



October 2008
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REGULATORY BOARD REVIEW

WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

AUDIT OVERVIEW

Licensure of Barbers and Cosmetologists Is Needed to Protect Public Interest

The Board of Barbers and Cosmetologists Complies With Most of the General Provisions of Chapter 30

The Practice of Hair Braiding and Hair Weaving May Fall Within Existing West Virginia Code Relating to Barbers and Cosmetologists

There Have Been No Incidences of Identity Theft Resulting From the Break-in at the Board's Headquarters

It Is Unclear Whether the Board's Executive Director Position Should Be Listed as Classified or Classified-Exempt Under the State's Civil Service System



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WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred John Sylvia Brian Armentrout Chris Carney Alysia Miller
Legislative Auditor Director Research Manager Research Analyst Referencer

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

October 14, 2008

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Jim Morgan
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

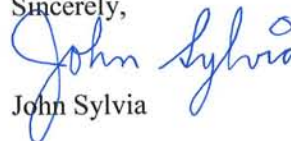
Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the *West Virginia Board of Barbers and Cosmetologists*, which will be presented to the Joint Committee on Government Operations and Joint Committee on Government Organization on Tuesday, October 14, 2008. The issues covered herein are "*Licensure of Barbers and Cosmetologists Is Needed to Protect Public Interest*;" "*The Board of Barbers and Cosmetologists Complies With Most of the General Provisions of Chapter 30*;" "*The Practice of Hair Braiding and Hair Weaving May Fall Within Existing West Virginia Code Relating to Barbers and Cosmetologists*;" "*There Have Been No Incidences of Identity Theft Results From the Break-in at the Board's Headquarters*" and "*It is Unclear Whether the Board's Executive Director Position Should Be Listed as Classified or Classified Exempt Under the State's Civil Service System*."

We transmitted a draft copy of the report to the West Virginia Board of Barbers and Cosmetologists on October 3, 2008. The Board of Barbers and Cosmetologists opted not to have an exit conference. We received the agency response from the Board of Barbers and Cosmetologists on October 6, 2008.

Let me know if you have any questions.

Sincerely,


John Sylvia

JS/tlc

Joint Committee on Government and Finance

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EXECUTIVE SUMMARY

Issue 1: Licensure of Barbers and Cosmetologists Is Needed to Protect Public Interest.

This report is a *Regulatory Board Review* which requires by law a determination of whether or not the Board of Barbers and Cosmetologists is necessary for the protection of public health and safety. The Board of Barbers and Cosmetologists is responsible for the health and welfare of all West Virginia citizens who seek professional services in barbering, cosmetology, manicuring and aesthetics. The 2007 Annual Report states that the Board issued 13,435 licenses in 2007. According to the *Occupational Outlook Handbook* provided by the U.S. Department of Labor all states require barbers, cosmetologists, and most other personal appearance workers to be licensed. Therefore, it is the opinion of the Legislative Auditor that it is necessary to continue licensing barbers and cosmetologists for the protection of the public.

The Board of Barbers and Cosmetologists has complied with applicable state laws and rules, except for not establishing continuing education requirements.

Issue 2: The Board of Barbers and Cosmetologists Complies With Most of the General Provisions of Chapter 30.

The Board of Barbers and Cosmetologists has complied with applicable state laws and rules, except for not establishing continuing education requirements. The Board suggests that its non-compliance dealing with continuing education requirements is due to being underfunded and not having the resources to implement continuing education or track the compliance with present staff and resources. Complaints are resolved in a timely manner. However, complaint information is inconclusive due to essential data missing from the annual reports.

The profession of hair braiding and weaving is relatively new and, with the exception of 10 states, is unregulated throughout the country. Hair braiding and weaving is unregulated in West Virginia.

Issue 3: The Practice of Hair Braiding and Hair Weaving May Fall Within Existing West Virginia Code Relating to Barbers and Cosmetologists.

The profession of hair braiding and weaving is relatively new and, with the exception of 10 states, is unregulated throughout the country. Hair braiding and weaving is unregulated in West Virginia. The profession poses potential harm but it is relatively low and not life threatening. The

Legislative Auditor contends that the unregulated practice of hair braiding and weaving creates a significant inequity and legal contradiction, in that braiding and weaving can be considered to be within the broad definitions of barbering and beauty culture, which are regulated. This conclusion is also supported by a 1981 legal opinion made by the Attorney General's Office. The Legislative Auditor recommends that the Legislature consider removing this inequity by taking the approach of others states that have regulated hair braiding and weaving by including it within the definition of their existing regulated practices.

Issue 4: There Have Been No Incidences of Identity Theft Resulting From the Break-in at the Board's Headquarters.

On the morning of Friday, August 17, 2007, the Board's headquarters was broken into by persons unknown. The thieves appeared to be looking for cash only, little of value was taken with the exception of the office safe. The safe contained no cash but did hold the back-up tapes for the computer system which included personally identifiable information including name, address, and social security numbers on the Board Director, Board members, and all licensees of the Board. Law enforcement was contacted, a report was filed and a full investigation of the break-in was initiated. A letter was sent out to all Board licensees on August 23, 2007, to inform them of the theft and to offer precautionary information regarding identity theft. According to the Director of the Board, to the best of his knowledge, there have been no reports to date of identity theft from any licensees as a result of the break-in of the Board's headquarters.

Legislative Auditor contends that the unregulated practice of hair braiding and weaving creates a significant inequity and legal contradiction, in that braiding and weaving can be considered to be within the broad definitions of barbering and beauty culture, which are regulated.

According to the Civil Service statute (WVC §29-6-4), the position of the executive director of a state board or commission should be classified-exempt, that is, it is exempt from civil service.

Issue 5: It Is Unclear Whether the Board's Executive Director Position Should Be Listed as Classified or Classified-Exempt Under the State's Civil Service System.

According to the Civil Service statute (WVC §29-6-4), the position of the executive director of a state board or commission should be classified-exempt, that is, it is exempt from civil service. The Division of Personnel indicated to the Legislative Auditor that this Board's

executive director is listed as classified service. According to the Civil Service Commission minutes from November 18, 1963, the Executive Director of the Board of Barbers and Cosmetologists was allocated to a classified position November 1, 1963, but changes to the code since 1963 would have this position listed as classified-exempt. By law, as amended, the executive director position should be a will and pleasure employee. Therefore, the Legislative Auditor recommends that the Legislature have the West Virginia Code clarified as to how the Board's executive director position should be classified.

Recommendations

1. *The Legislative Auditor recommends that the Legislature consider continuing the Board of Barbers and Cosmetologists.*
2. *The Legislative Auditor recommends that the Board of Barbers and Cosmetologists take appropriate measures in correcting its violation of not establishing continuing education requirements.*
3. *The Legislative Auditor recommends that the Board of Barbers and Cosmetologists thoroughly document all activities for its records and provide resolution dates for all complaints.*
4. *The Legislative Auditor recommends that the Legislature consider allowing the Board's fees be established by legislative rules.*
5. *The Legislative Auditor recommends that the Legislature consider regulating hair braiders and weavers under the current Code that regulates barbers and cosmetologists.*
6. *The Legislative Auditor recommends that the Division of Personnel list the Board of Barbers and Cosmetologists' executive director position as classified-exempt as required by West Virginia Code 29-6-4, along with any other position in the Board that should be legally listed as classified-exempt.*

OBJECTIVE, SCOPE & METHODOLOGY

This Regulatory Board Review of the Board of Barbers and Cosmetologists is required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10 of the *West Virginia Code*, as amended. The Board provides for the safety and protection of the consumer by providing licensure inspections of all licensed barber, beauty, manicuring and aesthetic shops.

Objective

The objective of this audit is to determine if the Board is necessary for protecting the public interest and whether or not the Board is operating in compliance with the provisions of Chapter 30 of the *West Virginia Code* and other applicable laws and rules.

Scope

The scope of the audit is fiscal years 2005 to 2008.

Methodology

Information compiled in this report has been acquired through communication with and documentation from the Board. Documents obtained from the Board included annual reports, board minutes, board procedures for investigating and resolving complaints, and board and licensee rosters. Information gathered from other state agencies included the Secretary of State's Office, the State Auditor's Office, and the Division of Personnel. Information was obtained from previous reports of the Legislative Auditor. Finally, information regarding licensing practices of other states was obtained via internet resources. Every aspect of this review compiled with Generally Accepted Government Auditing Standards (GAGAS).

Issue 1

Licensure of Barbers and Cosmetologists Is Needed to Protect Public Interest.

Issue Summary

This report is a *Regulatory Board Review* which requires by law a determination of whether or not the Board of Barbers and Cosmetologists is necessary for the protection of public health and safety. In determining the need for the Board, a primary consideration is the extent to which significant and discernable adverse effects on public welfare would occur if the Board were abolished. **The Legislative Auditor finds that the licensing of Barbers and Cosmetologists is necessary for protecting the citizens of West Virginia.**

Background

The mission of the Board of Barbers and Cosmetologists is to protect the health and welfare of all West Virginia citizens who seek professional services in barbering, cosmetology, manicuring and aesthetics.

The practice of “barbering, beauty culture, and manicuring” is defined by §16-14-2 as:

... “barbering” shall mean any one or combination of the following acts, when done on the human body, and not for the treatment of disease, to wit: Shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair, or applying tonics thereto; applications, treatment or massages of the face, neck or scalp with oils, creams, lotions, antiseptics, cosmetics, powders, clays or other preparations; and any such acts when done to encourage the use or sale of articles of trade, or for pay, rewards or other compensation, whether to be received directly or indirectly.

“Beauty culture” shall mean any one or combination of the following acts, when done on the human body,

The mission of the Board of Barbers and Cosmetologists is to protect the health and welfare of all West Virginia citizens who seek professional services in barbering, cosmetology, manicuring and aesthetics.

and not for the treatment of disease, to wit: The care, preservation and beautification of the hands and nails, commonly called manicuring; the cleansing, curling, waving, permanent waving, straightening, arranging, dressing, bleaching, tinting, coloring and shaping the hair, including such cutting of the hair as is necessary for the purposes mentioned in this paragraph; the application to, or treatment and massage of, the scalp, face, neck, arms, hands, or upper part of the body with oils, creams, lotions, powders, clays, cosmetics, antiseptics or other preparations; and any such acts when done to encourage the use or sale of articles of trade, or for pay, rewards or other compensation, whether to be received directly or indirectly. The retail sale or the trial demonstration by application to the skin for the purpose of making retail sale of cosmetics, preparations, tonics, antiseptics, creams or lotions shall not be considered the practice of beauty culture.

“Manicuring,” when done on the human body and not for the treatment of disease, shall mean the care, preservation and beautification of the hands and nails only.

The performance of any of the acts enumerated in this section shall not be deemed barbering, beauty culture or manicuring when done by duly licensed physicians, surgeons, nurses or morticians, in the proper discharge of their professional duties.

An Aesthetician is defined by §3-1-2 as:

... any person who engages in the practices and use of cosmetic preparations, makeups, antiseptics, tonics, lotions, creams, chemical preparations, or otherwise with hands or mechanical or electrical apparatus or appliances or who massages, cleanses, stimulates, manipulates, exercises, beautifies, grooms or performs similar work to the face, neck, arms and hands.

According to the 2007 Annual Report, the Board issued 13,435 licenses for 2007. The Board issued 13,615 in 2005 and 13,072 in 2006. Table 1 shows how these licenses are broken down.

Table 1 Licenses Issued For 2007	
<u>Renewals</u>	<u>License Types</u> Barbers – 545 Cosmetologists – 6,375 Barber/Cosmetologists – 98 Barbers Perm – 227 Manicurists – 684 Aesthetician – 87 Instructors – 78 Shops – 3044 Schools – 14 Total Renewals – 11,152
<u>Registrations</u>	<u>License Types</u> Barbers – 8 Cosmetologists – 369 Barber/Cosmetologists – 3 Barbers Perm – 16 Manicurists – 92 Aesthetician – 27 Instructors – 13 Shops – 368 Students – 799 Instructor Training – 13 Booth Rentals – 575 Total Registrations – 2,283
Total Licenses Issued 2007	13,435
Source: West Virginia Board of Barbers and Cosmetologists.	

Risks associated with the cosmetology profession fall into two major categories: transmission of communicable diseases and infection; and physical harm resulting from improper use of equipment and products.

The Profession of Barbering and Cosmetology Poses Risks to the Public

Risks associated with the cosmetology profession fall into two major categories: transmission of communicable diseases and infection; and physical harm resulting from improper use of equipment and products. Manicurists and aestheticians are required by the Occupational Safety and Health Administration (OSHA) to clean their instruments after use on each client and then submerging the implements fully in a disinfectant which prevents the spread of HIV and Hepatitis. Specific Hepatitis

viruses can remain infectious on salon surfaces for a week, making it 100 times more contagious than HIV if not properly sanitized. Further documented health hazards include accidentally getting chemicals into a person's eyes, skin infections acquired via contaminated whirlpool tubs where bacteria has collected due to the lack of sanitation, and the use of potentially harmful beauty products that are prohibited by the Food and Drug Administration (FDA). Consequently, inspections are essential to ensure proper sanitation not only for the health and safety of the customer, but for the licensee as well. Thus, licensure provides consumer protection and safety and health protection for citizens as well.

According to the *Occupational Outlook Handbook* provided by the U.S. Department of Labor, all states require barbers, cosmetologists, and most other personal appearance workers to be licensed. To qualify for a license, most applicants are required to graduate from a state-licensed barber or cosmetology school. Since there is no type of national licensure for these professions, West Virginia's licensing board is the only option for licensure.

According to the Occupational Outlook Handbook provided by the U.S. Department of Labor, all states require barbers, cosmetologists, and most other personal appearance workers to be licensed.

Conclusion

Currently, every state requires barbers, cosmetologists, and most other personal appearance workers to be listed. The Board issued 13,435 licenses in 2007. The professional occupations regulated under the Board of Barbers and Cosmetologists operate in various working conditions and perform duties that have the potential for harm to the public if competence were not regulated. **Therefore, it is the opinion of the Legislative Auditor that it is necessary to continue the licensing of the barbers and cosmetologists to provide for the protection of the public.**

Recommendation

1. *The Legislative Auditor recommends that the Legislature consider continuing the Board of Barbers and Cosmetologists.*

Issue 2

The Board of Barbers and Cosmetologists Complies with Most General Provisions of Chapter 30.

Issue Summary

The Board complies with most general provisions of Chapter 30 of the Code. The Board has yet to establish continuing education requirements. The Board properly investigates complaints and resolves them in a timely manner but a significant number of complaints files are missing proper documentation. The Board is financially self-sufficient but its end-of-year balance has been relatively low, approximately 20 percent of annual expenditures.

The Board of Barbers and Cosmetologists has complied with applicable state laws and most general provisions of Chapter 30, except for not establishing continuing education requirements.

The Board Complies With Most General Provisions of Chapter 30

The Board of Barbers and Cosmetologists has complied with applicable state laws and most general provisions of Chapter 30, except for not establishing continuing education requirements. These requirements, primarily found within the Board's own article of Code and in the general provisions of Chapter 30, are important in the effective operation of a licensing board. The Board has complied with the following requirements:

- The Board is listed in the state government section of the Charleston area telephone book and it maintains an Internet site (*Established April 26, 2002*);
- An official seal has been adopted;
- The Board meets at least once annually;
- The Board maintains a record of its proceedings;
- A representative of the Board has attended the annual State Board Seminar provided by the State Auditor's Office;
- The Board submits annual reports to the Governor and the Legislature;
- The Board maintains a register of applicants and a roster of licensees; and,

- The Board's meetings are open to the public and notifications to the Secretary of State's Office are published in a timely manner.

The Board Has Not Established Continuing Education Requirements

The Board has not yet established continuing education requirements, even though the 2002 Legislative Audit recommended that the Board comply with Code requirements and the Board agreed to do so. The Board suggests that its non-compliance is due to being underfunded and not having the resources to implement continuing education or track the compliance thereof with present staff and resources. The Board has introduced Legislation to increase the fees every year since 2002 without success. The bill failed to pass on the last day of the 2007 session needing one more vote.

The Board suggests that its non-compliance is due to being underfunded and not having the resources to implement continuing education or track the compliance thereof with present staff and resources.

The Board Properly Investigates Complaints

The Board's process for investigating complaints varies depending on the nature of the complaint. If it is a complaint alleging unsatisfactory service or incompetent service by a licensee or salon owner, the individual or salon owner is notified by letter with 14 days to respond to the Board in writing. The complainant is then sent a copy of the response for further comment or rebuttal. The Board then reviews the original complaint, the response and any rebuttal and makes a decision on the disposition of the complaint. If the complaint involves alleged unlicensed or other illegal activity, the complaint is forwarded to an inspector for investigation or in case of alleged illegal activities not within our jurisdiction (illegal drugs, etc.) the information will be forwarded to the proper authorities. Table 2 shows the complaints and resolutions for the years 2005 to 2007.

**Table 2
Complaints and Resolutions for 2005 -- 2007**

2005 Complaints	1 – Referred to Massage Therapy Board 1 – Referred to U.S. Department of Education 1 – Complaint withdrawn 21 – Dismissed by the Board 19 – Found to have no merit by the Inspectors 1 – Shop closed by Inspector 5 – Fines issued by Inspectors <u>24 – Warnings issued by Inspectors</u> 77 – Total
2006 Complaints	13-- Dismissed 5 – Up-held by the Board 7 -- No merit by Inspectors 11 -- Warnings issued by Inspectors 1 – C-36-B <u>3 – Fines by Inspectors</u> 40* -- Total
2007 Complaints	14 – Dismissed by the Board 1 – Withdrawn 2 – Upheld by the Board 17 – No merit 1 – Referred to Insurance Company 1 – Referred to Human Rights Commission 2 – Referred to Department of Education 17 – Warnings 5 – Fines <u>3 – Shops closed by Inspectors</u> 63 -- Total

Source: West Virginia Board of Barbers and Cosmetologists

** For FY 2006 a complaint was designated C-36-B in an attempt to keep the complaints in chronological order as the complaint C-36-B was not given to the person logging the complaints until after they had logged several more complaints for that period. This designation increases the total complaint number for FY 2006 to 40 complaints.*

Completed Complaint Files Show an Improvement in Resolving Complaints in a Timely Manner, However, a Significant Number of Complaint Files Are Incomplete

	2005	2006	2007
Number of Days	34.3	21.2	12.9

Source: West Virginia Board of Barbers and Cosmetologists

According to the Board's annual reports and stated in Table 3, the average number of days to resolve complaints was 34.3 for FY 2005, 21.2 for FY 2006, and 12.9 for FY 2007. This information is inconclusive due to essential data missing from the annual reports. Many of the resolved complaints are missing a resolution date. For FY 2005 the resolution time for 19 of the 77 complaints is not available due to certain dates not being provided; for FY 2006 12 out of 40¹; and for FY 2007 30 out of 63 complaints the resolution time is not available. Problems from designating numbers to complaints to keep them in chronological order and the skipping of numbers were the result of a person being unfamiliar with the numbering system. The Director stated:

I apologize for the errors in logging the complaints and resolutions but we have had several turnovers in staff, the lady responsible for logging the complaints was off work for over four months and the break in to our office which was very disruptive.

Although the information is inconclusive, Table 3 shows that documented information indicates that there has been an improvement of the days needed to resolve complaints. **The Legislative Auditor recommends that the Board thoroughly document all activities for their records and provide resolution dates for all complaints.**

According to the Board's annual reports... the average number of days to resolve complaints was 34.3 for FY 2005, 21.2 for FY 2006, and 12.9 for FY 2007. This information is inconclusive due to essential data missing from the annual reports.

¹ For FY 2006 a complaint was designated C-36-B in an attempt to keep the complaints in chronological order as the complaint C-36-B was not given to the person logging the complaints until after they had logged several more complaints for that period. This designation increases the total complaint number for FY 2006 to 40 complaints.

The Board Is Financially Self-Sufficient, However Its End-of-Year Balance Is Relatively Low

Financial self-sufficiency of regulatory boards is required by West Virginia Code §30-1-6(c). The Board of Barbers and Cosmetologists had revenues of \$418,304 for FY 2007. The Board's licensing and administrative fees imposed on its licensees are remitted to the Board's special revenue fund, and the fines imposed are remitted to the State's general fund in accordance with WV Code §30-1-8. As shown in Table 4, the Board's end-of-year balance shows that the Board is currently self-sufficient, however, the balance is relatively low, approximately 16 percent of its annual expenditures. Moreover, Table 4 shows a trend of expenditures exceeding revenues in each of the last three years. Past experience of the Legislative Auditor has shown that end-of-year balances of Chapter 30 boards tend to be closer to around 100 percent of annual expenditures, which may be more prudent. However, during the 2008 legislative session the Legislature passed a bill authorizing the Board to increase fees for one year. The licensing fee was raised from \$25 to \$35 and the examination fee was raised from \$25 to \$50. This may help increase the end-of-year balance to a more prudent amount.

The Board's end-of-year balance shows that the Board is currently self-sufficient, however, the balance is relatively low, approximately 16 percent of its annual expenditures. Past experience of the Legislative Auditor has shown that end-of-year balances of Chapter 30 boards tend to be closer to around 100 percent of annual expenditures,

**Table 4
Board Revenues and Expenses 2005-2007**

	FY 2005	FY 2006	FY 2007
Revenues	\$413,473	\$408,531	\$418,304
Expenditures	\$443,756	\$442,070	\$424,114
EOY Cash Balance	\$88,881	\$66,609	\$68,962

Source: Budget Division of the Legislative Auditor's Office

According to the 2002 report, the Board's EOY cash balance has decreased by \$84,476 from FY 2001 to FY 2007 (EOY Cash Balance for FY 2001 was \$153,438). **The recent increase of fees the Legislature authorized was the first increase since 1934.** Table 5 shows that some of the surrounding states have higher licensure and examination fees, some considerably higher, that enables the board to better control its budget and remain self-sufficient.

**Table 5
Licensure and Examination Fees**

	West Virginia	Pennsylvania	Maryland	Kentucky	Tennessee	Ohio
Licensure Fee	\$35**	\$35*	\$25	\$25	\$50	\$45
Examination Fee	\$50**	\$149	\$75	\$75	\$140	\$31.50

Source: Penn., Md., Ky., Tenn., and Ohio Boards of Cosmetology.
**Denotes Biennial licensure renewal.*
*** Recent increase in fees authorized by House Bill 4337 of the 2008 Legislative Session.*

Many licensing boards have their fees set by legislative rules which gives the board greater control over fees imposed on licensees, and allows the board to monitor and maintain financial self-sufficiency. Previously identified in the 2002 report, examination and licensure fees for the West Virginia Board of Barbers and Cosmetologists are set in statute in WVC §30-27-3 and §30-27-4 and also in legislative rules, which restricts the Board from having control over fees imposed on licensees, and allow the Board to monitor and maintain financial self-sufficiency. Again the Legislative Auditor recommends, as it did in the 2002 report, that the Legislature consider removing the code section legislating fees, and allowing the Board to set all of its fees by legislative rules.

Many licensing boards have their fees set by legislative rules which gives the board greater control over fees imposed on licensees, and allows the board to monitor and maintain financial self-sufficiency.

Conclusion

The Board of Barbers and Cosmetologists has complied with most of the general provisions of Chapter 30 of the West Virginia Code, except for establishing continuing education requirements. The Board responds to licensee complaints in a timely manner and provides due process to licensees for whom a complaint has been filed. The Board is currently financially self-sufficient, but its end-of-year balance is relatively low. The Legislative Auditor recommends that the Legislature consider allowing the Board's fees be established through legislative rules as opposed to the current method of having fees statutorily established.

Recommendations

2. *The Legislative Auditor recommends that the Board take appropriate measures in correcting its violation of establishing continuing education requirements.*
3. *The Legislative Auditor recommends that the Board thoroughly document all activities for its records and provide resolution dates for all complaints.*
4. *The Legislative Auditor recommends that the Legislature consider allowing the Board's fees be established by legislative rules.*

Issue 3

The Practice of Hair Braiding and Weaving May Fall Within Existing West Virginia Code Relating to Barbers and Cosmetologists.

Issue Summary

The profession of hair braiding and weaving is relatively new and, with the exception of ten states, is unregulated throughout the country. The profession poses potential harm but it is relatively low and not life threatening. Nevertheless, a significant inequity exists with braiding and weaving not being regulated, since hair braiding and weaving is arguably within the broad definitions in existing Code that regulates barbers and cosmetologists, a conclusion that is supported by a 1981 legal opinion by the Attorney General's Office. **By allowing hair braiders and weavers to practice unregulated while performing tasks that are by definition part of a regulated profession creates a legal contradiction.** In addition, hair braiders and weavers may be performing other regulated practices, such as cutting, bleaching and coloring hair. The Legislature should resolve this inconsistency by regulating hair braiding and weaving through current statutory language. Several states have resolved the same matter by regulating hair braiding and weaving under the current definitions of hairstyling practices.

Hair Braiding and Weaving Is a Relatively New Profession with Little Regulation

The profession of hair braiding and weaving is relatively new and consequently is not regulated in many states, including West Virginia. Braiding is the intertwining of hair, while weaving is the process by which a hair piece (synthetic or human hair) is attached to existing hair on scalp through braiding or another interweaving process. Currently, 10 states regulate hair braiders and weavers (see Table 6), including three of West Virginia's bordering states. These states regulate hair braiders and weavers through their respective boards that regulate barbers and cosmetologists or similar professions. Five of these states (Colorado, Michigan, New York, Ohio, and Tennessee) regulated this profession under a current license with no title distinction, while five other states

The profession of hair braiding and weaving is relatively new and consequently is not regulated in many states, including West Virginia.

Braiding is the intertwining of hair, while weaving is the process by which a hair piece (synthetic or human hair) is attached to existing hair on scalp through braiding or another interweaving process.

(Florida, Oklahoma, Pennsylvania, Texas, and Virginia) created a separate license with a distinct title.

State	License	Fees
Colorado	Hairstylist	\$75 exam & initial license, \$87* renewal
Florida	Hair Braider	\$30
Michigan	Natural Hair Culturist	\$25
New York	Natural Hair Stylist	\$15
Ohio	Natural Hair Stylist	\$45
Oklahoma	Hair Braiding Technician	\$25
Pennsylvania	Natural Hair Braider	\$10
Tennessee	Natural Hair Stylist	\$50
Texas	Hair Weaving/ Braiding	\$53
Virginia	Hair Braider	\$55

*Source: Licensing states' respective licensing boards.
Indicates the \$87 is for a two year renewal.

The Practice of Hair Braiding and Weaving May Already Fall Under WVC §16-14-2

Upon reviewing the definition of “Beauty Culture” (see Issue 1 of this report for a full definition) in WVC §16-14-2, it can be argued that the practice of hair braiding and weaving fall under this definition and thus should be regulated by the Board of Barbers and Cosmetologists through existing Code.

When asked if the practice of hair braiding and weaving should be regulated, the Executive Director of the Board of Barbers and Cosmetologists stated:

In my opinion, the practice of weaving and braiding hair does need to be regulated. West Virginia Code 16-14-2 defines Beauty Culture as “any one or combination of the following acts, when done on the human body, and not for the treatment of disease to wit: The care preservation and beautification of the hands and nails, commonly called manicuring; the cleansing, curling, waving, permanent waving, straightening, arranging, dressing, bleaching,

Upon reviewing the definition of “Beauty Culture” in WVC §16-14-2, it can be argued that the practice of hair braiding and weaving fall under this definition and thus should be regulated by the Board of Barbers and Cosmetologists through existing Code.

tinting, coloring and shaping the hair including cutting or the hair as is necessary for the purposes mentioned in this paragraph.

The act of braiding or weaving the hair clearly falls under the previously mentioned “arranging or dressing the hair”. The practitioners of this art are frequently required to trim the hair which also falls under the description of Beauty Culture.

The executive director of the Board of Barbers and Cosmetologists also indicated that the unregulated practice of weaving and braiding poses a potential harm to the public. The Executive Director stated:

If not done incorrectly, the practice of weaving and braiding may lead to premature hair loss and/or bald spots. The Practitioners of this service should also be regulated to ensure that they practice proper sanitary procedures.

The Office of the Attorney General has issued an opinion, 59 W.Va. Atty. Gen 142 (1981) that discusses the Code:

*Although the definition of barbering in Code §16-14-2 does not include the skill of permanent waving while the definition of beauty culture in that same Code section does, they should not be construed as mutually exclusive. That is, **the statutory definitions are descriptions of the types of services traditionally performed by barbers and beauticians.** Those descriptions are intended to place the public on notice as to the types of services which licensed practitioners of the two professions may perform. **The definitions are not intended to preclude new and innovative expansion of those services by the two professions, under the direction of the Board.***

The Legislative Auditor’s Legal Services also concluded, based on the language of the West Virginia Code §16-14-2 and the Attorney General’s opinion, hair braiding and weaving can fall under the practice of Barbers and Cosmetologists that is regulated under the West Virginia Code §30-27.

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Conclusion

Hair braiding and weaving is a relatively new profession that is arguably covered by WVC §16-14-2, which relates to the regulation of barbers and cosmetologists. As a result, a legal contradiction exists in which an unregulated profession is performing tasks that are within the definitions of a regulated profession. Hair braiders and weavers may be performing other regulated tasks, such as cutting, bleaching and tinting hair. Furthermore, they may not be following proper sanitary procedures. The Legislature can remedy this situation by regulating hair braiders and weavers under the current code that regulates barbers and cosmetologists.

Recommendation

5. *The Legislative Auditor recommends that the Legislature consider regulating hair braiders and weavers under the current Code that regulates barbers and cosmetologists.*

Issue 4

There Have Been No Incidences of Identity Theft Since the Break-in at the Board's Headquarters.

On the morning of Friday, August 17, 2007, the Board's headquarters was broken into by persons unknown. The thieves appeared to be looking for cash only, little of value was taken with the exception of the office safe. The safe contained no cash but did hold the back-up tapes for the computer system which included personal and identifiable information including names, addresses, and social security numbers of the board director, board members, and all licensees of the Board. Law enforcement was contacted, a report was filed and a full investigation of the break-in was initiated. A letter was sent out to all board licensees on August 23, 2007, to inform them of the theft and to offer precautionary information regarding identity theft.

According to the Director of the Board, to the best of his knowledge, there have been no reports to date of identity theft from any licensees as a result of the break-in of the Board's headquarters.

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Issue 5

It Is Unclear Whether the Board’s Executive Director Position Should Be Listed as Classified or Classified-Exempt Under the State’s Civil Service System.

The Division of Personnel indicated to the Legislative Auditor that the Board’s executive director and all of the Board’s staff are covered (classified) by Civil Service. Yet at the same time, executive directors and staff of other similar Chapter 30 licensing boards are not covered (classified-exempt) under Civil Service. Furthermore, the Civil Service statute, WVC §29-6-4(c), implies that certain positions selected by boards are exempt from classified service. This section of the Code reads as follows:

“Members of boards and commissions and heads of departments appointed by the governor or such heads of departments selected by commissions or boards when expressly exempt by law or board order.”

In addition, WVC §29-6-4(c)(6) states, “...One principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the governor or Legislature” are exempt from civil service coverage.

The Board’s executive director position also has some overlap between the Board and the Bureau for Public Health.² Under WVC §16-14-1, and according to the Acting Commissioner of Public Health, the Board’s executive director is considered her designee for enforcement of all laws and rules pertaining to sanitary conditions of barbering and beauty shops. The Commissioner of Public Health also has statutory authority to provide the Board with administrative support and to appoint the Board’s six inspectors who make inspections of all barber and beauty shops, and schools of barbering and beauty culture. These inspectors are required by law to report all violations to the Commissioner. However, the executive director has responsibilities to examine applicants for licensure and renew licenses, which is the jurisdiction of the Board (WVC §30-27-3).

The overlapping responsibilities the executive director has for the Board and the Commissioner of Public Health makes it unclear whether the executive director is employed by the Board or by the Commissioner of Public Health. Furthermore, it is unclear, because of the vagueness of §29-6-4(c), whether the executive director position should come under classified or classified-exempt service under the civil service system.

²West Virginia Code §16-14 uses outdated language in that it makes reference to the “State Department of Health,” which is now called the Bureau for Public Health, and it makes reference to “director of health,” which is now called Commissioner of Public Health.

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According to the Civil Service Commission minutes from November 18, 1963, the position of Director of the Division of Barbers and Cosmetologists, now the Executive Director of the Board of Barbers and Cosmetologists, was allocated to a classified position November 1, 1963. Similar chapter 30 boards are classified-exempt. The Legislature should decide how it wants to have this position classified given the changes to the statutes that have occurred since 1963. Therefore, the Legislative Auditor recommends that the Legislature have the West Virginia Code clarified as to how the Board's executive director position should be classified.

Conclusion

It is not clear how the executive director position of this Board became classified under civil service. Similar chapter 30 boards are classified-exempt. The Legislature should decide how it wants to have this position classified. Therefore, the Legislative Auditor recommends that the Legislature have the West Virginia Code clarified as to how the Board's executive director position should be classified.

Recommendation

6. *The Legislative Auditor recommends that the Legislature consider clarifying West Virginia Code as to how the Board of Barbers and Cosmetologists' executive director position and other positions be classified under the state civil service system.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

October 3, 2008

Larry Absten, Executive Director
Board of Barbers and Cosmetologists
1716 Pennsylvania Avenue, Suite 7
Charleston, West Virginia 25302

Dear Mr. Absten:

This is to transmit a draft copy of the Regulatory Board Evaluation of the Board of Barbers and Cosmetologists. This report is scheduled to be presented during the October 2008 interim meeting of the Joint Committee on Government Operations and Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by October 7, 2008. We need your written response by noon on October 9, 2008, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Friday, October 10, 2007 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Joint Committee on Government and Finance

Appendix B: Agency Response

State of West Virginia

Board of Barbers and Cosmetologists



October 6, 2008

John Sylvia, Director
WV Legislative Performance and Research Division
Building 1, Room W-314
1900 Kanawha Blvd. East
Charleston, WV 25305



Dear Mr. Sylvia:

In response to your evaluation of the Board of Barbers and Cosmetologists I offer the following:

I agree with the content of your report. The Board has strived to reduce the response time on all complaints and has done so dramatically. However, we pledge to do a better job of documenting the resolution dates for the complaints, hopefully, our staffing problems have stabilized and we will be able to produce a more efficient and consistent complaint process.

I agree the Board's fees need to be established by Legislative Rule and all fees taken out of the WV Code. We have attempted to do so since 2002.

I agree that the practice of hair braiding and weaving should be regulated by the Board and request permission to do so from the Legislature.

I agree that the Legislature should clarify the question of whether the Director of the Board and the Board staff is under the classified system or if classified exempt. I do however, believe that the present office staff and inspectors should remain under the classified system as they were all hired from the civil service register. If the Legislature determines that none of those positions are to remain under the classified service, then those positions should be "grandfathered" until the position is vacated and a replacement is hired.

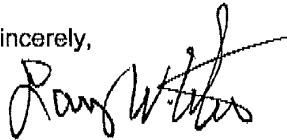
BOARD MEMBERS

Sarah Hamrick, Hurricane, WV, Justina Gabbert, Martinsburg, WV
Paula Kurczak, Fairmont, WV, James Ryan, Alum Creek, WV, Kenneth Coston, Charleston, WV
Larry W. Absten, Director, 1716 Pennsylvania Avenue, Suite 7, Charleston, WV 25302
Phone (304) 558-2924 Fax (304) 558-3450 E-mail larryabsten@wvdhhr.org
Visit us on the web at www.wvdhhr.org/wvbc

The current search for a new Executive Director has been very confusing as we were first told the position was under the classified service and subsequently requested a Civil Service Register for the position. Soon after, we reviewed an Attorney General's advisory opinion which stated it was not under the classified system and therefore had to re-advertise the position state wide as a non classified position. Therefore, we would welcome direction and clarification by the Legislature.

Thank you for the opportunity to respond to your report.

Sincerely,



Larry W. Absten
Director
Board of Barbers and Cosmetologist

LWA/ss



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939