



COLO R A D O

**Department of
Regulatory Agencies**

2014 Sunset Review:

**Barber and Cosmetologist Act
and Barber and Cosmetology Advisory
Committee**

*Office of Policy, Research and Regulatory Reform
October 15, 2014*



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2014

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Barber and Cosmetologist Act and the Barber and Cosmetology Advisory Committee. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2015 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 8 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Professions and Occupations and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads 'Barbara J. Kelley'.

Barbara J. Kelley
Executive Director





COLORADO

Department of Regulatory Agencies

2014 Sunset Review Barber and Cosmetologist Act and the Barber and Cosmetology Advisory Committee

SUMMARY

What Is Regulated?

Under the Barber and Cosmetologist Act (Act), barbers, cosmetologists, estheticians, hairstylists, and manicurists must hold a license to provide services in Colorado. Places of businesses (shops) where such services are provided must register with the state.

Why Is It Regulated?

Regulation ensures that barbers, cosmetologists, estheticians, hairstylists, and manicurists possess basic competence and provides the public an avenue to file complaints against incompetent individuals and businesses.

Who Is Regulated?

In June 2014, there were a total of 53,889 individuals and businesses licensed or registered under the Act:

- 2,237 barbers
- 29,826 cosmetologists
- 6,235 estheticians
- 2,321 hairstylists
- 8,760 manicurists
- 4,510 shops

How Is It Regulated?

The Director of the Division of Professions and Occupations (Director) within the Colorado Department of Regulatory Agencies is vested with the authority to regulate barbers, cosmetologists, estheticians, hairstylists, manicurists, and shops where such services are provided. The Barber and Cosmetology Advisory Committee assists the Director in fulfilling his or her statutory responsibilities. In order to qualify for a license, applicants must present proof of graduation from an approved beauty or barber school, pass a written and a practical examination, and pay a fee. Shops need only submit an application and pay a fee.

What Does It Cost?

In fiscal year 12-13, the total cost of regulation under the Act was \$920,084, and there were 3.90 full-time equivalent employees associated with the program.

What Disciplinary Activity Is There?

From fiscal year 08-09 to 12-13, the Director took a total of 2,371 disciplinary actions against individuals and businesses regulated under the Act, including citations, letters of admonition, revocations, stipulations, and cease-and-desist orders.

KEY RECOMMENDATIONS

Continue the Barber and Cosmetologist Act and the Barber and Cosmetology Advisory Committee for 11 years, until 2026, and repeal the separate sunset provision for the Committee.

By requiring licensees to meet minimal requirements before providing services to the public, investigating complaints, inspecting places of business, setting standards for cleaning and disinfection, and educating licensees and registrants about the standards, the Director assures the health and safety of the public. The Committee plays a key role in this regulation. Because the Act encompasses the Committee, it is unnecessary for the Committee to have a separate sunset provision.

Clarify that places of business must register with the Director and that the Director may take disciplinary action against registrants.

Shop owners bear responsibility for the storage and handling of harsh chemicals and for maintaining cleaning and disinfection standards within their places of business. Failure to maintain such standards could harm the public. The Act should be revised to clarify that all shops must register, and that the Director may discipline any shop that poses a threat to the public health. Making these changes would enhance public protection and eliminate the statute's current ambiguity without placing an undue burden on shop owners.

Exempt practitioners of natural hair braiding from the Act.

Under current law, practitioners of natural hair braiding must hold either a hairstylist or a cosmetologist license, but the education programs for those professions do not teach, and the required examinations do not test for, natural hair braiding. There is no meaningful relationship between the formal training and testing the Act compels a person to undergo and the profession he or she is seeking to enter. Exempting natural hair braiders from the Act would remove unnecessary regulation, increase the public's access to affordable services, bolster economic activity, and stimulate competition without putting the public at risk.

MAJOR CONTACTS MADE DURING THIS REVIEW

Associated Hair Professionals
Associated Skin Care Professionals
Barber and Cosmetology Advisory Committee
BluCo Brands
Colorado Community College System, Career and Technical Education
Colorado Division of Private Occupational Schools
Colorado Division of Professions and Occupations
National Association of Barber Boards of America
National Coalition of Estheticians, Manufacturers/Distributors & Associations
National-Interstate Council of State Boards of Cosmetology
Professional Beauty Association

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
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www.dora.state.co.us/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.colorado.gov/opr.

The regulatory functions of the Director of the Division of Professions and Occupations (Director and Division, respectively) and the Barber and Cosmetology Advisory Committee (Committee) as enumerated in Article 8 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2015, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the licensing program for barbers, cosmetologists, estheticians, hairstylists, and manicurists pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued for the protection of the public and to evaluate the performance of the Director. During this review, the Director must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff attended Committee meetings, interviewed Division staff, reviewed Committee records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed licensed professionals, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Professions

For thousands of years, there have been people in the business of enhancing the appearance of their customers. The cutting and styling of hair, the shaving of the face, and the beautification of the skin and nails were practices familiar to ancient cultures around the globe.

In the 21st century, there are numerous similar but distinct professions devoted to enhancing the appearance. The specific scopes of practice of these professions vary somewhat from state to state, but in general:

- **Barbers** shampoo, cut, and style the hair and shave the face. They may also provide chemical services, such as color, bleach, highlights, permanent waves, or relaxers. In some states, including Colorado, barbers are the only professionals who can perform straight-razor shaves.
- **Estheticians**, also called cosmeticians or skincare specialists, care for the skin by performing facials, chemical peels, and other services, and remove unwanted hair using tweezers, wax, or other methods.
- **Hairstylists** shampoo, cut, and style hair, and are more likely than barbers to provide chemical services.
- **Manicurists**, also called nail technicians, clean, shape, and beautify fingernails and toenails.
- **Cosmetologists**, who have the broadest scope of all the professions, are trained to provide a wide range of hair, skincare, and nail services.

All of these professionals must be knowledgeable about current styles, trends, and products, and know how to handle sharp implements such as scissors, razors, and nippers, and chemicals that can be harmful if not handled properly. They must be familiar with basic health and safety protocols, including universal precautions, and know how to properly clean and disinfect surfaces, implements, and equipment.

To enter any of the above professions, applicants must typically complete a course of study and pass a written and a practical examination in which the applicant demonstrates skills on either a mannequin or a live model. The number of education hours required for a license varies widely from state to state. States generally require barbers and cosmetologists to complete the most training, ranging from 1,000 to 2,100 clock hours, with an average required length of 1,590. Esthetics programs range from 260 to 1,500 hours, and manicuring from 100 to 750 hours.²

Education programs for all these professions generally include instruction in basic health and sanitation; extensive instruction in the specific techniques applicable to each profession, e.g., haircutting for barbers and makeup application for estheticians; as well as classes in interpersonal skills, ethics, and management.

Barbers, hairstylists, and cosmetologists typically work in salons or barbershops. Most of these professionals work part-time and roughly half are self-employed, meaning that they either own their own barbershops or salons or that they are independent contractors or booth-renters. In May 2012, the median hourly wage was \$12.06 for barbers and \$10.91 for cosmetologists and hairstylists. The U.S. Department of Labor projects that overall employment for these occupations will grow 13 percent from 2012 to 2022, which is about as fast as the average for all occupations.³

Estheticians usually work in salons and spas, and less often, in medical offices. Most estheticians work full-time. About 27 percent of estheticians are self-employed. In May 2012, the median hourly wage for estheticians was \$13.77. The Department of Labor projects that employment of estheticians will grow 40 percent from 2012 to 2022, far outpacing the average rate of growth for all occupations. An increasing interest in reducing the effects of aging likely drives this growth.⁴

Manicurists typically work in nail or hair salons or spas. Most work full-time and about 27 percent are self-employed. Manicurists' median hourly wage was \$9.24 in May 2012. The U.S. Department of Labor projects that overall employment for manicurists will grow 16 percent from 2012 to 2022, which is faster than the average for all occupations.⁵ Compared to other luxury services, such as massages and facials, manicures and pedicures are relatively low-cost, which likely contributes to an increased demand for services and faster than average growth in job opportunities.

² Most states do not offer a hairstylist license, so a comparison of the hours is not available.

³ Bureau of Labor Statistics, U.S. Department of Labor. *Occupational Outlook Handbook, 2014-15 Edition*, Barbers, Hairdressers, and Cosmetologists. Retrieved on June 16, 2014 from <http://www.bls.gov/ooh/personal-care-and-service/barbers-hairdressers-and-cosmetologists.htm>

⁴ Bureau of Labor Statistics, U.S. Department of Labor. *Occupational Outlook Handbook, 2014-15 Edition*, Skincare Specialists. Retrieved on June 16, 2014, from <http://www.bls.gov/ooh/personal-care-and-service/skincare-specialists.htm>

⁵ Bureau of Labor Statistics, U.S. Department of Labor. *Occupational Outlook Handbook, 2014-15 Edition*, Manicurists and Pedicurists. Retrieved on June 16, 2014 from <http://www.bls.gov/ooh/personal-care-and-service/manicurists-and-pedicurists.htm>

Legal Framework

History of Regulation

Colorado started regulating barbers in 1909, when the General Assembly created the Barber Board. In 1931, the General Assembly created the Cosmetology Board to regulate cosmetologists. Manicurists were regulated under the Cosmetology Board beginning in 1963.

In 1977, the General Assembly combined the two boards into a single State Board of Barbers and Cosmetologists (Board) and placed cosmeticians (now called estheticians) under the Board's regulatory authority. The new legislation also granted the Board the authority to establish minimum entry requirements for the occupations it oversaw.

In 1990, the General Assembly passed House Bill 90-1009, which granted the Board the power to issue letters of admonition and levy administrative fines. The bill also added language that explicitly required owners of shops—including barbershops, salons, and other similar places of business—to register with the Board. At the same time, the bill repealed the requirement that the Board conduct unannounced inspections of each registered shop at least once every three years, instituting instead a risk-based system, wherein the Board inspected only those businesses against which it had received a written complaint.

In 2000, the General Assembly passed House Bill 00-1179, which dissolved the Board and converted the licensing program into a director-model program, where all the licensing, enforcement, and policymaking authority rested with the Director of the Division of Registrations (Division, now called the Division of Professions and Occupations). The bill required the Director to appoint a five-member Barber and Cosmetology Advisory Committee (Committee) to assist the Director in fulfilling his or her responsibilities. The bill also created a new hairstylist license, which included in its scope the arranging and braiding of hair and the application of hair extensions.

Following the 2004 sunset review of the Barber and Cosmetologist Act, the General Assembly passed Senate Bill 05-146 (SB 146). The bill renamed cosmeticians "estheticians"; expanded the scope of practice for manicurists to include the removal of hair on the leg up to the knee and on the arm up to the elbow; expanded the scope of hairstylists to include beard-trimming; and added language requiring the Committee to meet at least four times per year. The bill also changed how the length of education programs was calculated: previously, the minimum program length for each profession was articulated in clock hours. Senate Bill 146 converted the clock hours to credit hours. The bill also established a pathway to licensure by endorsement and repealed the section of the statute that explicitly required shops to register with the Director.

In 2006, the General Assembly granted the Director the authority to issue confidential letters of concern to licensees whose conduct does not warrant formal disciplinary action but might lead to serious consequences if not corrected.

Barber and Cosmetologist Act

The laws governing the regulation of Colorado barbers, cosmetologists, estheticians, hairstylists, and manicurists are housed within Article 8 of Title 12, Colorado Revised Statutes (C.R.S.), and are known collectively as the “Barber and Cosmetologist Act”⁶ (Act).

The Director is vested with the authority to enforce the Act.⁷ The Director’s powers and duties include:⁸

- Promulgating rules that are necessary to enforce the Act;
- Investigating complaints, including entering premises where violations allegedly occurred;
- Upon receiving proof that a licensee has violated the statute or rules, revoking, suspending, or denying a license, or placing a licensee on probation;
- Establishing criteria that applicants must meet to take the licensing examinations;
- Establishing procedures for the registration of places of business; and
- Issuing cease and desist orders, letters of admonition, and letters of concern.

The Director must also keep a record of places of business that includes the business address and the owner’s name.⁹

Advisory Committee

Section 12-8-108(2)(a), C.R.S., requires the Director to appoint the five-member Committee to assist the Director in fulfilling his or her statutory responsibilities. The Committee must include three members who hold a license under the Act, one representative of a Colorado school that prepares students for licensure under the Act, and a member of the public. The Committee must meet at least four times a year, before rules are adopted, and at any other time the Director requests.

⁶ § 12-8-101, C.R.S.

⁷ § 12-8-108(1)(d), C.R.S.

⁸ § 12-8-108, C.R.S.

⁹ § 12-8-107(1), C.R.S.

Regulated Occupations

The Director regulates five distinct professions under the Act.

Barbers may cut and dye hair, shave or trim the beard, perform facial or scalp massages, and apply cosmetic preparations to the scalp, face, neck, or shoulders.¹⁰

Estheticians may give facials; apply makeup; massage, clean and beautify the face, neck, arms, bust or torso; and remove unwanted hair using depilatories, wax, or tweezers.¹¹

Hairstylists may cleanse and massage the scalp; cleanse, cut, style, braid, color, wave, straighten, and apply extensions to the hair; and trim the beard.¹²

Manicurists may cleanse, file, trim, buff, and polish nails and massage, cleanse, or manipulate the arms, hands, feet, or ankles. Manicurists may also use wax or depilatories to remove unwanted hair on the leg up to the knee and on the arm up to the elbow.¹³

Cosmetologists have the broadest scope of all the professions regulated under the Act and may perform most tasks within the scope of the other professions.¹⁴

The definition of each profession applies when services are provided for payment (either directly or indirectly) or when done without payment for the public generally. There is considerable overlap among the professions and slight variations in the statutory language.

¹⁰ § 12-8-103(2), C.R.S.

¹¹ § 12-8-103(9.4), C.R.S.

¹² § 12-8-103(9.7), C.R.S.

¹³ § 12-8-103(10.5), C.R.S.

¹⁴ § 12-8-103(9), C.R.S.

In order to qualify to take the licensing examination for any license issued under the Act, applicants must be at least 16 years old,¹⁵ pay an examination fee, and provide proof of graduation from a barber or beauty school approved by the Colorado Department of Higher Education's Division of Private Occupational Schools, the State Board for Community Colleges and Occupational Education, or, if the school is located in another state or country, by the governmental agency responsible for approving such schools in that state or country.¹⁶ Following are the minimum number of credit hours which an applicant must complete to qualify to take the examination for each license type:¹⁷

- Cosmetologist: 60
- Barber: 50
- Hairstylist: 40
- Esthetician: 20
- Manicurist: 20

Director's Rule 7B establishes, for each license type, the minimum number of credit hours required in each specific subject area. For each license type, a portion of the hours must include instruction in disinfection, cleaning, and safe work practices; laws, rules, and regulations; and management, ethics, interpersonal skills, and salesmanship. The remaining hours are devoted to skills specific to each profession. Appendix A provides an overview of the specific curricula for education programs in barbering, cosmetology, esthetics, hairstyling, and manicuring.

If the applicant received training outside of Colorado, the applicant must provide proof of graduation from a school approved by the governmental agency responsible for approving such schools in that state or country.¹⁸ In these cases, the applicant must also provide proof that the educational requirements he or she completed are substantially equivalent to those set by the Director.¹⁹

Once applicants have paid the fee and provided the proof of training, they may sit for the licensing examination.²⁰

Each licensing examination must include a written and a practical component and may address any other areas the Director deems necessary.²¹ Each examination must be consistent with the practical and theoretical requirements of its respective profession and emphasize health and safety issues. The Director, in consultation with the Committee, must review, revise, and update the examinations on a reasonable basis.²²

¹⁵ § 12-8-114(1), C.R.S.

¹⁶ § 12-8-114(2), C.R.S.

¹⁷ § 12-8-114(3), C.R.S.

¹⁸ § 12-8-114(2), C.R.S.

¹⁹ § 12-8-114(2), C.R.S.

²⁰ § 12-8-114(4), C.R.S.

²¹ § 12-8-110(2), C.R.S.

²² § 12-8-110(3), C.R.S.

The practical demonstrations must be conducted under conditions that are as similar to actual operating conditions as possible.²³ Anyone who evaluates applicants taking the practical examination must have practical experience and hold a license under the Act.²⁴

Once an applicant has passed the examination and paid an application fee, the Director must issue a license to the applicant.²⁵

Applicants who hold a license in another state may apply for a license by endorsement. Applicants must pay a fee and provide proof that they hold a license in good standing in another state where the requirements are substantially equivalent to those of the Act.²⁶

In rule, the Director defines “substantially equivalent” as proof of graduation from a barber or beauty school approved by the appropriate government agency and proof of passage of a written and a practical examination.²⁷

Once the license has been issued, the licensee must display the license conspicuously in his or her principle place of business.²⁸

Licenses must be renewed every two years. If a license has been expired for more than two but less than five years, an applicant must demonstrate competency by documenting 400 hours of work experience within the preceding five years and providing verification of licensure for all states where he or she has been working.²⁹ If an applicant cannot document the required work experience, or if the license has been expired for more than five years, the applicant must pass the written examination in order to qualify for reinstatement.³⁰

²³ § 12-8-110(2), C.R.S.

²⁴ § 12-8-110(5), C.R.S.

²⁵ § 12-8-114(4), C.R.S.

²⁶ § 12-8-118, C.R.S.

²⁷ Director Rule 10.B.

²⁸ § 12-8-119, C.R.S.

²⁹ Director Rule 12.B.

³⁰ Director Rule 12.C.

Generally, a license is required to provide barbering, cosmetology, esthetics, hairstyling, or manicuring services in Colorado, and if anyone practices or offers or attempts to practice any of these professions without an active license, the Director may issue an order to cease and desist such activity.³¹ However, certain people are exempted from the provisions of the Act, including:³²

- Colorado-licensed physicians, dentists, podiatrists, chiropractors, and the employees, agents, or volunteers of a health care facility when performing duties incidental to patient care;
- Therapists permitted to practice their occupations in Colorado;
- Students who have received more than 20 percent of the hours of instruction required by the Act who are providing services in a school setting under the supervision of a licensee; and
- Anyone providing free lectures and demonstrations on beauty culture in retail stores.

Shop Registration

Section 12-8-107(1), C.R.S., requires the Director to keep a register of places of business (shops), defined as fixed establishments or other places, including any mobile barber shop or beauty salon, where one or more people engage in the practice of barbering, hairstyling, or cosmetology or practice as a manicurist or an esthetician.³³ By rule, the Director defines barber, beauty, and cosmetology schools regulated by the Division of Private Occupational Schools or the community college system as places of business subject to registration.³⁴

The Director has the authority to establish procedures for the registration of shops³⁵ and to conduct inspections of any shop where a statutory violation is alleged to have occurred.³⁶

Cleaning and Disinfection Rules

Pursuant to section 12-8-108(1)(c), C.R.S., the Director promulgated Rule 2, Cleaning and Disinfection, which establishes standards for licensees and shops.

³¹ § 12-8-127.5(1), C.R.S.

³² § 12-8-121, C.R.S.

³³ § 12-8-103(13), C.R.S.

³⁴ Director Rule 5.A.

³⁵ § 12-8-108(1)(e), C.R.S.

³⁶ § 12-8-123, C.R.S.

The rule draws a distinction between cleaning, defined as physically removing all visible debris,³⁷ and disinfection, defined as the use of chemicals to destroy pathogens on implements and other surfaces,³⁸ and outlines the acceptable cleaning and disinfection methods for specific tools, implements, and materials, such as combs, pedicure footbaths, scissors, and towels. The rule also designates certain items—such as applicator sticks, disposable gloves, and emery boards—as single-use and directs the licensee to discard those items after using them once.³⁹

The rule also directs licensees to practice good hygiene habits,⁴⁰ such as regular hand-washing, and prohibits licensees from providing services to clients who are visibly ill or have infected skin or nail tissue, unless the client provides written authorization from a physician.⁴¹

Rule 6, Requirements for Places of Business and Licensees, charges salon or shop owners with assuring that their employees have the appropriate licenses and assuring that their employees comply with the Act and rules.⁴²

Complaints and Enforcement

Anyone may file a complaint against a person licensed under the Act. Grounds for discipline include:⁴³

- Having been convicted of or having entered a plea of nolo contendere to a felony;
- Making any misstatement on a license application;
- Being incompetent to practice a profession licensed under the Act, which includes performing services outside of the person's area of training, experience, or competence;
- Excessively or habitually using or abusing alcohol or controlled substances;
- Violating any of the provisions of the Act or any order of the Director;
- Being guilty of unprofessional or dishonest conduct;
- Advertising by means of false or deceptive statements;
- Failing to display his or her license;
- Failing to comply with the Director's rules; and
- Being guilty of willful misrepresentation.

³⁷ Director's Rule 2.A.4.

³⁸ Director's Rule 2.A.5.

³⁹ Director's Rule 2.A.7.

⁴⁰ Director's Rule 2.A.2.

⁴¹ Director's Rule 2.A.3.

⁴² Director's Rule 6.A.3.

⁴³ § 12-8-132(1), C.R.S.

The Act empowers the Director to investigate such complaints and conduct inspections of shops where violations allegedly occurred.⁴⁴

If the Director finds that a licensee has violated the Act, he or she may revoke, suspend, or deny the license; place the license on probation;⁴⁵ or issue a letter of admonition.⁴⁶ If the Director finds that a licensee's conduct poses an imminent threat to the public health, he or she may issue an order to cease and desist such activity.⁴⁷

The Director may also levy a fine between \$100 and \$500 per violation per day for the first violation and between \$1,000 and \$2,000 per violation per day for each subsequent violation.⁴⁸ All fines collected must be credited to the General Fund.⁴⁹

If an investigation reveals conduct on the part of a licensee that does not warrant formal disciplinary action but might lead to serious consequences if not corrected, the Director may issue a confidential letter of concern.⁵⁰

Services that May Be Provided with Additional Training

The Director has identified several services that are beyond the scope of a basic license but that licensees may perform after additional training. Where the training must be obtained, the specific subjects the training must address, and the number of hours required in each subject area are established in rule.

- Cosmetologists and manicurists may use **electric files** if they obtain eight additional hours of training that meet the criteria established in rule.⁵¹
- Manicurists may provide limited **waxing** services—on the leg up to the knee and on the arm up to the elbow—if they obtain six additional hours of training.⁵²
- Cosmetologists and estheticians may provide **permanent makeup** or facial cosmetic pigment implantation services if they obtain an additional 132 hours of training.⁵³
- Cosmetologists and estheticians may provide **cosmetic resurfacing exfoliating procedures** if they complete 24 hours of additional training.⁵⁴
- Cosmetologists and estheticians may perform **microdermabrasion**⁵⁵ if they complete 14 hours of additional training.

⁴⁴ § 12-8-108(1)(f)(I), C.R.S.

⁴⁵ § 12-8-108(1)(b), C.R.S.

⁴⁶ § 12-8-108(1)(h)(I), C.R.S.

⁴⁷ § 12-8-127.5(1), C.R.S.

⁴⁸ § 12-8-127(2), C.R.S.

⁴⁹ § 12-8-127(4), C.R.S.

⁵⁰ § 12-8-108(1)(j), C.R.S.

⁵¹ Director's Rule 9.A.3.

⁵² Director's Rule 9.C.3.

⁵³ Director's Rule 11.

⁵⁴ Director's Rule 3.C.1.

Program Description and Administration

The Director of the Division of Professions and Occupations (Director and Division, respectively) within the Colorado Department of Regulatory Agencies (DORA) is vested with the authority to regulate barbers, cosmetologists, estheticians, hairstylists, and manicurists, and to register places of business (shops). By policy, the Director delegates powers and duties to the Deputy Director of the Business and Inspections Branch within the Division and to the Program Director of the Office of Barber and Cosmetology Licensure (Office).⁵⁵ In practice, most of the powers and duties are fulfilled by the Program Director.

Table 1 illustrates, for the five fiscal years indicated, the expenditures and staff associated with regulation of the five professions licensed under the Barber and Cosmetologist Act (Act).

Table 1
Agency Fiscal Information

Fiscal Year	Total Program Expenditure	FTE
08-09	\$982,134	4.40
09-10	\$812,797	4.40
10-11	\$956,779	4.15
11-12	\$948,868	4.00
12-13	\$920,084	3.90

In July 2014, there were 3.95 full-time equivalent (FTE) employees devoted to the program, including:

- General Professional VI, Program Director, 0.35 FTE: Oversees the Office and serves as the liaison to the Division's leadership.
- Technician V, Program Manager, 0.60 FTE: Supervises the day-to-day operations of the Office.
- Administrative Assistant III, Enforcement and Compliance Monitoring Specialist, 1.00 FTE: Serves as the primary contact for the Office, and processes incoming complaints and non-routine licensing applications requiring Office review.
- Technician IV, Compliance and Outreach Specialist, 1.00 FTE: Monitors the compliance of licensees who have entered into probationary agreements with the Director and conducts outreach.
- Inspector I, 1.00 FTE: Inspects shops that have had complaints filed against them or that are on probation with the Director and conducts outreach.

⁵⁵ Director's Rule 3.C.2.

⁵⁶ Office of Barber and Cosmetology Licensure Policy 7.

This number does not include employees in the centralized offices of the Division, which provide licensing, management, administrative, technical, and investigative support to the Office. However, the cost of those employees is reflected in the Total Program Expenditures.

The total program expenditure decreased significantly from fiscal year 08-09 to 09-10 due to a drop in legal costs and a reduction in personal services and leased space. The following year, those expenses returned to previous levels.

Table 2 illustrates, for the five fiscal years indicated, the fees associated with the barber and cosmetology licensing program.

**Table 2
Fees**

Profession	Fiscal Year	Original*	Endorsement	Renewal**	Reinstatement
Barber	08-09	\$165	\$75	--	\$53
	09-10	\$165	\$75	\$38	\$53
	10-11	\$165	\$75	--	\$53
	11-12	\$165	\$50	\$16	\$39
	12-13	\$165	\$50	--	\$39
Cosmetologist	08-09	\$165	\$75	\$38	\$53
	09-10	\$165	\$75	\$38	\$53
	10-11	\$165	\$75	\$22	\$53
	11-12	\$165	\$50	\$22	\$39
	12-13	\$165	\$50	\$58	\$76
Esthetician	08-09	\$165	\$75	--	\$53
	09-10	\$165	\$75	\$38	\$53
	10-11	\$165	\$75	--	\$53
	11-12	\$165	\$50	\$16	\$39
	12-13	\$165	\$50	--	\$39
Hairstylist	08-09	\$165	\$75	--	\$53
	09-10	\$165	\$75	\$38	\$53
	10-11	\$165	\$75	--	\$53
	11-12	\$165	\$50	\$16	\$39
	12-13	\$165	\$50	--	\$39
Manicurist	08-09	\$165	\$75	--	\$53
	09-10	\$165	\$75	\$38	\$53
	10-11	\$165	\$75	--	\$53
	11-12	\$165	\$50	\$16	\$39
	12-13	\$165	\$50	--	\$39

Profession	Fiscal Year	Original*	Endorsement	Renewal**	Reinstatement
Shop Registration	08-09	\$50	Not applicable	--	\$85
	09-10	\$50	Not applicable	\$62	\$77
	10-11	\$50	Not applicable	--	\$77
	11-12	\$35	Not applicable	\$38	\$61
	12-13	\$35	Not applicable	--	\$61

*The original license fee includes the cost of the written and practical examinations and an application processing fee.

**Barbers, estheticians, hairstylists, and manicurists renew on March 31st of even-numbered fiscal years. Shop registrations renew on November 30th of odd-numbered years, so renewal fees are only set every other year. One half of licensed cosmetologists renew each April 30th, so renewal fees are set annually.

The decrease in renewal and reinstatement fees from fiscal year 09-10 to fiscal year 11-12 reflects the decrease in overall program costs during that time period, as described above.

Licensing and Registration

There are two primary routes to licensure as a barber, cosmetologist, esthetician, hairstylist, or manicurist in Colorado: examination and endorsement.

Examination applicants must apply directly to the examination vendor—currently PSI—to sit for the written and the practical examinations. Once an applicant has passed both examinations, PSI issues a license.

Endorsement applicants must complete an application and submit it with all supporting documentation to the Division’s Office of Licensing. A licensing specialist reviews the application and notifies the applicant of any deficiencies. Once the application is complete, a licensing specialist evaluates the application to ensure the applicant meets the requirements. If requirements are met, a license is issued. If not, the applicant has one year from the date he or she filed the application to fulfill any deficiency.

Applicants who completed their education and obtained their original license outside the United States must follow the same basic procedure as endorsement applicants, except that they must apply to either International Credentialing Associates or the International Education Research Foundation to evaluate their credentials to determine whether they are substantially equivalent to those required by Colorado law.

Table 3 illustrates, for the five fiscal years indicated, the number of new licenses issued by method for each license type.

**Table 3
Licenses Issued by Method**

Profession	Fiscal Year	Examination	Endorsement	Foreign-Trained	TOTAL
Barber	08-09	40	20	0	60
	09-10	66	34	0	100
	10-11	80	26	0	106
	11-12	93	38	1	132
	12-13	116	31	1	148
Cosmetologist	08-09	767	429	15	1,211
	09-10	843	414	7	1,264
	10-11	1,083	372	5	1,460
	11-12	1,132	440	9	1,581
	12-13	1,199	433	4	1,636
Esthetician	08-09	427	126	2	555
	09-10	375	122	0	497
	10-11	409	146	1	556
	11-12	493	142	5	640
	12-13	504	114	2	620
Hairstylist	08-09	226	31	6	263
	09-10	178	12	9	199
	10-11	245	22	6	273
	11-12	225	30	2	257
	12-13	173	27	5	205
Manicurist	08-09	351	112	2	465
	09-10	280	72	4	356
	10-11	287	84	0	371
	11-12	359	99	5	463
	12-13	311	116	0	427

Over the five year review period, the number of new cosmetologists and estheticians increased moderately, while the number of new hairstylists and manicurists declined slightly. The number of newly licensed barbers showed a significant increase, more than doubling over five years. In every category, the number of candidates granted a license by examination outnumber by a considerable margin those seeking a license by endorsement.

The procedure for registering a shop is straightforward: applicants must simply complete the required application and pay a fee. Because the registration is specific to a physical location within Colorado, there is no endorsement pathway. The owner of a place of business does not need to hold an individual license issued under the Act.

Table 4 illustrates, for the five fiscal years indicated, the number of new shop registrations issued.

**Table 4
Shop Registrations Issued**

Fiscal Year	Number
08-09	419
09-10	449
10-11	386
11-12	470
12-13	426

The number of new shop registrations has fluctuated over the five-year reporting period.

Table 5 shows the total number of active licensees there were on June 30th (the last day of the fiscal year) for the five fiscal years indicated.

**Table 5
Total Number of Licensees and Registered Businesses**

Fiscal Year	Barbers	Cosmetologists	Estheticians	Hairstylists	Manicurists	Shop Registrations	TOTAL
08-09	2,060	29,094	4,664	1,619	8,306	4,427	50,170
09-10	1,894	29,489	5,441	1,624	7,678	3,818	49,944
10-11	2,084	30,132	5,277	1,974	8,292	4,333	52,092
11-12	2,035	31,030	5,492	2,046	8,196	4,003	52,802
12-13	2,237	29,826	6,235	2,321	8,760	4,510	53,889

When considered all together, the total number of licensees and registrants has increased steadily each year since fiscal year 10-11.

Examinations

In order to qualify for any license type issued under the Act, applicants must pass both a written and a practical examination in their given profession. The Director contracts with an outside examination vendor to develop and administer the examinations. As of October 2013, the examination vendor is PSI, but for the five-year sunset reporting period, Promissor was the examination vendor. The general examination procedures below apply to PSI's examinations, but are substantially similar to those that Promissor followed. The examination pass rates and other data in Table 6 below apply to Promissor's examinations.

To sit for the examinations, applicants must submit to PSI an application, documentation verifying that they completed an education program, and a \$28 application fee.⁵⁷

Candidates have one year from the date PSI approves their application to pass both examinations. Candidates must pass the practical examination before they can take the written examination. Within that year, there is no limit on the number of times candidates may retake the examinations, but candidates must wait 14 days between attempts. After one year, the application expires, and candidates must reapply and pay all applicable fees.⁵⁸

There is a \$71 fee for the practical examination.⁵⁹

Candidates do not know in advance which specific services they will have to perform on the practical examination, so they must be prepared to perform any of the services listed in the *Candidate Bulletin* for their respective profession. Each listed service includes safety criteria, which are the steps necessary for health and safety; procedure criteria, the steps that outline the service itself; and the total time (in minutes) candidates have to complete the service. Each step in the service is worth one point.

⁵⁷ Licensure by Examination Application, PSI (2014), p. 3.

⁵⁸ *Candidate Information Bulletin*, PSI (2014), p. 1.

⁵⁹ *Candidate Information Bulletin*, PSI (2014), p. 2.

As an example, one service requires barber, cosmetologist, and hairstylist candidates to perform a 90-degree layered haircut using a razor with guard and shears. Candidates are allotted 30 minutes to complete this service.⁶⁰ The procedure criteria for this service are as follows:

1. Sanitizes/cleans hands
2. Drapes mannequin
3. Safely establishes a guideline at nape using razor to determine length
4. Safely palms razor when in use
5. Follows established guideline throughout haircut using shears
6. Safely palms shears when in use
7. Ensures haircut is blended and even throughout
8. Ensures hair is cut at a 90 degree angle
9. Removes at least one inch of hair throughout entire head and finished haircut is no shorter than four inches
10. Removes hair off workstation and sweeps hair from floor

The evaluators award one point to candidates for each numbered step they perform in the correct order.⁶¹

Candidates must also meet the following safety criteria at the appropriate times throughout the service.⁶² Again, each numbered step is worth one point.

1. Disposes of waste material using trash bag
2. Ensures workstation/area remains sanitary
3. Ensures draping is maintained throughout service
4. Implements and supplies are clean and bags are labeled (in English) as pre-sanitized
5. Replaces contaminated items
6. Kit remains closed

PSI evaluators assess the performance of candidates during the practical examination.

Because the length of allotted time for each service varies, the number of services assigned to a candidate during the examination period also varies. The length of each examination is as follows:

- Barber: two hours and 25 minutes
- Cosmetologist: two hours and 25 minutes
- Esthetician: one hour and 25 minutes
- Hairstylist: one hour and 55 minutes
- Manicurist: one hour and 30 minutes

⁶⁰ *Candidate Information Bulletin*, PSI (2014), p. 9.

⁶¹ *Candidate Information Bulletin*, PSI (2014), p. 9.

⁶² *Candidate Information Bulletin*, PSI (2014), p. 9.

The practical examination is offered in numerous sites around Colorado, including Centennial, Wheat Ridge, Fort Collins, Colorado Springs, Grand Junction, and Durango.

There is a \$56 fee for the written examination.⁶³ The written examinations are computer-based and vary in length:

- Barber: two hours, 110 scored items
- Cosmetologist: two hours, 110 items
- Esthetician: one hour and 40 minutes, 85 items
- Hairstylist: one hour and 40 minutes, 90 items
- Manicurist: one hour and 40 minutes, 60 items

The written examination is offered in the same Colorado locations as the practical, as well as locations in New Mexico and Utah. PSI has a network of testing sites nationwide, and candidates may request to take the written examination at any of those locations.

Table 6 illustrates the number of written and practical examinations administered and the corresponding pass rates for the five fiscal years indicated.

Table 6
Pass Rates for the Written and Practical Examinations by License Type

Profession	Fiscal Year	Number of Written Examinations Given	Pass Rate (%)	Number of Practical Examinations Given	Pass Rate (%)
Barber	08-09	142	32.4	49	75.5
	09-10	115	57.4	161	41.7
	10-11	128	68.0	192	50.0
	11-12	159	59.1	185	57.2
	12-13	150	71.3	199	63.8
Cosmetologist	08-09	995	81.0	677	77.5
	09-10	1,215	71.8	1,704	53.1
	10-11	1,573	73.7	1,807	63.3
	11-12	1,583	73.9	1,671	72.4
	12-13	1,461	76.6	1,681	70.0
Esthetician	08-09	560	77.1	316	95.3
	09-10	500	76.0	749	56.6
	10-11	556	74.6	693	64.9
	11-12	660	76.1	666	78.6
	12-13	646	72.6	625	83.3

⁶³ *Candidate Information Bulletin*, PSI (2014), p. 2.

Profession	Fiscal Year	Number of Written Examinations Given	Pass Rate (%)	Number of Practical Examinations Given	Pass Rate (%)
Hairstylist	08-09	662	54.4	280	91.8
	09-10	511	55.8	474	56.3
	10-11	514	57.4	495	67.4
	11-12	658	57.0	568	71.3
	12-13	500	58.6	528	65.5
Manicurist	08-09	467	49.0	206	79.1
	09-10	277	63.9	431	47.3
	10-11	431	56.4	390	65.3
	11-12	382	57.1	360	75.5
	12-13	265	52.1	246	71.1

The number of examinees and the pass rates for the written examination remained relatively stable over the five-year reporting period. The pass rates for the barber written examination fluctuate more from one year to the next, likely due to the lower number of examinees.

Across all professions, there is a striking increase in the number of practical examinations administered from fiscal year 08-09 to 09-10, and a corresponding decrease in pass rates. Manicuring provides the most dramatic example, with 206 candidates and a 79.1 percent pass rate in fiscal year 08-09, to 431 examinees and a 47.3 pass rate in 09-10. Overall, there was a 43 percent increase in the number of examinations administered, and a 60 percent decrease in the pass rates

Office staff attributes these fluctuations to the release of new examination content for all the license types on January 1, 2009. According to Office staff, changes in examination content sometimes causes the pass rates to drop in the short term and stabilize after the new content has more exposure among the candidate population. In keeping with this explanation, in fiscal year 10-11, the pass rates for all professions increased at least 10 percent then remained fairly stable for the remainder of the reporting period.

Once candidates pass both examinations, PSI will issue them a license on the spot, as long as they answered “no” to all the background screening questions and have not previously worked as a barber, cosmetologist, esthetician, hairstylist, or manicurist in Colorado.

Candidates answering “yes” on one or more of background screening questions must obtain approval from the Office before receiving a license.⁶⁴

Since July 2012, 12 applicants have had to contact the Office after passing the examinations because they had a felony conviction. Of these, three applicants were licensed with conditions after entering into a probationary agreement with the Director.

The Director denied licensure to the remaining eight applicants. Per Director’s Policy 3a, the Director denied four of these applicants because they were still incarcerated at the time of application and recommended that they reapply upon their release. The remaining four were denied because they failed to respond to offers of conditional licensure.

Complaints/Disciplinary Actions

Anyone, including consumers, employers, and the Director, can file a complaint against a licensee or anyone who may have violated the Act (e.g., practiced barbering or cosmetology without a license).

Office staff reviews incoming complaints to determine whether they might constitute a violation of the Act. If so, staff may either notify the person being complained against of the complaint and allow the person 30 days to respond to the allegations, or conduct an inspection of the business location or work area where the violation allegedly occurred. After receiving the licensee’s response or the results of the inspection, staff forwards the complaint, the response, and a preliminary recommendation for how the case should be handled to the Director. Staff might recommend dismissing the case, forwarding the complaint to the Division’s Office of Investigations, or forwarding the case to the Barber and Cosmetology Advisory Committee (Committee) for its review and recommendation.

⁶⁴ *Candidate Information Bulletin*, PSI (2014), p. 1.

Table 7 illustrates the total number of complaints received by the Office for the five fiscal years indicated.

Table 7
Complaints Filed with the Director

License Type	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Barber	34	60	86	29	43
Cosmetologist	232	353	480	352	302
Esthetician	32	29	85	43	43
Hairstylist	12	35	68	34	39
Manicurist	138	131	211	104	72
Shop Registration	87	95	156	108	60
Unlicensed*	55	35	4	9	57

*This category represents respondents who were not assigned one of the six license types in the Division's database.

In fiscal year 10-11, there was a notable increase in the number of complaints in every license category, while the number of complaints against unlicensed respondents dropped. Office staff had no specific explanation for this increase. In subsequent years, the number of complaints declined.

For barbers, cosmetologists, and hairstylists, the most common basis for the complaints was practicing without a license, followed by felony convictions, with the third most common basis for complaints relating to failure to comply with rules, including cleaning and disinfection rules.

For estheticians and manicurists, the most common basis for complaint was practicing without a license, followed by failure to comply with rules, with felony convictions as the third most common basis.

The most common basis for complaints against shops was failure to comply with rules, followed by unregistered operation. Violating the Act or the terms of a Director's order was a distant third.

For a specific breakdown of the nature of all complaints filed, by fiscal year and by license type, please see Appendix B.

If the Director finds that based upon an inspection or investigation that a licensee has violated the Act, the Director may suspend or revoke the license, place the licensee on probation, issue a letter of admonition, or levy an administrative fine.

Table 8 illustrates the number and types of final actions the Director has taken for the five fiscal years indicated.

**Table 8
Final Actions**

Type of Action	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Revocation	10	9	5	3	0
Suspension	0	0	0	0	0
Revocation/Suspensions held in abeyance or stayed or stayed suspended	0	0	0	0	0
Stipulations	361	338	491	319	221
Letters of Admonition	4	70	86	120	39
Other (C&D, Citations)	28	64	104	69	30
Total Disciplinary Actions	403	481	686	511	290
Dismissals	140	88	116	106	41
Dismiss with Letter of Concern	2	66	279	130	157
Total Dismissals	142	154	395	236	198
Total Final Actions	545	635	1,081	747	488

The reason for the high number of final actions in fiscal year 10-11 is likely due to the increase in the number of complaints for that time period.

For the number and type of disciplinary actions broken out by license type, please see Appendix C.

Inspections

Some types of complaints, particularly those against shops, will trigger an unannounced inspection. During an inspection, the inspector surveys the establishment to assure that stations are clean, implements are properly stored, and required documents—such as Material Safety Data Sheets (which disclose the ingredients of a given product, any potential hazards it poses, and instructions for its proper use, storage, and disposal) and cleaning and disinfecting logs for pedicure spa tubs—are available. The inspector also typically asks to see the licenses of all the people providing services at the establishment.

Table 9 illustrates, by license type, the number of inspections the Office conducted for the five fiscal years indicated.

**Table 9
Inspections**

License Type	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Barber	5	10	23	4	1
Cosmetologist	45	46	75	35	42
Esthetician	17	7	25	16	4
Hairstylist	1	15	19	10	8
Manicurist	109	87	148	54	34
Shop Registration	63	84	125	76	54
Unlicensed*	25	16	1	8	17
TOTAL	265	265	416	203	160

The increase in the number of inspections from fiscal year 09-10 to fiscal year 10-11 corresponds with the increase in the number of unlicensed practice complaints that year. According to Office staff, about 90 to 95 percent of inspections uncover cleaning and disinfection violations.

If an inspector discovers any violations of the Act, he or she may issue a citation to the shop and any licensee on the spot. The inspector has some discretion in determining the fine amount for each violation, depending on the degree of the violation, the nature of the underlying complaint, and the shop's complaint history. The inspector may offer a reduced fine to shop owners and licensees who pay within a specified period.

Table 10 shows the total fines collected for the five fiscal years indicated.

**Table 10
Fines Collected**

Fiscal Year	Amount
08-09	\$78,078
09-10	\$72,286
10-11	\$142,201
11-12	\$131,048
12-13	\$73,747

The total amount of fines collected increased quite dramatically from fiscal year 09-10 to 11-12, which corresponds with the increased number of complaints and inspections during that time span.

Barber and Cosmetology Advisory Committee

The General Assembly created the Barber and Cosmetology Advisory Committee (Committee) in 2000, following the dissolution of the Board of Barbers and Cosmetologists. The five-member Committee includes three people who are licensed under the Act, a representative of a Colorado-licensed school, and a member of the public. The mission of the Committee is to assist the Director in fulfilling his or her statutory responsibilities.

In fiscal years 12-13 and 13-14, the Committee had total expenses of \$269 and \$526, respectively. Committee members do not collect a per diem, so the expenditures represent the actual costs relating to attending meetings, including mileage, parking, gas, and travel expenses. Expenditures increased in fiscal year 13-14 because Committee members attended the annual meeting of the National Interstate Council of Cosmetology Boards, which was held in Colorado.

The Act requires the Committee to meet at least quarterly and before any rules are adopted.⁶⁵ The Committee met three times in fiscal year 12-13 and two times in fiscal year 13-14. Over the past four years, the Director has canceled at least one meeting per year due to lack of agenda items: the Director canceled one meeting in 2010, two in 2011, one in 2012, and two in 2013.

During fiscal years 12-13 and 13-14, the Committee focused primarily on reviewing rules and providing guidance to the Director on complaints requiring professional expertise. On three occasions—in August and September 2012—the Committee provided feedback on rules: the Director accepted most of the Committee's recommendations.

The Committee also provided professional expertise on four complaints. The Director accepted the Committee's guidance regarding two of these complaints and partially accepted its guidance on a third complaint. The fourth complaint is still pending as of this writing, and the Director has not made a final decision on the disposition of the case.

⁶⁵ § 12-8-108(2), C.R.S.

Analysis and Recommendations

Recommendation 1 – Continue the Barber and Cosmetologist Act and the Barber and Cosmetology Advisory Committee for 11 years, until 2026, and repeal the separate sunset provision for the Committee.

Article 8 of Title 12, Colorado Revised Statutes (C.R.S.), vests the Director of the Division of Professions and Occupations (Director) within the Department of Regulatory Agencies (DORA) with the power to regulate barbers, cosmetologists, estheticians, hairstylists, and manicurists. The statute authorizes the Director to promulgate rules, investigate complaints, and suspend, revoke, or restrict the licenses of those who violate the Barber and Cosmetologist Act (Act). The Director is also empowered to establish registration procedures for places of business (shops) and must maintain a registry of all such businesses. The Director appoints the five-member Barber and Cosmetology Advisory Committee (Committee) to assist him or her in fulfilling these statutory duties.

It is not the role of the state to judge whether a haircut or a manicure is attractive. Consumers are best equipped to determine whether a service meets their expectations, and if it does not, to seek services from another licensee or in a different shop. It is in the economic interest of licensees and registrants to provide the highest quality, most up-to-date services and products available. The sole interest of the state is to protect the public health, safety, and welfare.

The modern practice of all the professions regulated under the Act involve, to varying degrees, the use of sharp implements, such as shears, razors, and nippers, and harsh chemicals, such as those in dyes, relaxers, and exfoliants. An incompetent barber could cut a client when improperly using a straight razor; an incompetent cosmetologist could burn a client's scalp by leaving in a chemical treatment for too long. Judging by the complaints filed with the Director, such incidents are rare, but the potential for injury is real.

While professional grade implements and chemicals are readily available to the public, there is an important difference between purchasing these items for personal use and using them on the public.

Another risk that the professions regulated under the Act pose to the public is in the transmission of communicable diseases and bacterial infections. All of the professions regulated under the Act involve extensive person-to-person contact. Common infections such as norovirus and influenza are easily transmitted by unwashed hands. Infections such as methicillin-resistant *staphylococcus aureus* (commonly called MRSA) can be transmitted via improperly disinfected implements or surfaces. In fact, the only other DORA-regulated professions with a similar degree of contact are in health care, where the necessity for following proper cleaning and disinfection protocols is unquestioned.

Some argue that if barbering, cosmetology, and related industries were unregulated, market competition would compel the individuals and businesses providing such services to maintain cleaning and disinfection standards. Individuals and shops with poor standards would lose clients and be driven from the marketplace, while shops with high standards would grow and prosper.

This argument assumes that laypeople possess the expertise to evaluate cleaning and disinfection practices. However, while some violations—such as electric clippers clogged with hair and visibly dirty pedicure footbaths—are readily apparent, others are not. There is no way to determine by looking at a footbath or a pair of shears that they have been properly disinfected. Visibly clean implements or footbaths may still harbor harmful bacteria.

When members of the public lack the expertise or resources to recognize a threat, it is appropriate for a regulatory body to act on the public's behalf. By requiring prospective licensees to undergo training addressing specific areas and pass a written and practical examination, the Director assures that entry-level licensees have the skills to practice safely. By fielding complaints against licensees and registrants and inspecting barbershops and salons, he or she is assuring that basic cleaning and disinfection standards are met. These actions benefit the public. For these reasons, regulation is justified.

This is a director model program, meaning that the regulatory authority resides with the Director rather than an independent board. The Director regulates over 50,000 individuals and businesses under the Act. Despite this large number, the majority of complaints filed do not allege public harm; rather, they relate to unlicensed practice. Such complaints do not require the professional expertise of licensing board to resolve.

When the Director does need professional guidance, he or she may call upon the Committee. The three Committee members licensed under the Act and the member representing licensee education programs use their subject matter expertise to provide recommendations on cases, policy initiatives, and examination matters. If the Committee did not exist, the Director might be compelled to hire expert witnesses to provide professional expertise, which would be far more expensive.

The public member on the Committee assures that the Director considers the interests of people outside the regulated community when setting policy and resolving cases.

For these reasons, the director model remains an efficient and effective regulatory structure for these professions.

By requiring licensees to meet minimal requirements before providing services to the public, investigating complaints, inspecting shops, setting standards for cleaning and disinfection, and educating licensees and registrants about such standards, the Director protects the health and safety of the public. The Committee plays a key role in this regulation by providing professional guidance to the Director.

Because the Act encompasses the Committee, DORA has historically reviewed the Act and the Committee at the same time and produced one report for both reviews. For this reason, it is unnecessary for the Committee to have a separate sunset provision.

Therefore, the General Assembly should repeal the sunset provision specific to the Committee and continue the Act for 11 years, until 2026.

Recommendation 2 – Clarify that places of business must register with the Director and that the Director may take disciplinary action against registrants.

Prior to 2005, section 12-8-114.5(1), C.R.S., required all places of business (shops) where one or more people practice as a barber, cosmetologist, manicurist or esthetician to register with the Director. The Act also stated that failure to register could not be the basis for disciplinary action.

The 2004 sunset report argued that this provision rendered the registration requirement essentially voluntary. The report further argued that since the Director no longer conducted routine, unannounced inspections, instead inspecting only shops against which a complaint had been filed, there was no need to maintain a comprehensive registry of shops. Stating that the provisions served no apparent public policy purpose, the report recommended repealing them. Following the sunset report, the General Assembly passed Senate Bill 05-146, repealing section 12-8-114.5, C.R.S., in its entirety.

Numerous other provisions relating to shop registration were left in place, however. For example, the Act still requires the Director to maintain a registry of shops,⁶⁶ empowers the Director to inspect shops upon receiving a written complaint, and gives the Director the authority to issue cease and desist orders against registrants.⁶⁷ The Director may also issue a letter of concern to a registrant.⁶⁸

As a result, the repeal of section 12-8-114.5(1), C.R.S., changed Director practices little. The Director has continued to inspect shops, issue cease and desist orders and letters of concern, and maintain the registry.

⁶⁶ §12-8-107(1), C.R.S.

⁶⁷ §12-8-127.5, C.R.S.

⁶⁸ §12-8-108(1)(j), C.R.S.

As of July 2014, there were 4,269 shops registered with the Director. It is difficult to estimate what percentage of the total number of shops operating in Colorado this number represents. However, based upon the fact that there are 9,196 expired registrations on file, it is reasonable to assume that the majority of shops in the state are unregistered.

The ambiguity of the statute warrants revisiting how the Director regulates shops.

The first question is whether regulation is justified. Recommendation 1 above gives three reasons to regulate the individual professionals under the Act: the use of sharp implements, the use of harsh chemicals, and the importance of maintaining cleaning and disinfection standards. The first applies only to individuals, but shop owners must know how to handle and store harsh chemicals and share with licensees the responsibility for maintaining cleaning and disinfection standards in the location where services are provided. Individual licensees are clearly responsible for their own work stations, but who is responsible for instituting cleaning and disinfecting standards for the shop as a whole? Logically, the shop owner is responsible.

Because the conditions within shops can pose a threat to the public health, safety, and welfare, regulation is justified.

The second question is whether the current regulatory scheme is the least restrictive consistent with the public interest.

During the five-year sunset review period, the Director received 401 complaints against shops. Of these, 227, or 56 percent, alleged failure to comply with the Director's rules, including cleaning and disinfection rules. During the same five-year time period, the Director took disciplinary action against over 300 shops.

While the Director is able to take these actions under the current Act, the lack of a mandatory registration requirement could provide grounds for a legal challenge to the Director's authority. Further, the purpose of a registry is to give the public a means to make informed choices about where they seek services. The lack of a comprehensive registry means that it is difficult for people researching shops to determine whether a shop has been subject to discipline. This is not in the public's best interest.

Registration is among the least restrictive forms of regulation. If a person seeks a shop registration, he or she need only complete a one-page application and pay a modest \$35 fee. The Division's Office of Licensing issues the registration, which the shop owner must renew every two years. There is no requirement for an initial inspection before the registration is issued, as is customary in many states, and the person applying for the registration does not need to be a licensee or have any other specific credentials.

There is also no ongoing inspection requirement. Over the course of this review, DORA found a widespread public perception that the state conducts routine inspections of shops, as it did in prior to 1989, and many in the industry expressed a wish that Colorado still required them. However, there is no evidence that mandatory periodic inspections offer more public protection than the risk-based inspection system currently in place, and imposing such a system would arguably be unnecessarily burdensome.

Mandatory registration, however, is not burdensome. It would allow the public a clear way to determine which shops have been subject to discipline without placing an undue burden on the shop owner.

If the General Assembly clarifies that all shops must register, it should also explicitly state that the Director has the authority to take disciplinary action against registrants.

Shop owners bear responsibility for the storage and handling of harsh chemicals and the cleaning and disinfection standards within their places of business. Failure to maintain such standards could harm the public. The Director should have the explicit statutory authority to discipline any shop that poses a threat to the public health, and the public should have the ability to determine which shops have been disciplined. Potential disciplinary actions include citations, revocation, and probation, as well as letters of admonition.

Making these changes would enhance public protection and eliminate the statute's current ambiguity without placing an undue burden on shop owners. Therefore, the General Assembly should require that all shops register with the Director and authorize the Director to take disciplinary action against shops that violate the Act.

Recommendation 3 – Exempt practitioners of natural hair braiding from the Act.

African-style or natural hair braiding is a practice which focuses on hairstyles suited to the hair's natural texture, providing an alternative to chemical services—such as relaxers—that alter the structure of the hair. Natural hair braiding includes three-strand and other types of braiding, as well as locking, twisting, and weaving, where hair extensions are braided or intertwined with the natural hair. Although there are some formal training programs for natural hair braiding, many braiders acquire their skills from friends or family members in informal settings.

In Colorado, the scope of practice of hairstylists includes:⁶⁹

[c]utting, arranging, braiding, applying hair extensions to, or styling the hair by any means using the hands or with manual, mechanical, or electrical implements or appliances.

Because braiding is included within the scope of hairstyling, a person must hold a hairstylist license in order to provide such services. Alternatively, because cosmetology encompasses hairstyling, cosmetologists may also provide the above services.

To become a hairstylist, a person must complete 40 credit hours of training, most of which focuses on haircutting, chemical services, and other subject matter unrelated to the practice of natural hair braiding; cosmetologists must complete 60 credit hours. The written examinations for these two professions may contain a few questions pertinent to natural hair braiding, but the hairstyling portion of the practical examinations includes only a French braid as a potential test item.

Because education programs for hairstyling and cosmetology do not prepare a person to practice natural hair braiding, even licensed hairstylists and cosmetologists must learn their trade elsewhere. The natural hair braiders interviewed for this report typically learned how to braid from friends and family members. There is no meaningful relationship between the formal training and testing that the Act compels a person to undergo and the profession he or she is seeking to enter. In this respect, the current regulatory regime fails to accomplish the basic goal of licensure: to ensure that entry-level licensees are minimally competent to enter the marketplace.

Regulation of the professions under the Act is justified largely because such professionals routinely use harsh chemicals and sharp implements. Typically, natural hair braiders only use scissors to cut artificial hair before attaching it to a client's head, thereby removing the risk of any harm to the public. Braiders also eschew the use of chemicals.

In 2008, DORA conducted a sunrise review of African-style hair braiders and natural hairstylists. The sunrise applicant was seeking to establish a distinct licensing program for this profession. In its review, DORA found that because the risks posed by natural hairstyling were minimal, requiring people who wished to practice this profession to obtain either a hairstylist or cosmetology license was overly burdensome. The report recommended exempting people wishing to practice African-style hair braiding and natural hairstyling from the Act if they completed a 2-hour cleaning and disinfection course.

⁶⁹ §12-8-103(9.7)(c), C.R.S.

While some states, including Kansas and Mississippi, offer this kind of conditional exemption to natural hair braiders, others, including Arizona, California, Georgia, Maryland, and Washington, impose no such condition. The laws of these states simply define the practice of natural hair braiding and exempt people engaging in this limited practice from the licensing laws. There have been no discernible negative consequences following unconditional exemption.

Requiring an individual to complete hundreds of hours of training irrelevant to the occupation he or she wishes to pursue does not comport with the second sunset criterion that regulation be the least restrictive consistent with the public interest.

The sixth sunset criterion compels DORA to consider the economic impact of regulation and whether the agency under review stimulates or restricts competition. In this case, the Act is restricting competition by barring otherwise qualified people from plying their trade.

In crafting an exemption for hair braiders, it would be important to clarify that such practice does not include the use of sharp implements or chemicals. The state of California defines natural hair braiding as:⁷⁰

A service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include haircutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

The General Assembly should adopt a similar definition for Colorado and establish that natural hair braiders be exempted from the Act. Hair braiders who practice outside the statutorily defined scope would be subject to a cease and desist order for the unauthorized practice of cosmetology or hairstyling.

These changes would remove unnecessary regulation, increase the public's access to affordable natural hair braiding services, bolster economic activity, and stimulate competition without putting the public at risk. Therefore, the General Assembly should exempt natural hair braiders from the Act.

⁷⁰ § 7316(d)(2), California Business and Professions Code.

Recommendation 4 – Articulate the minimum length of training programs in contact hours, rather than credit hours.

Section 12-8-114(2), C.R.S., establishes the number of credit hours applicants must complete in order to qualify for each license type.

Prior to 2005, the Act and the Director's rules articulated the minimum number of required training hours in clock or contact hours. In 2004, the Director promulgated rules that articulated training in credit hours. Consequently, the 2004 sunset report recommended converting to credit hours to bring the Act into alignment with the Director's rules. The sunset report also argued that because credit hours are not awarded until the student successfully demonstrates competency, i.e., passes a final examination, credit hours provide more public protection.

Unfortunately, the conversion to credit hours has not offered any discernible benefits. Credit hours are typically used in institutions of higher education, such as colleges and universities, but most Colorado barbering and cosmetology schools are private institutions regulated by the Division of Private Occupational Schools (DPOS). Most Colorado schools have continued to record student progress in contact hours then convert them into credit hours using a DPOS-established conversion rate of 30 contact hours to one credit hour. Essentially, schools keep two sets of records: one showing contact hours and another using credit hours.

Colorado remains the only state to set training hours for the professions licensed under the Act in credit hours. This makes it difficult for endorsement applicants to determine whether their education is substantially equivalent to Colorado's and for Colorado-trained students and licensees to apply for a license in other states.

There is also a conflict between how the state and federal governments convert contact hours to credit hours. The Director uses the DPOS conversion rate of 30 clock hours to one credit hour. Since 2011, the federal Department of Education (DOE) has used a conversion rate of 37.5 clock hours to one credit hour. Because the DOE conversion rates are the basis for federal financial aid, this creates confusion for Colorado students and their schools.

Describing training in credit hours creates an administrative burden for occupational schools and creates confusion for students seeking federal financial aid. For these reasons, the General Assembly should amend the Act to articulate the minimum length of training programs for each profession in clock hours, as they existed prior to the conversion in 2004:

- Barber, 1,500 contact hours
- Cosmetologist, 1,800 contact hours
- Esthetician, 600 contact hours
- Hairstylist, 1,200 contact hours
- Manicurist, 600 contact hours

Recommendation 5 – Establish as grounds for discipline failure to disclose within 45 days convictions of any felony, or other crimes related to the practice as a barber, cosmetologist, esthetician, hairstylist, or manicurist.

Currently, applicants for a license as a barber, cosmetologist, esthetician, hairstylist, or manicurist, must answer the following question:⁷¹

Have you ever been convicted of, pled guilty or nolo contendere to, or accepted deferred judgment or prosecution to a felony?

Applicants answering “yes” must provide with their application original court documentation and a completed Information Regarding Felony Conviction form or Monitoring Information from Court or Probation/Parole Officer form. Once the person passes the written and practical examinations, the examination vendor, PSI, forwards the application and supporting documentation to the Office. The Director then determines whether to issue a license to the applicant or deny the license pursuant to section 12-8-132(1)(a), C.R.S.

There is no provision, however, for licensees who are convicted of a felony *after* they are granted licensure. This means that a person with such a history could continue to provide services to customers, even if his or her ability to do so safely has been called into question. While a criminal conviction in itself does not reflect on a licensee’s ability to practice safely, the underlying conduct might. Certain misdemeanors, such as assault of a client or theft from a client, could also reflect upon a licensee’s fitness to practice.

The issue of felony convictions is significant in a considerable percentage of the complaints filed with the Director: about 17 percent of the total complaints filed in fiscal year 12-13 relate to felony convictions.

Conviction of any felony or a lesser crime that relates specifically to the practice as a barber, cosmetologist, esthetician, hairstylist, or manicurist can indicate that a licensee is unsafe to practice. Making a determination on the basis of a criminal conviction itself before it becomes final and not subject to further challenge or appeal may raise due process concerns in some quarters. However, the Director should be entitled to consider and evaluate the underlying conduct from the perspective of the licensee's fitness to practice.

For this reason, the General Assembly should establish as grounds for discipline licensees’ failure to report to the Director within 45 days when they have been convicted of, or pled guilty or nolo contendere to, or accepted a deferred judgment or prosecution to any felony, or another crime relating to their professional practice.

⁷¹ *Licensure by Examination Application*, PSI/Colorado Office of Barber and Cosmetologist Licensing, p. 2.

Recommendation 6 – Establish as grounds for discipline aiding or abetting unlicensed practice.

Of the 518 complaints filed with the Director in fiscal year 12-13, about 57 percent were related to unlicensed practice.

While the Director is able to take disciplinary action against a person for practicing without a license, he or she lacks specific statutory authority to discipline a licensee or registrant who knowingly hires an unlicensed person. While the responsibility to obtain the appropriate license falls primarily on the person providing services, the owner or manager of the shop also bears responsibility for assuring he or she employs or contracts with only licensed people.

Authorizing the Director to take disciplinary action against licensees or registrants who aid and abet the unlicensed practice would help him or her address a problem that has been an ongoing issue for this program. Therefore, the General Assembly should establish it as grounds for discipline.

Recommendation 7 – Revise section 12-8-132(1)(b), C.R.S., to address fraudulently attempting to obtain a license.

Section 12-8-132(1)(b), C.R.S., establishes as grounds for discipline,

[making] any misstatement on his or her application for licensure to practice as a barber, hairstylist, cosmetologist, esthetician, or manicurist.

This provision allows the Director to take disciplinary action if a person lies on his or her application. This provision does not address the other dishonest acts related to the application process, such as taking the licensing examination on behalf of someone else, or other subversions of the licensing process.

Therefore, the General Assembly should revise section 12-8-132(1)(b), C.R.S., to establish as grounds for discipline providing false information on any application or attempting to obtain a license to practice by fraud, deception, or misrepresentation.

Recommendation 8 – Establish as grounds for discipline failure to respond to a complaint.

When the Director receives a complaint against a licensee, he or she sends a copy of the complaint to the licensee, who has 30 days to respond to the complaint in writing. Not only does failing to respond to a complaint create an administrative delay and hinder the investigative process, it also poses a potential threat to the public: each day that an unsafe licensee continues to work puts the public at risk. While there may be extenuating circumstances that prevent a licensee from responding promptly, the Director should have the authority to discipline a licensee for failing to respond.

Other professionals regulated by DORA—including physicians,⁷² nurses,⁷³ dentists,⁷⁴ chiropractors,⁷⁵ and physical therapists⁷⁶—are subject to discipline for failing to respond to a complaint.

Therefore, the General Assembly should establish as grounds for discipline failure to respond to a complaint.

Recommendation 9 – Add language clarifying that licensees may not treat diseases or ailments.

Section 12-8-103(2), C.R.S., specifically prohibits barbers from treating diseases or physical or mental ailments. This prohibition is not in place for the other four professions regulated under the Act.

The Colorado Medical Practice Act, however, defines the practice of medicine as including recommending or administering any form of treatment for intended relief or cure of any physical or mental disease or ailment,⁷⁷ and establishes clear penalties for the unauthorized practice of medicine.

Because the Act specifically addresses this matter for barbers, but not for cosmetologists, estheticians, hairstylists, or manicurists, licensees might be given the false impression that they are permitted to treat diseases or ailments. For this reason, it would be valuable to clarify within the Act that no individual licensed under the Act is authorized to treat diseases or ailments.

⁷² § 12-36-117(1)(gg), C.R.S.

⁷³ § 12-38-117(1)(u), C.R.S.

⁷⁴ § 12-35-129(1)(jj), C.R.S.

⁷⁵ § 12-33-117(1)(ff), C.R.S.

⁷⁶ § 12-41-115(1)(w), C.R.S.

⁷⁷ § 12-36-106(1)(b), C.R.S.

This is of particular importance in the area of esthetics, where licensed estheticians sometime provide services in “medical spas.” Medical spas are allowed under Colorado law, provided they comply with the Colorado Medical Board’s Rule 800, which addresses “Medical-Aesthetic Services,” but it can be unclear to the public who is authorized to provide services to treat diseases or ailments in the medical spa setting.

The Medical Practice Act already bars non-physicians from practicing medicine, but including a provision in the Act would clarify to the public and remind the regulated community that licensees under the Act may not do so.

Therefore, the General Assembly should add a general provision to the Act stating that individuals licensed under the Act may not treat diseases or physical or mental ailments.

Recommendation 10 – Clarify the language regarding exemptions from the Act.

Section 12-8-121, C.R.S., establishes who is exempted from the Act. Numerous changes would clarify this section.

The section exempts from the Act Colorado-licensed doctors, dentists, podiatrists, or chiropractors, when performing duties incidental to patient care and therapists permitted to practice their occupations under Colorado law. However, the section makes no mention of nursing or other professions that might provide services, fails to define which licensed therapists are exempt, and fails to state that any licensed person who is exempted must still act within his or her scope of practice. For the sake of clarity and consistency, paragraphs 12-8-121(1)(a) and (c), C.R.S., should be combined into a single provision that exempts from the Act anyone licensed under Colorado law who is acting within the scope of practice for which they are licensed.

Section 12-8-121(4), C.R.S., exempts from the Act people giving free lectures and demonstrations on beauty culture, hairdressing, and the use of beauty preparations in retail stores. Because this section is specific to retail stores, people who sell beauty products such as Avon and Mary Kay are in potential violation of the Act. This subsection should be revised to exempt from the Act people engaged in the application of beauty products for the exclusive purpose of recommending, demonstrating, or selling those products.

The General Assembly should make these changes to clarify who is exempt from the Act.

Recommendation 11 – Revise section 12-8-108(2)(a), C.R.S, to reduce the number of times that the Advisory Committee must meet from four times to at least once a year.

Under section 12-8-108(2)(a), C.R.S, the Committee must meet at least four times a year and prior to the adoption of rules.

For each of the last four calendar years, the Director has canceled scheduled Committee meetings because of lack of business matters requiring the Committee's review. One meeting was canceled in 2010, two in 2011, one in 2012, and two in 2013.

While the Committee plays an important role in helping the Director enforce the Act, there simply were not enough standard of care cases or policy matters requiring professional expertise to justify quarterly meetings. For this reason, the General Assembly should reduce the number of required yearly meetings from four to one. To ensure that the Committee has input on any potential rules, the requirement that it meet before rules are adopted should remain in statute.

Recommendation 12 – Require licensees who have had their licenses revoked, or who have surrendered their licenses in lieu of disciplinary action, to wait two years to reapply.

Many professionals regulated by DORA who have had their licenses revoked, or who have surrendered their licenses in lieu of revocation, must wait two years to reapply for licensure. These professionals, including electricians, plumbers, dentists, midwives, nurses, podiatrists, physical therapists, and pharmacists, are required to wait two years. Requiring individuals to wait a specified period before reapplying enhances public protection by assuring they possess minimal competency when they re-enter the workforce. Given the severity of the violations that result in revocation or surrender of a license, and the amount of time and resources it takes to process revocations and surrenders, two years is an appropriate waiting period.

The General Assembly should establish a two-year waiting period for licensees under the Act who have had their licenses revoked, or who have surrendered their licenses in lieu of disciplinary action.

Recommendation 13 – Authorize the Director to transmit letters of admonition to licensees by means other than certified mail.

Section 12-8-108(1)(h)(II), C.R.S., requires the Director to send letters of admonition to licensees via certified mail. While this delivery method allows the Director to verify that a delivery attempt was made, it does not guarantee that the addressee actually receives the letter. The addressee can decline to sign for or pick up the letter, and then claim he or she never received it. This defeats the purpose of sending the letter by certified mail.

Certified mail also costs more than first-class mail.

Repealing the requirement that letters of admonition be sent via certified mail would save money and streamline the administrative process without compromising the Director's enforcement authority. Therefore, the General Assembly should repeal the requirement that letters of admonition be sent by certified mail.

Recommendation 14 – Make technical changes to the Act.

The Act contains instances of obsolete, duplicative and confusing language. Further, reorganizing some portions of the statute would improve its clarity and readability. The Act should be revised to reflect current terminology and administrative practices and reorganized to group like subjects together. These changes are technical in nature, meaning that they have no substantive impact on the practice of any of the professions regulated under the Act.

The General Assembly should make the following technical changes:

- **Section 12-8-103(11), C.R.S., and throughout the Act.** Change the name of the profession "manicurist" to "nail technician." This change reflects the current terminology for the profession and more accurately reflects what this profession does.
- **Section 12-8-108(1)(b), C.R.S.** Revise this wording to reflect the full range of disciplinary actions the Act already authorizes the Director to take, specifically:
 - To revoke or suspend a licensee or registrant, or to deny, fine, place on probation, or limit the scope of practice of an applicant, licensee, or registrant, upon proof of violation of this article or the rules promulgated pursuant to this article.
- **Section 12-8-108(1)(c), C.R.S.** Repeal the words, "and of employees" because "the public" includes employees.

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- **Section 12-8-108(2)(a), C.R.S.** Repeal the sentence regarding the members of the Committee being compensated for their services, because section 24-34-102(13), C.R.S., does not require such reimbursement.
 - **Section 12-8-111(3), C.R.S.** Move this provision to section 12-8-116, C.R.S., which addresses fees.
 - **Section 12-8-117, C.R.S.** Move this section to section 12-8-116, C.R.S., which addresses fees.
 - **Section 12-8-132(1)(c), C.R.S.** Revise this section to define substandard practice more accurately, specifically:

Committed an act or failed to perform an act necessary to meet the generally accepted standards to practice a profession licensed under this article, which shall include performing services outside of the person's area of training, experience, or competence.

Appendix A - Minimum Training Requirements

Minimum Training Requirements: Barbers, Cosmetologists, Estheticians, Hairstylists, and Manicurists

Subject Area	Number of Credit Hours Required				
	Barber	Cosmetologist	Esthetician	Hairstylist	Manicurist
Law, rules, and regulations	1	1	1	1	1
Management, ethics, interpersonal skills and salesmanship	1	1	1	1	1
Disinfection, cleaning, and safe work practices	6	6	7	9	6
Application of artificial nails	0	5	0		5
Chemical texture services	0	4	0	4	0
Facial makeup	0	1	1	0	0
Facial massage and treatments	3	0	0	0	0
Facials and skin care		7	7	0	0
Hair Removal		3	3	0	0
Haircoloring	8	8	0	8	0
Haircutting	9	8	0	8	0
Hairstyling	9	7	0	7	0
Manicuring and pedicuring		7	0	0	7
Permanent waving & chemical hair relaxing	8	0	0	0	0
Shampooing, rinsing and conditioning	0	2	0	2	0
Shaving	3	0	0	0	0
Treatment of hair and scalp	2	0	0	0	0
TOTAL HOURS	50	60	20	40	20

Appendix B - Complaints Received, by License Type

Types of Complaints Received Against Barbers, Cosmetologists, Estheticians, Hairstylists, and Manicurists

Barbers

Nature of Complaints	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Practicing without a license	11	17	48	16	29
Felony conviction	15	33	28	6	14
Failing to comply with the rules to include cleaning and disinfection rules	1	0	11	4	1
Making a misstatement on application	0	2	2	2	3
Violated the provisions of the Act or a Director Order	0	2	1	1	0
Willful misrepresentation	0	1	1	1	0
Unprofessional or dishonest conduct	0	0	0	1	1
Excessively uses or abuses alcohol or controlled substance	0	0	0	0	1
TOTAL	27	55	91	31	49

Cosmetologists

Nature of Complaints	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Practicing without a license	104	227	340	252	194
Felony conviction	52	78	66	69	60
Failing to comply with the rules to include cleaning and disinfection rules	2	6	62	25	46
Making a misstatement on application	12	7	16	13	7
Violated the provisions of the law or a Director Order	1	0	5	1	0
Unprofessional or dishonest conduct	0	0	0	1	0
Excessively uses or abuses alcohol or controlled substance	0	2	0	0	0
Incompetent to practice	0	0	0	1	2
TOTAL	171	320	489	362	309

Estheticians

Nature of Complaints	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Practicing without a license	7	18	52	34	32
Felony conviction	5	7	8	3	5
Failing to comply with Director's rules, including cleaning and disinfection rules	0	2	22	4	6
Making a misstatement on application	1	0	2	4	1
Violated the provisions of the Act or a Director Order	0	0	0	1	0
TOTAL	13	27	84	46	44

Hair Stylists

Nature of Complaints	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Practicing without a license	1	17	51	25	24
Felony conviction	7	11	13	5	5
Failing to comply with Director's rules, including cleaning and disinfection rules	0	1	4	2	10
Making a misstatement on application	2	2	1	1	0
Violated the provisions of the law or a Director Order	0	0	0	0	1
Willful misrepresentation	0	0	0	1	0
TOTAL	10	31	69	34	40

Manicurists

Nature of Complaints	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Practicing without a license	62	42	78	59	30
Felony conviction	4	6	7	6	7
Failing to comply with Director's rules, including cleaning and disinfection rules	5	9	123	35	30
Making a misstatement on application	1	8	1	9	4
Violated the provisions of the law or a Director Order	0	1	0	1	4
Willful misrepresentation	0	0	0	0	1
Unprofessional or dishonest conduct	1	0	0	0	0
TOTAL	73	66	209	110	76

Shop Registration

Nature of Complaints	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Practicing without a license	20	23	58	34	29
Failing to comply with Director's rules, including cleaning and disinfection rules	5	19	91	74	38
Making a misstatement on application	0	0	0	1	0
Violated the provisions of the law or a Director Order	0	3	0	0	5
Willful misrepresentation	0	0	0	0	1
TOTAL	25	45	149	109	73

Appendix C - Final Actions Taken, by License Type

Final Actions Taken Against Barbers, Cosmetologists, Estheticians, Hairstylists, and Manicurists

Barbers

Type of Action	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Revocations	1	1	3	1	0
Stipulations	25	26	40	16	15
Letters of Admonition	0	3	3	6	1
Other (including cease and desist orders and citations)	0	11	17	2	2
Total disciplinary actions	26	41	63	25	18
Dismissals	5	5	15	10	1
Letters of Concern	0	0	22	1	17
Total dismissals	5	5	37	11	18
Total final actions	31	46	100	36	36

Cosmetologists

Type of Action	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY12-13
Revocations	7	4	2	2	0
Stipulations	186	131	170	155	107
Letters of Admonition	4	48	71	76	33
Other (including cease and desist orders and citations)	16	25	33	28	18
Total disciplinary actions	213	208	276	261	158
Dismissals	41	31	37	28	15
Letters of Concern	0	64	163	114	89
Total dismissals	41	95	200	142	104
Total final actions	254	303	476	403	262

Estheticians

Type of Action	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Revocations	0	0	0	0	0
Stipulations	16	14	34	13	19
Letters of Admonition	0	7	3	8	3
Other (including cease and desist orders and citations)	0	3	5	4	2
Total disciplinary actions	16	24	42	25	24
Dismissals	17	3	5	5	6
Letters of Concern	1	0	39	7	19
Total dismissals	18	3	44	12	25
Total final actions	34	27	86	37	49

Hair Stylists

Type of Action	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Revocations	0	3	0	0	0
Stipulations	9	8	22	12	10
Letters of Admonition		6	4	11	0
Other (including cease and desist orders and citations)	1	8	21	9	4
Total disciplinary actions	10	25	47	32	14
Dismissals	4	2	2	6	2
Letters of Concern	0	0	20	3	14
Total dismissals	4	2	22	9	16
Total final actions	14	27	69	41	30

Manicurists

Type of Action	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Revocations	2	1	0	0	0
Stipulations	94	97	132	65	37
Letters of Admonition	0	6	5	19	2
Other (including cease and desist orders and citations)	6	12	22	19	4
Total disciplinary actions	102	116	159	103	43
Dismissals	31	18	10	10	5
Letters of Concern	1	2	35	3	17
Total dismissals	32	20	45	13	22
Total final actions	134	136	204	116	65

Shop Registration

Type of Action	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Revocations	0	0	0	0	0
Stipulations	31	62	93	58	33
Letters of Admonition	0	0	0	0	0
Other (including cease and desist orders and citations)	5	5	6	7	1
Total disciplinary actions	36	67	99	65	34
Dismissals	42	29	47	47	12
Letters of Concern	0	0	0	2	1
Total dismissals	42	29	47	49	13
Total final actions	78	96	146	114	47