

**STATE OF WEST VIRGINIA**

**SPECIAL REPORT**

**On The Board of Barbers and Cosmetologists**

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

**Board Complies with Most of the General  
Provisions of Chapter 30, but Should Promulgate  
Rules for Continuing Education Requirements**

**Dual Jurisdiction Over Rule Making Authority Between  
The Board of Barbers and Cosmetologists and the  
Bureau of Public Health Creates Potential Conflict and Ineffectiveness**

**OFFICE OF LEGISLATIVE AUDITOR  
Performance Evaluation and Research Division  
Building 1, Room W-314  
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305  
(304) 347-4890**

**August 2002**

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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 Evaluation 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 if there is a need for the Board, a primary consideration is whether the unregulated practice of the profession would clearly endanger the health and safety of the public. The finding of this issue is that licensing Barbers and Cosmetologists is necessary for protecting the citizens of West Virginia.

The Board establishes and regulates by Legislative rule the licensing standards and sanitation standards for individuals, shops, and school. The Board also provides protection to the public through frequent inspections of all licensed barber, beauty, manicuring and aesthetic shops and salons and all schools of barbering and cosmetology. The inspectors also investigate complaints related to the barbering and cosmetology professions and enforce state laws and legislative rules relative to the barbering and cosmetology professions. These inspections ensure sanitary working environments, particularly among manicurists and aestheticians to help prevent the spread of HIV and Hepatitis.

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 by the State in which they work. Since there is no type of national licensure for these professions, West Virginia's licensing board is the only available option for licensure. Thus, licensure provides consumer protection and safety and health protection for citizens as well.

### **Issue 2: The Board Complies with Most of the General Provisions of Chapter 30, but Should Promulgate Rules for Continuing Education Requirements.**

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

One of the requirements of a Chapter 30 licensing board is that the board set rules requiring licensees to continue their education within their profession. The Board of Barbers and Cosmetologists does not have continuing education requirements in place and it should take the appropriate measures to correct this violation of law. The Board of Barbers and Cosmetologists proposed Legislative Rules in April of 2000; however, these rules never passed **the Legislature**. According to the Executive Director of the Board, there has been some resistance with licensees regarding continuing education.

The Board responds to licensee complaints in a timely manner and provides due process to licensees against whom a complaint has been filed. The Board is currently financially self-sufficient, but needs to have fees raised by the Legislature to ensure their stability in the future.

### **Issue 3: Dual Jurisdiction Over Rule Making Authority Between The Board of Barbers and Cosmetologists and the Bureau of Public Health Creates Potential Conflict and Ineffectiveness.**

Within West Virginia Code, dual regulatory jurisdiction exists over barbers and cosmetologists between the Board of Barbers and Cosmetologists, and the Bureau of Public Health. Much of the regulatory authority is provided to the Bureau. The Board is responsible for assisting the Bureau, administering the examination of barbers and cosmetologists, and issuing licenses. **However, both entities have rule making authority over similar matters but the Bureau's authority supercedes the Board's.** This is a source of potential conflict and ineffectiveness.

The primary area of overlap exists with dual rule making authority. There are three alternatives that can be considered: 1) Place all authority with the Board; 2) Eliminate the Board and place all authority with the Bureau; or 3) Amend the statute to remove the overlap of rule making authority between the two entities by allowing the Board to vote on rule changes and provide the Bureau with a voting member on the Board. **The Legislative Auditor does not make a recommendation as to which option should be implemented.** In addition, if the Board is to remain, the Legislature should consider reorganizing the membership composition of the Board in order to better represent the population of licensees.

### **Recommendations**

1. *The Legislative Auditor recommends that the Legislature continue to require Barbers and Cosmetologists to be licensed by the State of West Virginia.*
2. *The Legislative Auditor recommends that the Board take appropriate measures in correcting their violation of establishing continuing education requirements.*
3. *The Legislative Auditor recommends that the Legislature should consider removing the code section legislating fees, and allowing the Board to set fees only by Legislative Rules.*
4. *The Legislative Auditor recommends that the Legislature consider restructuring the Board's membership to better represent its licensees.*

### **Review Objective, Scope, and Methodology**

This special report conducted of the West Virginia Board of Barbers and Cosmetologists under the authority of the Legislative Auditor by Chapter 4, Article 2, Section 5 of the West Virginia Code. The Board provides for the safety and protection of the consumer by providing inspections of all licensed barber, beauty, manicuring and aesthetic shops.

## **Objective**

As stated in the Code, a performance evaluation is to determine for an agency whether or not the agency is operating in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency.

## **Scope**

The performance evaluation covers from the period 1999 through July 2002.

## **Methodology**

Information compiled in this evaluation was acquired from the West Virginia Code, interviews with Board and staff, examinations of annual reports, survey of surrounding states, meeting minutes, travel reimbursements, and complaint files. Every aspect of this review is in compliance with the **Generally Accepted Government Standards (GAGAS)**.



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

This report is a Regulatory Board Evaluation 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 if there is a need for the Board, a primary consideration is whether the unregulated practice of the profession would clearly endanger the health and safety of the public. **The finding of this issue is that licensing Barbers and Cosmetologists is necessary for protecting the citizens of West Virginia.**

The mission of the Board of Barbers and Cosmetologists as stated in the annual report is:

*... to protect the health and welfare of all West Virginia citizens who seek professional services in barbering, cosmetology, manicuring and aesthetics.*

As stated by the Director of the Board:

*The Board provides protection to the public by conducting examinations to determine basic competency for graduates of all schools of barbering and cosmetology within the state as well as graduates of several of the neighboring states. The Board establishes and regulates by Legislative rule the curriculum in all state schools of barbering and cosmetology. The Board establishes and regulates by Legislative rule the licensing standards and sanitation standards for individuals, shops and schools.*

*The Board provides protection to the public through frequent inspections of all licensed barber, beauty, manicuring and aesthetic shops and salons and all schools of barbering and cosmetology, by the five inspectors assigned to the Board. The inspectors also investigate complaints related to the barbering and cosmetology professions and enforce state laws and legislative rules relative to the barbering and cosmetology professions.*

Frequent inspections of all licensed barber, beauty, manicuring and aesthetic shops is an important duty of the Board. These inspections ensure sanitary working environments, particularly among manicurists and aestheticians. 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. 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 by the State in which they work. Since there is no type of national licensure for these professions, West Virginia's licensing board is the only available option for licensure.

## **Conclusion**

Currently, all fifty states require barbers, cosmetologists, and most other personal appearance workers to be licensed. The professional occupations under the Board of Barbers and Cosmetologists are engaged in various health related settings and perform duties which 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 barbers and cosmetologists to provide for the protection of the public.**

## **Recommendation**

*1. The Legislative Auditor recommends that the Legislature continue to require Barbers and Cosmetologists to be licensed by the State of West Virginia.*

## **Issue 2: The Board Complies with Most of the General Provisions of Chapter 30, but Should Promulgate Rules for Continuing Education Requirements.**

The Board of Barbers and Cosmetologists has complied with applicable state laws and rules, except for not establishing continuing education requirements. These laws and rules, primarily found with 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;
- A representative of the Board has attended the orientation session provided by the State Auditor's Office;
- The Board meets at least once annually;
- The Board maintains a record of its proceedings;
- The Board files meeting notices as required by the Open Government Proceedings Act;
- The Board submits annual reports to the Governor and the Legislature;
- The Board maintains a register of applicants and a roster of licensees.

### **The Board has no Continuing Education Requirements**

One of the requirements of a Chapter 30 licensing board is that the board set rules requiring licensees to continue their education within their profession. West Virginia Code §30-1-7(a) states that each board shall establish continuing education criteria based on its discipline which shall include, but not limited to, course content, course approval, hours required and reporting periods. **The Board of Barbers and Cosmetologists does not have continuing education requirements in place and it should take the appropriate measures to correct this violation of law.** The Board of Barbers and Cosmetologists proposed Legislative Rules in April of 2000; however, these rules never passed the Legislature. According to the Executive Director of the Board, there has been some resistance with licensees regarding continuing education, and the Board has recommended to grandfather current licensees in order to enact continuing education requirements.

### **Complaints are Resolved Timely**

The Board of Barbers and Cosmetologists maintains a computer log of all complaints received. The Board responds to complaints within two weeks of the initial complaint, and most complaints deal with individuals working without a license or practicing on an expired license, and unsanitary work conditions. The Board is neither required by Code nor Legislative Rules to resolve complaints in a specified time frame. For complaints reported in FY 2001, the average length of time for resolution of complaints was approximately 18 days. Table 1 shows the number of complaints logged for the past three fiscal years.

<b>Table 1 Complaint Log 1999-2001</b>				
<b>Fiscal Year</b>	<b># of Complaints</b>	<b>Total Fines</b>	<b># of Fines</b>	<b>Suspensions/ Revocations</b>
<b>1999</b>	21	\$1,500	3	1
<b>2000</b>	29	\$5,100	18	1
<b>2001</b>	46	\$7,305	42	1

Due process is provided by the Board as required by WV Code §30-1-8 for licensees against whom the complaint has been filed. Allegations can be denied by the licensee, and a hearing can be brought before members of the Board. Licensees are given the right to subpoena witnesses or documentation on their behalf. Every state beauty and cosmetology school is required to teach a curriculum of state law classes, which familiarizes students with due process, complaint procedures, and their responsibilities and privileges set forth in WV Code.

### **The Board is Financially Self-Sufficient**

Financial self-sufficiency of regulatory boards is required by West Virginia Code §30-1-6(c). The Board of Barbers and Cosmetologists had a total budget for FY 2002 of \$436,192. The Board's licensing and administrative fees imposed against 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 2, the Board is currently self-sufficient through its licensing fees.

<b>Table 2 Board Revenues and Expenses 1999-2001</b>			
	<b>FY 1999</b>	<b>FY 2000</b>	<b>FY 2001</b>
<b>Revenues</b>	\$431,924	\$397,097	\$386,313
<b>Expenditures</b>	\$361,906	\$358,112	\$421,572
<b>EOY Cash Balance</b>	<b>\$166,726</b>	<b>\$199,930</b>	<b>\$153,438</b>

In fiscal year 2001, the Board's expenditures exceeded revenues partially due to the cost of converting their licensing system over to a windows based system by IS&C. In addition to the cost of converting their licensing system, the Board received an average of \$1,018 per month less in FY 2001 because of expenses incurred conducting examinations. As shown in Table 3 below West Virginia's examination fees are at least \$22 lower than any surrounding state and on average \$66 lower than surrounding states. **Examination fees, along with student registration fees have not been raised since 1934.**

<b>Table 3 Licensure and Examination Fees</b>						
	<b>WV</b>	<b>Penn.</b>	<b>Md.</b>	<b>Ky.</b>	<b>Tenn.</b>	<b>Ohio</b>
<b>Examination Fee</b>	<b>\$25</b>	\$120	\$47	\$125	\$83	\$80
<b>Licensure Fee</b>	<b>\$25</b>	\$42*	\$50	\$40	\$50	\$75*

*\* Denotes Biennial licensure renewal*

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. Examination and licensure fees for the Board of Barbers and Cosmetologists are set in statute in WVC §30-27-3 and §30-27-4 and also in Legislative Rules. The Legislative Auditor recommends that the Legislature should consider removing the code section legislating fees, and allowing the Board to set fees only by Legislative Rules.

## **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. Legislative rules have been proposed to set continuing education requirements. The Board responds to licensee complaints in a timely manner and provides due process to licensees against whom a

complaint has been filed. The Board is currently financially self-sufficient, but needs to have fees raised by the Legislature to ensure their stability in the future.

## **Recommendations**

2. *The Legislative Auditor recommends that the Board take appropriate measures in correcting their violation of establishing continuing education requirements.*
3. *The Legislative Auditor recommends that the Legislature should consider removing the code section legislating fees, and allowing the Board to set fees only by Legislative Rules.*

### **Issue 3: Dual Jurisdiction Over Rule Making Authority Between The Board of Barbers and Cosmetologists and the Bureau of Public Health Creates Potential Conflict and Ineffectiveness.**

Within West Virginia Code, dual regulatory jurisdiction exists over barbers and cosmetologists between the Board of Barbers and Cosmetologists, and the Bureau of Public Health. Much of the regulatory authority is provided to the Bureau. The Board is responsible for assisting the Bureau, administering the examination of barbers and cosmetologists, and issuing licenses. **However, both entities have rule making authority over similar matters but the Bureau's authority supercedes the Board's.** This is a source of potential conflict and ineffectiveness.

The Legislative Auditor reviewed this statutory arrangement only to inform the Legislature of the situation and to offer possible solutions. The primary disadvantage with the current arrangement is that some conflicts may result if the Board wants to make changes that the Bureau disagrees with. This problem would be eliminated if all authority were placed with the Board; however, there is the risk that the Board may not perform the function as well as the Bureau. A simpler solution would be to amend the statute to allow rule changes to be voted on by the Board and place a designee from the Bureau on the Board as a voting member. Another alternative is to eliminate the Board. This could result in cost savings, but there would be some loss of professional input. **The Legislative Auditor makes no recommendation as to which option to implement.**

### **Dual Jurisdiction over Barbers and Cosmetologists**

According to WV Code §16-14-1, the State Department of Health, now known as the Bureau of Public Health, has jurisdiction over barbers and cosmetologists. The Bureau is responsible to provide administrative support to the Board as may be reasonable and appropriate. A letter from the Bureau of Public Health (Bureau) stated:

*The Bureau does have the authority to supervise, hire or fire and give raises to Board employees, but the exercise of that authority has been **delegated to the Executive Director of the Board** by (the Commissioner of Public Health).  
(Emphasis Added)*

The Bureau also has the responsibility to establish and enforce all laws and rules pertaining to sanitary conditions of barbering and cosmetology facilities. As a result, the Bureau is responsible for investigating and resolving complaints against licensees. The Bureau also has authority to promulgate rules concerning the licensure and qualification of the profession and the standards of instruction for schools of barbering and beauty culture.

On the other hand, the Board of Barbers and Cosmetologists also has jurisdiction over these professions. The Board is responsible for examining applicants, issuing licenses and collecting fees. The Board has authority to promulgate rules, but this authority is concurrent with the Bureau's authority and it extends to the same issues. However, the Bureau's rules would supersede the

Board's if their rules are in conflict. Below is a description of the statutory authority for the Board and for the Bureau.

**WVC §16-14-3 Public Health**

The board of health **shall promulgate rules** and regulations pertaining to the sanitary conditions of barbering and beauty shops, licensure, and qualifications of barbers, beauticians and manicurists, and curricula and standards of instruction for schools of barbering and beauty culture. (Emphasis Added)

**WVC §30-27-1(g) Barbers and Cosmetologists**

The board **shall have the power to promulgate rules** generally regarding the practice and conduct of barbering and beauty culture, including, but not limited to, the procedures, criteria and curricula for examination and qualifications of applicants for licensure, and for the licensing of instructional personnel for schools of barbering and beauty culture, and the practice and conduct of aestheticians. (Emphasis Added)

It can be seen that rule making authority is granted to both entities over the same matters. This statutory overlap could be a source of conflict between the Board and the Bureau if the Board wants certain changes that the Bureau disagrees with, since the Bureau has superceding authority (§30-27-1(g)).

The Bureau of Public Health believes that the Board should remain under the Bureau because the service barbers and cosmetologists provide to the public are health related. The President of the Board feels as though the Board should either be on its own (not under the Bureau of Public Health) or be responsible for the Board's actions. Under the current organization, Board members have no authority regarding decisions on personnel matters and internal policy made by the Executive Director. In some instances, board members are not made aware of spending of license revenues and budget requests made by the Executive Director. The former President of the Board also stated that board members are confused about their responsibilities and authority. According to the Board, it has trouble making recommendations or improvements for licensees. With the current management arrangement of the Board, members feel like they don't have the authority or ability to make these changes.

Board members also feel that they should have a decision on personnel matters. For example, the Executive Director could hire an additional employee without the Board's input or determining whether there is a necessity. Regarding hiring of employees, the current Director of the Board stated:

*The authority to hire and fire inspectors and office employees was delegated to the Director of the Board by the Commissioner of Health prior to my employment which was January 1989. ..., the former Director of the Board, also hired all office staff and inspectors and to the best of my knowledge, the Board members have never had an active role in the selection of these employees.*

*In the more than thirteen years that I have served as Director, none of the Board members have expressed any interest in participating in the selection of the*

*Board employees. If the present Board would like to appoint a committee to assist in this process, I would be completely agreeable to including them in the selection process of any future employees.*

## **Alternative Arrangements to be Considered**

Confusion of the Board's responsibilities and possible conflicts between the two entities could cause some ineffectiveness. Alternative arrangements are: 1) Place all authority with the Board; 2) Eliminate the Board and place all authority with the Bureau; or 3) Amend the statute to allow rule changes to be voted on by the Board and provide the Bureau with a voting member on the Board. The majority of West Virginia's licensing boards are independent entities. A purpose of a licensing board is to allow licensees to have input on rules and regulations surrounding their profession. Placing all authority with the Board would eliminate the current confusion and conflict. However, it is not certain if the Board would perform as well as the Bureau has. Furthermore, the Bureau's involvement in regulating these professions has value given its responsibilities over public health.

Another option is to eliminate the Board and place all licensing functions with the Bureau. This function should be considered because the Board has the limited responsibility of providing for the licensing examination. The Board does not have continuing education requirements and complaints against licensees are investigated and resolved by Bureau staff. **If the examination function were placed with the Bureau there would be some cost savings.** For the past three fiscal years, the cost of the Board members for expenses and per diem has risen from \$31,230 in FY 1999 to \$46,619 in FY 2001. Board members travel from different parts of the state to sit during applicant examinations. The Bureau could provide staff to administer the exam, which would probably cost less than the cost of the Board because of less travel. However, without the Board the professionals would not have the public forum that the Board provides. Although the Bureau may be receptive to the needs of these professions, having an independent Board composed of licensees would likely be preferred by licensees.

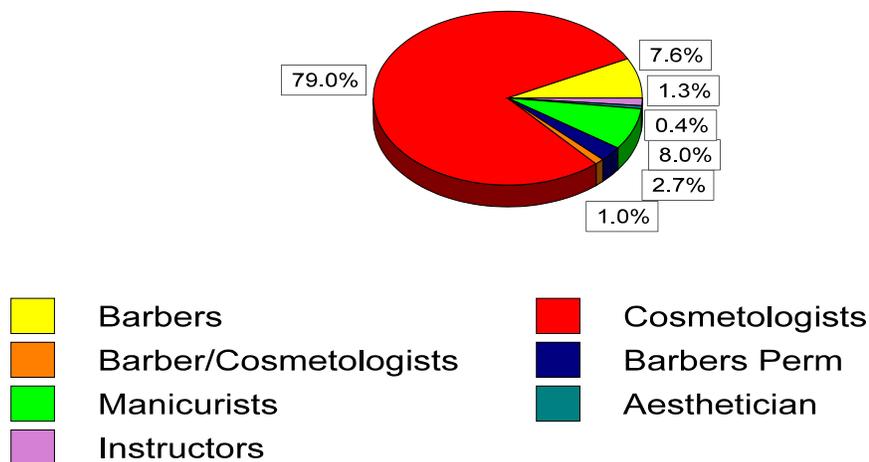
A final option would be to amend the statute to allow rule changes to be voted on by the Board and allow the Bureau to have a voting member. This would alleviate confusion, conflict and potential ineffectiveness and it would allow the Board more input over important matters.

## Manicurists and Aestheticians Should Have Representation on the Board

The Board has 8,482 licenses issued for 2002. Seventy-nine percent of the Board's licensees are cosmetologists. The following graph shows the breakdown of professions licensed by the Board for 2002. The Legislative Auditor is concerned with the membership composition of the Board. The current composition has two cosmetologist representatives, two barber representatives, and one lay member, **leaving manicurists and aestheticians without any representation on the Board.** Manicurists make up 8% of licensees while barbers make up 7.6% of licensees, but manicurists have no representation on the Board. A representative of the Board feels that manicurists and aestheticians should have a professional representative on the Board to better serve licensees. **The Legislative Auditor recommends that the Legislature restructure the Board's membership to better represent its licensees.**

Figure 1

### 2002 Board Licensees



## Conclusion

Dual jurisdiction over the professions of barbers and cosmetologists by the Board and the Bureau can lead to confusion, conflict and ineffectiveness. The primary area of overlap exists with dual rule making authority. There are three alternatives that can be considered: 1) Place all authority with the Board; 2) Eliminate the Board and place all authority with the Bureau; or 3) Amend the statute to remove the overlap of rule making authority between the two entities by allowing the Board to vote on rule changes and provide the Bureau with a voting member on the Board. **The Legislative Auditor does not make a recommendation as to which option should be implemented.** In addition, if the Board is to remain, the Legislature should consider reorganizing the membership composition of the Board in order to better represent the population of licensees.

## **Recommendation**

4. *The Legislative Auditor recommends that the Legislature consider restructuring the Board's membership to better represent its licensees.*



**APPENDIX A**

**Transmittal Letter to Agency**







**APPENDIX B**  
**Agency Response**





