



To: Economic Affairs Interim Committee

From: Montana Board of Barbers and Cosmetologists

Date: June 10, 2013

Subject: HB525 – BAR/COS response to the Economic Affairs Interim Committee questions

**1. What is the public health, safety or welfare rationale for licensing and regulating your Profession/Occupation?**

The Professions/ Occupations that are regulated by this board are those of a very few boards that require the licensee to physically touch their customers/ patrons. It is possible that licensees under the jurisdiction of this board touch more peoples skin, hair and scalp than medical doctors do with patients on a daily basis. This being the case, proper application of sanitation, disinfection and when appropriate sterilization procedures, must be observed to protect the public, to guard against the spread of infection.

The regulation of Barbers, Cosmetologists, Estheticians, Electrologists, Instructors, Manicurists through licensure serves the public interest by protecting the public against the risk of bodily harm by the use of practices (proper use of chemicals, implements, machines and equipment) that someone has been adequately trained to use and the knowledge of infection control by the proper disinfection/sterilization of equipment that is used on the public.

During the practice of these professions/occupations, there is the possibility of the licensee coming into contact with body fluids and blood, either associated with the service, or by the accidental misuse of a tool or an implement. If this should occur appropriate blood spill and blood borne pathogen procedures must be observed. It is this board's responsibility to insure that proper education, rulemaking, and ongoing facility and practitioner inspections are consistently applied for the protection of the public.

**2. If your profession/occupation were not licensed, what public protection would be lost?**

Licensure of the professions is preceded by and premised upon strict standards of education and periods of supervised experience for students. Students are educated in the proper and safe uses of the tools, implements, equipment and chemicals that are necessary to their practice. Students receive formal instruction in, anatomy, physiology, chemistry and the recognition of diseases and disorders that are associated with the hair, skin and nails. If this education was not required, followed by board approved nationally accepted theory and practical exams to determine competency, prior to issuing of licenses, the public would be exposed to a vast variety of unsafe, unsanitary and disease spreading practices.

The failure to regulate those who would practice under this board would be exposing the public to potentially harmful procedures and infection. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public complaints. The board sets the standards needed to insure that competency is met for the profession it regulates.

**3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.**

Yes. The board determines the educational curriculum and school standards to ensure that all licensees receive adequate and appropriate education in their scope of practice.

A board is necessary to provide the expertise to evaluate initial licensure applicants (such as appropriate educational, exams administered and passed, and to ensure there are no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. As required by law, the Board of Barbers and Cosmetologists is comprised of nine members and currently include three Cosmetologists, three Barbers, one Manicurist and two public members. The mix of the professions licensed by this board is the most appropriate method to deal with oversight issues.

**4. Does your board deal with unlicensed practice issues? If yes, what types of issues?**

Occasionally, the board is alerted to the conduct of individuals who portray themselves as having appropriate education and training to practice when they are not qualified. A great deal of personal harm to individuals may result if the unlicensed person is not trained in the correct procedures, safety, sanitation and the recognition of potentially harmful and contagious diseases associated with their practice.

**5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?**

The safe and competent practice of the disciplines under this board is learned through formal education and training and under supervision when students perform services on the public in an educational environment. To ensure the proper and necessary preparation, the law currently requires reasonable standards that do not unfairly bar any individual from earning a living once they have met qualifications.

**6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?**

Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists and they have followed this procedure. The presiding officer and staff also monitor bias

on a case-by-case basis to help ensure that the possibility or perception of bias is avoided. In addition, the public right to participation in open meetings is encouraged. Having a mix of public and professional members who serve together on the board is another safeguard. Board counsel will also advise members/staff if issues of bias come forward.

**7. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?**

Associations have a certain degree of overlap in their respective purposes. However, professional associations consist of members of the profession who choose to join the associations. Generally speaking, the primary mission of an association is to promote an industry, while the primary mission of a regulatory board is to protect the public. These are two separate functions not well-suited to be performed by the same entity.

No state professional associations currently exist that would function in this manner. Those national associations that are available for voluntary membership do not have oversight as part of their mission. Theirs is that of professional advancement, advanced training, and legislative action.

**8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?**

While this may not be directly pertinent for the Board of Barbers and Cosmetologists, those licensees who want liability insurance may find it required or easier to obtain in a licensed and regulated profession that sets forth certain standards of practice.

**9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?**

The board has the expertise of the disciplines it licenses along with members who understand the technical, artistic and beneficial aspects of the profession and two public members to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the department without the use of a board.

**10. Is there an optimum ratio between licensees, board size, or public representation?**

The number of licensees regulated by the board does not necessarily dictate the number of board members; however it may be taken into consideration on a board by board basis. What we have now, seven professional and two public members, appears to work well.

**11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?**

A disinterested third party would spend significant time and money learning the professions to best protect the public, the regulating entity must have adequate knowledge of “standards of practice,” with which the board is already uniquely equipped because of its professional members.

**12. If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?**

The scope of practice involving the professions under the board of Barbers and Cosmetologists (37-31-101) defines the areas of practice that are overlapping (as for a cosmetologist) and those that are distinct (barbering, manicuring, electrology, esthetics and instructors).

The public should be able to rely on the distinct titles associated with licensure that indicates the level of education and training associated with that person's practice. While there may be a third-party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the board responsible for regulating the practice.

**13. Should any board have the ability to limit use of certain terminology to only a licensee?**

Terminology that implies a particular level of training/experience should have its use restricted to those individuals that actually have that training/experience and have been adequately assessed. Consumers have a right to know the minimum qualifications of those who utilize the associated titles and terms, which is why some boards should be able to limit the use of certain terminology to only a licensee.