmetology professionals over the 10-year period from 2004-2014, and a 25% increase in the average wage for these professions, compared to a 4% growth in employment and a 28% increase in average wages statewide during this time.

According to the Bureau of Labor Statistics Occupational Outlook, overall employment of beauty professionals will grow ten percent by 2024 which is higher than the average of all occupations reported by the U.S. economy. As you can see, occupational licensing is not preventing individuals from obtaining a career in the professional beauty industry and is not a barrier to work.

The professional beauty industry allows for an individual to begin his or her career with a solid foundation of training and education. The array of opportunities for growth and upward mobility once the professional has obtained their license are vast. A beauty professional can choose to work in the following ways:

1. Starting their own business as a salon owner employing fellow professionals
2. Starting their own business as an independent contractor
3. Managing beauty professionals in a salon or spa or resort environment
4. Teach future professionals
5. Travel and train professionals as a product educator
6. Serve the industry as a member of the state Board
7. Develop and manufacturer their own line of professional products

8. Provide professional beauty services for the T.V., theater and film industry
9. Industry business and marketing consultant
10. Executive and management positions for large professional beauty companies

There are many opportunities to expand upon a cosmetology license that moves beyond a professional's work behind the chair at a salon. Insurable, licensed professionals are sought after by the beauty industry to work in a changing, dynamic, growing, sustainable industry. Obtaining a license in the cosmetology is not a long or challenging process that prevents upward mobility. Business owners seek sustainability and when choosing employees, they want licensed professionals that met the minimum requirements and understand standards for health, safety, and proper sanitation in the beauty environment.

### **Impact of Licensing Laws**

The Professional Beauty Association believes that upward mobility and entrepreneurship are positively impacted by licensing laws. Cosmetology is not a recently regulated professional career. Requiring accountability and a high standard of safety was established as far back as 1897 with the creation of a barber license. In 1927 the state of California established the Board of Barber Examiners and the Board of Cosmetology. The U.S. Bureau of Labor Statistics Employment Projections Program reports a steady and high increase of beauty professionals entering the industry. This high steady flow has not been deterred by cosmetology licensing requirements that have existed for nearly a hundred years.

The California Assembly has introduced and passed laws mandating safety standards for salons and spas as well as providing guidelines for the use of professional products. Cosmetology licensing laws are mandatory across the United States because this requirement ensures that the individuals physically touching consumers have the core knowledge of how to safely work with professional grade chemicals, products and tools. The mandatory training, accountability, and resolution process through the state Board is the result of mandatory occupational licensing for cosmetologists and should not be changed to a voluntary certification process.

Licensed beauty professionals understand the importance of their training and the possible damage that could occur to consumers, further licensed beauty professionals do not want to be unlicensed and consumers do not want to receive treatments and services from unlicensed individuals. Consumers across the U.S. overwhelmingly support professional beauty licensing to maintain the best practices for safety and quality standards. An independent national post-election study in 2012 shows that 82% of respondents think safety and quality would decline significantly if states ended licensing professions including hairstylists, barbers, nail technicians and skin care specialists.

### **American Institutes for Research Study**

The Professional Beauty Association is a proud member of the Beauty Industry Working Group (BIWG). This group is comprised of leading professional organizations that include the American Association of Cosmetology Schools, the International Salon Spa Business Network,

the National-Interstate Council of State Boards of Cosmetology, Milady (Education Resource), and King Research. Together representing all segments of the professional beauty industry, the BIWG's mission is to suggest the development of consistent standards and recommendations for reform. The Working Group will focus on standards relating to licensing, education, national testing, health and public safety. BIWG supports a consistent number of hours for cosmetology schools across the U.S., one national test, continuing education, and license reciprocity/mobility for all states.

The American Institutes for Research (AIR), an international behavioral and social science research organization, is working with the BIWG to collect and analyze data regarding the professional beauty industry. AIR is currently reviewing and comparing data regarding curriculum hours for cosmetology school programs, testing results and patterns, employment and wages, and student loan debt. Additional data points are also being considered within their scope of research.

The research and analysis provided by AIR coupled with the report, *The Value of Cosmetology Licensing to the Health, Safety, and Economy of America* authored by ndp|analytics (an economics and legal strategic research firm) will be provided to State Boards as well as elected officials to support BIWG's mission to achieve consistent streamlined standards across the United States for the professional beauty industry.

### **Standardize Requirements Nationally**

PBA supports reform efforts that include national standards, one consistent national set of hours to graduate from a cosmetology program, one national test, continuing education, license mobility from state to state, and a return to the basic reasoning for licensing which includes sanitation, health, and safety. As noted in the following excerpt from the July 2015 White House report prepared by the Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor, *Occupational Licensing A Framework For Policymakers* (page 46):

#### **STREAMLINING REQUIRED TRAINING TO FOCUS ON HEALTH AND SAFETY**

The Professional Beauty Association (PBA) represents a variety of professions related to personal appearance: cosmetologists, barbers, hairdressers, and manicurists, among others. Cosmetologists are uniformly licensed, though requirements vary substantially across States, with some requiring more than twice as much education as others. On average, more than a year of education is required, with fees that are often non-trivial. The PBA is now pushing for two general types of reform in the licensing of cosmetologists. First, they are seeking to standardize requirements for hours of schooling across States. This should eventually help make it simpler for workers to move across States. Second, they are advocating for licensing qualifications (mostly related to required school curriculum) that are more closely aligned with public health and safety concerns. This second initiative in particular is an important step forward for licensing reform. Many occupations have educational requirements that are not necessary to promote public safety. Limiting licensing requirements to those that are necessary to

protect the public can go a long way towards achieving a rational, minimally-intrusive licensing regime.

The Professional Beauty Association and fellow members of the Beauty Industry Working Group agree that improvements are necessary and support reform efforts to streamline the process to obtain an occupational license for cosmetology. We strongly support and have clearly demonstrated that occupational licensing for beauty professionals should remain a mandatory requirement. Occupational licensing for cosmetologists ensures a core knowledge for safely handling professional grade products and chemicals and providing an array of services as well infection and disease control, proper sanitation, accountability, and sustainability. Professional beauty licensing for cosmetologists in no way is creates barrier to workforce employment or prohibits upward mobility, in fact federal and state national public economic data prove the exact opposite of this incorrect claim.

### **Recommendations for California State Policymakers**

California has always been the leader in consumer safety establishing licensing more than ninety years ago driven in part because of hepatitis outbreaks in barbershops. Beauty professionals touch nearly all Californians across every demographic in large and small communities. These professionals acquire their specific set of skills to provide safe, high quality services to their clients.

Consumers expect and have a right to standards and rules, safe, sanitary and infection free services and establishments. Professional beauty licensing leads to higher employment rates, facilitates market entry, and acts as a stepping-stone to higher earnings and longer more sustainable careers. Lastly consumers appreciate the protection their state government has put into place for their benefit and overwhelmingly supports professional beauty licensing.

I welcome and encourage the opportunity to work together with the state of California to lead the way for reform. Upon completion of the research and work of the Beauty Industry Working Group I ask to work with the state Assembly and the Board of Barbering and Cosmetology to put into place reform recommendations that will streamline the licensing process for cosmetology.

I ask that you please consider the health and safety points explained in today's testimony as well as the supporting documents provided to the Honorable Members of the Commission. I believe that the professional beauty industry as well as independent third party research and data provided to you today correctly and honestly proves that occupational licensing for cosmetology is not a barrier to work, does not lessen entrepreneurship, and by no means limits upward mobility. You now have accurate information that provides in detail the positive impact occupational licensing has on the professional beauty industry.

Chairman Nava, Vice Chairman Kaye and Honorable Members of the Little Hoover Commission thank you for your time, I am happy to answer any of your questions.

## **Additional Information**

Bureau of Labor Statistics Occupational Outlook Handbook. Barbers, Hairdressers, and Cosmetologists.

Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor, White House Report: Occupational Licensing A Framework For Policymakers (page 46). July 2015.

Hepatitis C Support Project. "HCSP Fact Sheet: Personal Care Settings." February 2015.

Licensing Fact Page

National Poll – Post Election Professional Licensing Findings

Nam D. Pham, Ph.D. and Anil Sarda. The Value of Cosmetology Licensing to the Health, Safety, and Economy of America. January 2015.

The New England Journal of Medicine. "An outbreak of mycobacterial furunculosis associated with footbaths at a nail salon." May 2, 2002.

Personal Care and Service >

# Barbers, Hairdressers, and Cosmetologists

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## Job Outlook

About this section

Overall employment of barbers, hairdressers, and cosmetologists is projected to grow 10 percent from 2014 to 2024, faster than the average for all occupations.

Employment of barbers is projected to grow 10 percent from 2014 to 2024, faster than the average for all occupations. The need for barbers will stem primarily from an increasing population, which will lead to greater demand for basic hair care services.

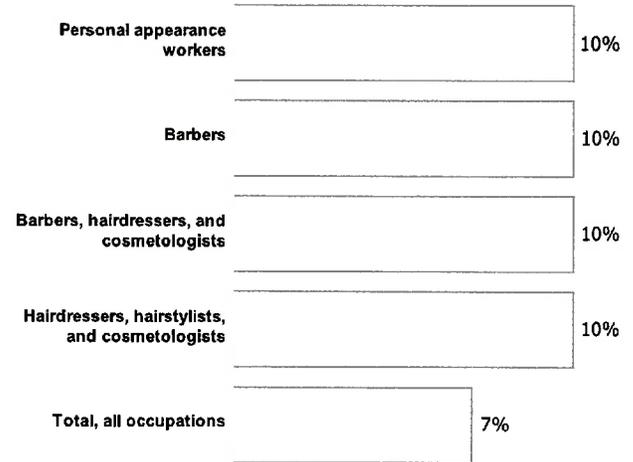
Employment of hairdressers, hairstylists, and cosmetologists is projected to grow 10 percent from 2014 to 2024, faster than the average for all occupations. Demand for hair coloring, hair straightening, and other advanced hair treatments has risen in recent years, a trend that is expected to continue over the coming decade.

### Job Prospects

Overall job opportunities are expected to be good. A large number of job openings will stem from the need to replace workers who transfer to other occupations, retire, or leave the occupation for other reasons. However, workers should expect strong competition for jobs and clients at higher paying salons, of which there are relatively few and for which applicants must compete with a large pool of experienced hairdressers and cosmetologists.

## Barbers, Hairdressers, and Cosmetologists

Percent change in employment, projected 2014-24



Note: All Occupations includes all occupations in the U.S. Economy.  
Source: U.S. Bureau of Labor Statistics, Employment Projections program

### Employment projections data for barbers, hairdressers, and cosmetologists, 2014-24

Occupational Title	SOC Code	Employment, 2014	Projected Employment, 2024	Change, 2014-24		Employment by Industry
				Percent	Numeric	
<b>Barbers, hairdressers, hairstylists and cosmetologists</b>	39-5010	656,400	720,700	10	64,400	<a href="#">[XLSX]</a>
<b>Barbers</b>	39-5011	59,200	65,100	10	6,000	<a href="#">[XLSX]</a>
<b>Hairdressers, hairstylists, and cosmetologists</b>	39-5012	597,200	655,600	10	58,400	<a href="#">[XLSX]</a>

SOURCE: U.S. Bureau of Labor Statistics, Employment Projections program

[← Pay](#)

[State & Area Data →](#)

#### SUGGESTED CITATION:

Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, 2016-17 Edition, Barbers, Hairdressers, and Cosmetologists, on the Internet at <http://www.bls.gov/ooh/personal-care-and-service/barbers-hairdressers-and-cosmetologists.htm> (visited March 09, 2016).

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# OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS

July 2015



*This report was prepared by  
the Department of the Treasury Office of Economic Policy,  
the Council of Economic Advisers,  
and the Department of Labor.*

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without excluding practitioners from the labor force. For example, establishments that serve alcoholic beverages are often regulated at the establishment level, while service workers are often unlicensed.

In weighing the most appropriate form of regulation, policymakers should also account for the costs of administering and enforcing the regulation. These costs vary depending on the content of licensing requirements and activities of the boards. For instance, licensing boards will often oversee entrance requirements regarding education and experience, set rules for other States' licensees, and hear complaints against violators of licensing regulations.

Some States have implemented or are considering adopting alternative regulatory approaches. For example, in 2015, the Indiana legislature passed a law that sets up a pilot program that would create a State registry of privately certified individuals. Occupations that are currently licensed will be unaffected (as will workers in health care occupations), but associations that privately certify workers in currently unlicensed fields will be able to apply to have their certification count as "State registered." Conditional on meeting a set of requirements, certified workers will then have exclusive right to use the title "State registered," but not an exclusive right to practice.<sup>95</sup>

In conversations with State regulators, they have suggested that some professionals have been seeking licensing not because unlicensed practitioners are a threat to public safety, but because third-parties won't recognize unlicensed practitioners in situations such as reimbursement for services. In these cases, States may want to engage with third-party payers to identify and address appropriate paths forward.

#### *Reducing the Substantive and Procedural Burdens of Professional Regulations*

Regardless of whether a profession is licensed or certified, it is important that the application process be as straightforward and transparent as possible, and that the requirements for obtaining a license or certification be narrowly tied to the specific public health and safety concerns of the work. There are two ways in which requirements tend to drift from these objectives. The first is when practitioners, often through the regulatory boards they participate in, act to raise standards. For example, the American Physical Therapy Association has considered requiring a bachelor's degree for obtaining a physical therapist assistant license.<sup>96</sup> Regulatory agencies also sometimes apply the requirements of an older occupation to a new but related type of work. For example, the "corporate practice of law" doctrine, which prohibits non-lawyers from participating in the financing, ownership, or management of law businesses, has been applied to online legal document and information companies seeking to provide online legal assistance or other innovative products.<sup>97</sup> These services are related to the activities of lawyers

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<sup>95</sup> Indiana General Assembly. 2015. House Bill 1303. <https://iga.in.gov/legislative/2015/bills/house/1303>.

<sup>96</sup> American Physical Therapy Association. 2012. "APTA to Explore Feasibility of Transitioning PTA Education to Bachelor Degree Level." <http://www.apta.org/PTinMotion/NewsNow/2012/6/15/HODRC20/>.

<sup>97</sup> Hadfield (2014).

but are legitimately new forms of work that merit separate consideration of the need for licensing.

Also, the labor market effects of specific occupational regulations sometimes depend less on their formal category than on other factors, such as their substantive and procedural requirements, as well as norms within the labor market. For example, a doctor who is not “board-certified” may find it difficult to obtain or maintain a position for practice in a hospital.<sup>98</sup> By contrast, if a particular license is not well-enforced, or if it imposes only minimal substantive requirements (e.g., educational and training standards) and is procedurally very easy to obtain (for example, it entails minimal paperwork and processing time), then it may have less of an impact on workers and consumers.

#### *STREAMLINING REQUIRED TRAINING TO FOCUS ON HEALTH AND SAFETY*

The Professional Beauty Association (PBA) represents a variety of professions related to personal appearance: cosmetologists, barbers, hairdressers, and manicurists, among others. Cosmetologists are uniformly licensed, though requirements vary substantially across States, with some requiring more than twice as much education as others. On average, more than a year of education is required, with fees that are often non-trivial.

The PBA is now pushing for two general types of reform in the licensing of cosmetologists. First, they are seeking to standardize requirements for hours of schooling across States. This should eventually help make it simpler for workers to move across States. Second, they are advocating for licensing qualifications (mostly related to required school curriculum) that are more closely aligned with public health and safety concerns. This second initiative in particular is an important step forward for licensing reform.

Many occupations have educational requirements that are not necessary to promote public safety. Limiting licensing requirements to those that are necessary to protect the public can go a long way towards achieving a rational, minimally-intrusive licensing regime.

#### *Allow Licensed Professionals to Provide Services to the Full Extent of their Current Competency*

When licensing is deemed appropriate for a given occupation, policymakers must also determine the boundaries of the licensed activity, or “scope of practice.” Typically, this becomes an important issue when multiple licensed occupations provide complementary or overlapping services. For instance, physicians and nurse practitioners may both prescribe medicines in some States. According to the Pew Health Professions Committee report in 1995, policymakers should endeavor to allow practitioners to offer services to the full extent of their competency and

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<sup>98</sup> Freed, Gary L., Kelly M. Dunham, and Acham Gebremariam. 2013. “Changes in Hospitals’ Credentialing Requirements for Board Certification from 2005 to 2010.” *Journal of Hospital Medicine* 8, no. 6: 298-303.

knowledge, even if this means that multiple professions are licensed to offer overlapping services.<sup>99</sup>

While most States simply focus on scope of practice on a case-by-case basis, a few States have recently considered their scope of practice rules in a more comprehensive manner, primarily in the health care context. In 2007, Pennsylvania expanded the types of services that can be provided by physician assistants, advanced practice nurses, physical therapists, and pharmacists. In 2008, the Colorado Governor commissioned a committee to investigate options for improving utilization of non-physician providers. In New Mexico, an interim legislative committee was established to help legislators evaluate proposed scope of practice reforms. Minnesota and California both have agencies that review scope of practice rules and potential policy changes.<sup>100</sup>

Connecticut's State legislature conducted a particularly thorough 2009 review of scope of practice for the health care professions, including comparisons with regulatory models from other States.<sup>101</sup> In keeping with the academic literature, Connecticut's report emphasizes the importance of evaluating scope of practice implications for consumer access to care. It also recommends that the legislature set up a process by which any health care profession could submit a request to change its scope of practice. Since 2012, the scope of practice review committee has received 21 requests from different health care occupations' associations through this process and has ruled on 6 of them.<sup>102</sup>

#### *Easing Exclusions for Workers with Criminal Records*

Occupational licenses are often unavailable to workers with criminal records.<sup>103</sup> Licensing regulations often refer broadly to "good moral character" as a requirement for holding a license, and in practice this has in many cases been interpreted to ban individuals with any criminal record.<sup>104</sup> Policymakers should endeavor to strike a more appropriate balance between protecting the public and ensuring that licensing laws do not prevent qualified individuals from securing employment opportunities. First, policymakers should refrain from categorically

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<sup>99</sup> Pew Health Professions Committee. 1995. "Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century." *Report of the Taskforce on Health Care Workforce Regulation*. [http://www.futurehealth.ucsf.edu/Content/29/1995-12\\_Reforming\\_Health\\_Care\\_Workforce\\_Regulation\\_Policy\\_Considerations\\_for\\_the\\_21st\\_Century.pdf](http://www.futurehealth.ucsf.edu/Content/29/1995-12_Reforming_Health_Care_Workforce_Regulation_Policy_Considerations_for_the_21st_Century.pdf).

<sup>100</sup> Swankin, LeBuhn, and Gulish (2010).

<sup>101</sup> Connecticut General Assembly. 2009. "Scope of Practice Determination for Health Care Professions." Legislative Program Review and Investigations Committee. [http://www.cga.ct.gov/2009/pridata/Studies/PDF/Scope\\_of\\_Practice\\_Final\\_Report.PDF](http://www.cga.ct.gov/2009/pridata/Studies/PDF/Scope_of_Practice_Final_Report.PDF).

<sup>102</sup> Connecticut Department of Public Health. 2015. *Scope of Practice Requests for 2014 – 2015*. <http://www.ct.gov/dph/cwp/view.asp?a=3121&Q=563950&PM=1>.

<sup>103</sup> This paragraph benefited from a conversation with the National Employment Law Project.

<sup>104</sup> Craddock, Larry. 2008. "'Good Moral Character' as a Licensing Standard." *Journal of the National Association of Administrative Law Judiciary* 28, no. 2: 450-469; See Massachusetts Department of Health and Human Services for example of a state regulation in Massachusetts requiring good moral character. Massachusetts Department of Health and Human Services. *Good Moral Character Requirements for Licensing*. <http://www.mass.gov/eohhs/gov/departments/dph/programs/hcq/dhpl/nursing/licensing/good-moral-character-requirements-for-licensure.html>.



# HCSP FACT SHEET

HCV ADVOCATE

• HCV TRANSMISSION AND PREVENTION •

## *Personal Care Settings*

Written by: Alan Franciscus, Editor-in-Chief

### *Foreword*

Hepatitis C is a disease of the liver caused by a virus called the hepatitis C virus, or HCV. The U.S. government estimates that more than three million Americans have chronic HCV infection. The virus is spread by blood-to-blood contact; primarily through use of shared needles for injection drug use. Sexual transmission and transmission from mother to child are also possible, but less common. Although many people with hepatitis C have no symptoms, over time the disease can cause serious liver damage including cirrhosis (scarring) and liver cancer. There is no vaccine to prevent HCV infection, but there are several important measures people can take to reduce the risk of transmission. There are also medications now that can cure more than 90% of people with hepatitis C who take them.

### **How is HCV Spread?**

Hepatitis C is a blood-borne infection, which means it is spread through contact with the blood of an infected person. The most common method of transmitting HCV is through sharing needles used to inject drugs. Healthcare workers may contract HCV infection through needle-sticks with contaminated needles or other accidental exposures on the job. In at least 1 in 10 cases, people have no identifiable risk factors for infection; in other words, it is not known how they got hepatitis C.

Since HCV is a blood-borne virus, it can – at least in theory – be transmitted by contaminated personal items such as razors or nail care equipment. Any equipment used by manicurists, estheticians (skin care specialists), barbers, and cosmetologists that may come into contact with HCV-infected blood might transmit the virus. This

### **HCSP FACT SHEET**

*A publication of the  
Hepatitis C Support Project*

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The information in this fact sheet is designed to help you understand and manage HCV and is not intended as medical advice. All persons with HCV should consult a medical practitioner for diagnosis and treatment of HCV.

This information is provided by the Hepatitis C Support Project a nonprofit organization for HCV education, support and advocacy

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## Personal Care Settings

can happen when a small amount of HCV-containing blood – even a tiny amount that is too small to see – stays on the equipment after it is used on one person, and then comes into contact with the bloodstream (through a cut or other open area on the skin) or mucous membranes (such as the mouth or nostrils) of another person on whom the same equipment is later used. Personal equipment that is shared between persons and can come into contact with blood and spread HCV includes tattooing and body piercing needles and other equipment; cuticle scissors, nail files, and emery boards; razors and hair clippers; hair removal tools such as tweezers and electrolysis equipment; and even hair-cutting scissors and combs.

The transmission of hepatitis C through personal care procedures has not been well-studied. State laws regarding health and safety standards in personal care settings vary widely from state to state.

## **Prevention**

### **Disposable Items**

Some tools used by tattooists, piercers, manicurists, and barbers should be used only once, on a single person. Professional tattooists, piercers, and electrologists should use new, disposable needles for each customer; disposable ink pots should also be used. Paper emery boards, files, orange wood sticks, cotton balls or swabs, sponges, neck strips, and other items that cannot be sterilized should be used on only one person and then thrown

away. Whenever possible, substitute single-use items for reusable items.

### **Risky Items**

Blade or scraper tools used to trim calluses (such as Credo blades) are especially likely to come into contact with blood. Many states prohibit the use of such tools in nail salons. Needle-like instruments used to extract skin blemishes are also likely to be prohibited. Cutting cuticles presents a risk for contact with blood, and many experts recommend that nail salon workers should not cut cuticles. Straight razors are also likely to draw blood; therefore, disposable blades or safety razors should be used and discarded after each customer.

### **Cleaning and Disinfecting**

Equipment that is used for more than one person should be properly cleaned and disinfected between users. For procedures that pierce the skin, disposable tools should be used unless they can be completely sterilized (that is, made completely germ-free). Sterilization can be done using steam or dry heat. An autoclave is a machine that sterilizes using both heat and pressure and is frequently used in medical settings.

Other types of tools should be cleaned using a disinfectant solution. Commercial products such as Barbicide disinfect rather than sterilize. Look for an EPA-registered hospital grade product that kills bacteria (bactericide), viruses (virucide), and fungi (fungicide). Immerse items in the solution for at least 10 minutes (some experts recommend

## Personal Care Settings

20 minutes). Small items may be stored in the disinfectant solution between uses. Commercial solutions should be changed at least once per week or when visibly dirty. Alternatively, alcohol, chlorine, or a 10% solution of bleach and water may be used for disinfection. Most experts recommend soaking items in a bleach solution (10 parts cool water to one part household bleach) for 10 minutes. Bleach solution should be made fresh daily and kept away from sunlight.

Although the actual needles and blades are disposable, tattoo guns, razor blade handles, and electrolysis machines should be sterilized between use.

### Workspace Precautions

Work-spaces should be set up so that new or clean and used or dirty equipment is separated and cannot be mixed up. Cover work surfaces with a clean cloth or paper towel or sheet before each customer. Lotions, powders, and other products should be kept in containers that allow for dispensing a portion of the product without contaminating the container, and sanitary applicators should be used for cosmetics.

Work surfaces should be disinfected between users. Manicurists should not use soaking water for more than one customer. Soaking bowls and foot spas should be disinfected after each user. Counters, chairs, lamps, and other surfaces should be cleaned regularly with a disinfectant solution. Used razor blades and other sharp items should be discarded in

a puncture-proof container. Nail and hair cuttings should be disposed of properly. Used towels, sheets, and gowns should be placed in a covered receptacle and washed in hot water with detergent.

Personal care professionals should be educated about disease transmission and trained to use proper health and safety procedures. Manicurists, cosmetologists, barbers, estheticians, and electrologists (hair removal specialists) must be licensed in most states. Workers should wash their hands with soap and water before each customer and, if appropriate, wear disposable gloves. Any cuts or sores should be covered with waterproof bandages.

### Personal Use Items

To be as safe as possible, some customers prefer to bring their own equipment with them to the nail salon or barbershop. Personal manicure and pedicure kits are available at local and national pharmacies. This is especially important for items like cuticle scissors and razors that are likely to come into contact with blood. Some professionals will keep personal client packs or kits at the salon with tools to be used only for a specific customer. Another option is to keep the personal care kit at home and bring it in to the shop when having work done.

**Note:** There have been reports of serious infections from people soaking hands and feet in solutions that have not changed or disinfected. To protect yourself there are disinfection solutions that can be purchased at

*Personal Care Settings*

pharmacies or online retailers. The solutions are sold in individual packets that can be poured directly into the soaking mediums that will disinfect the solutions and prevent infections. Check to make sure that the solutions are EPA approved.

Finally, as is the case with equipment used in nail salons, hair salons, and barbershops, personal health and beauty items used at home, including nail files, razors, toothbrushes, and pierced earrings, should not be shared.

*Related publications:*

- **HCV and Tattoos**  
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- **Occupational Exposure to Hepatitis C**  
www.hcvadvocate.org/hepatitis/factsheets\_pdf/occupational\_exposure.pdf
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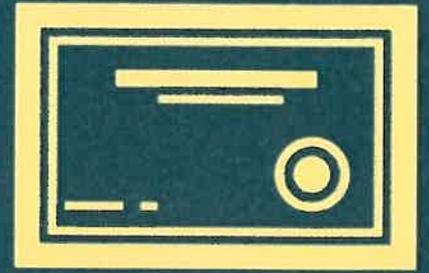
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# THE VALUE OF COSMETOLOGY LICENSING

A report measuring the importance of cosmetology licensing in the Professional Beauty industry and its economic contributions



Training and licensing are vital for the safety of beauty professionals and consumers

license!

cosmetology school



learn about safety, sanitation, technical skills, and business management

graduate



obtain certificates and degrees

board exam



demonstrate knowledge and abilities

accountable and ready to work



**Licensed Professionals**  
are accountable for safety and sanitation

82%

of poll respondents across age and income groups support the licensing of beauty professionals

**ECONOMIC CONTRIBUTIONS OF BEAUTY PROFESSIONALS**

**2.02 million jobs**  
(1,229,000 direct jobs)

**13% ~ 40% projected job growth by 2022**

**\$85.8 B**

**\$3.8 B**

Income tax paid (direct jobs)

**\$31.6 B**

total wages

total sales

# The Value of Cosmetology Licensing to America's Health, Safety and Economy

Nam D. Pham, Ph.D. and Anil Sarda

Beauty professionals touch nearly all Americans across every demographic in large and small communities. These professionals acquire their special skills to provide safe, high quality services to their clients through extensive training, certification and licensing.

Licensed cosmetologists, barbers, manicurists, skincare specialists and makeup artists in America are educated and trained beauty professionals from cosmetology programs that are approved and regulated by the state in which they operate.

- Licensing helps meet consumers' expectations to standards and rules.
- Licensing helps ensure consumers' right to safe, sanitary and infection free services.
- Licensing leads to higher employment rates, facilitates market entry, and acts as a stepping stone to higher education, higher earnings and longer more sustainable careers.
- Licensing enhances insurability and helps protect individuals and small business owners.
- The American public overwhelmingly supports professional beauty licensing.

## Economic contributions of the professional beauty industry are far-reaching and significant

- The industry supports 2 million direct and indirect jobs, generates more than \$85.8 billion in sales, pays nearly \$31.6 billion in wages and contributes nearly \$3.8 billion in income taxes.
- Beauty professional jobs are expected to grow at a rate well above the 11% national average for all industries, discrediting the claim that licensing acts as a barrier to job growth.
- The industry supports small businesses and minorities.

## State administered training, testing, licensing enhance accountability for safety, sanitation, infection control

- In addition to establishing training requirements, licensing and regulations, State Boards of Barbering and Cosmetology establish health and safety standards for the operation of beauty salons and trade schools to protect professionals as well as customers.
- State boards review complaints and take actions against individuals and businesses that do not adhere to the minimum industry standards and violate the law.
- State licensing helps ensure essential skills needed to prevent transmitted diseases for both customers and employees at professional beauty establishments. Bacterial infections, blood borne pathogens, hepatitis B and C, nail and toe fungus, and boils and rashes are common diseases that can be transmitted at beauty salons.

## National Public opinion poll indicates overwhelming support for professional beauty licensing

Public opinion overwhelmingly supports professional beauty licensing to maintain the best practices for safety and quality standards. An independent national post-election study in 2012 shows that 82% of respondents think safety and quality would decline significantly if states ended licensing professions including hairstylists, barbers, nail technicians and skin care specialists.

## Post-Election Professional Licensing Findings

Currently, licensing for hair stylists, barbers, nail technicians, and estheticians is very popular. More than nine in ten (94%) 2012 general election voters say they support requiring licenses, including 97% of Democrats, 92% of Republicans, and 92% of independent voters. Voters say that professional licenses protect the public as well as improve quality and safety. While support is very broad, the strongest support is from women, older voters, African Americans, and voters with low household income.

To the degree there is room to improve, it's important to stress the public health benefits from licensing. While voters know that becoming a hair stylist, barber, or a related profession requires attending cosmetology school and passing a test, the public does not currently see the connection to public health issues like lice and scalp disease as strongly as other requirements. Our findings suggest the most compelling message focuses on how licensing ensures proper sanitation and cleanliness. Over two in three (67%) voters said the message was very compelling, including voters of all political affiliations and ages. The best way to talk about the benefits of professional licensing is below:

### Voters believe licensing requires education; less aware about skills, public health benefits

Four in five (80%) 2012 presidential election voters say that stylist, barber, nail technician, or esthetician has to attend school in order to receive a license. Three in four (74%) voters say that learning proper techniques for handling tools and chemicals is a requirement, including 86% of African American voters. Voters were least likely to know that training in preventing the spread of disease was necessary, though almost three in five (59%) did identify it as a requirement.

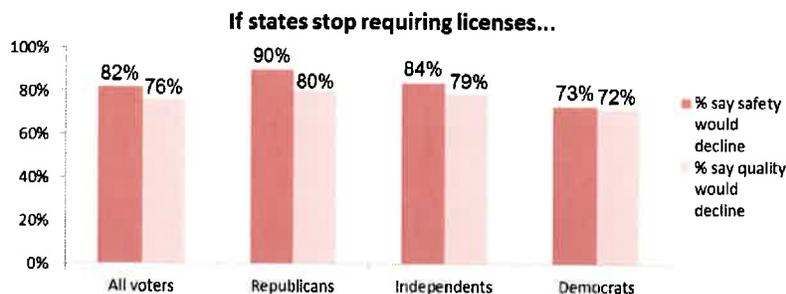
### Public thinks safety and quality would decline with law change

The vast majority of voters say quality and safety would decline if states ended licensing professions like hair stylists, barbers, nail technicians and estheticians. More than four in five (82%) say safety would decline and more than three in four (76%) voters say quality would decline without licensing.

Older voters and women are the most concerned demographic groups. Among 50+ voters, 88% say safety will go down and 91% say quality will decline. Among female voters, 87% say it will be less safe and 81% say quality will go down.

Younger voters are relatively more skeptical that ending licensing would impact safety and quality than older voters. Without licensing, six in ten (62%) voters under 35, say that quality would decline and nearly seven in ten (69%) say quality would decline.

As shown in the graph below, these concerns are held by voters of all political persuasions, with strong majorities of Republicans, independents and Democrats saying the procedures will be less safe and lower quality.



More African Americans say safety would decline (82%) than quality would decline (53%). Hispanics are the reverse, with more saying quality would decline (73%) than safety (56%). White voters are more likely to expect quality (83%) and safety (85%) to decline than either Hispanics or African Americans.

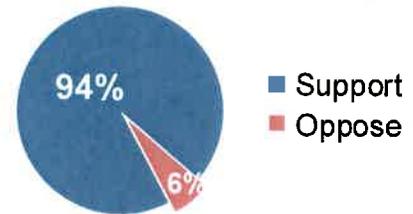
## Voters see benefit of licensing

More than nine in ten (94%) voters say they support requiring their stylist, barber, nail technician or esthetician to be licensed. This is a bi-partisan policy with 97% of Democrats, 92% of Republicans, and 92% of independents supporting licensing.

While support for licensing is widespread, there are differences in intensity. Nearly three in four (73%) older voters strongly support licensing, compared to just three in five (60%) voters under 35. Voters with household income under \$30,000 per year (72% strongly support) are also stronger supporters of licensing than voters with household incomes over \$75,000 (64% strongly support).

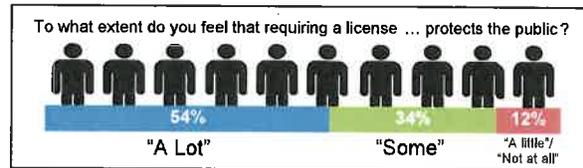
The strongest support is from African Americans (79% strongly support), women (76% strongly support) and Democrats (74% strongly support).

## Widespread support for professional licensing



## Public sees benefit to professional licensing

Nearly eight in nine (88%) voters say that requiring a license protects the public either "a lot" or "some". A majority of voters (54%) believe that state licensing helps protect the public a lot.



## Best messages focus on front-line prevention of diseases and safety

The best pro-licensing message focuses on how professional licensing ensures cleanliness and sanitation and enables professionals to identify scalp diseases, head lice, and other public health concerns. Over two in three (67%) voters said the message was very compelling.

Of the three pro-licensing messages PSB tested, the cleanliness message was the most effective among women and men, though it was more effective with women (77% very compelling) than men (54% very compelling). It was equally effective with voters of all political affiliations and ages. The full message is below:

*Professional licensing and inspections help ensure proper cleanliness and sanitation practices in hair salons and spas. In addition, most states require training in properly identifying scale diseases, head lice, and other ailments.*

### Methodology

The results are taken from the 2012 Penn Schoen Berland (PSB) National Post-Election Study. The study was conducted online from November 9-10, 2012 among n=1,202 Americans who voted in the 2012 presidential election. The margin of error for the study is +/- 2.83% at the 95% confidence level and larger for subgroups. Certain questions were split sampled to reduce respondent fatigue.

# The Value of Cosmetology Licensing to the Health, Safety, and Economy of America

Nam D. Pham, Ph.D.  
Anil Sarda

**January 2015**

## Licensed Beauty Professionals: A Part of America's Daily Life

The objective of this report is to detail the health, safety and economic contributions of the professional beauty industry and the critical role professional beauty licensing plays in protecting those contributions. In addition, this report will document the overwhelming public support for the industry and the licensing of its professionals.

This report reinforces and supports the following:

- Consumers expect and have a right to standards and rules.
- Consumers expect and have a right to safe, sanitary and infection free services and establishments.
- Professional beauty licensing fosters income and tax reporting accountability.
- Professional beauty licensing leads to higher employment rates, facilitates market entry, and acts as a stepping stone to higher education, higher earnings and longer more sustainable careers.
- Professional beauty licensing enhances insurability and helps protect individuals and small business owners against personal liability claims.
- The American public overwhelmingly supports professional beauty licensing.
- Nationwide harmonization of licensing requirements, a more efficient consistent process for licensing and reciprocity across the states is required.

### Key Findings of the Report

*Professional Beauty licensing is critical to the industry, beauty professionals, and every American.*

All cosmetologists, barbers, manicurists, skincare specialists and makeup artists in America are trained and licensed beauty professionals from cosmetology schools that are approved by the state in which they operate. Professional beauty programs offer courses to teach individuals skill sets to enhance clients' appearances - hair, nails, skin, and makeup – and maintain a safe salon environment. One of the most valuable features of all professional beauty programs, from a comprehensive cosmetology program to a shorter nail technology program, is safety and sanitation training to minimize the transfer of infectious diseases and risk of accidents for cosmetologists and clients. Upon completing their training, students who pass their exams are awarded certificates and licenses to work in hair salons, barber shops, nail salons, spas and other personal care service facilities. Currently, professional beauty licenses are set and administered by state offices and the requirements vary from state to state and specialty to specialty.

*Economic contributions of the professional beauty industry are far-reaching and significant*

More than 1.2 million beauty professionals provide essential services to almost every American during economic upturns as well as downturns.

- Beauty professional jobs are expected to grow 13% for cosmetologists, 16% for manicurists and 40% for skincare over the next 10 years. This is well above the 11% national average for all industries, discrediting the claim that licensing acts as a barrier to job growth. Skincare specialists are predicted to be among the top 20 fastest growing occupations over the next 10 years.

- The industry directly employs 1,229,000 professionals, including hairdressers, hairstylists, cosmetologists, barbers, manicurists, pedicurists, skincare specialists, shampooers, and makeup artists. About half of these practitioners are self-employed and nearly two-thirds of the remaining work in small establishments.
- The beauty industry generates nearly \$46 billion in sales and pays over \$19 billion in wages to beauty professionals.
- The industry also provides jobs to minorities who make up a disproportionate percentage of the unemployed. Nearly 85% of beauty professionals and 95% of cosmetologists are women compared to 47% of all U.S. industries. Nearly 57% of manicurists, pedicurists and skincare specialists are Asian, while 65% of barbers are African American and Hispanic.
- The industry supports 2,020,107 direct and indirect jobs, generating more than \$85.8 billion in sales, paying nearly \$31.6 billion in wages and contributing nearly \$3.8 billion in income taxes to federal and local governments in 2012-13.

#### Training, Testing and Licensing enhance accountability

Among the various disciplines within the beauty industry, cosmetologists and barbers usually undertake the most comprehensive programs that cover multiple teachings and skills from safety, sanitation, and technical skills to customer and business management skills. Full-time programs in cosmetology and barbering range from 9 to 24 months and can lead to associate's degrees in cosmetology.

- Professional cosmetology schools also offer shorter, more affordable programs such as nail treatment, skincare and hair styling designed to teach specific skills to work in the beauty industry.
- Upon completion of study, beauty professionals take exams to demonstrate their knowledge, skills, and abilities required to perform their jobs. After passing required exams they are awarded with certificates and licenses to work at hair salons, barber shops, nail salons, spas, nursing facilities and performance art centers.
- Registered professionals are proven to be accountable for the benefit of the consumer.

#### In order to practice legally, professionals obtain licenses administered and controlled by state cosmetology, barbering or similar boards, or state licensing agencies.

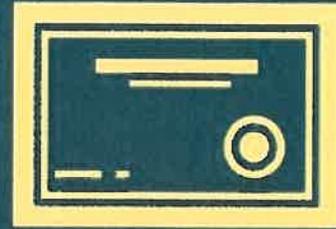
- The requirements for beauty licenses differ from state to state. The school hourly requirements range between 1,000 and 2,300 hours for cosmetologists, 250 and 1,500 hours for skincare specialists and 100 and 600 hours for manicurists. The industry is moving toward the harmonization of licensing requirements and licensing processes.
- In addition to licensing and regulating, the State Boards of Barbering and Cosmetology establish health and safety standards for the operation of beauty salons and trade schools to protect professionals as well as customers. The Board also reviews complaints and takes actions against individuals and businesses that do not adhere to the minimum industry standards and violate the law.

*Public opinion polls indicate overwhelming support for professional beauty licensing*

Public opinion overwhelmingly supports professional beauty licensing to maintain the best practices for safety and quality standards. The benefits of beauty licensing are significant. Licensing of beauty professionals improves the quality of workers in the beauty industry and ultimately protects consumers from unqualified individuals. In fact, a national post-election study in 2012 shows that 82% of respondents think safety and quality would decline significantly if states ended licensing professions like hairstylists, barbers, nail technicians and skin care specialists. The results are consistent across age groups, income groups and political affiliations.

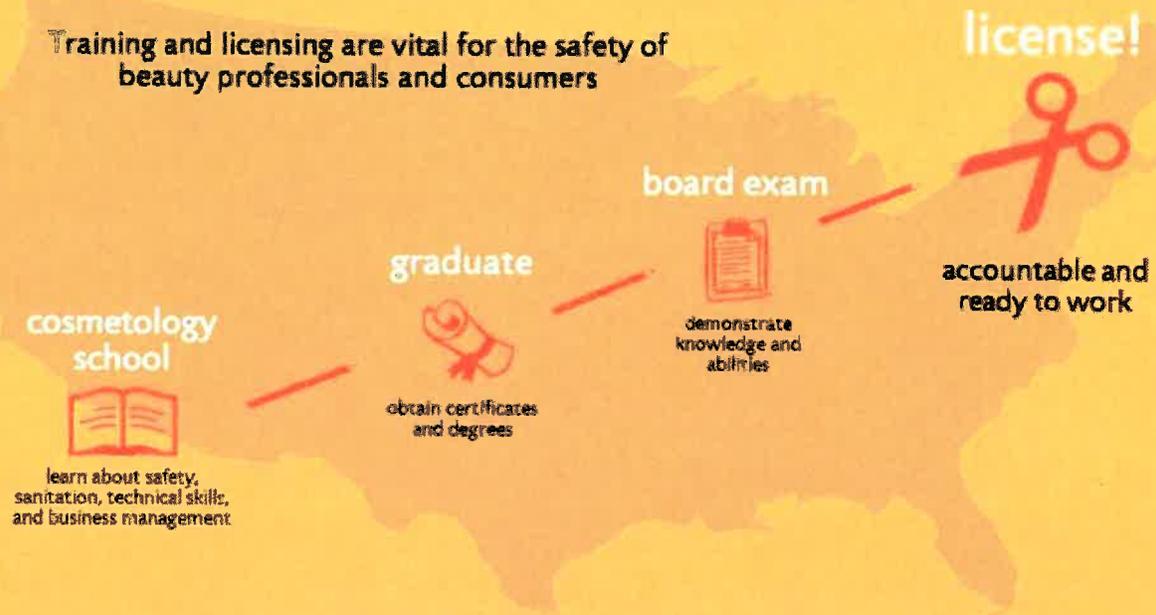
Professional beauty licensing is an essential component to the health of America's economy and to the health of its citizens. Beauty professionals touch nearly all Americans across every demographic in large and small communities. These professionals acquire their special skills to provide safe, high quality services to their clients through extensive training, certification and licensing.

# THE VALUE OF COSMETOLOGY LICENSING



A report measuring the importance of cosmetology licensing in the Professional Beauty industry and its economic contributions

Training and licensing are vital for the safety of beauty professionals and consumers



**Licensed Professionals**  
are accountable for safety and sanitation

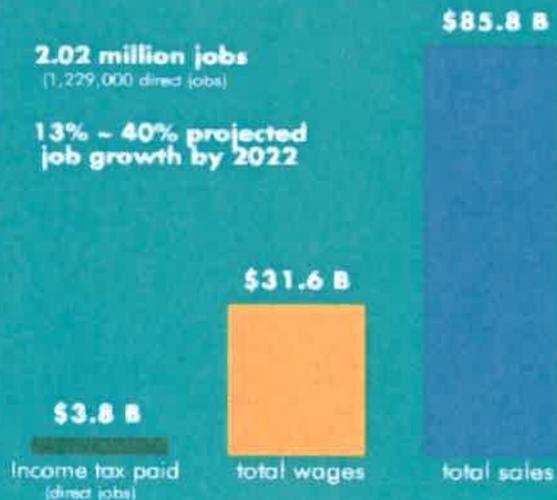


of poll respondents across age and income groups support the licensing of beauty professionals

**ECONOMIC CONTRIBUTIONS OF BEAUTY PROFESSIONALS**

2.02 million jobs  
(1,229,000 direct jobs)

13% - 40% projected job growth by 2022



# The Value of Cosmetology Licensing to the Health, Safety, and Economy of America

Nam D. Pham, Ph.D. and Anil Sarda<sup>1</sup>

*[More than 1.2 million beauty professionals make up one of America's most diverse industries](#)*

The professional beauty industry in 2013 employed more than 1.2 million licensed professionals, including hairstylists, hairdressers, cosmetologists, barbers, manicurists, pedicurists, skincare specialists, assistants and makeup artists. About 64% of workers are cosmetologists, including hairdressers and hairstylists. Manicurists and pedicurists account for 14.9% of the total employed. Skincare specialists, shampooers and makeup artists account for 7%, 3.3% and 0.5% of total employment, respectively (Table 1).

**Table 1. Employment by Professional Beauty Occupation, 2013<sup>2</sup>**

	Employment	Share of Total Employment
<b>TOTAL</b>	<b>1,229,000</b>	<b>100.0%</b>
Cosmetologists	786,000	64.0%
Manicurists & pedicurists	182,987	14.9%
Barbers	127,000	10.3%
Skincare specialists	86,535	7.0%
Shampooers	40,210	3.3%
Makeup artists	6,269	0.5%

*[The industry is dominated by small- and diversity-owned businesses](#)*

The beauty industry provides opportunity to those who often need it most —those who struggle for business and jobs – especially in time of economic downturn. About half of beauty professionals are self-employed, while small establishments employ most of the remaining. The professional beauty industry is dominated by female workers, accounting for 84.5% of total employment compared to 47.0% in all industries in the United States. In 2013, female workers accounted for 94.8% of all cosmetologists and 85.1% of all manicurists, pedicurists, skincare specialists, shampooers, and makeup artists (Table 2).

The professional beauty industry is diverse, of those employed, 18.3% Asians, 14.4% Hispanics, and 13.3% African Americans. About 56.7% of manicurists, pedicurists, skincare specialists, shampooers and makeup artists are Asian, while 34.5% and 30.0% of barbers are American African and Hispanic, respectively (Table 2).

<sup>1</sup> We would like to thank the Beauty Industry Working Group for their financial support to conduct this study. The opinions and views expressed here are solely those of the authors.

<sup>2</sup> U.S. Bureau of Labor Statistics and author's estimates.

**Table 2. Demographic of Professional Beauty Workers, 2013<sup>3</sup>**

	Employment	Women	African American	Asian	Hispanic
<b>All Industries (U.S.)</b>	<b>143,929,000</b>	<b>47.0%</b>	<b>11.2%</b>	<b>5.7%</b>	<b>15.6%</b>
<b>Professional Beauty Industry</b>	<b>1,229,000</b>	<b>84.5%</b>	<b>13.3%</b>	<b>18.3%</b>	<b>14.4%</b>
Cosmetologists	786,000	94.8%	12.8%	5.2%	14.6%
Barbers	127,000	19.2%	34.5%	3.4%	30.0%
Others	316,000	85.1%	6.1%	56.7%	7.8%

1/ "Others" include manicurists, pedicurists, skincare specialists, shampooers and makeup artists.

The professional beauty industry has 97,207 establishments with one or more paid employees, often referred to as an employer establishment. The beauty industry is made up of three major segments: beauty salons (78.2%), nail salons (17.9%) and barber shops (3.9%). On average, each employer establishment has five workers, with more workers in beauty salons and fewer in nail salons and barber shops. These establishments generated more than \$22.9 billion in gross, direct sales, averaging \$235,940 in sales per establishment and \$45,735 in sales per employee. Total wages paid to employees, excluding typical tips of between 15% and 20%, were over \$9.7 billion in 2012, accounting for approximately 42.5% of revenues and averaging \$19,432 per worker (Table 3).

**Table 3. Number of Establishments and Revenues for the Professional Beauty Industry, 2012<sup>4</sup>**

	Beauty Salon	Nail Salon	Barber Shop	Professional Beauty Industry
Establishments	76,016	17,394	3,797	97,207
% of industry	78.2%	17.9%	3.9%	100.0%
Employees	433,912	54,190	13,371	501,473
per establishment	5.7	3.1	3.5	5.2
Gross Sales	\$19,518,000,000	\$2,726,000,000	\$691,000,000	\$22,935,000,000
per establishment	\$256,762	\$156,721	\$181,986	\$235,940
per employment	\$44,981	\$50,304	\$51,679	\$45,735
Wages	\$8,613,304,000	\$864,424,000	\$267,005,000	\$9,744,733,000
per employment	\$19,850	\$15,952	\$19,969	\$19,432

Nearly two-thirds of employer establishments are small with less than five workers. In addition to employer establishments, the U.S. Census reported more than 1 million establishments in the professional beauty industry do not have paid employees (commonly referred as a non-employer establishment). Overall, the professional beauty industry had 1,142,495 employer and non-employer establishments in 2012 (Table 4). The U.S. Census also reported employer and non-employer establishments generated over \$45.9 billion in direct sales in 2012. Using similar wage-revenue ratios in the employer establishments of the professional beauty industry, we estimate total wages paid to both employer and non-employer establishments were nearly \$19.1 billion in 2012.

<sup>3</sup> U.S. Bureau of Labor Statistics and author's estimates.

<sup>4</sup> U.S. Census Bureau.

**Table 4. Number of Establishments in the Professional Beauty Industry by Employment Size, 2012<sup>5</sup>**

	Beauty Salon	Nail Salon	Barber Shop	Professional Beauty Industry
<b>Total Establishments</b>	<b>789,064</b>	<b>215,956</b>	<b>137,475</b>	<b>1,142,495</b>
Non-employer Establishments	713,048	198,562	133,678	1,045,288
Establishments (Employer)	76,016	17,394	3,797	97,207
1-4 employees	45,519	13,780	3,063	62,362
5-9 employees	18,066	2,792	451	21,309
10-19 employees	9,223	701	208	10,132
>19 employees	3,208	121	75	3,404

*The beauty industry supports more than \$85.8 billion in sales and nearly \$31.6 billion in wages*

Direct employment, wages and sales measure the number of beauty professionals, their wages (excluding tips, averaging between 15% and 20%) and sales of beauty establishments. Indirect and induced effects are changes in employment, wages and sales in other industries along the supply chain resulting from the direct activity. We applied the Bureau of Economic Analysis' multipliers to estimate the indirect and induced economic impacts of professional beauty industry to the U.S. economy. As a result, we estimate that in 2013, the professional beauty industry supported 2,020,107 direct and indirect jobs, produced more than \$85.8 billion in economic activity and paid nearly \$31.6 billion in wages (Table 5).

**Table 5. Direct and Indirect Effects of Professional Beauty Industry, 2012-13<sup>6</sup>**

	Employment	Wages (\$ millions)	Sales/Revenues (\$ millions)
Direct (employer and non-employer)	1,229,000	\$19,056.8	\$45,978.7
Multipliers (range)	1.2182 ~ 1.8960	1.1925 ~ 1.9075	1.3438 ~ 2.1887
Average	1.6437	1.6566	1.8661
Direct, Indirect, and Induced Effects	2,020,107	\$31,569.5	\$85,800.9

Based on a 15% federal income tax rate and individual state income tax rates in 2013, we estimate total income tax payments by professionals in the beauty industry to federal and local governments were nearly \$3.8 billion in 2012-13. Since the direct wages above (\$19,056.8 million) reported by the U.S. statistics do not include tips, we have added an additional 15% of tips to wages to estimate total taxable incomes (\$21,915.3 million).

<sup>5</sup> U.S. Census Bureau.

<sup>6</sup> U.S. Bureau of Economic Analysis, U.S. Bureau of Labor Statistics, and author's estimates.

## Qualifications of beauty professionals vary from state to state and specialty to specialty

The main service of beauty professionals is to enhance the appearance and well-being of their clients. No other profession, other than medical, requires the degree of skin-to-skin contact as does the beauty industry. Their work heavily involves chemical products, sharp tools and potentially dangerous machines, while focusing on clients' skin, eyes, face, scalp and other human anatomy. In addition to strong physical requirements, beauty professionals need to acquire skills and keep up with new technology and techniques from cosmetology schools. A high school diploma or equivalent is typically required to enter cosmetology schools. Some programs are available in accredited postsecondary vocational schools and other accredited full-time programs lead to an associate's degree in cosmetology.

Although maintaining different focuses, all beauty programs provide comprehensive training on safety, sanitation and infection control. Students learn the arts of hair treatment (shampooing, cutting, coloring, styling and repairing), nail care (polishing, filing, cleaning and disinfecting), makeup and skincare (cleaning, disinfecting, treating and evaluating). In addition to technical skills, cosmetology schools also offer training in sales, marketing, business management and customer skills for those who want to open their own business. These business skills have proven to be helpful for not just employee-based salons, but for the more than 1 million professionals who are self-employed in the beauty industry across the country as well.

Of the various occupations within the beauty industry, cosmetologists and barbers usually undertake the most comprehensive programs that cover multiple aspects from safety, sanitation, anatomy and technical skills to customer skills and business management. Full-time programs in cosmetology and barbering range from 9 to 24 months and often lead to higher degrees. Most professional cosmetology schools also offer shorter, more affordable programs for people to learn specific skills within the beauty industry. For example, nail technology training programs focus solely on safety and sanitation, polishing, filing, cleaning and disinfecting nails. Similarly, hair design programs emphasize safety, sanitation, hair cutting, coloring and styling. Table 6 summarizes typical programs and specializations offered in cosmetology schools.

**Table 6. Essential Skills and Basic Training by School<sup>7</sup>**

	Safety, Sanitation, Anatomy	Hair	Nails	Makeup	Skincare	Business Mgt	Customer Skills
Cosmetology	X	X	X	X	X	X	X
Barbering	X	X			X	X	X
Hair design	X	X					X
Esthetics	X				X		X
Makeup artistry	X			X	X		X
Nail	X		X				
Electrolysis	X	X			X		
Salon & spa mgt.	X					X	X

<sup>7</sup> Beauty Schools Directory.

Like other professional courses of study, professional beauty students take standardized exams at the end of their courses to demonstrate their knowledge, skills and abilities to perform the occupations at the workplace. After passing required exams and fulfilling state board requirements, they are awarded with certificates and licenses to work at hair salons, barber shops, nail salons, spas, nursing facilities and performance art centers. In order to work and charge clients, beauty professionals are required to obtain work licenses.

*Industry seeks to minimize red tape, harmonize requirements, and enhance reciprocity*

Licensing legislation for cosmetology has existed in the United States since the turn of the century. Today all 50 states and the District of Columbia require the licensing of cosmetologists. Currently, individual states administer and set the requirements for professional beauty licensing. Depending on the scope and depth of the curriculum, training requirements and fees vary substantially among states. For example, the minimum requirement of training hours for cosmetology licenses range from 1,000 hours (lowest) in Massachusetts and New York, to 2,300 hours (highest) in Oregon. While most states require licenses to be renewed between one and two years, Indiana and New York allow four years and Minnesota and North Carolina allow three years. Among 13 states that require continuing education to renew licenses, North Carolina is the highest, requiring 24 hours and West Virginia, the lowest, requires only 4 hours. Reciprocity and endorsement also differ among states; some states require a simple application while others require an application as well as practical exams (Table 7 and Appendix A4).

This variation is the subject of much discussion with the professional beauty industry, which is advocating for the nationwide harmonization of licensing requirements and a more efficient and consistent process for licensing and reciprocity across the states. Several states have recently streamlined the requirements and process of licensing. For example, Iowa in 2006 combined manicurist/pedicurist licenses and nail technician license to streamline the process.<sup>8</sup> Michigan in 2014 reduced the required number of training hours for barbers from 2,000 hours to 1,800 hours.<sup>9</sup>

**Table 7. Professional Beauty Licensure Requirements (as of October 2014)<sup>10</sup>**

	Cosmetology	Esthetics	Nails
Training	1,000 ~ 2,300 hrs	250 ~ 1,500 hrs	100 ~ 600 hrs
License Renewal	1 ~ 4 years		
Continuing Education	0 ~ 24 hours		
Reciprocity/Endorsement	Varies		

*Skillsets and professional licensing lead to higher wages and higher employment rates*

Certified beauty professionals, who pass the board exams and obtain state licenses, are expected to find jobs in reputable workplaces and to be rewarded with higher paying wages. Estimates indicate that more than 35% of employees in the U.S. are either licensed or certified, rising from 5% in the 1950s and around 20% in 2000. Empirical studies found that licensing rises with education: more than 44% of those with post-

<sup>8</sup> Iowa Code Title IV, Chapter 157.5A. <https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=157&year=2014>

<sup>9</sup> Michigan House Bill 5396.

<sup>10</sup> Beauty Schools Directory.

college education are required to have a license compared to only 15% of those with less than a high school education. In terms of earnings, cross-sectional studies show that wages of occupational licensing in the U.S. are between 10% and 15% higher than their counterparts of non-licensed occupations.<sup>11</sup>

About 90% of beauty professionals found jobs in the personal care service industry and the other 10% of professionals work in health stores, nursing facilities, traveler accommodations, motion picture and broadcasting industries, amusement industries, and hospitals. According to recent statistics, the range of wages for beauty professionals (lowest and highest 10<sup>th</sup> percentile) are between \$17,010 and \$44,220 for cosmetologists, \$17,370 and \$44,190 for barbers, \$16,700 and \$30,330 for manicurists and pedicurists, \$16,160 and \$23,640 for shampooers, \$17,480 and \$56,930 for skincare specialists and between \$19,560 and \$121,910 for makeup artists (Table 8).

As with other professions, the time and effort spent in cosmetology school is positively correlated with salaries and employment. Evidence shows that educational attainment is positively correlated with earnings and negatively correlated with unemployment rates.<sup>12</sup> Licensing encourages growth. The U.S. Bureau of Labor Statistics projects the professional beauty industry will grow 13% for cosmetologists and 40% for skincare specialists during 2012-22, compared to 11% of the national average of all industries. Among 580 occupations, the skincare specialist occupation is among the top 20 fastest growing occupations in the United States during the period between 2012 and 2022 (Table 8).

**Table 8. Wages and Employment Growth of the Professional Beauty Industry<sup>13</sup>**

	2013 Wages (lowest-highest 10th percentile)	Industries with Highest Levels of Employment	Job Growth (2012-22)
Cosmetologists	\$17,010-\$44,220	Personal care svcs, health stores, nursing facilities, traveler accommodation, motion picture industries	13%
Barbers	\$17,370-\$44,190	Personal care svcs, employment svcs, psychiatric and substance abuse hospitals	13%
Manicurists and pedicurists	\$16,700-\$30,330	Personal care svcs, traveler accommodation, amusement industries, health stores	16%
Shampooers	\$16,160-\$23,640	Personal care svcs	--
Skincare specialists	\$17,480-\$56,930	Personal care svcs, amusement industries, health offices, health stores	40%
Makeup artists	\$19,560-\$121,910	Motion picture industries, personal care svcs, performing arts companies, broadcasting	--

<sup>11</sup> Kleiner Morris M. and Alan B. Krueger. 2013. "Analyzing the Extent and Influence of Occupational Licensing on the Labor Market." *Journal of Labor Economics*, Vol. 31, No. 2.

<sup>12</sup> Earnings and Unemployment Rates by Educational Attainment, U.S. Bureau of Labor Statistics.

<sup>13</sup> Occupational Outlook Handbook, U.S. Bureau of Labor Statistics.

*Licensed professionals in the beauty industry are accountable for safety, sanitation and infection control*

As shown above, cosmetology schools provide essential skills for safety, sanitation and infection control for all students, regardless whether they are enrolled in a comprehensive cosmetology program or in a shorter nail technology program. Safety and sanitation are proven to be crucial elements in preventing transmitted diseases for both customers and employees at professional beauty establishments. Bacterial infections, blood borne pathogens, hepatitis B and C, nail and toe fungus and boils and rashes are common diseases that can be transmitted at beauty salons.

Reported bacterial outbreaks linked to improperly cleaned and disinfected spas have raised concerns about spa safety and sanitation. Several major mycobacterial skin infection outbreaks in California in 2000 and 2004 infected hundreds of nail salon clients.<sup>14</sup> According to a study in the New England Journal of Medicine, mycobacterial infections associated with nail salons are currently under-recognized and may increase in prevalence. Since mycobacteria are found in soil and water, microorganisms in foot spas can enter through the skin, finding passage into the body.<sup>15</sup>

Blood-borne viruses, such as hepatitis B and C and HIV, are serious global health problems. Patients infected by these viruses may not be aware they are carriers of the disease and could transmit them to others accidentally. Peer-reviewed medical research studies have found strong evidence that razors, barber's scissors, nail files and body piercing instruments are risk factors for transmission of hepatitis B and C, HIV and other blood borne pathogens. Without training and knowledge, professionals in the beauty industry may accidentally transmit diseases from an infected client to others.<sup>16</sup>

Fungal nail infections are common infections of the fingernails and toenails that can cause the nails to become discolored, thick, and more likely to crack and break. The infections can be transmitted by instruments such as nail clippers and scissors at beauty salons. Fungal nail infections are difficult and may take several months to a year to cure with proper antifungal treatment.

Public health officials have called for raising awareness among beauty industry professionals and focusing on regulations to prevent transmissions of diseases. The Centers for Disease Control and Prevention (CDC) advises people to choose salons that are clean and licensed by the state's cosmetology board. Proper cleaning and disinfection greatly reduce the risk of infection and salons should use EPA-registered hospital disinfectant products. Professional Beauty establishments need to follow the instructions on products to disinfect instruments in between serving customers and nightly. The CDC also provides guidance for customers to better understand how to ask how the salon how they clean and disinfect foot spas and tools and how often.

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<sup>14</sup> Board of Cosmetology, State of Oregon. [http://www.oregon.gov/ohla/cos/pages/features/bacterial\\_skin\\_infections.aspx](http://www.oregon.gov/ohla/cos/pages/features/bacterial_skin_infections.aspx)

<sup>15</sup> Winthrop Kevin L, Marcy Abrams, Mitchell Yakrus, Ira Schwartz, Janet Ely, Duncan Gillies, and Duc J. Vugia. 2002. "An Outbreak of Mycobacterial Furunculosis Associated with Footbaths at a Nail Salon." The New England Journal of Medicine.

<sup>16</sup> Winthrop Kevin L, Marcy Abrams, Mitchell Yakrus, Ira Schwartz, Janet Ely, Duncan Gillies, and Duc J. Vugia. 2002. "An Outbreak of Mycobacterial Furunculosis Associated with Footbaths at a Nail Salon." The New England Journal of Medicine.

Walsh, Sarah A. 2012. "Beyond the Polish: An Examination of Hazardous Conditions in Nail Salons and Potential Solutions for the Industry in New York City." Journal of Law and Policy, Brooklyn Law School. Volume XXI, Issue 1; Wagner, Richard F., Jr. 1990. "Risks of Infection to Dermatologists, Cosmetic Workers, and the Public." International Journal of Dermatology; U.S. Department of Labor, "Health Hazards in Nail Salons." Safety and Health Topics, Occupational Safety & Health Administration, Web <https://www.osha.gov/SLTC/nailsalons/biohazards.html>

Licensed professionals are trained to properly handle electrical equipment, professional grade chemical products and hazardous substances at the workplace to protect themselves and customers. In addition, proper equipment operation at beauty salons reduces the risk of chemical exposures as well as accidents at the work place.<sup>17</sup> Licensed professionals and beauty salons have protocols to handle, use, and dispose of hazardous chemical products, waste, and equipment.

### *State boards play a valuable role*

Individual state boards were created to provide safe operating standards for the beauty industry, to monitor the industry and to enforce rules that protect consumers and professionals. The state board of barbering and cosmetology establishes licensing requirements, operational rules and health safety standards for beauty salons and trade schools to protect customers as well as professionals. Currently, state boards set training requirements for its own state, this varies substantially across states.

State Boards also provide a platform for customers to file complaints about beauty salons and professionals in the beauty industry. As with any occupation, accidents and negligible work performance sometimes occur. When they do, state boards are there to help. Complaints are filed with individual state boards every year on the work performed by estheticians, barbers, cosmetologists, nail technicians, establishments, and even cosmetology schools. Statistics regarding complaints are available for several states. For example, the California Board of Barbering and Cosmetology provides detailed statistics on complaints in its state. During the fiscal years between 2006 and 2012, the California Board received 21,402 complaints and referred 1,095 cases for further investigation. Among 998 violations issued by the California Board, 286 cases (28.7% of total issues) were related to health and safety, another 283 cases were related to unlicensed activity, and 216 cases were related to incompetence/negligence.<sup>18</sup>

During the 5 fiscal years between 2008 and 2012, the Colorado State Board of Barbers and Cosmetologists received 3,713 complaints filed with the Director.<sup>19</sup> Similarly, Maine reported 459 complaints filed in 2012, 432 in North Carolina, and 396 in Michigan.<sup>20</sup> The accidents range from minor issues, such as not meeting clients' expectations to more serious issues, such as skin burning and infections.

After reviewing complaints, the state board investigates these cases and may take actions against individuals and businesses that do not adhere to the minimum standards and violate the law. Disciplinary decisions of the board include revocation, surrender of license, suspension, probation and public reprimand. The board also issues citations and collects fines.

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<sup>17</sup> Tsigonia, Alexandra, Argyro Lagoudi, Stavroula Chandrinou, Athena Linos, Nikos Evlogias, and Evangelos Alexopoulos. 2010. "Indoor Air in Beauty Salons and Occupational Health Exposure of Cosmetologists to Chemical Substances." *International Journal of Environmental Research and Public Health*.

<sup>18</sup> Board of Barbering and Cosmetology. "Enforcement Statistical Overview." Department of Consumer Affairs, State of California.

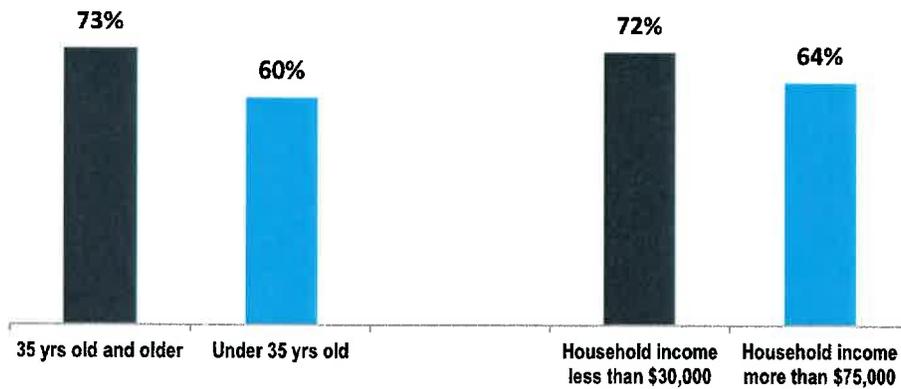
<sup>19</sup> Department of Regulatory Agencies. "2014 Sunset Review: Barber and Cosmetologist Act and Barber and Cosmetology Advisory Committee." Office of Policy, Research, and Regulatory Reform, State of Colorado.

<sup>20</sup> Data compiled by Professional Beauty Association.

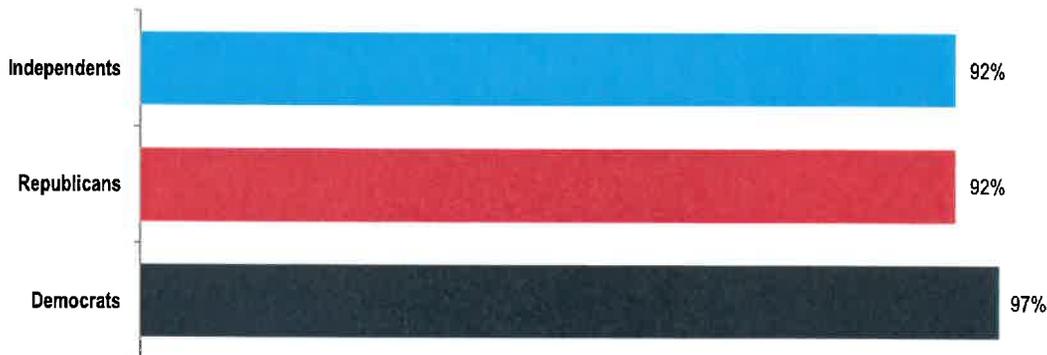
Public Opinion overwhelmingly supports licensing

The benefits of beauty licensing are overwhelming. Professional licensing in the beauty industry ensures the quality and safety of workers and ultimately protects consumers from unqualified, unsafe workers. In fact, a national post-election study in 2012 shows that 82% of respondents think safety and quality would decline if states ended licensing for professionals like hairstylists, barbers, nail technicians and estheticians. The results are consistent across age groups, income groups, and political affiliations (Figure 1).

**Figure 1. Public Opinions Supporting Professional Beauty Licensing<sup>21</sup>**  
**Panel A. By Age and Income Groups**



**Panel B. By Political Affiliations**



<sup>21</sup> 2012 Penn Schoen Berland (PSB) National Post-Election Study. The study was conducted online from November 9-10, 2012 among n=1,202 Americans who voted in the 2012 presidential election.

## Conclusion

The professional beauty industry is a critical element in America's economic landscape and professional beauty licensing is an essential component to the overall health of American consumers and beauty professionals. Ultimately, licensing of beauty professionals supports an industry of over 2.2 million workers who earn \$31.6 billion in wages and contribute \$85.8 billion in goods and services to the U.S. economy. The beauty industry is dominated by small businesses, self-employed individuals and exemplifies gender and ethnic diversity. The beauty industry touches almost every American in large and small communities. These trained and licensed beauty professionals acquire special skill sets, including hair, nail, skin treatments, business management, sanitation, hygiene, human anatomy, and infection control to provide safe and high quality services for their clients. As with other professional education programs, participants have to pass standardized course exams to demonstrate their knowledge and ability to perform their skills in the marketplace. With a higher level of training, beauty professionals are able to earn higher wages. Licensing safe and well trained beauty service providers protect customers from unqualified beauty workers. To ensure consistency from state-to-state, industry professionals are pushing to harmonize the requirements and processes to obtain professional beauty licenses to strengthen safety, remove barriers and ensure economic performance of the industry.

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Appendix.

Table A1. Professional Beauty Employment by State (Employers only), 2012<sup>22</sup>

State	Employment	State	Employment
Alabama	4,550	Montana	860
Alaska	440	Nebraska	3,310
Arizona	7,760	Nevada	3,650
Arkansas	1,750	New Hampshire	3,030
California	49,060	New Jersey	25,270
Colorado	8,210	New Mexico	1,320
Connecticut	8,350	New York	44,190
Delaware	1,870	North Carolina	8,910
District of Columbia	1,380	North Dakota	1,440
Florida	29,200	Ohio	22,350
Georgia	10,830	Oklahoma	3,060
Hawaii	1,600	Oregon	4,660
Idaho	1,530	Pennsylvania	29,880
Illinois	22,280	Rhode Island	1,520
Indiana	8,380	South Carolina	3,800
Iowa	4,410	South Dakota	940
Kansas	3,610	Tennessee	6,640
Kentucky	4,370	Texas	28,700
Louisiana	4,460	Utah	3,000
Maine	1,230	Vermont	760
Maryland	13,120	Virginia	15,520
Massachusetts	15,240	Washington	13,190
Michigan	14,100	West Virginia	1,440
Minnesota	11,880	Wisconsin	11,710
Mississippi	2,190	Wyoming	550
Missouri	7,830	United States	490,050

<sup>22</sup> U.S. Bureau of Labor Statistics. Occupational Employment Statistics. May 2013.

**Table A2. Professional Beauty Employment (Employers only) per 10,000, by State, 2012<sup>23</sup>**

State	Professional Beauty per 10,000	State	Professional Beauty per 10,000
Alabama	9	Montana	8
Alaska	6	Nebraska	18
Arizona	12	Nevada	13
Arkansas	6	New Hampshire	23
California	13	New Jersey	28
Colorado	16	New Mexico	6
Connecticut	23	New York	22
Delaware	20	North Carolina	9
District of Columbia	21	North Dakota	20
Florida	15	Ohio	19
Georgia	11	Oklahoma	8
Hawaii	11	Oregon	12
Idaho	9	Pennsylvania	23
Illinois	17	Rhode Island	14
Indiana	13	South Carolina	8
Iowa	14	South Dakota	11
Kansas	12	Tennessee	10
Kentucky	10	Texas	11
Louisiana	10	Utah	10
Maine	9	Vermont	12
Maryland	22	Virginia	19
Massachusetts	23	Washington	19
Michigan	14	West Virginia	8
Minnesota	22	Wisconsin	20
Mississippi	7	Wyoming	9
Missouri	13	United States	16

<sup>23</sup> U.S. Bureau of Labor Statistics. Occupational Employment Statistics. May 2013; U.S. Census Bureau.

**Table A3. Establishments of Professional Beauty Industry by State, 2012<sup>24</sup>**

State	Establishments	State	Establishments
Alabama	24,751	Montana	2,962
Alaska	1,247	Nebraska	5,914
Arizona	18,293	Nevada	10,510
Arkansas	10,635	New Hampshire	3,289
California	136,453	New Jersey	20,176
Colorado	14,801	New Mexico	4,569
Connecticut	8,675	New York	71,542
Delaware	1,997	North Carolina	39,494
District of Columbia	3,140	North Dakota	1,579
Florida	92,591	Ohio	34,835
Georgia	61,001	Oklahoma	13,209
Hawaii	3,083	Oregon	10,773
Idaho	4,714	Pennsylvania	28,140
Illinois	64,695	Rhode Island	3,750
Indiana	23,950	South Carolina	19,219
Iowa	8,801	South Dakota	1,985
Kansas	8,327	Tennessee	29,040
Kentucky	13,124	Texas	97,922
Louisiana	25,922	Utah	8,917
Maine	3,558	Vermont	1,368
Maryland	20,652	Virginia	24,924
Massachusetts	17,404	Washington	15,901
Michigan	52,247	West Virginia	4,030
Minnesota	13,238	Wisconsin	16,293
Mississippi	14,748	Wyoming	1,651
Missouri	22,456	United States	1,142,495

<sup>24</sup> U.S. Census Bureau. County Business Patterns. 2012.

**Table A4. License Requirements by State<sup>25</sup>**

State	Cosmetology (hours)	Esthetics (hours)	Nails (hours)	Renewal (years)	Continuing Education (hours)
Alabama	1500	1500	600	2	0
Alaska	1650	350	250	2	0
Arizona	1600	600	600	1	0
Arkansas	1500	600	600	2	0
California	1600	600	400	2	0
Colorado	1800	600	600	2	0
Connecticut	1500	NR	NR	2	10
Delaware	1500	600	300	2	0
District of Columbia	1500	600	350	2	6
Florida	1200	260	240	2	16
Georgia	1500	1000	525	2	5
Hawaii	1800	600	350	2	0
Idaho	2000	600	400	1	0
Illinois	1500	750	350	2	14
Indiana	1500	700	450	4	0
Iowa	2100	600	325	2	8
Kansas	1500	1000	350	2	0
Kentucky	1800	1000	600	1	0
Louisiana	1500	750	500	1	0
Maine	1500	600	200	1	0
Maryland	1500	600	250	2	0
Massachusetts	1000	300	100	1 and then 2	0
Michigan	1500	400	400	1 and then 2	0
Minnesota	1550	600	350	3	0
Mississippi	1500	600	350	2	0
Missouri	1500	750	400	2	0
Montana	2000	650	350	2	15
Nebraska	2100	600	300	2	8
Nevada	1800	900	600	2	0
New Hampshire	1500	600	300	2	0
New Jersey	1200	600	300	2	0
New Mexico	1600	600	350	1	0
New York	1000	600	250	4	0
North Carolina	1500	600	300	3	24
North Dakota	1800	600	350	1	0
Ohio	1500	600	200	2	0
Oklahoma	1500	600	600	1	0

<sup>25</sup> Cosmetology License Requirements by State, Beauty Schools Marketing Group, Inc.

Oregon	2300	250	350	2	0
Pennsylvania	1250	300	200	2	0
Rhode Island	1500	600	300	1 and then 2	0
South Carolina	1500	450	300	2	12
South Dakota	2100	600	400	1	0
Tennessee	1500	750	600	2	16
Texas	1500	750	600	2	4
Utah	1600	600	300	2	0
Vermont	1500	600	400	2	0
Virginia	1500	600	150	2	0
Washington	1600	600	600	2	0
West Virginia	1800	600	400	1	4
Wisconsin	1800	450	300	2	0
Wyoming	2000	600	400	2	0

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Nam D. Pham is Managing Partner of ndp|analytics, a strategic research firm that specializes in economic analysis of public policy and legal issues. Prior to founding ndp|analytics in 2000, Dr. Pham was Vice President at Scudder Kemper Investments in Boston, where he was responsible for research, asset allocations, and currency hedging for global and international bond funds. Before that he was Chief Economist of the Asia Region for Standard & Poor's DRI; an economist at the World Bank; and a consultant to both the Department of Commerce and the Federal Trade Commission.

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**About Us.** ndp | analytics is a strategic research firm that specializes in the economic analysis of public policy and legal issues. Our services include economic impact studies, business impact analyses, cost-benefit analyses, statistics, and data construction. Our analytical frameworks are data-driven and supported by economic fundamentals which are robust, transparent, and defensible. We present facts and findings to tell a complete story in simple yet effective language for broad public audiences. We excel in supporting an organization's advocacy, government and industry relations, public affairs campaigns, and strategic initiatives. Clients of ndp | analytics include trade associations, coalitions, financial institutions, law firms, U.S. and foreign corporations, and multinational organizations. Our work has been prominently cited in the 2011 Economic Report of the President to the Congress, print and broadcast media, reports from government agencies, Congressional testimonies, and by Congressional leaders.

## AN OUTBREAK OF MYCOBACTERIAL FURUNCULOSIS ASSOCIATED WITH FOOTBATHS AT A NAIL SALON

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### ABSTRACT

**Background** In September 2000, a physician in northern California described four patients with persistent, culture-negative boils on the lower extremities. The patients had received pedicures at the same nail salon. We identified and investigated an outbreak of *Mycobacterium fortuitum* furunculosis among customers of this nail salon.

**Methods** Patients were defined as salon customers with persistent skin infections below the knee. A case-control study was conducted that included the first 48 patients identified, and 56 unaffected friends and family members who had had a pedicure at the same salon served as controls. Selected *M. fortuitum* isolates, cultured from patients and the salon environment, were compared by pulsed-field gel electrophoresis.

**Results** We identified 110 customers of the nail salon who had furunculosis. Cultures from 34 were positive for rapidly growing mycobacteria (32 *M. fortuitum* and 2 unidentified). Most of the affected patients had more than 1 boil (median, 2; range, 1 to 37). All patients and controls had had whirlpool footbaths. Shaving the legs with a razor before pedicure was a risk factor for infection (70 percent of patients vs. 31 percent of controls; adjusted odds ratio, 4.8; 95 percent confidence interval, 2.1 to 11.1). Cultures from all 10 footbaths at the salon yielded *M. fortuitum*. The *M. fortuitum* isolates from three footbaths and 14 patients were indistinguishable by electrophoresis.

**Conclusions** We identified a large outbreak of rapidly growing mycobacterial infections among persons who had had footbaths and pedicures at one nail salon. Physicians should suspect this cause in patients with persistent furunculosis after exposure to whirlpool footbaths. (N Engl J Med 2002;346:1366-71.)

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**R**APIDLY growing mycobacteria are distributed ubiquitously in soil and water, including chlorinated municipal water systems.<sup>1-5</sup> They are known to cause localized cutaneous infections, such as cellulitis and soft-tissue abscesses, as well as rare extracutaneous or disseminated disease.<sup>6</sup> Since the first description of *Mycobacterium fortuitum* infection, from an abscess resulting from vitamin injection in 1936,<sup>7</sup> nosocomial outbreaks of infection with rapidly growing mycobacteria have been documented. These outbreaks are typically associated

with surgical or clinical devices contaminated with water from a hospital or municipal water system.<sup>8</sup> In the community setting, only sporadic infections have been reported, usually resulting from the contamination of a traumatic wound with soil or water.<sup>6,9</sup>

On September 26, 2000, a physician in northern California reported to her local health department a cluster of four female patients in whom lower-extremity furunculosis of unknown cause had developed in the previous six months. The patients presented with small erythematous papules that, after several weeks or months, became large, tender, fluctuant, violaceous boils (Fig. 1A). Some progressed to frank ulceration, and some resolved spontaneously with substantial scarring (Fig. 1B). In all four patients, empirical trials of antibiotic therapy had failed, and wound swabs failed to yield bacterial growth on routine culture. The physician noted that all boils occurred below the knee and that all four patients had received pedicures at the same nail salon.

At the salon, we observed that patrons began with a 10-to-15-minute soaking of the lower extremities in a whirlpool footbath. The water levels were always below the knee but often reached to the mid-calf. After the bath, and before working on nails and calluses, the nail technician massaged the leg below the knee with oil or lotion.

We suspected that rapidly growing mycobacteria might be responsible for the disease in these four patients. We undertook an investigation to search for similar cases in the community.

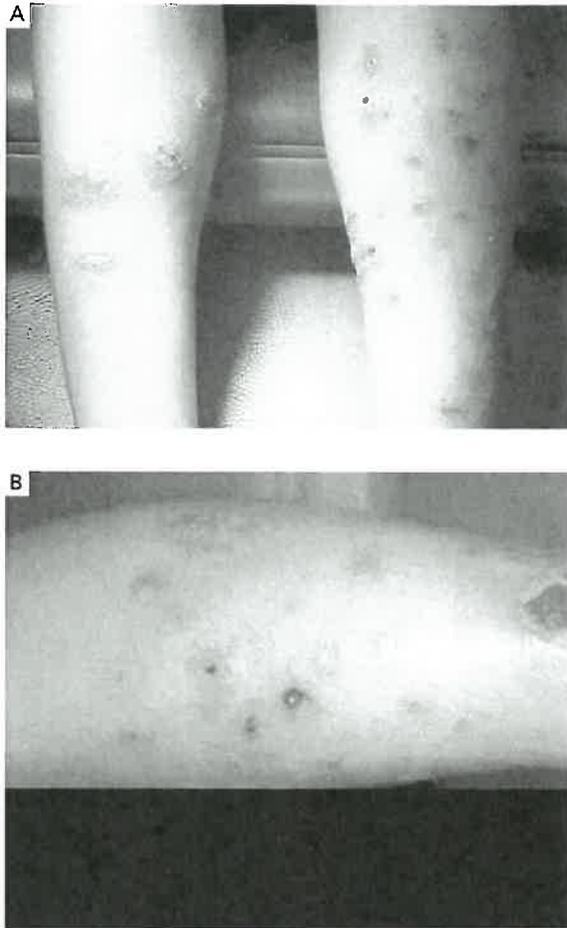
### METHODS

#### Patient Identification

To define the extent of the outbreak, we notified all local primary care and dermatology clinicians of a potential outbreak of mycobacterial disease among customers of the salon, and we asked them to report to the local health department all patients with lower-extremity skin infections in the previous six months who had received a pedicure from the salon. These persons were contacted by local or state health-department staff, and a brief, standardized

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From the Epidemic Intelligence Service, Epidemiology Program Office (K.L.W.), and the Division of AIDS, Sexually Transmitted Diseases, and Tuberculosis Laboratory Research, Tuberculosis/Mycobacterial Branch (M.Y.), Centers for Disease Control and Prevention, Atlanta; the Division of Communicable Disease Control, California Department of Health Services, Berkeley (K.L.W., J.E., D.J.V.); and the Santa Cruz County Department of Health, Santa Cruz (M.A., I.S., D.G.). Address reprint requests to Dr. Winthrop at the California Department of Health Services, Rm. 708, 2151 Berkeley Way, Berkeley, CA 94704, or at [kwinthro@dhs.ca.gov](mailto:kwinthro@dhs.ca.gov).



**Figure 1.** Lesions of Furunculosis.

Panel A shows the legs of a 14-year-old girl with typical disease presentation. Panel B shows lesion ulceration and scarring.

questionnaire was administered. Data collected included age, sex, clinical information, and pertinent details of the pedicure procedure.

We defined a patient as any person who had had a pedicure at the salon between April and October 2000 and who had a skin infection below the knee lasting at least two weeks with at least one of the following features: a negative routine bacterial culture, a failure to respond to routine antibiotic therapy, and a treating physician's clinical suspicion of mycobacterial furunculosis.

#### Case–Control Study

We enrolled the first 48 patients in a case–control study to identify potential risk factors for infection. Because no salon records or sales receipts were available for identifying possible control subjects, we asked the patients to refer unaffected acquaintances, friends, or family members who had had pedicures at the salon in the previous six months to serve as controls. All identified control subjects were included. We used a detailed questionnaire to interview patients and controls. Information collected included sex, age, date of last pedicure, and details of the last pedicure procedure

(e.g., leg shaving before pedicure and the use of lotion or oil during leg massage).

For statistical analysis, patients and controls underwent unmatched and matched comparisons. Because these analyses produced similar results, only the unmatched results are presented here. Mantel–Haenszel odds ratios, 95 percent confidence intervals, and Fisher's exact P values (with the use of two-sided tests) were calculated with Epi Info 2000 software (version 1.0.4).

#### Environmental Investigation

We obtained multiple environmental samples from the salon for mycobacterial culture, including any substance that came in contact with the patrons' lower legs, specifically massage oils, lotions, bubble soap for the whirlpool bath, tub cleaner, cuticle oil, and exfoliating scrub. Using cotton-tipped swabs, we cultured behind the inlet suction screen of each of the 10 whirlpool-footbath basins in the salon. We obtained tap-water specimens from the salon's sink four and eight weeks after the salon was closed on October 6, 2000.

#### Laboratory Methods

Physicians were encouraged to obtain punch-biopsy specimens from suspect lesions for routine bacterial and mycobacterial cultures. We requested that all positive mycobacterial cultures be sent to the California Microbial Diseases Laboratory for identification and confirmation of species.

Biopsy specimens submitted to local public health laboratories were decontaminated and digested with *N*-acetyl-L-cysteine (NALC) sodium hydroxide. All environmental culturette specimens were processed in similar fashion.<sup>10</sup> These digests were inoculated onto Lowenstein–Jensen slants, Middlebrook 7H10 plates, and MB/BacT process bottle broth medium (Organon Teknika, Durham, N.C.).

Water samples were concentrated and decontaminated with cetylpyridium chloride, as previously described,<sup>11</sup> and inoculated onto Lowenstein–Jensen slants. Lotions, oils, and other cosmetic samples were prepared for processing by mixing 10 ml of sample with 10 ml of sterile Tween 80. This mixture was swirled to make a suspension and mixed with 80 ml of trypticase soy broth at 44°C. Ten milliliters of this prepared sample was then decontaminated with NALC sodium hydroxide, concentrated by centrifugation, and inoculated onto Lowenstein–Jensen and Middlebrook 7H10 culture medium. The remaining 90 ml of sample was filtered through a 0.45- $\mu$ m membrane filter, and the filter was placed in 50 ml of Middlebrook 7H9 broth (with MB/BacT antibiotic supplement).

All inoculated mediums and broths were incubated at 35°C. Broth cultures with growth were plated on Middlebrook 7H10. Smears were made from colonies appearing on the medium and were stained with Ziehl–Neelsen stain.<sup>12</sup> Acid-fast colonies were subcultured to Lowenstein–Jensen medium and submitted for high-performance liquid chromatography.<sup>13</sup> These isolates were identified to the species level with the use of high-performance liquid chromatography and biochemical methods.<sup>14</sup>

#### Molecular Comparison

Selected *M. fortuitum* isolates from patients and from the environment were forwarded to the Tuberculosis/Mycobacteriology Branch of the Centers for Disease Control and Prevention for molecular subtyping by pulsed-field gel electrophoresis and multilocus enzyme electrophoresis. Pulsed-field gel electrophoresis of large restriction fragments of genomic DNA was performed with a restriction enzyme (*Xba*I) according to methods described elsewhere.<sup>15</sup> Gels were interpreted with the use of previously described criteria.<sup>16</sup> For analysis by multilocus enzyme electrophoresis, the mobility of 10 enzymes from each isolate was compared on starch gels with the use of previously described methods.<sup>17</sup> Both molecular subtyping techniques used *M. fortuitum* reference strain American Type Culture Collection 23031.

## RESULTS

## Identification of Patients

We identified 110 patients in whom furunculosis had developed between April and October 2000 (Fig. 2). Thirty-four (31 percent) had cultures positive for rapidly growing mycobacteria, with 32 identified as *M. fortuitum* and 2 not identified. All patients except one were female, with a median age of 36 years (range, 10 to 65). Most patients had more than 1 boil (median, 2; range, 1 to 37). Because most patients had been to the salon more than once before the onset of disease, we calculated the incubation time for the 13 patients who reported only one visit to the salon, 6 of whom had culture-confirmed disease. The median interval from exposure to clinically apparent infection was 23 days (range, 10 to 128) for these 13 patients; the results from the 6 of these 13 patients with culture-confirmed infection were similar (median, 27 days; range, 12 to 69). No patients were hospitalized, and there were no deaths.

Preliminary information on clinical outcome was reported for 60 patients. Forty-eight patients received oral antibiotics for a median of four months (range, one to seven), and all had resolution of boils. No patients underwent surgical excision of the lesions or received intravenous antibiotics. Clinicians prescribed single- or dual-agent therapy guided by susceptibility testing of early isolates that showed susceptibility to ciprofloxacin, clarithromycin, and doxycycline or minocycline. In 11 of the 12 untreated patients, the boils eventually resolved; 1 patient required treatment after a distal-calf boil led to an abscess deep within the proximal thigh, from which a culture confirmed the presence of *M. fortuitum*.

## Case-Control Study

Forty-eight patients were enrolled in the case-control study, of whom 14 had culture-confirmed myco-

bacterial infection. Twenty-seven patients identified between 1 and 3 control subjects each, for a total of 56 controls enrolled in the study. Patients and controls did not differ with respect to age (median, 39 years for both) or sex (99 percent of patients and 100 percent of controls were female). No patients or controls reported immunocompromising conditions. More patients than controls had shaved their legs with a razor before the pedicure or had had oil massage during the pedicure (Table 1). All persons who had shaved before the pedicure had done so either the night before or the morning of the pedicure. In a stratified analysis, only leg shaving was significantly associated with infection (adjusted odds ratio, 4.8; 95 percent confidence interval, 2.1 to 11.1).

## Environmental Factors

We found large amounts of hair and skin debris behind the inlet suction screen of every whirlpool footbath examined during our initial visit to the salon. The salon owner reported that the areas behind these screens were never cleaned, and cultures from these areas of all 10 footbaths yielded *M. fortuitum*. We found other acid-fast organisms in at least five of the footbaths, including *M. mucogenicum*, *M. smegmatis*, unidentified mycobacteria, and nocardia organisms. All cultures of oils, lotions, whirlpool disinfectant, and whirlpool bubble soap were negative. Salon tap water yielded rapidly growing mycobacteria in the *M. chelonae* (or *M. abscessus*) group.

## Molecular Comparison

We compared *M. fortuitum* isolates from six different footbaths and 14 patients using pulsed-field gel electrophoresis. The isolates from all 14 patients and from three footbaths were indistinguishable (represent-

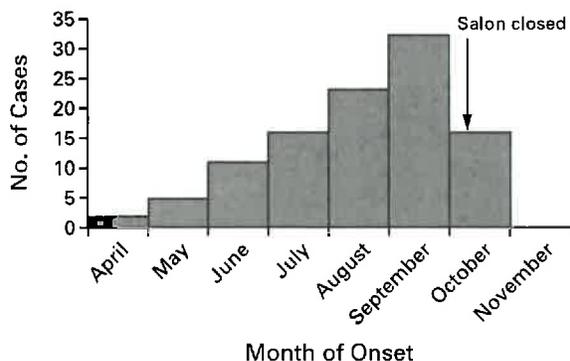


Figure 2. Onset of Infections during the Epidemic.

TABLE 1. RISK FACTORS FOR FURUNCULOSIS ASSOCIATED WITH THE NAIL SALON IDENTIFIED AS THE SOURCE OF THE OUTBREAK.

FACTOR	PATIENTS (N=48)	CONTROLS (N=56)	ODDS RATIO (95% CI)*
	no. (%)		
Whirlpool footbath	48 (100)	56 (100)	Undefined
Leg massage	48 (100)	50 (89)	Undefined
Leg shaving†	31 (70)	17 (31)	4.8 (2.1–11.1)
Oil massage‡	35 (78)	31 (56)	2.0 (0.8–4.9)

\*Odds ratios were adjusted after stratified analysis. CI denotes confidence interval.

†Percentages are based on 44 patients and 54 controls for whom data were available.

‡Percentages are based on 45 patients and 55 controls for whom data were available.

tative isolates shown in Fig. 3). The three other footbath isolates were distinct from the outbreak strain. Multilocus enzyme electrophoresis was also performed on the six footbath isolates and a subgroup of the isolates from 6 of the 14 patients. These results corroborated our findings: all isolates that matched on pulsed-field gel electrophoresis shared the same electrophoretic type (ET-4).

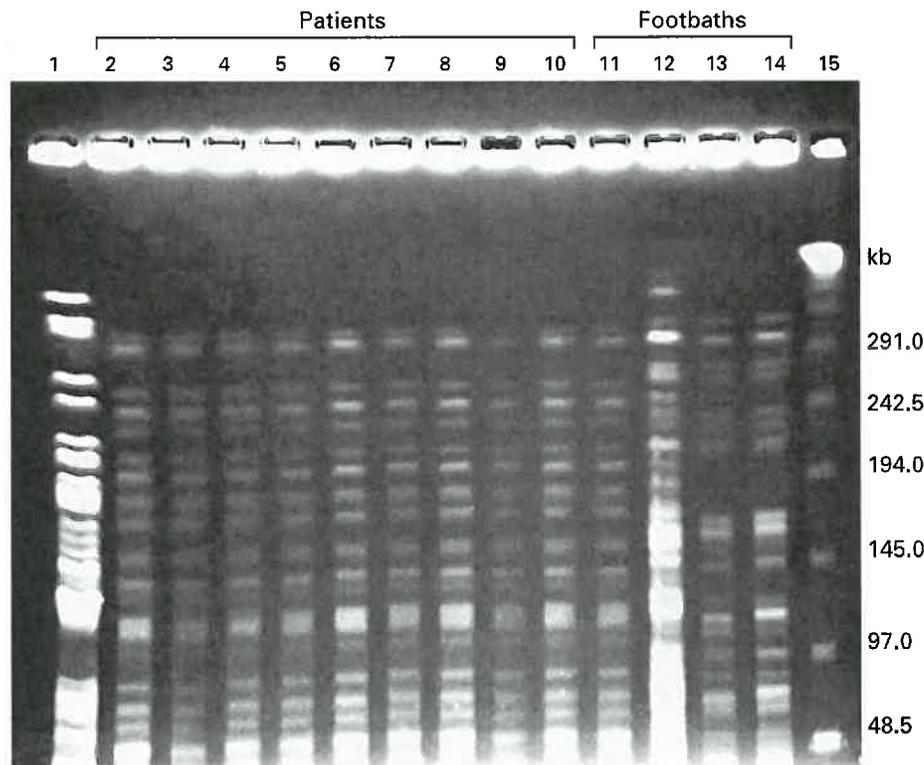
### DISCUSSION

This investigation identified a large community outbreak of *M. fortuitum* furunculosis after the use of contaminated whirlpool footbaths in a northern California nail salon. A single strain of *M. fortuitum* was responsible for the follicular infections, and the same strain was recovered from the footbaths that were used in pedicures. Outbreaks of follicular disease from whirlpools and baths caused by pseudomonas and staphylococcus bacteria have been documented, but only a few sporadic cases of cutaneous infection

with rapidly growing mycobacteria have been reported in this setting.<sup>18,19</sup> In contrast to the quickly healing and nonscarring lesions of typical folliculitis, this outbreak produced severe, protracted, scarring furunculosis.

Despite the severity of the disease, this large outbreak escaped detection for nearly six months. The patients often delayed seeking medical attention because of the benign nodular appearance and indolent course of early lesions. However, once the lesions worsened and the patients consulted their physicians, the physicians typically cultured and treated for nonmycobacterial skin infection, with no resulting clinical improvement.

Patients who were treated with oral antibiotics with activity against *M. fortuitum* had eventual resolution of boils, and no patient required intravenous therapy or surgical excision of lesions. Although the disease resolved in some untreated patients, one initially untreated patient did have disease dissemination.



**Figure 3.** Pulsed-Field Gel Electrophoresis of Representative Isolates from Patients and Whirlpools Obtained with Restriction Enzyme *Xba*I.

Lane 1 shows the reference strain of *Mycobacterium fortuitum* (American Type Culture Collection 23031); lanes 2 through 10 show *M. fortuitum* isolates from nine patients; lanes 11, 12, 13, and 14 show *M. fortuitum* isolates from four whirlpool footbaths; and lane 15 shows a molecular-weight marker (a 48.5-kb lambda ladder).

In this outbreak, it appears that rapidly growing mycobacteria, which commonly inhabit municipal water systems,<sup>1-3</sup> entered the salon in the tap water, seeded the accumulated organic debris behind the footbath inlet screens, and then multiplied in this warm, nutritive environment. These organisms recirculated within the footbath basin as pedicure customers received footbaths. Because all of the salon's footbaths harbored one or more rapidly growing mycobacterial species, and in some cases even multiple strains of *M. fortuitum*, it is unlikely that the footbaths were contaminated by a patron.

The case-control study identified shaving the legs with a razor as a risk factor for disease in this outbreak. Razor-induced microtrauma of skin epithelium or hair follicles could serve as a portal of infection for these organisms, although one third of the patients did not shave their legs before their pedicure. These were healthy persons with no other identifiable risk factors for disease, and it is unclear why they became infected. One possibility is that the outbreak strain of *M. fortuitum* was highly virulent. Our finding of a single disease-causing strain among several other *M. fortuitum* strains in the salon's footbaths raises this possibility and might explain why outbreaks have not occurred previously in similar settings.

Will similar outbreaks occur in the future? We performed a bacteriologic survey of California nail salons and found rapidly growing mycobacteria to be highly prevalent in whirlpool footbaths. More than one species (*M. fortuitum* and other known pathogens) was found in most machines, even when little debris was present (California Department of Health Services: unpublished data). The nail-care industry is large and growing. In California there are more than 7500 nail salons, and the number of licensed nail technicians has doubled from 40,000 to 80,000 in the past 10 years.<sup>20</sup> There may be similar outbreaks in the future. Salon-associated infections may also occur sporadically and not be recognized. After notifying local health departments in California of this outbreak, we were informed of at least six sporadic cases of rapidly growing mycobacterial furunculosis of the lower extremities in pedicure customers at other salons. We helped investigate one such case and documented a molecularly indistinguishable isolate from both the patient and her salon's footbath (unpublished data).

The California Bureau of Barbering and Cosmetology, with our assistance, has developed new state regulations for the nail-care industry. The proposed regulations emphasize frequent cleaning behind the inlet suction screen, but further study is necessary to determine the optimal cleaning and disinfection procedures for these machines. These organisms can be resistant to a variety of disinfectants,<sup>8,21</sup> and it is unknown whether there is a level of footbath con-

tamination that may be acceptable in terms of infectious risk.

The large and unprecedented *M. fortuitum* outbreak we identified affected healthy persons who took whirlpool footbaths as part of pedicures. We believe that these rapidly growing mycobacterial infections associated with nail salons are underrecognized and may increase in prevalence. Clinicians should consider rapidly growing mycobacteria in the differential diagnosis of hard-to-treat furunculosis or other soft-tissue infections of the lower extremity, particularly if the patient has used a footbath at a nail salon.

*We are indebted to the following persons for their help in the outbreak investigation and for their helpful review of the manuscript: Kim Albridge, M.D., Kate Cummings, M.P.H., Andrea Wingquist, M.D., Ben Werner, M.D., Candi Zizek, M.P.H., Steve Schneider, M.S., Ed Desmond, Ph.D., Dave McNutt, M.D., and all the local clinicians who treated patients in the outbreak.*

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## AN OUTBREAK OF MYCOBACTERIAL FURUNCULOSIS ASSOCIATED WITH FOOTBATHS

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President & CEO, Deborah Davis Design, Inc.

PRESENTED TO:

LITTLE HOOVER COMMISSION  
State of California

Public Hearing on Occupational Licensing )

March 30, 2016

Mike Balkman City Council Chambers, City Hall )  
Culver City, California

Space  
Planning  
Construction  
Documents  
Kitchen and  
Bath Design  
- Material  
and Finish  
Selections  
- Tenant  
Improvement  
Code  
Research  
- Electrical  
and Lighting  
Drawings  
- Window  
Treatments  
- Test Fits  
Relocation  
Services  
- Custom  
Cabinetry

Chairman Nava, members of the commission and staff, thank you for the opportunity to work with you on such a valuable study regarding occupational licensure, especially as it relates to the profession of interior design and its positive effect on the citizens of California.

My name is Deborah Davis and I have been a practicing interior designer for the past 27 years, 18 of which have been in Los Angeles. My work experience has been with both small and large firms as well as corporations, most notably as the Director of Facilities for E! Entertainment. I currently work for NBC Universal and its networks on their portfolio of interior design construction/renovation projects. I am also, like 75 percent of all interior designers, a small business owner.

It has come to my attention based on witness testimony in your last hearing, that inaccurate and false information about the licensing of interior designers and the profession overall was discussed. It is my hope that we can engage in a productive dialogue to correct the record. This is particularly important considering the vital role this commission has to guarantee public access to the truth.

First and foremost, note that one of the biggest mistakes any person can make is to confuse and interchangeably use the terms “interior **designer**” and “interior **decorator**.” This is an important fact to understand based on the role of an interior designer in constructing and/or renovating the built environment and therefore the necessity for licensure.

Licensure of built environment professionals such as architects, engineers, and interior designers is based entirely on government adopted building codes. As you are no doubt aware, building codes focus on upholding public safety through standards for the design and construction of structures. In their role to safeguard the public, every level of government across the entire country has adopted codes for both public and private building projects. Consequently, the professionals working in the built environment must be qualified to comprehend, implement, and comply with the codes as they carry-out their own scope of work on a project. For the architects and engineers, their “code focus” is on structural integrity and other systems in the building. Interior designers focus on planning a structure’s interior spaces otherwise known as the physical layout and non-loading bearing features of a building. These laws and codes influence every decision an interior designer makes when they personally plan *and* monitor the construction of a building’s interior elements. For hallways, walkways, doors and stairwells, they ensure compliance with fire codes for proper egress and exiting. Their work also includes designing and placing the lighting systems to comply with emergency lighting requirements, location of exit signs, and even fire extinguishers. For Americans with Disabilities Act (ADA) compliance, interior designers guarantee accessibility by designing a “barrier free” environment specifically for the disabled that also has benefits to all building occupants.

Interior designers also must ensure fire code is followed when they specify building materials, interior finishes, and commercial furniture. To summarize, licensure of interior designers is highly important and necessary based on the direct role our profession has to protect public safety through building code compliance – a fact that was recognized with the passage of the first U.S. interior design licensure law over 40 years ago.

Regarding the aesthetics of a building; they are just one consideration for interior designers. However, they will always take a back seat to an interior designer’s responsibility and vital role on a project to guarantee the public’s safety. For interior decorators, **not** designers, aesthetics are well over a majority

of their consideration and job. Decorating is a matter of personal taste and style that does not necessarily require formal education / training. However, interior design does. Unqualified individuals attempting to practice interior design without proper training are a risk to upholding public safety. They must have formal education/training and experience. It is absolutely the key to protecting public and consumer safety after a project's completion. Licensure is the confirmation that said education and experience have been satisfied in order for an interior designer to work in "code impacted" spaces. It is the recognition overall that built environment professionals, such as interior designers, are qualified and capable to protect the public throughout their careers.

The licensure process for interior designers is based on experience, education, and examination. This is much like the model for other profession's licensing both inside and out of the built environment such as architects or attorneys respectively. Like them, interior designers attend school for numerous years in order to obtain a degree in interior design. There are approximately 400 interior design programs offered by colleges and universities that issue certificate, associate, bachelor, and graduate degrees. Aspiring licensed interior designers also must have "on the job" experience. This is not unlike attorneys. During their education years interior design students also work for a firm in order to apply the skills they obtain in the classroom. The combination of education and work experience prepares them to pass the industry exam known as the National Council for Interior Design Qualification or NCIDQ. A parallel example would be the bar exam for attorneys. The NCIDQ is a comprehensive examination that incorporates each individual's classroom and work experience, including a specific focus on building codes. Therefore, it is no surprise that all governments in the US offering licensure to practice interior design require an individual to pass NCIDQ – just like states' requiring aspiring attorneys to pass "the bar" in order to practice law.

Despite the previously stated facts about interior designers, there are still those who mischaracterize and accuse the licensing of interior designers in general as a conspiracy to prevent minority populations from becoming interior designers. They create false narratives based on incorrect or at best half-truths that fail to support any of their arguments.

Up front, there is an immediate failure to recognize that 89 percent of interior designers are women and 11 percent male. We are almost an entire profession of minorities.

Regardless, these interest groups target the licensure process' requirement to obtain a college degree as a barrier to minority populations to practice interior design in general. For example, the following is an exact quote from an opponent of licensing interior designers during a hearing called by US Senator Ted Cruz of the US Senate Judiciary Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts entitled *Opportunity Denied: How Overregulation Harms Minorities*:

*"Florida requires people to have a college degree and pass a government exam before they can practice the business of 'interior design.'"*

This is very inaccurate. Anyone can practice interior design without a college degree in the state of Florida and in any of the other states offering interior design licensure. The exception is if one wants to practice in a *commercial* space. As previously stated, this is due to the necessity for an individual to be properly trained with the knowledge and compliance measures associated with building codes in these spaces.

Only 4 states, 1 territory and the District of Columbia require interior designers to be licensed. They are Louisiana, Alabama, Nevada, Florida, District of Columbia, and Puerto Rico. None of them require all interior designers to be licensed, only those working in commercial spaces – i.e. buildings that are heavily impacted by the building codes due to the large number of occupants. In other words, all interior design licensure laws and regulations only apply to individuals practicing in commercial buildings. Also, it is important to note in this context that no local, state, or federal entity regulates the practice of interior *decoration* in any type of structure and/or interior *design* in residential structures. Anyone, anywhere can practice interior decorating and/or interior design in a residential structure without a license. Therefore, it is inaccurate for anyone to imply that without a college degree, an individual is prohibited from practicing the business of interior design.

Regardless, in this same US Senate Judiciary hearing, the opponents of licensure proposed that the college degree “*requirement has a racially disproportionate impact*” on entry into the profession. Again, no individual needs a college degree to practice in the residential space anywhere in America. If an individual does need a degree because they want to practice in the *commercial* space, there are more than 400 interior design programs in the country that offer certificate, associate, bachelor, and graduate degrees. Note that California has the largest amount of interior design schools in the country. This provides a vast amount of opportunity for any individual to chart their own course through an education program that is appropriate for them, their financial situation, and overall goal of becoming an interior designer. The profession and every single type of degree granting educational institution are clearly not closing any doors or opportunities to be an interior designer.

The opponents also address the disproportionate number of Black and Hispanic interior designers. In fact, they are not wrong and we agree, this is unfortunate. However, licensure is not the cause of their underrepresentation.

Race	US Population*	Interior Designers**
White	77%	89%
Hispanic/Latino	17%	5%
Asian	5%	5%
Black	13%	1%
Native American	1%	>1%

\*US Census Bureau. <http://quickfacts.census.gov/qfd/states/00000.html>

\*\* US Census Bureau, 2007 US Economic Census.

Blacks and Hispanics are underrepresented both in states that do and do not require licenses. This suggests licensure is not a significant barrier to entry for these groups. Only 4 states out of 50 and the District of Columbia as well as Puerto Rico offer a license to practice interior design. Let's suppose for a moment that licensure is an important barrier to practice interior design for Blacks and Hispanics. If that were the case, then it's fair to say this barrier does not exist for 46 out of 52 states/territories (88%). Yet Blacks and Hispanics are still underrepresented without the "barrier" of licensure in place. In other words, if licensure were a meaningful barrier to entry for Blacks and Hispanics, we would see much more representative numbers of those groups in the total population of interior designers.

These accusations of discrimination can also be refuted by the growth of the interior design profession. According to the US Bureau of Labor Statistics, the number of interior designers has increased by 10,000 in just the last three years. Also, the number of interior design firms is up 7.5 percent to 13,257. We see this growth even though licensure laws for interior design have existed for more than 40 years. Clearly, they have no negative effect on entry into the profession.

Finally, the opponents of licensure also posit that "*[i]nterior designer licensing is a monopolistic privilege*".

The irony of this statement when compared with the reality interior designers face when working under architects and engineers is striking. The fact is we are opposed to monopolies in the built environment among design professionals. It is for that reason that we encourage interior designers to exercise their First Amendment rights to advocate for licensure.

Without these laws, interior designers are legally subservient to other members of the design team, such as architects and engineers. Both of these built environment professions are woefully low in female and ethnic diversity. Therefore, advocating for removal of interior design licensure not only jeopardizes public safety, but also advocates for two professions that are overly dominated by white males. In short, one would be advocating for less diversity and opportunity in the built environment.

To summarize, the absence of interior design licensure in California actually undermines the opportunity for current and aspiring individuals of any ethnicity, race, gender, sex, etc...to truly practice interior design. This is the unfortunate reality that tens of thousands in our profession live every day – in states that don't offer licensure for interior designers.

It is unfortunate that others are not aware of these true facts regarding the profession and the positive effects of licensure not only on upward mobility of those practicing it, but also the role it plays in guaranteeing the health, safety, and welfare of the public.

Thank you again for the opportunity to testify on this important issue. If I, or ASID, can ever be a resource to the commission as you continue this study, please do not hesitate to contact me.

Testimon of  
Michelle Natividad Rodriguez  
National Employment Law Project

Criminal Record Restrictions in  
State Occupational Licensing

Before the  
State of California's Little Hoover Commission

March 9, 2016



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Thank you to the Committee Members of the Little Hoover Commission for the opportunity to provide testimony on barriers to occupational licensing for people with conviction records. My name is Michelle Natividad Rodriguez and I am Senior Staff Attorney of the National Employment Law Project.

## **The National Employment Law Project (NELP) Promotes Workers' Rights**

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Over forty-five years ago, NELP was founded to promote the employment rights of the working poor and unemployed. Today, NELP is one of the nation's leading voices promoting employment policies that deliver on the nation's promise of economic opportunity. From our locations throughout the country, we shape model policies at the local, state and national levels through empirical research, legal and policy advocacy, and building alliances. One of our focus areas is to reduce employment barriers and advance opportunities for the employment of people with prior arrest and conviction records.

## **Employment Barriers Exact a Heavy Toll, But Jobs Turn Lives Around**

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NELP estimates that there are 7 million adults with arrest or conviction records in the United States—or about one in three adults.<sup>1</sup> Unfortunately, finding a job is all too difficult for many people with records. Men with criminal records accounted for about 34 percent of all the nonworking men surveyed between the ages of 25-54 (generally considered to be prime working age) in a poll last year.<sup>2</sup> In another recent survey, 2 in 3 formerly incarcerated people were unemployed or underemployed five years after their release.<sup>3</sup>

Persistent joblessness translates into economic losses with far-reaching consequences. One study found that lowered job prospects of people with felonies and formerly incarcerated people cost the U.S. economy between \$57 and \$65 billion in lost output in 2008.<sup>4</sup> At the individual level, serving time reduces annual earnings for men by 40 percent,<sup>5</sup> meaning families too often fall into a poverty trap.<sup>6</sup>

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<sup>1</sup> In 2012, there were 100,596,300 subjects ("individual offenders") according to Bureau of Justice Statistics survey of the criminal history files within the 50 states, American Samoa, Guam, and Puerto Rico. U.S. Dept. of Justice, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012* (Jan. 2014) at 2, ([www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf](http://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf)). To account for duplication in the survey of the state criminal record repositories (that is, individuals who may have criminal records in more than one state and deceased individuals who have not been removed from the state record systems), NELP conservatively reduced the numbers cited in the state survey by 30 percent to arrive at a total of 70,417,410 individuals with state arrest or conviction records. The U.S. Census 2012 population estimate for those 18 years and over was 240,185,952. *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States April 1, 2010 to July 1, 2012* (U.S. Census Bureau, Population Division, June 2013 ([www.census.gov](http://www.census.gov))). Using these estimates, 29.3 percent of U.S. adults, or nearly one in three, have a criminal history on file with states.

<sup>2</sup> Binyamin Appelbaum, "Out of Trouble, but Criminal Records Keep Men Out of Work," *New York Times* (Feb. 28, 2015) ([www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html?\\_r=0](http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html?_r=0)). Poll available at <http://kff.org/other/poll-finding/kaiser-family-foundation-new-york-times-cbs-news-non-employed-poll/>.

<sup>3</sup> Ella Baker Center for Human Rights, et al., "Who Pays? The True Cost of Incarceration on Families," (Sept. 2015), at 7. (<http://whopaysreport.org/>).

<sup>4</sup> John Schmitt and Kris Warner, "Ex-offenders and the Labor Market," Washington, D.C.: Center for Economic and Policy Research, (2010) ([www.cepr.net/documents/publications/ex-offenders-2010-11.pdf](http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf)).

<sup>5</sup> Bruce Western and Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility* The Pew Charitable Trusts, (2010) ([www.pewtrusts.org/uploadedFiles/Collateral\\_Costs.pdf?n=8653](http://www.pewtrusts.org/uploadedFiles/Collateral_Costs.pdf?n=8653)).

<sup>6</sup> John Tierney, "Prison and the Poverty Trap," *The New York Times* (Feb. 19, 2013) at D1 ([www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&\\_r=0c](http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&_r=0c)).

Conversely, new job opportunities for workers with prior records could translate into economic benefits for all. One study found that securing employment for just 100 formerly incarcerated people would increase their combined lifetime earnings by \$55 million and increase their tax contributions by \$1.9 million, all while saving more than \$2 million annually by keeping them out of the criminal justice system.<sup>7</sup>

Clearing the path to employment for people with prior records not only can boost the local economy, but it can also significantly increase public safety. Stable employment has been found to be a significant factor in reducing the likelihood of reoffending.<sup>8</sup>

## Removing Licensing Barriers to Open Pathways to Professions

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The White House reports that the percentage of the workforce covered by state licensing laws has grown five-fold since the early 1950s.<sup>9</sup> Today, not only the health care and education sectors are heavily regulated, but also sales, management, transportation, and even construction.<sup>10</sup> More than one-quarter of U.S. workers require a state license for their occupations.<sup>11</sup> Only when the vast number of state-licensed occupations is viewed in light of the ubiquity of licensing barriers can the enormity of the ramifications be appreciated.

The American Bar Association (ABA) Collateral Consequences Inventory (ABA Inventory) is a nationwide collection of the collateral consequences of arrest and conviction records that exist in the law. According to the ABA Inventory, there are 16,534 occupational licensing restrictions related to criminal records nationwide.<sup>12</sup> An additional 15,782 business license and other property rights restrictions add to the state law tally,<sup>13</sup> many of which limit the ability of those with conviction records to become entrepreneurs by opening their own businesses. Together, over 32,000 occupational and business licensing restrictions embedded in state laws include some type of background check requirement or criminal record disqualification. For California,

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<sup>7</sup> “Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia,” Economy League of Greater Philadelphia (2011) ([http://economyleague.org/files/ExOffenders\\_-\\_Full\\_Report\\_FINAL\\_revised.pdf](http://economyleague.org/files/ExOffenders_-_Full_Report_FINAL_revised.pdf)).

<sup>8</sup> “Safer Foundation Three-Year Recidivism Study, 2008,” (2008) (<http://saferfoundation.org/files/documents/Safer%20Recidivism%20Study%202008%20Summary.pdf>).

<sup>9</sup> The White House, *Occupational Licensing: Framework for Policymakers* (July 2015) at 17 ([www.whitehouse.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](http://www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf)).

<sup>10</sup> *Id.* at 21.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> American Bar Association, *AB National Inventory of the Collateral Consequences of Conviction* ([www.abacollateralconsequences.org](http://www.abacollateralconsequences.org)). The inventory includes information for all 50 states, the District of Columbia, and all U.S. territories. Hereinafter, referred to as “ABA Inventory” (visited March 7, 2016). Note that the inventory codes disclosures of backgrounds or background check requirements as freestanding entries in some cases. See ABA Inventory, *User Guide* Question and Answer 10, ([www.abacollateralconsequences.org/user\\_guide/](http://www.abacollateralconsequences.org/user_guide/)). The “occupational and professional licenses and certification” includes the following: commercial drivers’ licenses, pilots’ and mariners’ licenses, commercial hunting and fishing licenses, most professional licensure requirements, and endorsements to operate school buses, multiple-person vehicles, and any other commercial vehicles on an ordinary driver’s license.

<sup>13</sup> ABA Inventory (visited March 7, 2016). The category “business licenses and other property rights” includes liquor licenses; livestock, agriculture, and wildlife licenses; lottery and gambling licenses; licenses to operate care-giving or educational facilities; licenses to engage in specific industries; and consequences affecting property rights, such as fines and administrative forfeitures, and corporate ownership interests. The user guide for the ABA Inventory cautions that the “difference between professional and business licensure will not be clear, and a comprehensive search should select both categories.” See ABA Inventory, *User Guide*, Question and Answer ([www.abacollateralconsequences.org/user\\_guide/](http://www.abacollateralconsequences.org/user_guide/)).

the ABA Inventory lists 619 entries for restrictions in occupational licensing laws, with an additional 726 entries for business license restrictions.<sup>14</sup>

Critics of occupational licensing regimes argue that variations among licensing laws demonstrate the arbitrariness of professional licensing requirements.<sup>15</sup> One commentator noted that if “a license is required to protect the public health and safety, one would expect more consistency.”<sup>16</sup> This observation is especially relevant in the conviction history context; if denying a license based on the applicant’s conviction history were necessary for public safety, one would expect consistency among the disqualifying convictions throughout the states.

Instead, thousands of occupational licensing laws are poorly calibrated to advance public safety and health. These restrictions eliminate well-qualified candidates with records who could otherwise contribute to the local economy. One conservative think tank has reported that strict occupational licensing restrictions have a negative effect on both low-wage workers and consumers, while doing little to advance safety or quality of service.<sup>17</sup> They estimate that these restrictions could eliminate 2.85 million jobs nationwide and raise consumer expenses by over 10 billion dollars.<sup>18</sup> Although these statistics reflect the impact of licensing laws generally, they provide a glimpse into the potential benefit to the economy and labor market if states were to more narrowly tailor criminal record licensing restrictions.

Indeed, voices from across the political spectrum have found common ground on reducing conviction barriers in occupational licensing. Koch Industries General Counsel Mark Holden has opined that reducing occupational licensing restrictions is part of “reforming the criminal justice system.” Without the ability to obtain professional licenses, Mr. Holden asks, how can we expect people with conviction records to “create value in their communities and improve their lives?”<sup>19</sup>

With the aim of advancing reforms to state law and policy that will allow people with records to be evaluated on their merits, this testimony examines significant flaws in state occupational licensing criminal background check regimes and provides recommendations.

### **Recommendation 1: Understand the State’s Landscape of Licensing Restrictions**

Auditing the current criminal record restrictions in occupational licensing laws and in licensing agencies’ practices would help direct reform. The ABA Inventory provides a snapshot of the restrictions embedded in statutes and regulations by each state. However, another dimension of the problem is the licensing agencies’ interpretation and application of the laws. With a wide latitude for discretion in decision-making, agencies can be biased gatekeepers to the profession, despite improvements to the letter of law.

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<sup>14</sup> ABA Inventory (visited March 7, 2016).

<sup>15</sup> Dick M. Carpenter II, et al., Institute for Justice, *License to Work: A National Study of Burdens from Occupational Licensing 2* (2012) ([www.ij.org/images/pdf\\_folder/economic\\_liberty/occupational\\_licensing/licensetowork.pdf](http://www.ij.org/images/pdf_folder/economic_liberty/occupational_licensing/licensetowork.pdf)).

<sup>16</sup> *Id.*

<sup>17</sup> Morris M. Kleiner, *Reforming Occupational Licensing Policies* The Hamilton Project, Discussion Paper 2015-01 (Jan. 2015) at 13.

<sup>18</sup> *Id.*

<sup>19</sup> Mark V. Holden, “How to Keep the Unemployed Out of Work,” *The Wall Street Journal* (Dec. 8, 2015) ([www.wsj.com/articles/how-to-keep-the-unemployed-out-of-work-1449618512?cb=logged0.5074470604304224](http://www.wsj.com/articles/how-to-keep-the-unemployed-out-of-work-1449618512?cb=logged0.5074470604304224)).

Policymakers could request a baseline of information from the licensing agencies that includes the number of licensee applicants, applicants with records, licensee rejections based on records, the type of records that are disqualifying applicants, and any internal criteria, practice, or policy of the agency used to review applicants. To target reform, an inquiry could examine the high-growth occupational sectors, survey denied licensees and convene stakeholders familiar with the obstacles that licensees experience. An audit or study of the landscape should not be a substitution for reform, but could be helpful in focusing efforts.

### ***Problem: Broad Criminal Record Inquiries Do Little for Public Safety and Increase Bias***

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The rationale for broad criminal record inquiries is ostensibly compelling—entities seek robust information to advance public safety and health. However, broad inquiries can be misleading, confusing and activate strong negative biases for decision makers. Indeed, no available evidence demonstrates that the mere existence of a criminal record is related to poor occupational performance or low-quality services. In other words, simply having some type of a past record does not predict an individual’s ability to perform in an occupation.

Rather, having an arrest record has been shown to predict the likelihood of re-arrest within a certain time period.<sup>20</sup> Yet, after a certain amount of time has passed without involvement with the criminal justice system, this predictive value also declines.<sup>21</sup> The reality is that a criminal record is not used to screen out applicants because of its value of predicting re-arrest. Instead, decision makers are responding to the perception that a criminal record is a proxy for immorality or untrustworthiness.

Even more damaging, there is a deep-seated negative stereotype of “criminality” as being associated with dangerousness. Although research does not demonstrate that a workplace is less safe with an employee with a past record, the negative perception is pervasive. To address and dismantle these stereotypes, state law can provide the structure and processes to minimize the impact of these existing biases.

### **Recommendation 2: “Ban the Box” and Limit Scope of Criminal Record Inquiry to Reduce Bias.**

The 2012 U.S. Equal Employment Opportunity Commission (EEOC) guidelines on the consideration of arrests and convictions in employment decisions recommends “as a best practice . . . that employers not ask about convictions on job applications and that, if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related . . .”<sup>22</sup>

The first component of the EEOC’s recommendation is commonly known as “ban the box.” In the hiring setting, the check-box conviction inquiry is removed from the job application and any inquiries are delayed until later in the hiring process. The rationale for banning the box in

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<sup>20</sup> Alfred Blumstein and Kiminori Nakamura, “Redemption in the Presence of Widespread Criminal Background Checks,” *Criminology* 47(2), 2009: 327-359.

([www.search.org/files/pdf/Redemption\\_Blumstein\\_Nakamura\\_2009Criminology.pdf](http://www.search.org/files/pdf/Redemption_Blumstein_Nakamura_2009Criminology.pdf)).

<sup>21</sup> Shawn D. Bushway and Gary Sweeten, “Abolish Lifetime Bans for Ex-Felons,” *Criminology and Public Policy* 6(4), 2007: 697-706. ([www.reentryaftercare.org/pdf/Bushway%20-%20Abolish%20Lifetime%20Bans%5B1%5D.pdf](http://www.reentryaftercare.org/pdf/Bushway%20-%20Abolish%20Lifetime%20Bans%5B1%5D.pdf))

<sup>22</sup> EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. at 13-14 (Apr. 25, 2012) (“EEOC guidance”) ([www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)).

hiring is that employers automatically reject applications with the checked-box, regardless of the applicant's qualifications. Substantiating this insight, one study showed that 76 percent of hiring discrimination takes place at the initial stage of hiring, before individuals can present their qualifications fully.<sup>23</sup> In the licensing setting, Colorado provides an example of ban the box:

“[T]he agency shall not perform a background check until the agency determines that an applicant is a finalist . . .”<sup>24</sup>

By fully evaluating an applicant's professional qualifications before his or her conviction history is known, licensing authorities ensure that their assessment of those qualifications is objective and not unduly influenced by bias against people with conviction records. Research on preventing biased decision-making emphasizes deliberative processes such as articulating elements deemed essential for the job early in the process.<sup>25</sup> In the licensing context, this approach could translate into creating a clear set of requirements essential for the occupation that are considered prior to any criminal record inquiry.

The second element of the EEOC's recommendation in considering criminal record information in employment decisions is to limit inquiries to only job-related convictions. In other words, instead of a broad inquiry into any criminal background information, a licensing agency would limit its inquiry to only those convictions that are deemed occupation-related. These convictions may be potentially disqualifying but would be considered on a case-by-case basis. In the employment context, the EEOC directs employers to consider the following factors, commonly referred to as a job-relatedness analysis:

- The nature and gravity of the offense;
- The time that has passed since the offense or the completion of the sentence;
- The nature of the job held or sought.

Using these factors to limit the scope of an inquiry to only occupation-related offenses, a minefield of biases could be potentially avoided.

### ***Problem: Blanket Bans Indiscriminately Eliminate Qualified Candidates***

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Background check reports are inaccurate and misleading, yet still form the basis for automatic disqualifications from employment opportunities.<sup>26</sup> Apart from inaccuracies, merely understanding and evaluating background check reports is challenging. For example, on its face, “assault” seems to imply a propensity for violence. Without knowing the circumstances—such as **age** (youthfulness), **frequency** (first and only time), or **situation** (defending a friend

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<sup>23</sup> Marc Bendick, Jr., Lauren Brown, and Kennington Wall, “No Foot in the Door: An Experimental Study of Employment Discrimination,” *Journal of Aging and Social Policy* 10 (4): 5-23 (1999), at 10.

<sup>24</sup> Colo. Rev. Stat. 24-5-101 (3)(b); see also Colo. Rev. Stat. 24-34-102 (8.7).

<sup>25</sup> See Cheryl Staats, et al., *State of the Science: Implicit Bias Review 2015* Kirwan Institute (2015) (<http://kirwaninstitute.osu.edu/wp-content/uploads/2015/05/2015-kirwan-implicit-bias.pdf>); Rachel D. Godsil, et al. *The Science of Equality, Volume 1: Addressing Implicit Bias, Racial Anxiety, and Stereotype Threat in Education and Health Care* (Nov. 2014) at 47-48 (<http://perception.org/app/uploads/2014/11/Science-of-Equality.pdf>).

<sup>26</sup> Persis Yu & Sharon Dietrich, “Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses,” National Consumer Law Center (2012) ([www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf](http://www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf)).

from a slur that resulted in a barroom brawl)—an automatic disqualification against individuals with the label of “violent offense” could eliminate a strong applicant.

Unfortunately, state licensing laws commonly include some type of blanket disqualification—many that last a lifetime. As a gauge for the frequency, the ABA Inventory reports mandatory disqualifications in over 400 licensing regulations and statutes in California.<sup>27</sup> These run the gamut from broad categories—such as permanent disqualifications against people with any felony—to narrower fields—such as individuals with “violent” or “serious” felonies.

### **Recommendation 3: Remove Automatic Blanket Bans; Provide Anti-Discrimination Framework.**

Policymakers should seek to remove any automatic blanket exclusions from the law. As a point of reference in the employment context, the EEOC guidance on the use of arrest and conviction records in employment decisions discourages the use of automatic, across-the-board exclusions.<sup>28</sup> The guidance explains that these types of bans are disfavored because they are not tailored to the risks in particular job positions.

Thus, the best course would be to avoid any outright blanket disqualification and instead provide an affirmative statement in the law that the existence of a criminal record cannot be the sole basis for disqualification. Minnesota’s statutory scheme provides one example:

“Notwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.”<sup>29</sup>

### **Recommendation 4: Develop Narrowly Tailored, Targeted Potential Exclusions.**

The best replacement for a blanket ban is to forego any mandatory disqualifying offenses in favor of a case-by-case assessment of an individual’s record. If, however, any disqualifying offenses are statutorily enumerated, then they should be narrowly tailored to the specific occupation. The EEOC job-relatedness factors described above should guide the development of targeted exclusions. However, an essential companion to any exclusion is an opportunity for the individual to both rebut the accuracy of the criminal record and provide mitigating evidence or any evidence of rehabilitation. Without this individual assessment component, the exclusion would be an automatic ban. As discussed above, the categorization of an offense may not necessarily translate to a commonsense understanding of the conduct.

### **Recommendation 5: Provide Notice and Opportunity to Respond.**

The Fair Credit Reporting Act (FCRA), a federal consumer protection law, requires entities to receive an applicant’ authorization prior to acquiring a report from a private background

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<sup>27</sup> Search of California’s “mandatory/automatic” offenses in occupational and professional licenses and business licenses categories in the ABA Inventory resulted in 439 entries for regulations and statutes, removing duplications of entries and court rule entries. (Visited March 9, 2016).

<sup>28</sup> EEOC Guidance, *supra* at 11, 16.

<sup>29</sup> Minn. Stat. § 364.03.

check company.<sup>30</sup> In addition, FCRA requires that prior to any adverse action, the entity must provide a copy of the background check report. Before a final decision is made, the agency should provide the applicant with written notice of the specific item in the background check report that is considered occupation-related, in addition to a copy of the report.

Background check reports can be rife with errors or inaccuracies, so allowing applicants the chance to verify or challenge the information is key. Licensing authorities, even entities that rely on government-produced background check reports that are not subject to FCRA, should meet these basic consumer protection standards. Connecticut's licensing statute provides the following example:

“If a conviction of a crime is used as a basis for rejection of an applicant, such rejection shall be in writing and specifically state the evidence presented and reasons for rejection. A copy of such rejection shall be sent by registered mail to the applicant.”<sup>31</sup>

### ***Problem: Overbroad or Vague Standards Foster Biased Decisions***

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Depending on the occupation and the state, applicants for occupational licenses may be required to satisfy a “good moral character” component. Often these types of character evaluations afford licensing boards overly broad discretion and fail to provide adequate guidance. Another example of a vague, but common term is an offense of “moral turpitude.” The phrase often operates as a catch-all for a broad range of convictions. Licensing schemes may permit or even mandate disqualifications for any candidates who have committed offenses of moral turpitude.

### **Recommendation 6: Remove Vague and Overbroad Standards.**

The U.S. Supreme Court has described the term “good moral character” as “unusually ambiguous” with the potential to serve as “dangerous instrument for arbitrary and discriminatory denial” of a professional license.<sup>32</sup> In an attempt to provide some parameters to the term, the Court has articulated that a “good moral character” standard “must have a rational connection with the applicant's fitness or capacity to practice” in the occupation.<sup>33</sup>

In order to ensure that licensing boards have fair processes in place to consider applicants, vague terms such as “good moral character” and catch-all categories such as offenses of “moral turpitude” should be removed from licensing standards. An alternative to removing the terms would be to add definitions of the terms that allow for individual assessments.

### **Recommendation 7: Licensing Agencies Should Adopt Specific Criteria for Evaluations.**

licensing board is tasked with evaluating whether someone is fit to practice a profession. Without standards in place—and with unfettered access to irrelevant, but highly stigmatizing criminal record information—it is unsurprising that licensing agencies would disqualify many

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<sup>30</sup> 1 U.S.C. 168 *et seq.*

<sup>31</sup> Conn. Gen. Stat. § 46a-80.

<sup>32</sup> *Konigsberg v. State Bar of California* 353 U.S. 252, 263 (1957). The Court stopped short of declaring the “good moral character” standard unconstitutionally vague.

<sup>33</sup> Although *Schware v. Board of Bar Examiners of State of New Mexico*, 35 U.S. 232, 23 (1957), examined bar applicant's ability to practice law, this rational connection standard has been imported into other occupational licensing contexts. *See, e.g. Barletta v. Rilling* 973 F. Supp. 2d 132, 137 (D. Conn. 2013).

applicants with records. The EEOC guidelines recommend the use of individualized assessments to allow employers to consider more complete information, thus helping employers to avoid civil rights law liability. In the licensing context, a potentially disqualified applicant should be provided the opportunity to submit mitigating information or evidence of rehabilitation to demonstrate why the disqualification should not apply to him or her. The EEOC provides some examples of individualized evidence:

- The facts or circumstances of the offense;
- Evidence of work history;
- Rehabilitation efforts such as education and training;
- Employment or character references; and
- Whether the individual is bonded.<sup>34</sup>

To ensure that the individual has the time to respond, statutory or regulatory schemes can provide a timeline for the applicant.

In the context of considering rehabilitation, the most helpful laws provide standards and examples of evidence of rehabilitation as well. Minnesota’s statute provides that a person with a conviction “shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties.” The statute proceeds to list examples of “evidence of sufficient rehabilitation” such as demonstrating completion of probation or parole.<sup>35</sup>

### ***Problem: Lack of Consistency and Transparency Among Licensing Laws***

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Laws for the same occupations can vary widely across states, as do the standards states use to evaluate past offenses. Further complicating matters, the statutes governing individual professions or classes of professions often have different language and procedures from the general state licensing statutes. In addition, reciprocity statutes that allow an applicant who is already licensed and practicing in one state to become licensed in another state often require a new background check.

Navigating this complicated web of intersecting laws is impossible for the average worker. Not specific to criminal background requirements, critics of occupational licensing schemes have highlighted how these inefficiencies squelch employment and entrepreneurship opportunities for low-income people in particular.<sup>36</sup>

### **Recommendation 8: Creating Uniformity in Standards.**

Several states have enacted statutes aimed at creating a more uniform policy regarding the consideration of criminal records by different occupational licensing boards.<sup>37</sup> Despite the

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<sup>34</sup> EEOC Guidance, *supra*.

<sup>35</sup> Minn. Stat. § 364.03 (Subd. 3).

<sup>36</sup> The White House, *Occupational Licensing: Framework for Policymakers* (July 2015).

<sup>37</sup> Since 2012, Louisiana, New Hampshire, North Carolina, Ohio, and Texas have all passed such laws. H.B. 29 (La. 2012) (prohibiting licensing boards from denying license based solely on a applicant’s criminal record); H.B. 136 (N.H. 2014) (same); S.B. 3 (N.C. 2013) (same); S.B. 33 (Ohio 2012) (allowing people to apply for a certificate of qualification for employment that lifts the automatic bar on obtaining professional license and limiting the extent to which criminal records can be considered in licensing decisions); H.B. 1659 & H.B. 798 (Tx. 2013) (restricting the use of certain misdemeanors and felonies in licensing decisions).

potential benefits of a general licensing statute, without guidance as to the interaction between such a statute and restrictions relevant to only individual occupations, the web of licensing laws could be even more confusing. A general licensing statute should clearly supersede existing statutory languages, and any legislation should include provisions that amend all the relevant statutory schemes of the individual occupational licensing laws. With similar standards in place across occupations, greater efficiencies in the implementation of the laws can be expected.

**Recommendation 9: Clear Guidance for Applicants and Transparency in Decision-Making.**

In order to help applicants understand if they should invest the time and money required for training and applying for a license, policymakers can look to one example in Texas. The Texas Department of Licensing and Regulation allows potential license applicants to have their records evaluated by an attorney whose recommendation is sent to the licensing board.<sup>38</sup> A recommendation that the conviction history is *not* a bar to licensure does not dictate a board's decision.<sup>39</sup> However, the department provides guidelines for the types of offenses that will often be considered related to a license.<sup>40</sup> In addition, licensing agencies could publish their licensing decisions (while preserving confidentiality) in order to provide greater transparency into the decision-making process.

**Recommendation 10: Ongoing Data Collection to Identify Existing Barriers.**

To ensure licensing boards are reducing the number of people disqualified for non-occupation-related convictions, data collection should also be incorporated into the statutory scheme. For example, a law that prohibits blanket disqualifications and specifies certain criteria for considering a past record should require the board to report, at minimum, the following: the number of applicants with criminal records, the number of those denied licenses based on their records, and the type of record that was the basis for the denial. Comparing this information to baseline data established prior to the enactment of a new law will help ensure that the law is implemented as intended.

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<sup>38</sup> Texas Department of Licensing and Regulation Administration, *Guidelines for License Applicants with Criminal Convictions* [www.tdlr.texas.gov/crimconvict.htm#bar](http://www.tdlr.texas.gov/crimconvict.htm#bar) (visited Aug. 7, 2015).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*



## A New Way of Life Re-Entry Project

Little Hoover Commission  
 Public Hearing on Occupational Licensing  
 Wednesday, March 30, 2016  
 Mike Balkman Council Chambers, City Hall  
 9770 Culver Blvd.  
 Culver City, CA

Testimony of CT Turney, Senior Staff Attorney  
 A New Way of Life Reentry Project

Thank you for giving me the opportunity to speak with you today regarding an issue that impacts so many of my clients.

My name is CT Turney, and I am Senior Staff Attorney at A New Way of Life Reentry Project. A New Way of Life is a non-profit organization located in Watts in South Los Angeles, with a mission to advance multi-dimensional solutions to the effects of incarceration. As part of our services, A New Way of Life offers free legal representation to formerly incarcerated and convicted people in a variety of matters, including in applications for occupational licenses.

For the past nine years, A New Way of Life has represented clients in their efforts to obtain a wide variety of occupational licenses and license-related clearances, including criminal record clearances for employment in state-license care facilities, real estate and insurance agents, nursing, security “guard cards,” and federal transportation worker credentials, among others. I greatly appreciate this opportunity to share some of the insights we have gained over these years.

The issue of occupational licensing is increasingly important to formerly incarcerated people, for several reasons. As the Commission itself has recognized, more and more careers now require licensure. Additionally, many careers that require licensing offer more stable jobs, dependable income, and the potential for income growth than other types of employment often available to people with past convictions. Although I do not have precise numbers, many of my clients seek careers in health care, caretaking, real estate, insurance, contracting, and other areas, precisely because of those benefits. Without licensing, the options available to these same clients are often warehouse work, retail, restaurant staffing, and low-level clerical work.

Licensing also offers greater potential for entrepreneurship in many professions. As people with conviction histories find it difficult to secure work for a traditional employer, many seek to start their own businesses, which often require industry-specific licensing, as well as general business licenses. Without entrepreneurial opportunities, many of my clients would be unable to establish meaningful careers.

The ability for people with past convictions to find work and support themselves and their families clearly has a direct benefit for that potential licensee. However, it also has benefits

for their communities. Gainful employment is a significant factor in reducing recidivism. Additionally, people who are able to find meaningful work place less burden on social support networks, contribute to the economy with purchases and taxes, and become a more stable part of the fabric of their communities. As the need for licensing continues to increase, the issue of licensing becomes a more and more significant factor in all of these outcomes.

If the premise of licensure is that some types of work require increased regulation for the protection of the public, then it stands to reason that restrictions on licensing based on past convictions should be tailored to only disqualify those applicants who would currently pose a meaningful threat to the public if they held the license in question. In other words, if the person does not pose a meaningful threat to the public *at present*, they should not be denied the license. Similarly, if the person poses no greater threat to the public with the license than without it—in other words, the past convictions bear no relation to the function of the license—they should similarly not be denied the license.

Unfortunately, for various reasons, restrictions on licensure generally far exceed this aim. More often, people with past convictions are denied licenses out of a generalized fear of people with past convictions. Rather than any present, tangible threat, license restrictions often rise from a more knee-jerk reaction that we want people who have “done that” to be as far away from us as possible.

When policies and decisions are made based on visceral fear rather than on a reasoned analysis of actual risk, they reach far beyond the justification of public safety. Instead they merely serve as additional punishment for a past offense. In the process, such policies impose greater burdens on individuals, who lose out on stable work and better pay, and on communities, who lose out on financially stable members as well as the services of otherwise qualified professionals.

In this testimony, my goal is to provide you with an overview of the main issues I have seen in my practice related to securing licensing for people with past convictions. Where possible, I offer possible solutions as starting points for thinking about ways some of these problems might be remedied or avoided.

## **A GENERAL OVERVIEW OF LICENSING STATUTES AND REGULATIONS RELATED TO PAST CONVICTIONS**

As an initial matter, it is helpful to provide some background of the statutes and regulations that govern the issuing of licenses in relation to applicants with past convictions. The first thing to understand is that there are as many different guidelines as there are licenses. Each license has its own criteria for what constitutes grounds to deny a license, and what procedure is used to do so. It would be impossible to cover them all; however there are several common regulatory schemes that it is helpful to understand.

A large number of licenses in California are issued under the Department of Consumer Affairs (DCA), and have governing statutes in the California Business & Professions Code. Regarding the use of convictions, all of these licenses are governed in a general manner by Business & Professions Code sections 480 and 490, which provide that a license may be denied or revoked only on the basis of an offense that “is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.” Section 481

requires that each board develop criteria to determine what offenses are “substantially related” to the license at issue. Section 480 further states that an application cannot be denied if the applicant meets criteria of rehabilitation established by the governing agency; section 482 in turn requires that agencies develop criteria for rehabilitation.

Under this scheme, in addition to the general provisions of sections 480, 481, 482 and 490, individual licenses have more specific statutory restrictions, found throughout the Business and Professions Code. One step further, still more specific criteria for “substantial relationship” and rehabilitation for each license are contained in Title 16 of the California Code of Regulations.

With this framework, on the surface it appears that for licenses governed by the DCA, applicants can only be denied for convictions related to the license, and even then, not if they can establish rehabilitation. This appears to be a common-sense approach, and while it may be the start of one, it often fails to result in common sense, levelheaded results, for reasons I will discuss throughout this testimony.

While this regulatory framework governs many licenses in California, there are also licenses that are governed wholly outside the Business & Professions Code. These include, among other things, teaching and education-related credentials, insurance licensing, certified nursing assistants and home health aides, and more. For these licenses, there is often an enumeration of the offenses that will bar an applicant, and a discussion of mitigating factors that may be considered by the relevant agency. In general, however, there often is less of a statutory mandate that convictions be reasonably related to the functions of the license, and less explicit requirement that an agency thoroughly consider evidence of rehabilitation.

Underneath the statutory and regulatory frameworks discussed for these licenses, some agencies also have adopted internal policies and guidelines to provide more detailed direction to agency employees in evaluating applications. These guidelines can often be acquired through Public Records Act requests, but may or may not be available through means such as the agency’s website, and their existence may or may not be readily publicized.

A third regulatory framework that I will discuss does not involve the specific licensing of the individual. I include it here because it involves the employment of individuals at state-licensed facilities, and because it is an area that impacts an incredible number of my clients. This third area involves employment at facilities licensed by the California Department of Social Services and the Department of Developmental Services, for providing care for children, elderly, and developmentally disabled adults. These facilities range from home daycare programs to 24-hour residential care facilities, and include foster homes, family caretaking, and the provision of care services such as cooking and cleaning in a client’s own home. Such work is immensely important to people in communities that I serve.

Under the DSS and DDS framework, an individual can be denied clearance to work in a licensed facility for any conviction other than a minor traffic violation, regardless of the age or severity of offense. Once clearance has been denied, the individual must request a criminal record exemption to be allowed in the facility. In order to be granted a criminal record exemption, the applicant must establish rehabilitation as well as provide substantial and convincing evidence of their current good character.

When analyzing the requirements of any individual license, it is always important to keep in mind what regulatory framework the license falls under. These various frameworks have significant impacts on who has the burden of proof, and what they must establish in order to deny or secure a license.

Having given this overview, I will now discuss some of the most prevalent issues I have seen in my licensing representation work.

## **ISSUE #1: BROAD AND VAGUE STANDARDS GOVERNING LICENSING DENIALS ON THE BASIS OF CONVICTIONS**

As discussed above, statutes or regulations provide the authority for an agency to deny a license on the basis of a conviction. For most licensing structures, those convictions that can be used are ostensibly limited to those offenses that have a reasonable relationship to the license being sought. In many cases, however, the link between the offense and the license stretches credibility. In other cases, the language in the statute or regulation is so vague as to be practically meaningless.

One of the most striking examples that I have encountered is the licensure of insurance agents and brokers. It is notable that insurance licenses do not fall under the Department of Consumer Affairs, and so are not subject to the provisions of Business & Professions Code sections 480, which explicitly limits the use of convictions to those that are “substantially related.” A license to sell insurance can be denied based on a conviction for any felony.<sup>1</sup> There is no requirement that the offense be related in any way to the actual practice of insurance—the fact that it was a felony is considered enough to establish an applicant’s unsuitability for licensure. Further, the Insurance Commissioner may deny the license without offering a hearing or any avenue of appeal to the applicant.<sup>2</sup>

This broad sweep extends to many misdemeanors as well. Among other things, applicants can be denied an insurance license on the basis of a misdemeanor conviction for any form of theft, obstructing a police officer, any offense involving willful injury to property, and “multiple convictions which demonstrate a pattern of repeated and willful disregard for the law.”<sup>3</sup> Under these guidelines, someone can be denied an insurance agent license for shoplifting, arguing with a police officer, tagging a bus bench, or even for repeatedly driving with a suspended driver’s license.

It is true that the commissioner does have the leeway to grant a license notwithstanding such convictions, and very well might do so in the case of such simplistic offenses as those examples. However under current law, such leeway is at the discretion of the Commissioner; the Commissioner is under little obligation to exercise it.

Even broader is the language in statutes and regulations that govern employees at care facilities licensed by the Department of Social Services. As noted above, an individual can be barred from working or volunteering at such a facility for any offense other than a minor traffic

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<sup>1</sup> Cal. Ins. Code § 1668(m)(1); 10 CCR 2183.2(a)

<sup>2</sup> Cal. Ins. Code § 1669

<sup>3</sup> 10 CCR 2183.2(b)

violation.<sup>4</sup> Individuals can also be barred for any “conduct that is inimical to the health, morals, welfare, or safety” of the people of the State of California.<sup>5</sup> Under this language, literally any conviction can be used as the basis for barring employment.

When standards are not explicitly broad, difficulties still arise when they are overly vague. Even when agencies are required to determine what offenses are substantially related to the license, the statutes and regulations that do so are far from precise. Many include a generalized statement that “substantially related” convictions are any convictions that “evidence a potential unfitness” to have the license. Regulations often include a list of specific types of offenses, but with the caveat that disqualifying offenses are not limited to those listed, and even these more specific lists often contain a generalized catch-all provision.

For example, the Contractor’s State License Board regulations state that a conviction is substantially related if it “evidences a present or potential unfitness . . . to perform the functions authorized by the license in a manner consistent with the public health, safety, and welfare.”<sup>6</sup> The regulation then lists specific categories of offenses, and then concludes with “crimes or acts that indicate a substantial or repeated disregard for the health, safety, or welfare of the public.” Such general language provides little or no realistic guidance as to what offenses may actually be used to deny licensure.

Problems also arise with standards used to gauge an applicant’s rehabilitation. Such standards are intended to place the focus squarely on the present risk—or lack of risk—that the applicant poses. Unfortunately, many of these standards are riddled with vagueness as well. For example, the criteria for rehabilitation for a Registered Nursing license are:

1. The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
2. Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.
3. The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
4. The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
5. Evidence, if any, of rehabilitation submitted by the applicant.<sup>7</sup>

Similarly, the criteria for how heavily to weigh the importance of a past conviction for an insurance broker or agent license are:

- a. The extent to which the particular act or omission has adversely affected other person(s) or victim(s), including but not limited to, insurers, clients, employers or other persons, and the probability such adverse effects will continue;
- b. The recency or remoteness in time of the act, misconduct, or omission;

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<sup>4</sup> Cal. Health & Safety Code § 1522

<sup>5</sup> Cal. Health & Safety Code § 1558

<sup>6</sup> 16 CCR 868

<sup>7</sup> 16 CCR 1445(a)

- c. The type of license applied for or held by the licensee or applicant involved;
- d. The extenuating or aggravating circumstances surrounding the act, misconduct, or omission;
- e. Whether the licensee or applicant has a history of prior license discipline, particularly where the prior discipline is for the same or similar type of conduct.<sup>8</sup>

These guidelines provide virtually no guidance as to what is “enough” rehabilitation or mitigating evidence in order to receive the license. An applicant must guess, for instance, whether five years since they shoplifted is long enough, or if they should wait ten.

### **Problems Arising from Broad and Vague Standards**

Vague and overbroad standards lead to considerable problems for applicants in several ways. Not only do they result in excessive license denials, they create uncertainty and confusion for those contemplating pursuing a particular license.

#### *Excessive License Denials*

First and foremost, overbroad and vague standards result in people being denied licenses for offenses that in no way relate to specific risks of a certain license, and in cases where the person has long since ceased to pose any real risk. Obviously, this result is clearest with those standards that are explicitly broad. Perhaps less obvious is that vague standards have much the same impact as explicitly broad ones.

In my experience, many licensing boards use imprecise standards to expand the offenses for which they will deny a license. The less well defined the standards are, the more latitude an agency can claim in denying an application. As discussed elsewhere, in my experience applicants are at a substantial disadvantage in sophistication and resources, and without legal representation rarely have the ability to mount a serious challenge to the denial of a license. Vague standards magnify this disadvantage by providing plausible coverage for denials that, if challenged in court, may not be upheld.

#### *Difficulty in Gauging Likelihood of Success*

Additionally, vague standards make it difficult for applicants to determine whether to pursue a certain license, because they cannot accurately gauge the likelihood of being successful. This uncertainty has ramifications far beyond simply deciding whether to apply or not, as potential applicants must also decide whether to undertake training and preparation. Preparation for many licenses requires significant costs in both money and time. For example, Registered Nursing programs span 2-4 years; applicants are essentially required to commit to the equivalent of a college education, without knowing whether they can ultimately obtain a license.

This uncertainty is a two-edged sword. On one side, some people who have truly disqualifying convictions optimistically pursue training to no avail; they may spend years on training that they cannot use, and incur debt without the expected career to repay it. On the other side, many people who would be successful applicants choose not to take the risk. This deprives

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<sup>8</sup> 10 CCR 2183.3

applicants of a lucrative profession, and deprives their communities of valuable service providers. Even further, many training programs vigorously screen out applicants with past convictions, even if those applicants would realistically be successful in obtaining a license. Although I do not have research on this area, in my experience it appears that training programs fear that accepting such students will negatively impact the success rates of their programs.

## Potential Solutions

### *Narrow and Specific Tailoring of Disqualifying Offenses*

There are multiple ways that standards can be tailored to provide meaningful guidelines both to agencies and to applicants. First and foremost is to clearly delineate those convictions that relate in a meaningful way to the license being issued. In other words, the only disqualifying convictions should be those that point to an increased risk to the public that specifically stems from the functions of the license.

Consider offenses that contain an element of violence, such as battery or domestic violence. There is a common knee-jerk reaction that giving a license to someone with a violent offense on their record, even a misdemeanor, would be endangering the public. The question should not, however, be whether the public is placed in *any* danger by interacting with this person, but whether the public is placed in *more* danger because the person has the license being sought.

For example, in the context of a security “guard card,” there is a stronger argument that someone with a recent history of violence may be more likely to pose a greater threat to the public. The functions of a security guard have an inherently greater likelihood of a heated interaction or physical altercation simply by the nature of the work. In the context of an insurance license, however, it is difficult to see how the public is at a greater risk than it would be if the person had any other occupation, such as a store clerk or sales representative.

For some licenses, such analysis might preclude the denial of a license for practically any criminal conviction. This is not necessarily a bad thing. Consider, for example, licenses for barbering. The primary goal of licensing barbers is to ensure that proper sanitation and health practices are followed, to protect the health of employees and customers. Beyond sanitation and health, however, there is little room to claim that the public is at greater risk from a barber with a history of violence or theft, than they would be from any other retail employee with such a background. At first glance, the restrictions established for a barbering license reflect this limited risk; the only offenses enumerated are violations of specific laws governing barbering, and offenses committed in association with use of a barbering license.<sup>9</sup> A closer reading, however, shows the same catch-all standard as other licenses: offenses that “evidence[] present or potential unfitness of the licensee to perform the functions authorized by the licensee in a manner consistent with the public health, safety or welfare.”<sup>10</sup>

This example illustrates that it is not enough to merely theoretically tailor disqualifying convictions to those related to the license. The above-mentioned barbering regulation, like so many others, already theoretically narrowly tailors convictions. However the vague language used in the regulation defeats this intended tailoring, providing significant room for on-the-

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<sup>9</sup> 16 CCR 970

<sup>10</sup> *Ibid.*

ground expansion of those offenses that can be used to justify denial of a license. Because of this, regulations should specifically enumerate those categories of offenses that may be used to deny a license.

A useful example of such narrow tailoring is the federal regulation that governs issuance of credentials to airport workers. This regulation, contained in Title 49, Section 1542.209(d) of the Code of Federal Regulations, provides a specific list of those offenses that will prevent an applicant from receiving the credential.<sup>11</sup> This list is reasonably well tailored to the specific risks involved in possessing the credential, which allows workers to access secure airport areas. It is easy to parse, and a potential applicant can easily determine whether they will have difficulty securing the credential.

### *Concrete Rehabilitation Guidelines Involving Time Periods and Post-Conviction Relief*

Regulations should also provide more meaningful guidelines regarding evidence of rehabilitation. While the notion of rehabilitation is by nature somewhat difficult to quantify, and will necessarily contain some “soft” guidelines, the passage of time and the granting of post-conviction relief by criminal courts are concrete measures that can be clearly addressed in regulations.

While almost every licensing regulation I have seen accounts for the passage of time in some way, most do so with only a general reference to the passage of time, such as the examples provided earlier: “the recency or remoteness in time,”<sup>12</sup> or “the time that has elapsed since commission” of the offense.<sup>13</sup> There are, however, many examples of agencies using the passage of time as one gauge for rehabilitation, in a concrete and useful way.

The federal regulation of airport workers, referenced above, is one example. Under this regulation, disqualifying convictions are only at issue if the conviction occurred within the past 10 years.<sup>14</sup> Regulations governing the federal TWIC (Transportation Worker Identification Credential), used for maritime and land transportation workers, also utilize clear time-based restrictions. Under these regulations, some particularly serious offenses may permanently disqualify an applicant, while others will only disqualify an applicant for seven years following conviction, or five years following release from incarceration.<sup>15</sup>

At the state level, the regulations of the Contractors’ State License Board incorporate clearer time-based guidelines to a greater degree than many others. Under its regulations, the Board has established baseline times for rehabilitation of seven years for felonies, and three years for misdemeanors.<sup>16</sup>

There is a strong argument that creating inflexible time-based parameters may unduly harm both applicants and licensing boards, by removing an agency’s ability to consider granting or denying a license in particularly unique or compelling situations. Such time-based parameters, however, can still provide some leeway for unique considerations. Regulations for

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<sup>11</sup> 49 CFR 1542.209(d)

<sup>12</sup> 10 CCR 2183.3, pertaining to insurance agent licenses

<sup>13</sup> 16 CCR 1445(a), pertaining to registered nursing licenses

<sup>14</sup> 49 CFR 1542.209(d)

<sup>15</sup> 49 CFR 1572.103

<sup>16</sup> 16 CCR 869(a)(1)

both the TWIC and contractor's licensure provide such options. TWIC regulations allow for a waiver to be granted even in the case of some permanently disqualifying convictions,<sup>17</sup> while contractor regulations allow for the baseline time to be adjusted either up or down.<sup>18</sup> Although this allowance reintroduces some element of uncertainty, having the clear baseline provides a better point of reference for potential applicants, and also establishes standards that must be met in order to deviate from the baseline.

Guidelines should also more concretely consider the impact that certain types of post-conviction relief have on consideration of a conviction. Certificates of rehabilitation, for example, require an intensive review of the applicant's character and history by the court and district attorney.<sup>19</sup> This review includes references, residence, work history, and a requirement that the applicant be free from negative contact with law enforcement for seven to ten years. Such an investigation and judicial assessment of rehabilitation should be given meaningful weight in licensing. Similarly, the early termination of probation under Penal Code section 1203.3 requires a finding by the court that relief from probation is warranted by the applicant's good conduct and reform.<sup>20</sup> Set aside and dismissal remedies, provided under Penal Code sections 1203.4, 1203.4a, and 1203.41, also often involve a judicial finding that relief is warranted by the interests of justice.<sup>21</sup>

## **ISSUE #2: DENYING LICENSES ON THE BASIS OF APPLICATION DISCLOSURES**

The second significant problem I have seen for people with past convictions is the denial of licenses based on an alleged failure to honestly and forthrightly disclose their convictions and the circumstances of their convictions during the application process. One interesting point of note from my practice is that with only one exception, every client I have represented who was ultimately unsuccessful, failed because of alleged dishonesty in their application materials.

Virtually every licensing scheme includes a provision that allows for an applicant to be denied if they "knowingly made a false statement of fact that is required to be revealed in the application for the license."<sup>22</sup> This is the language applicable to all licenses issued under the Department of Consumer Affairs; similar language exists in every license that I have researched, including authorizations for employment at care facilities licensed by the Departments of Social and Developmental Services.

As a matter of course, applications almost always ask whether the applicant has ever been convicted, and if so, often require that the applicant to provide information about the convictions. The requested information generally includes a statement by the applicant explaining the convictions, official documents about each offense, and occasionally evidence of rehabilitation. Providing incorrect information in this area usually constitutes a separate and independent basis for denying licenses, and is also often used as conclusive evidence that the applicant has not been rehabilitated.

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<sup>17</sup> 49 CFR 1515.7

<sup>18</sup> 16 CCR 869(a)(2)

<sup>19</sup> Cal. Pen. Code §§ 4852.05, 4852.12(a)

<sup>20</sup> Cal. Pen. Code § 1203.3(a)

<sup>21</sup> Cal. Pen. Code §§ 1203.4(a) & (c), 1203.4a(b), 1203.41(a)

<sup>22</sup> Cal. Bus. & Prof. Code § 480(d)

This issue comes into play even when an applicant has been convicted of an offense that would otherwise not be an issue for receiving the license, but fails to accurately or adequately provide information about the conviction. Even though the underlying offense would not have disqualified the applicant, and they therefore had no reason to be untruthful, the purported dishonesty now becomes grounds for denying the license.

The commonly understood narrative of rehabilitation holds that if someone is rehabilitated, and therefore trustworthy, they will be up front and honest about past convictions. Under this logic, if a person fails to disclose a conviction, or does not provide a truthful explanation of what occurred, they should be deemed to be untrustworthy and denied a license on those grounds. This conception, however, overlooks the reality of what people with convictions may experience, remember, or believe about what convictions must be disclosed.

Applicants often do not remember the details of their convictions or may misremember them. This is particularly true for people with extensive conviction histories, old convictions, or convictions that occurred in the midst of addiction or mental health issues. In some cases, memory simply fails. In others, details from one conviction to another blend together, leaving the applicant uncertain. In many cases, applicants never really understood what they were convicted of—the criminal system is not particularly user friendly. It is not uncommon for me to meet with clients who have recent convictions, who thought they had been charged with one thing, but actually pled to something totally different.

Having access to records does not always help clear up the situation. RAP sheets from the Department of Justice (DOJ) are notoriously difficult for people to read, with a single offense appearing multiple times, poor delineation between records for different offenses, and confusing distinctions between what a person was arrested for, what they were charged with, and what they were actually convicted of, and when all of these events happened.

Applicants may also mistakenly believe that certain records do not need to be disclosed. I have met with many clients who incorrectly believed that a conviction “fell off” your record after a certain length of time. For applicants with minor offenses where they were not taken into custody by police, they may not realize that they have a criminal conviction at all. This is often the case with “tickets” for disturbing the peace, public drunkenness, shoplifting, and driving without a license.

Further confusion arises once a person has received post-conviction relief for a conviction, such as set aside and dismissal under Penal Code section 1203.4. On one hand, the statutory language of 1203.4 specifically states that a conviction dismissed under 1203.4 must still be disclosed on an application for licensure; and licensing applications often specify that a conviction must be disclosed even if it has been dismissed under this provision. On the other hand, often clients do not make the connection between language about section 1203.4 and the “expungement” they received. Applicants often understand their conviction as simply being “expunged,” and language about “dismissals under 1203.4” means nothing to them. They do not realize that the two are one and the same.

If an applicant makes an error in their disclosure, it is possible to show that the error was inadvertent, rather than intentional. Once the applicant is in that position, however, they are already at a disadvantage, and agencies may be skeptical that mistakes were inadvertent. It may seem incredible to an agency representative that somebody could not know what they were convicted of, cannot clearly remember the events that led to particular conviction, or do not

remember what sentence they were ordered to serve. In my experience, however, such things are the norm rather than the exception.

### **Potential Solution: Request Information After Providing Applicant with Clear Background Check Results**

The easiest way to remedy this situation is to simply not rely on the faulty memories of applicants looking at confusing official records. Nearly every application requests information about convictions at the initial stage of the application. There is no reason, however, why this cannot be held until later in the process. Agencies do not actually rely on the applicant's answers to determine whether the applicant has any convictions; they obtain fingerprint-based background checks from the Department of Justice that tell them whether the applicant has ever been convicted and of what. The only remaining purpose for asking for this information at the beginning would seem to be as a test of candor. As just discussed, however, this is often an unreliable test.

A more logical approach is for the agency to obtain the DOJ results, and if there are one or more convictions that pose an issue for the license, request information about those specific convictions. In making the request, agencies should provide results to the applicant that are clear and readable, and that specifically indicate which convictions the applicant must provide information about.

This approach still provides the agency with the means to get the information that is actually needed: what happened in the offense and how it might relate to the license, as well as the opportunity to gauge the applicant's rehabilitation through seeing how they describe and relate to the pertinent conviction. Denials based on faulty memory or misunderstanding of the law would be greatly reduced, as would denials based on misinformation about otherwise entirely irrelevant convictions.

### **ISSUE #3: UNSOPHISTICATED AND UNPREPARED APPLICANTS**

The third issue that I see prevalently in my practice is applicants that are unsophisticated in presenting evidence to the agency, or unprepared to adequately assert their rights and defend their application. This issue may be the most stark when an application procedure reaches the point of an administrative hearing, but often exists throughout the application process.

In preparing an initial application, clients routinely fail to realize the extent of documentation and evidence that is needed to successfully apply for a license. This is particularly true with evidence of rehabilitation. In many cases, although evidence of rehabilitation is an important factor in determining whether a license will be granted, it is barely mentioned in the list of documents and information requested by the agency.

The request for information sent to applicants seeking clearance to work in a DSS-licensed care facility is illustrative of this problem. Under statute and DSS regulations, an applicant with a prior conviction must provide "substantial and convincing evidence" that they have "been rehabilitated and [are] presently of such good character as to justify" the clearance.<sup>23</sup> Under this statutory structure, information about rehabilitation is not merely helpful; it is

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<sup>23</sup> 22 CCR 80019.1(c)(4)

required. However, the request for information to apply for clearance makes only vague reference to information about rehabilitation. Specifically, the form letter sent by DSS requests the following:

1. A signed statement describing the events of the conviction;
2. Documentation about probation;
3. Verification of “any training, classes, courses, treatment or counseling;”
4. Three character reference statements, which must be provided on forms created by DSS and which don’t ask the referrer to discuss rehabilitation or character in specific relation to the applicant’s conviction; and
5. Police reports related to the offense.

Unsurprisingly, clients who apply for clearance before seeking legal assistance almost always fail to provide any meaningful evidence of rehabilitation in their application. At best, they predictably go down what they perceive to be a checklist of everything DSS is asking for. They are then surprised when their application is denied, and surprised again when I begin instructing them to round up meaningful letters of recommendation, awards and certificates, school transcripts, employment records, and write a letter of explanation that goes in depth into the ways they now live as a law-abiding member of their community.

Even when applications are more comprehensive in asking for evidence of rehabilitation, applicants are often shortsighted about what may constitute such evidence. Many people think of “rehabilitation” as formal programs or classes. They do not realize that things they take for granted, such as attending church, caring for a family member, or even just maintaining stable employment, all constitute evidence of their rehabilitation.

Some applicants also simply do not realize the extent of effort and evidence that is required to assert their rights. Many approach completing an application as “just filling out a form,” and have difficulty realizing that what they thought would just be a one-page form is actually an extensive exercise in rounding up documents and evidence. This is particularly true if the applicant’s convictions are old or seem to be very unrelated to the purpose of the license. In the applicant’s mind, it seems like a common sense matter that the conviction should have little to do with applying for the license, and they fail to realize the importance of providing thorough information.

All of these issues are exacerbated if the process progresses to an appeal or a formal hearing. In addition to not understanding what was needed in the initial application, applicants now venture into more formal legal proceedings without an understanding of specific legal standards, concepts of burdens of proof, and even the form that the appeal will take. My clients are regularly surprised to learn that an appeal will be a very formal hearing involving a judge, an opposing lawyer, evidence, and sworn testimony. They often presumed that the hearing would simply be an opportunity to talk to a representative of the agency and explain the situation.

The end result of all of these factors is that many people are ultimately denied licenses not because they truly pose a threat to public safety, but because they simply were not effective in presenting their case. Such a result hurts communities and agencies that lose out on qualified licensed professionals, and obviously also hurts applicants that needlessly miss opportunities for more stable and better paying work.

## Potential Solutions

### *Agencies Adopting a Cooperative Approach to Obtaining Information*

The easiest way to mitigate this issue is for agencies to adopt a more proactive and cooperative approach in gathering the information needed to make a determination about an application. In my experience, agencies typically have a front-line staff of analysts who evaluate applicants with convictions, making an initial recommendation for granting or denying the application. Such analysts are in a prime position to interact with applicants, recognize when an application is lacking important elements, talk to the applicant about what is missing, and help guide the applicant towards providing documentation that truly reflects the applicant's level of risk or rehabilitation.

Anecdotally, the California Department of Public Health, which controls issuance of Certified Nursing Assistant and Home Health Aide certificates, takes this approach. Several clients have related to me that analysts for this agency took a more proactive approach in requesting specific documentation, and helping to guide the applicant in providing complete materials.

Analysts can even use this method to get information for an application directly from the person seeking licensure. If the goal is to gauge the actual risk that an applicant presents, the best way to do this may not be through formal written statements, but through conversation and direct communication.

### *Increased Utilization of Informal Hearings*

If an initial application is denied, a better option than moving directly to a formal hearing may be to increase the use of informal hearings. Informal hearings provide the opportunity for what many of my clients expect would happen: for the applicant and agency to talk about the situation and get a better understanding. Informal hearings are by nature less contentious, and more directed towards a candid attempt to understand the applicant's current situation and character.

I have found that the Bureau of Security and Investigative Services utilizes the informal hearing process with some success. If an applicant is initially denied a license from BSIS, they have the option to move directly to a formal administrative hearing, or instead to attend an informal hearing, where they meet directly with representatives from the bureau and discuss the issue at hand. In my experience, such candid and direct communication is often more effective than a contentious legal proceeding.

### *Support for Pro Bono Legal Representation Programs*

Inevitably, there will be some cases for which formal hearings are necessary, and it is in these situations that people with past convictions are most at a disadvantage. People with convictions who are seeking a license are rarely in a position to afford legal counsel. Without representation, applicants have little chance of successfully navigating the formal hearing process.

Unfortunately, programs that provide pro bono legal representation for people seeking licensure are few and far between. Increased public support for programs to expand access to

legal representation would go a long way towards ensuring that these formal hearings are held on even footing.

#### **ISSUE #4: FAILURE TO MEANINGFULLY APPLY LEGAL STANDARDS EARLY IN THE ANALYSIS**

The final issue I would like to address is that in my experience, the initial analysts who review license applications often fail to meaningfully apply the correct legal standards when determining whether to recommend grant or denial of an application. For many agencies, it appears to me that it is not until a license denial is appealed that trained legal staff review the application with a serious evaluation of burdens of proof, weight of the evidence, and proper legal standards.

The end result of this is naturally that more applications will be denied, with the onus placed on applicants to appeal the denial. Agency employees have significant incentives to be risk-averse in recommending granting or denying a license. The envisioned consequence of granting a license is that the applicant will go on to misuse the license or cause some harm. Even if the odds of this happening are relatively small, rhetoric of public safety often hinges on the notion that no risk is too small, and that one incident is one too many. On the flip side, the consequences for improperly denying a license are small. At worst, the applicant will appeal and the decision will be reversed. Often, though, the denial is the end of the line, as applicants lack the resources to mount a meaningful appeal.

#### **Potential Solution: Increase Training and Support for Analysts**

As I am not privy to the internal practices and training of most licensing agencies, my ability to offer concrete suggestions for improvement is limited. One potential for improvement in this area may simply be to provide improved training for front-line analysts, and to reinforce this training. This approach alone, however, may not do much to alleviate the pressures analysts feel to lean towards denial of an application.

Analysts could be provided support in other ways. One approach that I have seen used to good effect in the employment context is for agencies to adopt a team-based approach to granting or denying a license. In the employment context, best practices under the Equal Employment Opportunity Commission involve giving each applicant an individualized review of the nature of the convictions, the nature of the job being applied for, and evidence of mitigation and rehabilitation. In other words, it calls for an analysis strikingly similar to that envisioned by Business and Professions Code section 480. Often employers perform this “analysis” in a perfunctory manner, with one person making a quick decision one way or the other, with results that do not greatly increase the odds for someone with a past conviction.

At least one major corporation, however, has successfully implemented a more comprehensive approach. Under this approach, there is a team of staff members who review an applicant’s file, convictions, and potential job duties, and determine whether or not these factors considered together should result in the denial of employment. The result is a much more thoughtful consideration, and has led to a significant drop in the number of applicants denied employment on the basis of convictions.

In the agency context, such a team approach could be used for considering many applications. Ideally, an agency could designate certain convictions as posing no barrier to licensure, and time-based guidelines after which even a potentially related offense would not be considered; for these cases, an analyst is free to approve the application with no issues. For those applications that have convictions deemed to be more related and more recent, the application could move to a team-based review. In this way, the decision can be made by an analyst who has had more direct contact with the applicant, in close conjunction with a more experienced supervisor, and a legal staff member who can provide analysis using the actual legal standards that should apply.

## **CONCLUSION**

In closing my testimony, I note that one overarching theme that seems evident in my suggestions is the adoption of less oppositional processes on the part of agencies, and focusing on the best way to reach the desired goal of protecting the public without placing onerous burdens on people with past convictions. In many of the cases that I represent, the process has long since moved away from common sense notions of whether a particular person actually poses a realistic threat to public safety and welfare. Policies, laws and regulations that focus more on a collaborative effort to make a reasonable assessment of risk, rather than on automatically presuming a combative stance, could go a long way towards achieving this tricky but important balance.

Thank you again for your time and consideration.

Sincerely,  
CT Turney

## **Hearing on the Impact of Occupational Licensing on Upward Mobility and Opportunities for Entrepreneurship and Innovation for Californians.**

Culver City Mike Balkman City Council Chambers

Culver City, California  
March 30<sup>th</sup>, 2016

Thank you Chairman Nava and members of the Little Hoover Commission. My name is José Ramón Fernández-Peña. I am the founder and director of the Welcome Back Initiative, and the associate chair of the Department of Health Education at San Francisco State University. I am also representing IMPRINT, a national coalition of agencies working on immigrant professional integration. And, I am a foreign medical graduate. Thank you for the invitation to speak on this important topic.

My testimony will focus on the impact that the State's occupational licensing processes have on immigrant health professionals. What I will share with you today is based on the experience we have accrued over the past 15 years working with immigrant health professionals.

### **Background**

In 2002 the Institute of Medicine first reported and later on the Sullivan Commission and others confirmed that the lack of diversity in the health workforce was an important contributing factor to racial and ethnic health disparities. This lack of ethnic, cultural, and linguistic parity between the health workforce and the population it serves is strikingly apparent in California, where for example, 37% of the population is Latino and only five percent of the doctors, eight percent of the nurses, and seven percent of the dentists are Latinos.

In addition to this problem, California faces serious shortages in the health workforce along with an insidious mal-distribution of the health workforce. The California Public Policy Institute projects that our state will need 500,000 new health workers by 2020. These projected shortages are already apparent in the areas of mental health, oral health, and in the number of laboratory technicians, and pharmacists to name a few. In regards to primary care, only 16 of California's 58 counties have the minimum suggested rate of 60-80 primary care providers per 100,000. Last, but certainly not least, the Association of Schools of Public Health predicts a deficit of 250,000 public health workers by 2020.

The rich diversity of the state is becoming more and more apparent among the fastest growing segment of the population: seniors 65 and over. It is estimated that by 2025 the number of Asians over 65 will increase by 65% and the number of Latinos over 65

will increase by 85%. In total, 48% of the seniors in California will be non-white by 2025.

Since the implementation of the Affordable Care Act (ACA), millions of California residents now have some form health insurance. And many of those who are not eligible for ACA insurance may have some form of coverage through the "Healthy California" program. This has significantly increased access to health services across the state.

As California and the US face this situation, the Migration Policy Institute estimates there are 1,700,000 foreign-born, college-educated California residents. Of these, over 400,000 are working in low-skilled jobs or are unemployed. Many of these are presumed to have been health professionals in their countries of origin.

### **The Welcome Back Initiative**

The Welcome Back Initiative was founded in 2001 in partnership between San Francisco State University and City College of San Francisco with the intent of connecting the untapped pool of immigrant health professionals residing in California and the need for a health workforce that better reflects the linguistic and cultural diversity of our State.

In the process of developing the program, my staff and I spent a significant amount of time in Sacramento meeting with the leadership of all the health professions licensing boards to understand the licensing requirements for each profession in order to effectively convey this information to our participants. Ensuring that our participants meet the standards for licensure has been a top priority for our program.

Since then, the Welcome Back Initiative (WBI) has grown tremendously and currently includes 11 centers in 10 states, from California to Maine. Together, the centers have identified over 14,000 foreign-trained health professionals (FTHPs) -primarily physicians, nurses and dentists- from 167 countries. Seventy-two percent are women, and 66% were not working in the health sector when we meet them for the first time. Typically, those working in the health sector are grossly under-employed, (for example physicians working as medical assistants or nurses working as certified nursing assistants). Half of them have been in the US less than three years. California is home to 11,800 of these individuals.

The WBI model of service is a highly individualized approach where we work with each participant to assess their personal, educational, and professional experience in order to be able to effectively guide them through the steps needed to enter the US health workforce. In addition, the WBI has developed curricula specifically tailored to this population: an accelerated, health-focused English as a Second Language curriculum ("The English Health Train"), and a course entitled "Introduction to the US Health

System", which was developed to familiarize our participants with our rather complex and unique system.

To date, more than 2,000 participants have found employment in the health sector for the first time (1,500 in California), 800 have been able to move up their career ladder (560 in California), and 130 physicians have secured residency training slots (104 in California). Thousands more are actively engaged with our centers and moving forward. On average, their income increases by 255% from intake to discharge from our program.

### **Overview of the occupational licensing-related challenges faced by foreign-trained health professionals when seeking employment in California.**

In addition to the individual-level barriers FTHPs face as they attempt to re-enter the health workforce (e.g. fluency in English, lack of time to redress educational deficiencies, etc.), there are three specific examples that, in our opinion, deserve a second look:

- A foreign-trained physician, regardless of his or her specialty or years of practice may not seek licensure in California as a physician assistant unless he or she "has completed an approved physician assistant training program".
- A foreign trained dentist may not seek licensure in California until he or she completes a two-year international dentist program with an average cost of \$150,000.
- A foreign trained dentist may not seek licensure in California as a dental hygienist unless he or she "graduated from a program which has a minimum of two academic years of dental hygiene curriculum provided by a college or institution of higher education, the program of which is accredited by a national agency recognized by the United States Department of Education and/or an appropriate national voluntary agency".

In these three situations, we are failing to build on the educational and professional experience of foreign trained health professionals. In the absence of concrete evidence that would suggest that the creation of accelerated or advance-standing programs would in any way jeopardize patients' health, the rationale behind these provisions seems unreasonable.

### **The opportunity**

Many foreign-trained immigrants living in the U.S. have backgrounds in high growth sectors such as health, finance, accounting, IT, engineering, management, and other fields. But, they need assistance finding their way back to their respective fields due to cultural, language and systemic barriers, as well as the challenges they face transferring

their professional certifications, academic credentials and training. Consequently, many foreign-trained immigrants are either underemployed or unemployed in the U.S. This "waste" of human capital is referred to as "brain waste."

Against this backdrop, U.S. employers report either a loss of productivity, a loss of revenue, and/or difficulty expanding their business because they are unable to fill key, skilled positions. In the specific case of the health sector, it is a lost opportunity to fill current and projected vacancies and to increase the cultural and linguistic diversity of the sector.

These three examples illustrate opportunities to capitalize on the experience of foreign trained health professionals:

Upon validation of their degree, foreign trained doctors may take the US Medical Licensure Exam (USMLE). When they pass these exams (all US graduates also take these exams), they may apply to residency training programs. The average cost of medical school in the US ranges between \$197,192 at public schools to \$267,936 for private schools; an average of \$232,564. The Welcome Back Initiative has assisted 130 foreign trained physicians in securing residency training slots. The average cost of sending these individuals to medical school in the US would have been over \$28M.

Upon validation of their degree, foreign trained nurses may sit for the nursing licensure exam (NCLEX). To ensure our nurses are ready for the exam, several Welcome Back Centers offer courses to prepare them. The average cost of an NCLEX prep exam ranges between \$3000 and \$8,000 per nurse. A typical class can take 25 students, for a total cost between \$75,000 and \$200,000. The average cost of recruiting a nurse ranges between \$20,000 and \$22,000. The equivalent cost for recruiting 25 nurses would be between \$500,000 and \$550,000.

Upon validation of their degree by a reputable US agency, a foreign trained pharmacist is eligible to take the exams to be licensed in the US. A US trained pharmacist completes a minimum of six years of education before they can sit for the licensure exams, an average cost savings of \$63,000 if the degree is obtained at a public university or \$122,000 at a private university. These costs are in addition to the cost of the undergraduate degree.

Alternatively, a foreign trained pharmacist may also, upon validation of his/her foreign credentials, take the pharmacy tech exam and be licensed for under \$100.00. The cost of a pharmacy tech program in California ranges between \$600 and \$1,100.

As stated before, our participants typically increase their income by 255% once they reach their professional goals. Thus, professional integration translates into economic integration. It can also be inferred that economic integration leads to social and civic integration.

## **Models or best practices from other states or countries that California could consider adopting.**

As the White House report "Occupational Licensing: A Framework for Policymakers" recognizes, licensing regulations are sometimes an impediment for skilled immigrant professionals to work in fields related to their experience and training. We were delighted to be approached by the Little Hoover Commission in their effort to explore areas where occupational licensing requirements create an unnecessary barrier to labor market entry or labor mobility for foreign-educated immigrants. Our efforts to remove artificial barriers will result in improved economic opportunities and will support economic growth and prosperity in our state.

### **Minnesota**

The Minnesota Department of Health is supporting the integration of international medical graduates (IMG) through the implementation of the International Medical Graduate Assistance Program. The Minnesota Legislature established this program, in 2015 Minnesota Session Laws, Chapter 71, Article 8, Section 17, to address barriers to practice and facilitate pathways to assist immigrant international medical graduates (IIMG) to integrate into the Minnesota health care delivery system, with the goal of increasing access to primary care in rural and underserved areas of the state.

<http://www.health.state.mn.us/divs/orhpc/img/>

### **Massachusetts**

A report by the Governor's Advisory Council for Refugees and Immigrants' (GAC), "Rx for Massachusetts' Economy and Healthcare System" was developed by a statewide Task Force on Immigrant Healthcare Professionals in Massachusetts and offers information and recommendations aimed at supporting the needs of immigrant and refugee medical professionals in achieving their full potential in the U.S.

[https://miracoalition.org/images/stories/gac task force report final-12.18.14.pdf](https://miracoalition.org/images/stories/gac_task_force_report_final-12.18.14.pdf)

### **Washington**

One America released "Reducing Brain Waste: Creating Career Pathways for Foreign-Educated Immigrants in Washington State" which details the impact brain waste has had on Washington State. To illustrate the barriers experienced by foreign-educated immigrants, the report takes a deeper look at nursing and teaching. As industries that are regulated by state law, those entering the nursing or teaching workforce must obtain state licenses in order to find employment in their respective industries. Despite years of investing in education or sometimes decades in the field, foreign-educated immigrants searching for a way to re-enter professional careers encounter one road block after another.

<https://www.weareoneamerica.org/sites/weareoneamerica.org/files/OA.BrainWaste.final.pdf>

### **Canada, Bridging Program**

The Gateway for International Professionals programs, offered through Ryerson University's G. Raymond Chang School of Continuing Education, are helping bridge the gap between education, experience, and employment. International professionals often come to Canada with a breadth and depth of experience and credentials that simply aren't recognized here. The Chang School offers bridging programs that accurately assess the skills of international professionals and provide them with the education and experience needed to succeed in the Canadian workplace at levels that correspond with their qualifications.

<http://ce-online.ryerson.ca/ce/default.aspx?id=2672>

**Florida, Miami-Dade – No longer offered through college** • Miami Dade College established the Foreign Physician Alternative Certification Program (FOPAC), supported by the Department of Children and Families (Office of Refugee Services), the Florida Legislative Allocation and Blue Cross and Blue Shield, which provided orientation, assistance and training to foreign health care professionals living in the U.S. The FOPAC program offered two tracks. One provided foreign physicians the opportunity to train and study for licensure in the U.S. to work as practicing medical doctors. The other track aimed at retraining foreign-trained health professionals to obtain degrees in other in-demand medical careers, such as in nursing, medical lab technology, respiratory care, sonography and teaching.

<http://www.mdc.edu/main/newsandnotes/2009/vol7-6/otherstories/foreignhealthcare.aspx>

### **Recommendations**

This situation can be addressed in many ways, most requiring new partnerships between educators, immigrant-serving organizations, state licensing boards, professional associations, and employers to: **a.** identify in-demand occupations and employers' workforce needs, **b.** assess the skills of the foreign-trained immigrant professionals, **c.** develop and adapt training models, and prepare these individuals for licensure. Examples include:

- Establish an inter-agency working group to examine licensing requirements and funding barriers for health professionals and provide flexibility for foreign-trained health workers to help fill gaps.

- Provide foreign-trained immigrant professionals with relevant networks, work experience and training in the U.S. required for licensure through mid-career apprenticeships, paid internships, and on-the-job training programs.
- Develop programs in partnership with postsecondary educational institutions to provide foreign-trained immigrants with credit towards degree attainment for work, other experience, and credentials gained abroad.
- Accelerate the completion of any additional training, including degree attainment required for U.S. licensure, saving participants time and money.

Thank you again for the opportunity to share with you our experience working with foreign-trained health professionals. I am happy to answer any questions.



Little Hoover Commission  
Hearing on Occupational Licensing  
March 30, 2016

Testimony of  
Laurie Crehan, Ed.D.  
Regional State Liaison, Southwest (AZ, CA, HI, NV, UT)  
Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy  
[www.USA4MilitaryFamilies.org](http://www.USA4MilitaryFamilies.org)

On behalf of the Deputy Assistant Secretary of Defense, Military Community and Family Policy, I would like to thank you for the opportunity to submit testimony on occupational licensure requirements and their impact on Service members and their spouses. My name is Dr. Laurie Crehan and I work for the Department of Defense State Liaison Office. Since many issues surrounding quality of life and family well-being can only be addressed by states, the Department of Defense started the USA4MilitaryFamilies initiative under the Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy. The State Liaison Office seeks to engage state policymakers and other state leaders in addressing the needs of military members and their families. By developing state/military partnerships, the Department of Defense works with states to remove unnecessary barriers and significantly improve the quality of life for military families. The State Liaison's position papers on licensure for separating Service members and military spouses are attached to this testimony.

Separating Service Member Licensure

While the unemployment rate for veterans has been dropping in recent years, separating Service members are frequently delayed getting post-Service employment even though they have applicable military education, training, and experience which can help them

meet state licensing requirements. In February 2016, the Bureau of Labor Statistics listed the unemployment rate among Post 9/11 veterans nationwide at 4.7%.

In working with states, the Department of Defense is asking licensing boards to accept military education, training, or experience that is substantially equivalent to the requirements mandated by the state for obtaining a license. Even in cases where the licensing authority determines that the Service member's education, training, and experience only fulfills part of the licensing criteria of the state, the Service member will still save time and expense and be able to enter the workforce more quickly if the licensing boards accept that service toward licensure requirements. This practice alleviates the need for separating Service members to expend time and resources repeating education and training they have already completed while in the military. This training and education has already been paid for by us, the taxpayers.

All 50 states have made some progress towards this goal. California addresses the issue off licensure in its code.

Business and Professions Code, Section 35

*35. It is the policy of this state that, consistent with the provision of high-quality services, persons with skills, knowledge, and experience obtained in the armed services of the United States should be permitted to apply this learning and contribute to the employment needs of the state at the maximum level of responsibility and skill for which they are qualified. To this end, rules and regulations of boards provided for in this code shall provide for methods of evaluating education, training, and experience obtained in the armed services, if applicable to the requirements of the business, occupation, or profession regulated. These rules and regulations shall also specify how this education, training, and experience may be used to meet the licensure requirements for the particular business, occupation, or profession regulated. Each board shall consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations. Each board shall perform the duties required by this section within existing budgetary resources of the agency within which the board operates.*

The California Department of Consumer Affairs completed a review in 2012 of all licensing boards in California regarding whether or not they accept military education, training, and experience. Their findings are included in the following publication:

[http://www.dca.ca.gov/publications/military\\_legislature.pdf](http://www.dca.ca.gov/publications/military_legislature.pdf)

The Department of Defense recognizes that if we are going to ask credentialing bodies to evaluate military training and experience, we have to make it easier for them to do so. In this regard, we are evaluating how we make that information available to the licensing authorities.

- First, a Joint Services Transcript has been developed to make sure the transcripts for each Service is standardized and accessible in one location. We are working with the Services and with credentialing organizations to see how we can make these transcripts more understandable to non-military audiences.
- Second, since some credentials require an individual to have completed an approved or accredited training program, we are determining which credentials related to military occupations require training program approval or accreditation and identifying methods of facilitating this.
- Finally, a key aspect of providing accrediting and credentialing agencies the ability to assess military training is making the training programs of instruction (POIs) available to them for review. Currently, the Services each have their own policies and procedures related to development and maintenance of POIs and there is no centralized location for agencies to access them. Ensuring POIs have some degree of standardization and are more easily accessible to accrediting and credentialing agencies and educational

institutions will make it easier for them to assess whether the military training courses meet their criteria.

### Military Spouse Licensure

One primary concern for the Department of Defense is retention of Service members and its impact on military readiness. We know that most decisions to stay in the military are made around the kitchen table and not in the personnel office. To retain our trained and experienced military, we must retain the family. The Defense Manpower Data Center reported in a survey of active duty Service members that 59% of our military are married. Additionally, that percentage increases to 72% for non-commissioned officers and 73% for officers. These two groups possess the critical experience necessary for our professional armed forces. Sixty-eight percent of married Service members reported their spouse's ability to maintain a career impacts their decision to remain in the military by a large or moderate extent, thus making the ability of the spouse to obtain a professional license in each state of assignment an influence on national security.

Over 70% of military spouses say they want to work or need to work. Military families are not unlike their civilian counterparts; they depend on two incomes, and like anyone else, want to achieve their goals and aspirations. Military spouses relocate on average every 2-3 years. The annual percent of the military spouse population that moves across state lines is 14.5% - compared to 1.1% for civilian spouses.

In 2007, the RAND Corporation published a study; "Working Around the Military," in which they indicated that military spouses had more education than their civilian 'look alike'

counterparts, yet on average are employed at lower rates and earn less. This result is indicative of a mobile lifestyle which does not support military spouses expediting the transfer of their professional licenses and often leads them into taking lower paying positions below their training and certifications.

The Defense State Liaison Office conducted an informal study to identify some of the barriers hindering military spouses from attaining licenses following a military move. In a review of twenty states, using the top five highest demand professions according to the US Department of Labor, the licensing timeline was delayed up to 6 months due to the exam process, application process, or requirement for background checks. This delay in licensing means military spouses have little time left in their assignment to find a job and employers are less likely to hire military spouses because they will have less time in the position before being transferred out of State.

The Department of Defense is working with states to assist in the licensure of military spouses through policy to provide licensure by endorsement, temporary licenses, and expedited procedures for obtaining a license. The attached DoD position paper describes how states have been addressing these three approaches. California has passed legislation recently that provides for some temporary licenses and expedited licenses.

Business and Profession Code, Sections 115.5 – 115.6

**115.5.**

*(a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:*

*(1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.*

*(2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a license from the board.*

*(b) A board may adopt regulations necessary to administer this section.*

*(Added by Stats. 2012, Ch. 399, Sec. 1. Effective January 1, 2013.)*

**115.6.**

*(a) A board within the department shall, after appropriate investigation, issue the following eligible temporary licenses to an applicant if he or she meets the requirements set forth in subdivision (c):*

*(1) Registered nurse license by the Board of Registered Nursing.*

*(2) Vocational nurse license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.*

*(3) Psychiatric technician license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.*

*(4) Speech-language pathologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.*

*(5) Audiologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.*

*(6) Veterinarian license issued by the Veterinary Medical Board.*

*(7) All licenses issued by the Board for Professional Engineers, Land Surveyors, and Geologists.*

*(8) All licenses issued by the Medical Board of California.*

*(b) The board may conduct an investigation of an applicant for purposes of denying or revoking a temporary license issued pursuant to this section. This investigation may include a criminal background check.*

*(c) An applicant seeking a temporary license pursuant to this section shall meet the following requirements:*

*(1) The applicant shall supply evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.*

*(2) The applicant shall hold a current, active, and unrestricted license that confers upon him or her the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which he or she seeks a temporary license from the board.*

*(3) The applicant shall submit an application to the board that shall include a signed affidavit attesting to the fact that he or she meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of his or her knowledge. The application shall also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.*

*(4) The applicant shall not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed. A violation of this paragraph may be grounds for the denial or revocation of a temporary license issued by the board.*

*(5) The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.*

*(6) The applicant shall, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.*

*(d) A board may adopt regulations necessary to administer this section.*

*(e) A temporary license issued pursuant to this section may be immediately terminated upon a finding that the temporary license holder failed to meet any of the requirements described in subdivision (c) or provided substantively inaccurate information that would affect his or her eligibility for temporary licensure. Upon termination of the temporary license, the board shall issue a notice of termination that shall require the temporary license holder to immediately cease the practice of the licensed profession upon receipt.*

*(f) An applicant seeking a temporary license as a civil engineer, geotechnical engineer, structural engineer, land surveyor, professional geologist, professional geophysicist, certified engineering geologist, or certified hydro geologist pursuant to this section shall successfully pass the appropriate California-specific examination or examinations required for licensure in those respective professions by the Board for Professional Engineers, Land Surveyors, and Geologists.*

*(g) A temporary license issued pursuant to this section shall expire 12 months after issuance, upon issuance of an expedited license pursuant to Section 115.5, or upon denial of the application for expedited licensure by the board, whichever occurs first.*

While CA has begun to address the issue of licensure for spouses and separating Service members, we do not have current evidence of how these statutes are being implemented. The DoD State Liaison Office is working with Land-Grant University to study how states are enacting

these approaches and the impact it is having on separating Service member and spouse employment.

It is certainly in the interest of states to make every effort to attract veterans to their states and to be viewed as a military friendly state. By removing barriers to licensure for our veterans and military spouses, states can demonstrate their support for our Armed Forces. T

Thank you for this opportunity to provide this testimony. I am willing to address any of your questions.



## REMOVING LICENSURE IMPEDIMENTS FOR TRANSITIONING MILITARY SPOUSES

*States can modify licensing requirements and processes, which impede military spouses from becoming employed following a military move.*

**KEY MESSAGE:** Many occupations require a state license, often with state-specific conditions and processes, which can cause lengthy re-employment delays for military spouses moving between states. Because of these delays and the expense involved in re-licensure, many spouses decide not to practice in their professions. This is a financial and career choice issue for military members and their spouses, impacting their desire to stay in the military.



### DISCUSSION POINTS:

- States have enacted legislation using one or more of the following approaches:
  - **35 states** have supporting endorsement policy or have modified their license by endorsement (which allows a state board or regulator to recognize active credentials from another state) to allow options that accommodate gaps in employment for military spouses with active licenses from another state.
  - **43 states** provide temporary licenses to allow a military spouse with a current license to secure employment while completing state requirements that may be substantially different from what was required by the previous licensing state or while awaiting verification of current license, certification and/or employment history for an endorsement.
  - **34 states** have expedited procedures for regulatory department or board approval to provide opportunity for spouses to obtain an endorsed, temporary, based on acceptance of the information provided in the application. The department director or licensing boards release the license, and afterwards validate the documents from states and institutions, having opportunity to take further action if there are discrepancies in the application.
- The Department of Defense (DoD) views these options as having a cumulative effect when applied together to provide military spouses flexibility in order to overcome the circumstances that limit their professional opportunities. **DoD encourages states to enact changes that will support all three approaches.**

Sixty-eight percent of married Service members reported their spouse's ability to maintain a career impacts their decision to remain in the military by a large or moderate extent.<sup>1</sup>

Seventy-seven percent of military spouses report they want or need to work.<sup>2</sup>

The annual percent of the military spouse population that moves across state lines is 14.5 percent – compared to 1.1 percent for civilian spouses.<sup>3</sup>

As much as 34 percent of military spouses in the labor force are required to be fully licensed. Nineteen percent of employed spouses experience challenges maintaining their licenses.<sup>4</sup>

<sup>1</sup> Defense Manpower Data Center (DMDC) Status of Force Survey of Active Duty Members, April 2008

<sup>2</sup> 2008 Survey of Active Duty Spouses, DMDC

<sup>3</sup> Current Population Survey data 2008 – 2010

<sup>4</sup> Blue Star Families survey, May 2010



## LICENSURE/ACADEMIC CREDIT FOR SEPARATING SERVICE MEMBER

*Separating Service members are frequently delayed getting post-Service employment even though they have applicable military education, training and experience which can qualify them for licenses and/or provide academic credit toward degree requirements.*

**KEY MESSAGE:** Separating Service members leave the military with documented training and experience that can prepare them for civilian employment; however, this documentation is not always used by state entities to qualify them for licenses required for their occupation or to provide them academic credit. Reported unemployment rates of separating Service members that are higher than national averages have brought attention to supporting issues such as expedited licensure and increased academic credit recognition to alleviate this problem.



### DISCUSSION POINTS:

- The DoD is enhancing its existing processes to assist Service members with their professional development and with their transition to civilian jobs; however these will not by themselves overcome some of the inherent disconnects in converting military training and experience:
  - The Military Services provide Service members opportunities while on active duty to determine certifications that they may need when they transition to civilian occupations.
  - DoD and the Military Services provide each Service member a transcript of their experience and training; however, these transcripts are not always adequate for civilian institutions to assess for possible academic credit and by licensing boards to assess for license requirements.
- Additionally, the American Council on Education (ACE) has established college credit recommendations for the learning experiences, which are published in the *ACE Guide to the Evaluation of Educational Experiences in the Armed Services*. This document provides the mechanism, but not a requirement for academic institutions to accept military training and experience.
- Through statute and regulation, states can establish requirements for licensure boards to:
  - Qualify separating Service members to obtain credit toward occupational licenses based on their military education, training and experience that is essentially equivalent to licensing requirements;
  - Allow separating Service members remaining in that state to transfer a current license from another state through endorsement or temporary licensing; and
  - Allow deactivating Reserve Component members to practice in the state of origin for a temporary period with a license that would have otherwise expired while on active duty.
- Likewise, states can establish requirements for academic institutions to grant separating Service members credit towards degree and certificate requirements for education, training and experience gained in the military.

“The growing confidence on the part of veterans and employers means veteran employment is moving in the right direction, but gaps remain in veteran retention programs among employers, translating military skills to civilian ones, and credentialing. Increased emphasis in these areas will not only help veterans find employment, but will help employers retain the veteran talent they work hard to recruit.”<sup>1</sup>

<sup>1</sup> Monster/Military.com, “Veterans Talent Index: Insights and Analysis from Veterans, Recruiters and Hiring Managers,” 8<sup>th</sup> Edition, July 2015, page 5

## LITTLE HOOVER COMISSION

## DCA DIRECTOR COMMENTS

**A brief overview of the Department of Consumer Affairs and its mission.**

The primary mission of the Department of Consumer Affairs (Department) is to protect California consumers. The Department consists of 26 boards, ten bureaus, two committees, one program, and one commission. These entities regulate and issue licenses to more than 250 different business and professional categories. These license categories do not include interior decorators, tattoo artists, or auctioneers which were discussed at length at the previous hearing.

From the Department's perspective licensing plays a critical role in ensuring consumer protection. First, if a licensee violates any part of their practice act the board can work to educate the licensee and help to prevent future violations. If issues persist or violations are severe enough disciplinary action can be taken against the license including, fines, citations, or license revocation. Taking disciplinary action is the ultimate authority a board has to restrict or remove bad actors and protect consumers. Licensing is one way to formally recognize competence or expertise, the other process is certification

Licensing differs from certification in a few key areas. Certification generally requires passing an exam administered by a private accrediting agency. Certification simply ensures that an individual has met certain criteria to practice in a given profession, but certification does not confer the privilege to practice. Traditionally, requirements for certification are set by a non-governmental entity that does not possess the regulatory power of a state entity consequently, if a consumer wishes to file a complaint or seek recourse from a certified practitioner they must work through the civil process.

**An overview of the Department of Consumer Affairs' relationship with the boards and bureaus that comprise it. Please explain any differences in the Departments' relationship with the bureaus vs. the boards. How does the Department supervise the boards and bureaus? How much authority does the Department have over the boards and bureaus?**

There is a different governance structure between boards and bureaus. Boards are semi-autonomous entities with appointed board members that set their own priorities. If a board has a policy issue that it wants to pursue, it can vote to seek a regulatory or statutory change during one of their public meetings. Boards can take positions on legislation; propose changes to state law, and take disciplinary actions on their licensees.

Bureaus are a direct extension of the Department and cannot act on policy matters without first consulting with the Department. Policy decisions start at the bureau level and must be vetted through the Department, the Business, Consumer Services and Housing Agency (Agency), and

finally the Governor's Office. Administratively, the director of the Department can delegate authority to a bureau chief to carry out licensing and enforcement duties.

**An overview of the boards and bureaus' rulemaking processes and the role the Department plays in rulemaking.**

In regard to the rulemaking process, when a proposed regulation is approved by a board, board staff prepare the regulation package for public notice and initial publication with the Office of Administrative Law. After publication of the regulation, the official public comment period begins and board staff submits the regulation package to the Department for official review.

The Department conducts a rigorous review of every regulation for its legal, economic, and policy impacts. In 2015, the Department reviewed 93 regulatory packages. Based on the review by the Department's executive staff, a position is recommended to the Director for approval. If there are any concerns with the regulation, the Department's executive staff work with the board and stakeholders to resolve issues or the Department Director can deny the regulation all together.

The process for Bureaus differs only in that before officially noticing and publishing with the Office of Administrative Law, the regulation is first reviewed by the Department and Business, Consumer Services, and Housing Agency. The Department also offers this courtesy to boards; however, it is not a requirement.

After the Department review is completed, the regulation is further reviewed by Agency. If there is an economic impact, the Department of Finance will also review the regulation. If Agency or the Department of Finance have any concerns, they contact the Department and staff work with the program to address those concerns. Once concerns have been addressed, the regulation is then returned to the Department for the closing process and then to the Board to file with the Office of Administrative Law.

**A discussion on the Department's effort to standardize data and create performance metrics. Please indicate how the Department measures how it is protecting consumers.**

Regarding performance measures, in 2010 in response to the realization that many healing arts boards were taking up to three years on average to complete an investigation and take action against a licensee, the Consumer Protection Enforcement Initiative was launched. A goal was set to first reduce these timelines to an average of between 12 and 18 months by focusing on the following issues:

- Staffing;
- Technology;
- Training; and

- Metrics, also known as performance measures.

The performance measures were developed in partnership with the boards and with enforcement experts. The goal was to measure as many standardized enforcement processes as possible. For example, all boards have processes for; intake, investigations, and discipline, however, boards may differ on exactly what activities take place within those three areas. This is also a reason boards may differ on performance measure targets. Since 2010, the Department has been gathering data on complaints, convictions, case aging, and enforcement times. The Department uses this data to work with boards to increase efficiency in its processes.

Beginning in the next fiscal year, the Department expects to begin reporting more detailed data on timelines and processes. Capturing and reporting more accurate data within the core performance measures will give the Department and boards additional information to review and analyze to ensure consumers are being protected.

**A discussion on the work the Department is doing to understand how the boards and bureaus look at applicant convictions.**

For each board and bureau, applicant convictions are dealt with on a case by case basis. In general, a board or bureau may deny a license only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.

For example, if an applicant for a security guard license had a previous felony for breaking and entering the Bureau of Security and Investigative Services would look at the specifics of the case to determine if a license should be issued. If the facts of the conviction are substantially related to the duties of the profession then a license may be denied. Other convictions would be considered differently by other licensing entities and, in the case of boards, the ultimate decision regarding licensing is up to the board members.

We continue to look at how our boards and bureaus license individuals and seek to ensure that unnecessary barriers are not created. However, the Department would caution this body regarding any one-size fits all approach to dealing with applicant convictions.

**Closing**

Finally I believe the Department plays an essential role in protecting the states' consumers. Through our licensing and enforcement efforts we ensure that licensees in a wide range of professions are qualified and that consumers have protection and recourse. I am open to reviewing applicant criteria for each license type to try and reduce unnecessary barriers to entry, as long as that does not create a risk for consumers.

Thank you for your time and I am happy to take any questions you may have.