

2004
SUNSHINE
ACT
REVIEW

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

The Barber and Cosmetologist Act
and the Barber and Cosmetology
Advisory Committee



October 15, 2004

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

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Bill Owens
Governor

October 15, 2004

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 Colorado Department of Regulatory Agencies has completed its evaluation of the Barber and Cosmetologist Act (Act), as it is administered by the Director of the Division of Registrations, as well as the Barber and Cosmetology Advisory Committee (Advisory Committee). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2005 legislative committee of reference. The report is submitted pursuant to sections 2-3-1203 and 24-34-104(8)(a), Colorado Revised Statutes (C.R.S.).

Section 2-3-1203, C.R.S., states, in part:

The department of regulatory agencies shall conduct an analysis and evaluation 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 containing such analysis and evaluation to the office of legislative legal services by October 15 of the year preceding the date established for termination.

Section 24-34-104(8)(a), C.R.S., 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 Act, the Advisory Committee, or both. The report also discusses the effectiveness of the staff of the Division of Registrations 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,

Tambor Williams
Executive Director

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Executive Summary

Quick Facts

What is Regulated? Barbers, cosmetologists, hairstylists, cosmeticians and manicurists.

Who is Regulated? In fiscal year 03-04 there were 43,411 active licensees:

- 2,388 barbers
- 29,823 cosmetologists
- 521 hairstylists
- 2,691 cosmeticians
- 7,988 manicurists

How is it Regulated? The Barber and Cosmetologist Act (Act) is administered by the Director of the Division of Registrations (Division Director), with the assistance of the Barber and Cosmetology Advisory Committee (Advisory Committee), in the Department of Regulatory Agencies. The Division Director may issue, deny, renew and discipline licenses; establish training criteria; administer written and practical examinations and promulgate rules.

What Does it Cost? The fiscal year 03-04 expenditure to oversee this program was \$775,588, and there were 9.0 FTE associated with this program.

In 2004, license costs were:

	New	Renewal
Barbers	\$95	\$40
Cosmetologists	\$95	\$27
Hairstylists	\$95	\$40
Cosmeticians	\$95	\$40
Manicurists	\$95	\$40

What Disciplinary Activity is There? During the five year period fiscal year 98-99 to fiscal year 02-03, the Division Director's disciplinary proceedings consisted of:

Complaints Filed	266
Revocations	9
Suspensions	4
Letters of Admonition	69
Fines	244
Stipulated Settlements	0
Cease & Desist Orders	474
Dismissed	88

Where Do I Get the Full Report? The full sunset review can be found on the internet at:

<http://www.dora.state.co.us/opr/oprpublications.htm>

Key Recommendations

Continue the Act until 2012.

The regulation of barbers, cosmetologists, hairstylists, cosmeticians and manicurists protects the health, safety and welfare of the public by ensuring that practitioners practice safely and properly clean and sterilize the implements they use.

Sunset the Advisory Committee.

Created in 2000, the primary function of the Advisory Committee has been to provide advice and expertise to the Division Director in a years-long rule revision process. With all of the Division Director's rules revised and the future role of the Advisory Committee in doubt, sunset is warranted.

Repeal the Requirement that License Candidates Take and Pass Practical Examinations.

The practical examinations administered pursuant to the Act do not adequately ensure that practitioners can practice safely and they are psychometrically flawed. On some test items, license candidates could perform all of the health and safety tasks but still fail the examination because some test items consist of mostly style and technique tasks. Additionally, the practical examinations do not test for all potentially harmful tasks, such as face shaving, and they do not require candidates to demonstrate the ability to clean and sterilize implements. Furthermore, since a license candidate performs the practical examination in front of only one proctor, the candidate's score is entirely within the discretion of that proctor. Psychometrically, this is unacceptable.

...Key Recommendations Continued

Combine the Practices of Barbering and Hairstyling and Create a Single, Combined Practice of Barbering-Hairstyling.

In 2000, the General Assembly created the hairstylist license type, based on the premise that those who wanted to limit their practices to styling hair should not be required to obtain licensure as barbers or cosmetologists, license types that consisted of practice areas extraneous to styling hair. However, the training requirements and examination test items are so overwhelmingly similar for the barber and hairstylist license types that it is inefficient to maintain both. In conjunction with this recommendation, the practices of face shaving, beard trimming and facial massage, practices in which barbers may currently engage, should be excluded from the practice of barbering-hairstyling.

Authorize the Division Director to Promulgate Training Requirements for those Barber-Hairstylists, Cosmetologists and Cosmeticians Who Wish to Offer Face Shaving, Beard Trimming and Facial Massage Services.

There is no valid, public policy reason to limit the practices of face shaving and beard trimming to barbers. Additionally, the demand for such services seems to be declining, thus giving rise to questions regarding the necessity for every barber receiving training in a practice area in which the barber may never engage. Given that this report recommends combining the barber and hairstylist license types and since cosmetologists and cosmeticians already receive extensive training regarding facials, the Division Director should be authorized to promulgate training requirements that will enable any barber-hairstylist, cosmetologist or cosmetician who wishes to offer such services, to do so. This will enact a more flexible, less restrictive approach to regulation.

Require the Division Director to Redesign the Written Examinations to Address Solely Health and Safety Issues.

Regulation of barbers, cosmetologists, hairstylists, cosmeticians and manicurists is based on the need to assure that practitioners practice safely. However, the current written examinations address factors other than health and safety issues, such as style and technique. Depending upon the examination and form administered, a candidate could answer all of the health and safety questions correctly, but still fail the examination. The written examinations should be redesigned to solely address health and safety issues.

Major Contacts Made in Researching the 2004 Sunset Review of the Act and the Advisory Committee

The Beauty and Barber Supply Institute
Colorado Attorney General's Office
Colorado Beauty Federation
Colorado Community College System
Colorado Department of Public Health and Environment
Colorado Division of Professional and Occupational Schools
Colorado Division of Registrations

Cosmetic, Toiletry and Fragrance Association
National Accrediting Commission of Cosmetology Arts & Sciences
National Barber Boards of America
National Coalition of Esthetic & Related Associations
National Cosmetology Association
Promissor, Inc.
U.S. Food and Drug Administration

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:
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Background

The Sunset Process

The regulatory functions of the Director of the Division of Registrations (Division Director) and the Barber and Cosmetology Advisory Committee (Advisory Committee) in accordance with Article 8 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2005, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Division Director and Advisory Committee pursuant to sections 24-34-104(8)(a) and 2-3-1203, C.R.S., respectively.

The purpose of this review is to determine whether regulation by the Division Director, the Advisory Committee, or both should be continued for the protection of the public and to evaluate the performance of staff in the Office of Barber and Cosmetology Licensure (Office). During this review, the Division Director and Advisory Committee must demonstrate that there is still a need for regulation and for the Advisory Committee, and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 52.

Methodology

As part of this review, DORA staff conducted a literature review; attended an Advisory Committee meeting; interviewed the Division Director, Office staff, officials with state and national professional associations, and licensees; and reviewed Office and Advisory Committee records and minutes, complaint and disciplinary actions, Colorado statutes and rules, and the laws of other states.

Profile of the Profession

Section 12-8-101, *et seq.*, C.R.S., otherwise known as the Barber and Cosmetologist Act (Act), regulates five inter-related occupations: barbers, hairstylists, cosmetologists, cosmeticians and manicurists. Due to the considerable degree of overlap among the regulated occupations, particularly with regard to cosmetologists, the practice areas of each can be confusing. Table 1 illustrates the services that each occupation may provide.

Table 1
Service Areas by License Type

	Barbers	Hairstylists	Cosmetologists	Cosmeticians	Manicurists
Applying eyelashes			X	X	
Applying makeup			X	X	
Beautifying arms			X	X	
Beautifying bust			X	X	
Beautifying face			X	X	
Beautifying neck			X	X	
Cleansing hair	X	X	X		
Coloring or bleaching hair	X	X	X		
Cutting & styling hair	X	X	X		
Facials			X	X	
Manicuring or pedicuring nails			X		X
Massaging arms			X	X	
Massaging face	X		X	X	
Massaging hands			X	X	X
Massaging neck			X	X	
Massaging shoulders			X	X	
Shaving/trimming beard	X				
Waving/straightening hair	X	X	X		

In very general terms, barbers and hairstylists perform services on the hair and scalp, cosmeticians perform services on the face and skin, and manicurists perform services on the hands, feet and nails of their respective clients. Cosmetologists, by contrast, may perform services on any of these body areas, although most, as a practical matter, specialize in one or two areas. It is also noteworthy that the individuals that Colorado licenses as “cosmeticians” are commonly referred to as “estheticians.”

Most practitioners work as independent contractors in salons, spas or barbershops, although practitioners that work in national chain salons are typically employees of such establishments.

In order to obtain licensure in Colorado, practitioners must satisfy certain, minimum training requirements. Although these requirements are delineated by a certain number of credit hours, training programs can take anywhere from several months to several years to complete.

According to the 2004-2005 edition of the U.S. Department of Labor’s *Occupational Outlook Handbook*, the median earnings for hairstylists and cosmetologists in 2002 were \$18,960, and \$19,500 for barbers, \$22,450 for cosmeticians and \$17,330 for manicurists. Of course, individual practitioners can make much more or much less than these median values.

History of Regulation

Colorado first began regulating barbers in 1909, when the General Assembly created the Barber Board. Regulation of cosmetologists and the creation of the Cosmetology Board followed in 1931. By 1963, manicurists were also regulated by the Cosmetology Board.

In 1977, the General Assembly combined the Barber Board and the Cosmetology Board, and created the State Board of Barbers and Cosmetologists (Board). That same year, the legislature began regulation of cosmeticians. The new Board was empowered to prescribe training requirements, as well as written and practical licensing examinations.

In 2000, the General Assembly created a new level of regulation by requiring hairstylists to obtain a license to practice, and it repealed the statutory provision creating the Board, transferring all of its licensing, disciplinary and policy-making functions to the Division Director. That same year, the General Assembly also required the Division Director to appoint a five-member advisory committee to assist in regulation.

Legal Framework

The Barber and Cosmetologist Act (Act), which is codified at section 12-8-101, *et seq.*, Colorado Revised Statutes (C.R.S.), governs the licensing and regulation of barbers, cosmetologists, hairstylists, manicurists and cosmeticians under a director model approach to regulation. In that regard, the Act also creates the Barber and Cosmetology Advisory Committee (Advisory Committee).

The practice of cosmetology includes arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring or similar work upon the hair of any person by any means and, with hands or mechanical or electrical apparatus or appliances or by the use of cosmetic or chemical preparations, antiseptics, tonics, lotions, creams or otherwise massaging, cleansing, stimulating, manipulating, exercising the scalp, face, neck, arms, hands or shoulders or manicuring or pedicuring the nails of any person. § 12-8-103(9), C.R.S.

The practice of barbering includes, when done on the upper part of the body for cosmetic purposes, shaving or trimming the beard, cutting the hair, giving facial or scalp massages or treatment with oils, creams or lotions, or other chemical preparations either by hand or with mechanical appliances; dyeing the hair or applying hair tonic; applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or shoulders, when done for payment, or without payment for the public generally. § 12-8-103(2), C.R.S.

The practice of hairstyling includes cleansing, massaging or stimulating the scalp with oils, creams, lotions or other cosmetic or chemical preparations, using the hands or with manual, mechanical, or electrical implements or appliances; applying cosmetic or chemical preparations, antiseptics, powders, oils, clays or lotions to the scalp; cutting, arranging, braiding, applying hair extensions to or styling the hair by any means; cleansing, coloring, lightening, waving or straightening the hair with cosmetic or chemical preparations, using manual, mechanical or electrical implements or appliances when done for payment, or without payment for the public generally. § 12-8-103(9.7), C.R.S.

The services offered by cosmeticians include facials; applying makeup; giving skin care; applying eyelashes; beautifying the face, neck, arms, bust or upper part of the body by the use of cosmetic preparations, antiseptics, tonics, lotions or creams; massaging, cleaning or stimulating the face, neck, arms, bust, or upper part of the body by means of the hands, devices, apparatus or appliances with the use of cosmetic preparations, antiseptics, tonics, lotions or creams; and removing superfluous hair from the body with the use of depilatories or waxing or by the use of tweezers. § 12-8-103(7), C.R.S.

The practice of manicuring includes filing, buffing, polishing, cleansing, extending, protecting, wrapping, covering, building, pushing or trimming the nails, or any other similar work, upon the nails of any person by any means, including softening the hands, arms, ankles or feet by use of hands, mechanical or electrical apparatus or appliances, cosmetic or chemical preparations, antiseptics, lotions or creams by massaging, cleansing, stimulating, manipulating or exercising the arms, hands, feet or ankles of any person when done for payment, or without payment for the public generally. § 12-8-103(10.5), C.R.S.

The Director of the Division of Registrations (Division Director) has the power and authority to promulgate rules, issue and deny licenses, discipline licensees, supervise and regulate the barber and cosmetology industries in Colorado, establish eligibility criteria for license examinations, and to inspect salons and barber shops upon receipt of written complaints. §§ 12-8-108(1) and 12-8-123, C.R.S. The Division Director also appoints the five-member Advisory Committee. At least three of these appointees must be licensed under the Act. § 12-8-108(2), C.R.S.

Additionally, the Division Director must maintain records of proceedings, licensure applicants, licensees and registered salons and barber shops. The Division Director may also prepare and transmit annual reports to the General Assembly and the Governor. § 12-8-107, C.R.S.

Any person engaging in barbering or cosmetology in Colorado must be licensed under the Act. § 12-8-120, C.R.S. However, the Act provides several exemptions to this requirement, including for those who are licensed to practice medicine, surgery, dentistry, podiatry, osteopathy and chiropractic, as well as for volunteers in the performance of charitable services for washing and setting the hair of patients in nursing homes and hospitals and persons confined to their homes due to age or mental or physical disability. §§ 12-8-121(1)(a) and (1)(b), C.R.S. Students pursuing licensure are also exempt from the licensing requirements of the Act. § 12-8-121(1)(d), C.R.S.

An individual interested in obtaining a license under the Act may proceed along one of two tracks: endorsement or examination. An individual pursuing licensure by endorsement must demonstrate that he or she: 1) possesses credentials and qualifications that are substantially equivalent to Colorado's requirements for licensure by examination, and 2) has practiced under a relevant license for at least two of the preceding five years. § 12-8-118, C.R.S.

To pursue licensure by examination, interested candidates must complete the educational requirements established by the Division Director. § 12-8-114(2), C.R.S. The Division Director's requirements must include at least 1,000 hours of education for cosmetologists, barbers and hairstylists, 550 hours for cosmeticians and 350 hours for manicurists. § 12-8-114(3), C.R.S.

In March 2004, the Division Director promulgated a new rule, Rule 7, regarding education. The primary change entailed a shift from requirements based on clock hours to requirements based on credit hours. Table 2 illustrates, for students applying for initial licensure on or after July 1, 2006, the number of credit hours that must be obtained in the designated subjects before a candidate will be allowed to sit for a licensing examination.

Table 2
Education Requirements by License Type

	Cosmetologists	Barbers	Hairstylists	Cosmeticians	Manicurists
Scalp treatments and shampooing, rinsing & conditioning	2	2	2		
Hair coloring	8	8	8		
Haircutting	8	9	8		
Hairstyling	7	9	7		
Chemical texture services	4	8	4		
Manicuring & pedicuring	7				7
Application of artificial nails	5				5
Shaving		3			
Facials & skin care	7	3		7	
Facial makeup	1			1	
Hair removal	3			3	
Law, rules & regulations	1	1	1	1	1
Management, ethics, interpersonal skills & salesmanship	1	1	1	1	1
Disinfection, sanitation & safe work practices	6	6	9	7	6
Total Credit Hours	60	50	40	20	20

Note that there are several areas in which the scopes of practice of one or more licenses overlap, but education requirements differ among license types. The Office of Barber and Cosmetology Licensure (Office) attributes this discrepancy to the fact that prior to the conversion to credit hours, a job study analysis was performed to determine how much time practitioners under each license type spend performing each area of practice. The results of this study, the Office asserts, explain the differentiation in education requirements. That is, barbers spend more time styling hair than do cosmetologists or hairstylists; thus, they receive more education in hairstyling.

Licensing examinations consist of both written and practical components. § 12-8-110(2), C.R.S. The examinations must emphasize health and safety issues, and they must be developed and graded in Colorado. § 12-8-110(3), C.R.S.

All licensees must conspicuously display their licenses at their principal place of business. § 12-8-119, C.R.S.

In addition to licensees, the salons, spas and barbershops in which most licensees work are also subject to regulation. Such facilities must register with the Division Director. § 12-8-114.5(1), C.R.S. However, failure to register “shall not be [a] basis for disciplinary action.” § 12-8-114.5(2), C.R.S.

Failure to comply with the requirements of the Act or any rules promulgated thereunder may result in discipline. Pursuant to section 12-8-132, C.R.S., the Division Director may deny, revoke, suspend or place on probation any license issued pursuant to the Act upon proof that the licensee:

- Has been convicted of or has entered a plea of *nolo contendere* to a felony;
- Has made any misstatement on his or her application for licensure;
- Is incompetent to practice and practicing outside the scope of the person’s area of training, experience or competence;
- Is addicted to or dependent on alcohol or a habit-forming drug;
- Has violated any provisions of the Act or order or rule of the Division Director;
- Is guilty of unprofessional or dishonest conduct;
- Advertises by means of false or deceptive statement;
- Fails to display his or her license; or
- Is guilty of willful misrepresentation.

In addition to any other penalty, the Division Director may also impose fines for violations of the Act. In the first administrative proceeding against any person, the Division Director may impose a fine of between \$100 and \$500 per day per violation. § 12-8-127(2)(a), C.R.S. In the second administrative proceeding against any person, the Division Director may impose a fine of between \$1,000 and \$2,000 per day per violation. § 12-8-127(2)(b), C.R.S. All fines collected pursuant to the Act are deposited in the state’s General Fund. § 12-8-127(4), C.R.S.

Alternatively, when a complaint or investigation reveals a violation of the Act that does not warrant formal action, but that should not be dismissed as being without merit, a letter of admonition (LOA) may be sent to the person against whom the complaint was made. § 12-8-108(1)(h), C.R.S. A licensee receiving a LOA may request, within 20 days of proven receipt, that such letter be vacated and that formal disciplinary proceedings be instituted. § 12-8-108(1)(h)(III), C.R.S.

The Division Director may employ administrative law judges (ALJs) to conduct any and all disciplinary hearings. § 12-8-131(1), C.R.S. ALJ decisions must be approved or rejected by the Division Director, and appeal of the Division Director's final decision is to the Colorado Court of Appeals. §§ 12-8-131(5), (6) and (7), C.R.S.

Finally, if the Division Director determines, after a hearing, that a person is acting in a manner that is a threat to the health and safety of the public, the Division Director may issue an order to cease and desist such activity. § 12-8-127.5, C.R.S.

All fees associated with the regulation of this industry are set administratively and are deposited into the Division of Registrations Cash Fund, from which they are appropriated each year to cover the costs associated with administering the Act. §§ 12-8-116 and 12-8-117, C.R.S.

The Division Director has also promulgated a series of rules addressing issues such as sanitation, disinfection and safety procedures. In addition, the Division Director has established, by rule, educational requirements for licensed practitioners who wish to provide certain, specialty services.

A licensed cosmetologist or cosmetician wishing to use cosmetic resurfacing exfoliation substances must obtain 24 hours of additional training in: skin analysis, conditions, contraindications and aftercare (eight hours); product ingredient of cosmetic resurfacing exfoliating substances (eight hours) and chemical peel treatment procedures and treatment reactions (eight hours). Rule 3(C)(1).

A licensed cosmetologist or cosmetician wishing to provide microderm abrasion services must obtain an additional 14 hours of training in: skin (one hour); skin type and conditions (one hour); microexfoliation (two hours); treatment procedures (five hours), sanitation, sterilization and safety (two hours); law, rules and regulations (one hour); salesmanship (one hour) and occupational health and safety (one hour). Rule 3(C)(3).

Program Description and Administration

For the purpose of administering the Barber and Cosmetologist Act (Act), the Director of the Division of Registrations (Division Director), has created the Office of Barber and Cosmetology Licensure (Office) and appointed the Barber and Cosmetology Advisory Committee (Advisory Committee). The Act regulates barbers, hairstylists, cosmetologists, cosmeticians and manicurists.

The Division Director has appointed a Program Director to head the Office and oversee the day-to-day operations of the Office. Legally, however, all actions taken by the Office or Program Director are done so in the name of the Division Director.

Additionally, the Division Director appoints the five-member Advisory Committee, which comprises members of the regulated practices. Advisory Committee members may serve as such for two, three-year terms. Currently, two cosmetologists and a barber serve on the Advisory Committee. The terms of one cosmetologist and a manicurist expired in June 2004 and, as of this writing, their vacancies had not been filled.

The Advisory Committee generally meets on a quarterly basis. Although the Advisory Committee occasionally offered advice to the Division and Program Directors regarding licensing matters and whether and what disciplinary action should be taken in select cases, since 2002, the Advisory Committee's sole function has been to provide the Division Director with advice on proposed rule changes. Table 3 illustrates the Advisory Committee's recommendations and the Division Director's subsequent actions during fiscal years 02-03 and 03-04.

Table 3
Advisory Committee Recommendations and Subsequent Director Actions

Date	Proposal	Action
07/08/02	Recommendation of 14-hour course in microderm abrasion for licensed cosmeticians and cosmetologists.	Rule 3 – Cosmetic Resurfacing Exfoliating Procedures – Effective March 1, 2004
10/28/02	Recommendation for rulemaking regarding health and safety issues pertaining to foot spas & blood borne pathogens.	Rule 2 – Sanitation and Disinfection - Effective March 1, 2004
10/28/02	Recommendation for rulemaking regarding the use of electric files.	Rule 9 – Manicuring – Effective March 1, 2004
10/28/02	Recommendation to allow the use of disinfectants such as bleach, isopropyl alcohol and ethyl alcohol for cleaning of implements.	Rule 2 – Sanitation and Disinfection - Effective March 1, 2004
01/13/03	Recommendation to modify the existing rule pertaining to shop registration.	Rule 5 – Registration of Places of Business – Effective September 1, 2003
01/13/03	Recommendation to modify the existing rule regarding endorsement applications.	Rule 10 – Licensure by Endorsement - Effective August 1, 2003

Date	Proposal	Action
01/13/03	Recommendation to modify the existing rule regarding advanced skin care practices, such as chemical exfoliations.	Rule 3 – Cosmetic Resurfacing Exfoliating Procedures – Effective March 1, 2004
07/14/03	Reviewed and approved the proposed manicuring rule regarding electric file training and prohibition of MMA.	Rule 9 – Manicuring – Effective March 1, 2004
07/14/03 & 1/12/04	Approved the proposed education rule converting clock hours to credit hours.	Rule 7 – Education Requirements - Effective May 1, 2005, and Applicable July 1, 2006
07/14/03	Reviewed and approved proposed disinfection rule.	Rule 2 – Sanitation and Disinfection - Effective March 1, 2004
01/12/04	Approved changes to the Rule 1 regarding the advisory committee to eliminate the requirement that all committee members be licensees to allow for public representative.	Rule 1 – Advisory Committee - Effective May 1, 2004
01/12/04	Approved changes to the Rule 6 regarding minimum health and safety issues for places of business.	Rule 6 – Requirements for Places of Business and Licensees - Effective May 1, 2004
01/12/04	Reviewed and approved inspection protocols.	Revised inspection protocols - Implemented March 1, 2004

Historically, the Division Director regulated the five occupations with the assistance of nine full-time equivalent (FTE) employees and an annual budget of almost \$900,000. Table 4 illustrates the Division Director’s total expenditures and FTE totals for fiscal years 98-99 through 02-03, as they pertain to the Office.

**Table 4
Agency Fiscal Information**

Fiscal Year	Total Program Expenditure	FTE
98-99	\$671,701	9.0
99-00	\$675,888	9.0
00-01	\$717,164	9.0
01-02	\$826,875	9.0
02-03	\$896,452	9.0

Following a reorganization of the Division of Registrations (Division) and the outsourcing of the examinations administered pursuant to the Act, Office staffing was reduced. Currently, the Office is staffed by 5.5 FTE comprising 0.5 FTE General Professional VI (Program Director), 2.0 FTE Program Assistant I (inspectors), 1.0 FTE Program Assistant II (expedited settlements and compliance monitoring), and 2.0 FTE Administrative Assistant III (licensing and complaint processing).

Licensing

The Office administers a program that issues five types of licenses: barber, hairstylist, cosmetologist, cosmetician and manicurist. Table 5 illustrates, for fiscal years 98-99 through 02-03, the total number of licenses issued by examination and endorsement, as well as the number of licenses that were renewed and reinstated each year.

Table 5
Licensing Information

Number of Licenses				
Fiscal Year	Exam	Endorsement	Renewals & Reinstatements	TOTAL ACTIVE LICENSEES
98-99	2,829	707	12,821	39,293
99-00	2,983	785	20,726	39,499
00-01	2,367	520	12,470	38,265
01-02	2,547	598	20,550	40,533
02-03	2,589	647	15,323	44,284

Renewal and reinstatement numbers fluctuate due to a staggered two-year renewal cycle for all license types. Overall, however, the total number of licensees has increased by approximately 5,000 over the course of the five years under review.

Table 6, which illustrates the number of new licenses issued via examination by license type, demonstrates that the number of new licensees has not increased symmetrically across license types.

Table 6
Licensure by Examination by License Type

Fiscal Year	Barbers	Cosmeticians	Cosmetologists	Hairstylists	Manicurists
98-99	334	474	1,050	0	971
99-00	372	566	1,145	0	900
00-01	183	415	900	149	720
01-02	195	470	850	255	777
02-03	153	474	984	268	708

Between fiscal years 99-00 and 00-01, the number of new barber licensees dropped by almost 200. Fiscal year 00-01 also saw the creation of the new hairstylist license. It is generally believed that, due to the similarity in the scopes of practice of these two license types, the decline in the number of new barbers is directly related to the creation of the hairstylist license. The hairstylist license requires less education, primarily owing to the fact that hairstylists cannot shave the faces or trim the beards of clients, whereas barbers can. Thus, more people entering the profession opt to pursue a hairstylist license rather than a barber license.

While the number of new cosmeticians has remained relatively constant, the number of new cosmetologists has declined slightly and the number of new manicurists has declined more significantly, during the five-year period reviewed here.

Finally, Table 7 illustrates the total number of active licenses, by license type, for the five-year period indicated.

**Table 7
Total Active Licenses by License Type**

Fiscal Year	Barbers	Cosmeticians	Cosmetologists	Hairstylists	Manicurists
98-99	2,601	1,317	28,795	0	6,580
99-00	2,411	1,487	29,186	0	6,415
00-01	2,510	1,815	26,712	179	7,153
01-02	2,399	2,425	27,562	396	7,741
02-03	2,621	2,650	30,113	433	8,457

During this period, the number of licensees of each license type has increased. Note, however, that the number of barber licensees increased by only 20.

In order to obtain initial licensure by examination, a candidate must have completed the required number of hours of education from an approved school for the license sought, complete an application form and pay the required fee. All candidates first take a practical examination and then a written examination.

The fee for initial licensure by examination, for all license types, is \$95, which comprises a one-time \$20-application fee, a \$40-fee for the required practical examination and a \$35-fee for the required written examination.

Schools are approved either by the Colorado Division of Private and Occupational Schools (DPOS) or are a part of the Colorado Community College System (CCCS). Both DPOS and CCCS have promulgated their own standards regarding instructor qualifications and licensing. Approved schools develop course curricula that adhere to the Division Director's educational requirements. As of March 2004, DPOS had approved 58 schools and the CCCS operated approximately 20 programs.

Additionally, schools may be accredited by the National Accreditation Commission of Cosmetology Arts and Sciences (NACCAS). In addition to other things, NACCAS-accreditation allows students at DPOS-licensed schools to participate in the federal government's various student aid programs. The NACCAS has accredited 13 programs in Colorado.

Individuals seeking licensure by endorsement must pay a \$50-fee. In order to qualify for licensure by endorsement, the candidate must be licensed in another state for the practice sought in Colorado and either submit proof of two years of experience or proof that the individual obtained an education that is substantially equivalent to the education requirements for licensure by examination in Colorado.

All licenses are renewed every two years. Renewal fees for barbers, hairstylists, cosmeticians and manicurists are \$40, and the renewal fee for cosmetologists is \$27.

In addition to licensing individuals, the Division Director also registers the places of business at which licensees offer their services, such as barbershops, spas and salons. Table 8 illustrates the number of places of business that have registered with the Office during the five-year period indicated.

Table 8
Place of Business Registration Information

Fiscal Year	Number of Places of Business
98-99	Not Available
99-00	4,086
00-01	3,390
01-02	4,014
02-03	4,194

To register, business owners complete a simple form and pay the required fee of \$35. Although this is a one-time fee, registrations must be renewed every two years or when the address changes.

Examinations

Until August 2003, the Division Director administered Division-owned practical and written examinations that had been created under the old Board of Barbers and Cosmetologists. Effective September 8, 2003, however, the Division Director arranged with Promissor, Inc. (Promissor), a private vendor, to create (in close cooperation with the Office) and administer the licensing examinations for all five license types. Promissor also processes applications for licensure by examination and issues initial licenses at the written examination site.

Candidates may complete licensure applications on-line, over the phone with Promissor, or they may complete a paper application and fax it to Promissor. A candidate must be at least 16 years old and have graduated from a barber or beauty school approved by DPOS or operated by CCCS before being allowed to take an examination.

A candidate must take and pass the practical examination before he or she is permitted to sit for the written examination. The practical examinations are offered at Promissor-provided facilities at least one time each month in Fort Collins, Colorado Springs and Grand Junction, and at least one time each week in Denver.

Candidates are tested on between two and six items and are given between 30 minutes and two hours to complete the assigned tasks. Generally, cosmetologist candidates are tested on six items over two hours; barber, hairstylist and manicurist candidates are each tested on three items over approximately one hour and cosmetician candidates are tested on two items over approximately 30 minutes.

Promissor maintains a pool of potential examination items on which candidates may be tested. Each item has between 9 and 29 tasks that must be completed. Scoring is based on whether the candidate completes an enumerated task, not on whether the candidate completes the task well or poorly. If the candidate fails to perform a “must get” task, the candidate will fail that item. Each item has a cut score, which is the minimum number of tasks that must be completed in order to pass that particular item. If a candidate fails any examination item, the candidate fails the examination and must retake the entire examination.

Prior to the examination, candidates are aware of the examination items in the pool and the tasks associated with each item, but until the examination begins, they do not know on which items they will be tested. Each candidate for a particular license type is tested on the same items on any given examination day at any given examination site.

One proctor is assigned to evaluate three candidates and no proctor may evaluate candidates for more than one type of license. That is, if a proctor evaluates cosmetologist candidates, that same proctor may not also evaluate a hairstylist candidate during the same testing session. Additionally, a proctor must be licensed in the license-type for which he or she is serving as proctor.

At the conclusion of the testing session, proctors tally the score sheets for all candidates at the examination site and provide the candidates with initial documentation of passing or failing the examination. Score sheets are then faxed to Promissor’s headquarters, scores are verified and confirmation of a candidate’s passing or failing is mailed to the candidate. This is generally completed within three to five days.

Due to this verification procedure, a candidate must wait approximately one week after taking the practical examination before taking the written examination. Written examinations are offered via computer at Promissor testing facilities around the state, six days a week.

Prior to beginning the written examination, the computer asks all candidates two screening questions regarding their criminal history and alcohol/substance abuse. If a candidate answers either question affirmatively, meaning that the candidate does have a criminal history or does have a history of drug or alcohol abuse, the candidate may proceed with taking the examination, but additional documentation must be provided and reviewed by the Office prior to issuance of a license. However, if the candidate answers the two screening questions negatively and the candidate achieves a passing score on the written examination, Promissor will issue a photo-bearing license on the spot and the individual may immediately begin practicing.

The written examinations for barbers and cosmetologists each contain 120 multiple-choice questions that must be answered within two hours. The written examinations for hairstylists, cosmeticians and manicurists each contain 100 multiple-choice questions that must be answered within one hour and 40 minutes.

Tables 9 and 10 illustrate the pass rates for the practical and written examinations, by license type, given between fiscal years 98-99 and 02-03.

**Table 9
Pass Rates for Practical Examinations by License Type**

Fiscal Year	Barber	Cosmetician	Cosmetologist	Hairstylist	Manicurist
98-99	51%	100%	90%	NA	100%
99-00	76%	98%	90%	NA	99%
00-01	86%	99%	84%	92%	99%
01-02	80%	99%	80%	87%	99%
02-03	62%	89%	57%	57%	90%

**Table 10
Pass Rates for Written Examinations by License Type**

Fiscal Year	Barber	Cosmetician	Cosmetologist	Hairstylist	Manicurist
98-99	63%	93%	70%	NA	70%
99-00	67%	88%	68%	NA	66%
00-01	53%	91%	67%	32%	67%
01-02	50%	84%	59%	63%	65%
02-03	32%	77%	45%	42%	45%

The pass rates for both written and practical examinations declined over the years indicated. This can be, in part, attributed to inconsistent scoring during these years, as well as the types of items tested. However, beginning in late 2003, the Office and Promissor report that they redesigned both the written and practical examinations to place greater emphasis on health and safety matters. Additionally, the manner in which the practical examinations are administered has been redesigned in an attempt to make the examinations more objective.

Table 11 illustrates pass rates for both written and practical examinations, by license type administered between September 8, 2003, and July 31, 2004.

Table 11
Promissor-Administered Examination Pass Rates by License Type

License Type	Practical Examination (%)	Written Examination (%)
Cosmetologist	70.3	87.7
Barber	73.1	35.4
Hairstylist	74.4	55.8
Cosmetician	96.2	89.5
Manicurist	77.6	52.0

For the most part, these pass rates are significantly lower than when the Office administered the examination. In addition, the Division of Registration's Office of Examination Services (OES) explains that the differential in pass rates between the practical and written examinations can be, at least partially, explained by language barriers. OES theorizes that the practical examinations are easier for non-English speakers than the written examinations because language is less of an issue in the practical examinations. In the practical examinations, a license candidate with poor English language skills can observe the tasks being performed by other candidates to determine the task to be performed for the examination. Such is not the case with the written examinations, however, where the candidate must read, comprehend and answer the questions in English.

It must also be noted that pass rates on the barber written examination are exceptionally low. While language may play a role here as well, the number of people pursuing licensure as barbers is, as Tables 12 and 13 illustrate, much lower than for other license types, thus skewing the figures. More importantly, however, an OES psychometric analysis prompted by this sunset review revealed that the items on the barber written examinations are particularly difficult.

Tables 12 and 13 illustrate, for each license type, the number of practical and written examinations given for each of the five fiscal years indicated.

Table 12
Number of Practical Examinations by License Type

Fiscal Year	Barber	Cosmetician	Cosmetologist	Hairstylist	Manicurist
98-99	97	191	1,176	0	772
99-00	67	260	1,206	0	667
00-01	88	297	1,164	24	664
01-02	69	349	1,259	172	764
02-03	76	440	1,816	358	885

Table 13
Number of Written Examinations by License Type

Fiscal Year	Barber	Cosmetician	Cosmetologist	Hairstylist	Manicurist
98-99	97	198	1,376	0	1,277
99-00	65	286	1,443	0	1,116
00-01	104	328	1,452	33	1,139
01-02	135	400	1,599	240	1,417
02-03	109	518	2,135	384	1,546

Inspections

In addition to licensing individuals, the Division Director also registers the places of business at which those individuals work. While failure to so register does not constitute a violation of the Act, places of business that permit violations to be committed can be disciplined, typically by a fine.

The Division Director lacks the authority to inspect places of business unless a complaint is lodged against one of the licensees working in a particular salon. Only then can the Division Director inspect the place of business for compliance with the safety and sanitation rules promulgated pursuant to the Act.

As a result, the number of inspections conducted, on an annual basis, is somewhat limited by the number and types of complaints received. Table 14 illustrates the number of inspections conducted for each of the five fiscal years indicated.

**Table 14
Inspection Information**

Fiscal Year	Number of Inspections
98-99	112
99-00	115
00-01	170
01-02	176
02-03	100

The Office attributes the drop in the number of inspections between fiscal years 01-02 and 02-03 to the fact that, during this period, the Office was consumed with administering examinations. As a result, staff time was devoted to examinations, rather than inspections. This situation has been addressed by outsourcing the examinations.

The vast majority of inspections reveal some type of violation, including: health and safety; unlicensed activity; unsafe tools or products; and licensees practicing beyond the scope of their licenses. In such cases, disciplinary action, typically the imposition of a fine, may be instituted against violating licensees and the places of business.

Complaints/Disciplinary Actions

The Office receives complaints from a variety of sources, including consumers, other licensees and as the result of inspections. Table 15 illustrates the types of complaints received between fiscal years 98-99 and 02-03.

**Table 15
Complaint Information**

Nature of Complaints	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Practicing w/o a License (Unlicensed activity)	104	140	137	178	140
Standard of Practice	0	0	0	0	0
Fee Dispute	0	0	0	0	0
Beyond Scope of Practice	0	1	1	3	7
Sexual Misconduct	0	0	0	0	0
Substance Abuse	0	0	0	0	0
Theft	0	0	0	0	1
Sanitation and Safety Violation	14	32	23	55	73
Felony Conviction	2	1	1	2	8
Service Related Complaints	33	31	20	29	37
TOTAL	153	205	182	267	266

As Table 15 clearly illustrates, most complaints pertain to practicing without a license, safety and sanitation issues, and service-related complaints. Service-related complaints can generally be characterized as those alleging a “bad haircut” without any permanent, physical harm. The Division Director dismisses these complaints due to lack of jurisdiction.

Table 16 illustrates the number of complaints by license type during the period indicated.

Table 16
Complaints by License Type¹

Fiscal Year	Barber		Cosmetician		Cosmetologist		Hairstylist		Manicurist		Business Registration	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
98-99	0	0%	0	0%	49	32%	0	0%	27	18%	77	50%
99-00	24	12%	13	6%	43	21%	0	0%	35	17%	90	44%
00-01	25	14%	0	0%	35	19%	0	0%	24	13%	98	54%
01-02	21	8%	0	0%	34	14%	1	0%	27	11%	168	67%
02-03	23	9%	13	5%	78	29%	3	1%	43	16%	106	40%

After complaints regarding failure to register a place of business, most of which are originated by the Office, most complaints are lodged against cosmetologists. This is consistent with the fact that cosmetologists are the largest license group.

The Program Director reviews all complaints upon receipt. Most service-related complaints and other complaints that involve allegations that, even if true, would not constitute a violation of the Act, are immediately dismissed.

If it appears to the Program Director that further investigation is warranted, the Office may notify, in writing, the licensee that is the subject of the complaint that a complaint has been filed and offers the licensee 20 days in which to provide the Office with his or her side of the story. Usually, however, the Program Director authorizes an unannounced inspection of the place of business where the licensee works.

During an unannounced inspection, one of the Office's inspectors arrives at the subject shop or salon and, adhering to a standardized inspection checklist, looks for unlicensed persons, health and safety violations, the use of unsafe tools or products, or any other violations of the Act. As part of an inspection, the investigator takes samples of nail liquids, as applicable, to test for methyl methacrylate (MMA).²

Once all the necessary information is obtained, either via an inspection or otherwise, a memorandum containing the relevant facts of the case and an outcome recommendation is prepared by Office staff and sent to the Division Director for final action. The Division Director may request additional information, dismiss the case or refer the case to the Attorney General's Office for disciplinary proceedings.

¹ Percentages may not add up to 100 due to rounding.

² MMA is an otherwise legal material, but the U.S. Food and Drug Administration has banned its use on human nails. In fact, MMA can cause such severe and permanent harm that the Division Director deems its presence in a place of business to be evidence of its use, thus resulting in an automatic \$500-fine.

The Program Director routinely refers cases to the Office's Expedited Settlement Process (ESP), where Office staff attempts to settle the case. The vast majority of settlements involve a fine and at least one year of probation, during which time the Office may conduct additional inspections. In fiscal year 02-03, 142 cases were resolved through utilization of ESP.

Table 17 illustrates the number and types of actions taken by the Division Director during the period indicated.

**Table 17
Final Agency Action Information**

Type of Action	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Revocation	4	0	1	1	3
Surrender of License / Retirement	0	0	0	0	0
Suspension with Probation	1	1	1	0	1
Probation (no suspension) / Practice Limitation	43	39	47	45	70
Letter of Admonition	5	5	5	5	49
License Granted with Probation / Practice Limitations	0	0	0	0	0
License Denied after Hearing	0	0	0	0	0
Injunction	0	0	0	0	0
Fine	43	39	47	45	70
Stipulated Agreement	0	0	0	0	0
Suspension without Probation	0	0	0	0	0
Cease and Desist Orders	48	50	92	128	156
Dismiss	0	0	4	0	84
TOTAL	144	134	197	224	433

The Office attributes the significant increase in the number of letters of admonition in fiscal year 02-03 to a personnel change in the position of Program Director. The two Program Directors, the Office maintains, had different philosophies regarding the use of this disciplinary tool.

Similarly, the Office attributes the large number of dismissals in fiscal year 02-03 on the personnel change and the new Program Director's effort to reduce the Office's back-log of old cases where parties could no longer be located. In contrast, fiscal years 98-99 through 01-02 saw fewer dismissals because most complaints resulted in inspections, which, in turn, resulted in the identification of violations.

In addition, in fiscal year 02-03, the Division Director began issuing letters of caution in those circumstances where complaints were dismissed, but where the Division Director felt it was necessary to advise the licensee that the conduct at issue was cause for concern. In fiscal year 02-03, the Division Director issued a total of 115 letters of caution: 11 to barbers, 70 to cosmeticians, 4 to cosmetologists, 1 to a hairstylist, 26 to manicurists and 3 to places of business.

Finally, the Division Director routinely imposes a fine whenever a licensee is placed on probation, thus the correlation between these two types of disciplinary actions in Table 17. Fines may also be imposed under other circumstances, such as failure to register a place of business.

Table 18 illustrates the number of fines imposed, the dollar value of the fines assessed and the dollar value of the fines actually collected. The difference between assessments and collections is attributable to the fact that some fines are held in abeyance, which encourages compliant conduct.

**Table 18
Fining Information**

Fiscal Year	Fines Assessed	Fines Collected	Number of Fines Imposed
98-99	\$50,400.00	\$34,457.00	43
99-00	\$58,891.44	\$47,610.00	39
00-01	\$59,000.00	\$46,437.62	47
01-02	\$66,100.00	\$40,117.00	45
02-03	\$52,400.00	\$44,810.77	70

Table 19 illustrates the average time to closure for complaints handled by the Office. Average time to closure is calculated by determining the number of days that pass between when a complaint is received and when final agency action occurs.

**Table 19
Average Time to Closure**

Fiscal Year	Number of Days to Closure
99-00	105
00-01	137
01-02	85
02-03	43

Analysis and Recommendations

Recommendation 1 – Continue the regulation of barbers, cosmetologists, hairstylists, cosmeticians and manicurists until 2012.

The regulatory functions of the Director of the Division of Registrations (Division Director), with respect to barbers, hairstylists, cosmetologists, cosmeticians and manicurists, as provided by section 12-8-101, *et seq.*, Colorado Revised Statutes (C.R.S.)(Act), are scheduled to expire on July 1, 2005, unless affirmatively extended by the General Assembly. The Department of Regulatory Agencies (DORA) recommends that the General Assembly extend such regulation for seven years, until 2012.

The first sunset criterion asks whether regulation is necessary to protect the public health, safety or welfare. While the question of how the regulation of outwardly aesthetics-based occupations protects the public is not readily apparent, DORA nevertheless finds that such regulation is necessary because, while the public is capable of determining whether it receives quality services, the level of safety with which those services are rendered is not as obvious.

Additionally, the General Assembly has concluded, after every sunset review of this program that regulation is necessary and has repeatedly continued the program.

The various practices involved in this industry utilize sharp implements for cutting and styling hair, as well as in the performance of manicure and pedicure services. The improper cleaning, disinfection or both of such implements can lead to bacterial and fungal infections as well as to the spread of blood-borne pathogens, such as HIV and Hepatitis.

Practitioners also employ potentially hazardous chemicals in, among other things, the coloring and texturing of hair (relaxers and permanent waves), chemical peels of the face, and the application of acrylic nails. Misuse or misapplication of such chemicals can lead to serious bacterial and fungal skin infections, chemical burns and scarring, permanent loss of hair, loss of appendages such as fingers and toes, and many other types of permanent, physical harm.

Even failing to properly clean and disinfect something as innocuous as a comb can lead to the spread of lice and various fungal scalp conditions from one client to another.

Improper care, cleaning and disinfection of various pieces of equipment can lead to harm. This is particularly important because members of the general public cannot determine, from a simple visual inspection, whether implements or other equipment has been properly cleaned and sterilized.

For example, during the course of this sunset review, a representative of DORA accompanied inspectors on an inspection of a nail salon that failed to properly clean its foot spas.³ As a result, the filters became clogged with sloughed skin and other debris from previous clients. More disturbing, however, was the idea that whatever fungi or bacteria those previous clients bore on their feet were also clogged in the filters. Since the foot spas were not properly cleaned, those fungi and bacteria were then introduced to subsequent clients.

The risks posed by such situations are far from tenuous. Several years ago, approximately 100 California women contracted a form of dermal tuberculosis from foot spas that had not been properly sterilized. Investigators determined that the women had shaved their legs prior to using the foot spas. The act of shaving opened skin pores and created small cuts on their legs through which the bacteria entered their bodies. The infections resulted in severe blistering and scarring of the legs and feet, and required prolonged medical treatments.

While the number of complaints filed with the Office of Barber and Cosmetology Licensure (Office) alleging actual, physical harm is not very high, such complaints are filed. Thus, although there is little documented harm in Colorado, the potential for harm nevertheless exists. Regulation can be credited with keeping this potential from developing into actual, widespread harm.

It is reasonable to question, however, whether licensure is the proper form of regulation. An alternative to licensure of individuals would be to regulate the places of business through the Colorado Department of Public Health and Environment (CDPHE). CDPHE could then promulgate health and sanitation standards to which places of business must adhere.

While this approach may address the cleanliness and sanitation of spas and salons, it would neglect the other factors first listed in this Recommendation 1 -- the use of sharp implements and potentially hazardous chemicals by individuals.

Thus, in determining whether regulation should continue, the purpose of regulation must first be clarified. Members of the general public are perfectly able to determine whether they like the haircuts, facials, pedicures, etc. that they receive. In this sense, the free market is able to determine the relative success or failure of individual practitioners, and the expenditure of the state's resources toward this end is not justified.

³ A foot spa is an apparatus that resembles a reclining chair with a whirlpool at the base into which the client places his or her feet. Each foot spa has its own system of physical (not chemical) filters through which water is drawn, filtered and then reintroduced into the spa basin.

However, since members of the general public cannot easily determine whether the various implements and equipment used in this industry have been properly cleaned and sterilized, or whether chemical preparations are applied properly, and because improperly cleaned and sanitized equipment and improperly applied chemicals can cause harm, there are legitimate safety concerns. The expenditure of the state's resources towards these ends -- public protection -- is justified. Therefore, regulation of these occupations should be continued in a manner that is consistent with the recommendations contained in this report.

There are additional aspects of this regulatory program that deserve examination. In the 2000 legislative session, the General Assembly repealed the Board of Barbers and Cosmetologists (Board) and vested in the Division Director, those regulatory functions previously vested in the Board. Additionally, the General Assembly repealed the Division Director's authority to conduct random inspections of licensees and places of business and restricted the authority to conduct such inspections to those licensees and places of business against which the Division Director receives complaints. Both of these policy shifts appear to be working as intended, but merit some discussion here.

For the most part, the director-model of regulation is working as intended. During the course of this sunset review, a representative of DORA met and spoke with a wide variety of interested parties, stakeholders and licensees. With few exceptions, all noted that the current model of regulation is more efficient and more effective than was regulation under the Board.

Additionally, several individuals cited to the principal that many licensees viewed the Board as their advocate, rather than their regulator. Such a perception, if true, would have warranted the repeal of the Board. Similar comments were not received regarding the Division Director.

Over the course of the last two years, the Division Director has revised all of the licensing program's rules, an exercise that, with respect to some rules, had not been undertaken in over a decade. Most of these rule changes have served to eliminate unnecessary regulation or to clarify confusing rules, resulting in more effective and more efficient regulation overall.

In 2000, the General Assembly also changed the basis upon which the Division Director may inspect licensees and places of business. Prior to 2000, the Board possessed the authority to inspect any licensee or any place of business at any time, with or without notice. Since the 2000 legislative session, however, the Division Director has been restricted to conducting inspections of licensees and places of business against which the Division Director receives complaints.

Many in the industry would like to see a return to what is frequently referred to as "random" inspections, that is, the system that was in place prior to 2000. DORA disagrees that this is necessary to protect the health, safety or welfare of the public.

Advocates of the return to random inspections posit that public protection would be enhanced because licensees and places of business would not know when an inspection was going to take place. Therefore, they would have an incentive to remain in compliance with the Act and the rules promulgated thereunder at all times.

Licensees and places of business retain that incentive under the current model of complaint-based inspections. When the Division Director receives a complaint against a licensee or place of business and determines that an inspection is necessary, the subject of the complaint is neither informed that a complaint has been filed, nor that an inspection is pending. Rather, the inspectors go to the place of business unannounced and conduct the inspection. Thus, under this model, the licensees and places of business still do not know whether or when an inspection is coming, so their incentives to remain in compliance with the Act and the rules promulgated thereunder remain intact.

Additionally, it is not completely clear that if authority for random inspections were restored, the practice of conducting inspections based on complaints would cease. The Division Director's resources are finite. Given that there are more than 44,000 licensees and more than 4,000 places of business, the Division Director would have to somehow prioritize inspections. Such prioritization would very likely result in inspections based on risk. What better indicator of risk than filed complaints? As a result, little, if anything, would change if random inspections were reauthorized.

Thus, complaint-based inspections force the Division Director to adhere to a risk-based inspection policy. This is a demonstrated practice in conserving resources while maintaining an effective regulatory program. Therefore, the current model of inspections based on complaints should be retained.

Because the continued regulation of barbers, hairstylists, cosmetologists, cosmeticians and manicurists serves to protect the public, the General Assembly should continue the regulation of barbers, cosmetologists, hairstylists, cosmeticians and manicurists for seven years, until 2012.

Recommendation 2 – Repeal the Barber and Cosmetology Advisory Committee.

Section 12-8-108(2), C.R.S., requires the Division Director to appoint a five-member Barber and Cosmetology Advisory Committee (Advisory Committee), three of whom must be licensees. This provision also specifies that each Advisory Committee member receive a \$50-*per diem* for service. The statute does not specify how often the Advisory Committee must meet or what function the Advisory Committee shall serve.

Over the course of the last two years, the Division Director has consulted with the Advisory Committee regarding the various rule changes that have been made. As Table 3 on page 11 illustrates, this has been the Advisory Committee's sole function.

Thus, consulting during the rules revision process has been the exclusive function of the Advisory Committee for the last two years, and, as of this writing, all of the rules promulgated under the Act had been revised within the last two years. It is also important to note that the Division Director, not the Advisory Committee, promulgates rules under the Act. The Division Director has utilized the expertise offered by the Advisory Committee in revising the rules. Such consultation was not required.

Additionally, the Office does not anticipate further rule revisions in the foreseeable future, leaving the function of the Advisory Committee going forward in doubt. Thus, a very real possibility exists that the Advisory Committee will not be convened again for quite some time.

Admittedly, the costs of running the Advisory Committee are minimal, but costs nevertheless exist. Table 20 illustrates the various costs associated with the Advisory Committee for the last four fiscal years.

Table 20
Expenditures Associated with the Advisory Committee

	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Per Diem	\$800	\$700	\$800	\$950
In-State Travel (Parking, Rental Car, Gas, Tips)	\$151	\$126	\$165	\$202
In-State Travel (Mileage)	\$394	\$317	\$421	\$434
Out-of-State Travel (Parking, Rental Car, Gas, Tips)	\$0	\$0	\$0	\$80
Out-of-State Travel (Airfare, Taxi, Limo, Bus)	\$536	\$793	\$303	\$636
Out-of-State Travel (Meals & Lodging)	\$1,344	\$862	\$748	\$1,086
Out-of-State Travel (Mileage)	\$55	\$0	\$0	\$64
Postage	\$0	\$0	\$0	\$66
Official Functions-Advisory Committee Meetings	\$0	\$34	\$109	\$387
Totals	\$3,280	\$2,832	\$2,546	\$3,905

Although the cost savings would be minimal, a cost savings of approximately \$4,000 per year could be realized by repealing the Advisory Committee.

Even without the statutory mandate to convene the Advisory Committee, the Division Director could convene *ad hoc* advisory committees as needed, thus preserving the role of the Advisory Committee, but removing it from statute.

Since the role and function of the Advisory Committee in the future is questionable, since repealing the Advisory Committee would result in a cost savings and since the Division Director could convene *ad hoc* advisory committees in the future, the General Assembly should repeal the statutes creating the Advisory Committee.

Recommendation 3 – Repeal the requirement that candidates for licensure take and pass practical examinations.

Section 12-8-110(2), C.R.S., provides that licensing examinations for barbering, hairstyling and cosmetology “shall include practical demonstrations, [and] written tests . . . The examination shall emphasize health and safety issues.” To this end, candidates for licensure must take and pass both written and practical examinations.

In September 2003, the Program Director, along with a private vendor, Promissor, redesigned the practical examinations for all five licensed occupations under review.

Candidates bring mannequin heads upon which they demonstrate the required skills, as well as all of their own equipment, such as cutting implements, brushes for applying chemicals, and other tools. However, rather than using actual chemicals, candidates supply substances that approximate the consistency and viscosity of the actual chemicals used in practice, such as hot wax, color, relaxer, and permanent waving chemicals.

Promissor has developed a pool of examination items that may be administered, depending on license type. Prior to the examination, candidates are aware of the pool of examination items, but are unaware of the actual items they will be tested on. Each examination item must be completed within a specified period of time.

Candidates are rated on a “yes/no” basis for the practical examination. If the candidate performs one of the enumerated tasks, the candidate receives a “yes” for that task. If the candidate does not perform one of the enumerated tasks, the candidate receives a “no” for that task.

Each examination item has a “cut score,” which is a minimum number of “yes” marks necessary to pass that item. Additionally, each item has certain “must get” tasks, which are tasks that the candidate must perform in order to pass that examination item. Failure to earn a “yes” mark on a “must get” task results in failure of that item. Each candidate must pass each examination item offered in order to pass the practical examination.

There are several problems with the practical examination, however. The first involves the subject matter being tested. Section 12-8-110(2), C.R.S., directs that both the written and practical examinations shall emphasize health and safety issues. However, during the course of this sunset review, a representative of DORA observed an administration of the practical examinations and reviewed the score sheets used during administration of the practical examinations. This review of the score sheets revealed that there remain enough style and technique tasks such that on several examination items, the candidate could receive “no” marks on all of the style or technique tasks and “yes” marks on all of the health and safety tasks, but fail that examination item and, thus, the examination.

Promissor has developed and published a candidate handbook for licensure candidates in Colorado. This handbook asserts that the practical examinations for the following license types contain the indicated percentage of infection control/safety tasks: hairstylist - 56 percent; barber - 53 percent; cosmetologist - 37 percent; manicurist - 56 percent; and cosmetician - 68 percent.

In mandating the examination to “emphasize” health and safety issues, the General Assembly expressed the principal that the State regulates these professions to ensure that the people of Colorado receive safe haircuts, not necessarily aesthetically pleasing haircuts. The sole purpose of regulation is to protect the public from harm in those cases where the public lacks the resources to determine the competency of the offeror of services.

A member of the general public may not be able to tell, from a simple visual inspection, whether a cutting implement is properly sterilized or whether a foot spa has been disinfected properly, or whether a particular bonding agent contains methyl methacrylate. Members of the public can, however, determine whether they like the haircut, facial, manicure, permanent wave, etc. that they received. In this way, the free market determines whether an individual practitioner will succeed or fail. It is not the proper role of the state to expend resources to determine whether a practitioner offers “good” services. Rather, it is the role of the state to ensure that a licensed practitioner offers safe services.

Importantly, the practical examination also fails to include in the examination item pool, all potentially harmful tasks. For example, barbers may legally shave the face of another, but the practical examination test pool lacks an item for shaving the face, arguably the most dangerous service that barbers are legally permitted to offer.

In this respect, the practical examination fails because, while the Division Director has improved the emphasis on health and safety, the practical examination continues to test on style and technique to the point where candidates can fail the examination for their inability to adequately perform such styles or techniques.

Additionally, the practical examinations attempt to recreate a salon setting to the greatest extent possible. The examinations fail in this effort as well. During the course of the practical examinations, candidates may be required to cut hair, apply “chemicals” or perform other, potentially harmful tasks. Candidates are not required to use actual chemicals, though, and neither are they required to sterilize their cutting implements during the course of the examination. Rather, in place of actual chemicals, candidates apply substances that approximate the consistency and viscosity of actual chemicals under the theory that this will at least allow them to demonstrate the ability to work with such substances. On many examination items, candidates are not required to remove the faux-chemicals from the mannequin.

This technique fails because it does not take into account the possibility of chemical burns that can result from applying chemicals too close to the scalp or from leaving chemicals on the hair too long. This is particularly troublesome because many proponents of regulation have asserted that these are the very services that present the greatest risk of harm, thus justifying continued regulation.

Additionally, by requiring candidates to provide their own cutting implements and requiring them to bring such implements in sealed containers, for example, and not requiring them to clean and disinfect them during the course of the examination, the state is not assured that candidates know how to properly clean and disinfect their implements. In fact, the state is not even assured that candidates know that implements need to be cleaned and disinfected. This practice merely ensures that candidates know to bring their implements in a sealed container.

A properly designed written examination, on the other hand, can just as easily test for such knowledge. In fact, a written examination may be able to test for such knowledge better than a practical examination.

Many of the proponents of the practical examinations cite to the idea that individuals who enter these occupations work better with their hands, thus lending more credibility to the practical examinations, rather than the written examinations. The pass rates for the various licensing examinations, as illustrated in Tables 9 and 10 on page 17, tend to partially support this proposition since the pass rates for the practical examinations are much higher than those for the written examinations.

This proposition ignores the observations made thus far, however. The practical examination does not adequately reflect real world practice, does not test a candidate's ability to clean and sanitize implements, and does not test a candidate's ability to safely use potentially harmful chemicals.

Finally, the process of administering the practical examinations is psychometrically flawed. During a practical examination, a single proctor observes and scores three candidates who are performing the same test items simultaneously. Under such a process, it is possible for a candidate to perform a required task, but not receive credit for it because the proctor was observing one of the other candidates at the time.

More importantly, a single proctor model raises psychometric concerns regarding the reliability and defensibility of the practical examinations. With only a single proctor and no recording of the actual practical examination, candidates' scores are completely within the discretion of the proctor. If a proctor maintains that a candidate did not perform a required task and the candidate maintains that the task was performed, there is no appeal process because there is no way to independently verify whether the task was performed. Verification would be possible with multiple proctors scoring each candidate, by video taping the practical examination, or both.

During the course of this sunset review, a representative of DORA observed an administration of practical examinations. During the course of this observation, the candidates that some proctors were scoring finished earlier than others. This was due to the fact that practical examinations for all license types are offered simultaneously in the same room and the permitted time periods for the license types vary.

During this period, one of the proctors advised the DORA representative that there was one proctor who would fail candidates she did not like. This is cause for serious concern and highlights the problems inherent in a single proctor model.

Finally, since all candidates for each license type perform the same test items in the same order and in the same room, the opportunity to cheat increases.

Admittedly, all of the reasons thus far articulated for repealing the practical examination requirement could be addressed with the dedication of an appropriate level of resources. The question remains, however, as to whether the practical examination is necessary to protect the health, safety and welfare of the people of Colorado. DORA concludes that it is not. Legislatures in several other states have reached similar conclusions.

At least seven states (Connecticut, Florida, Hawaii, Iowa, Illinois, Minnesota, and Oregon) no longer possess such a requirement. During the course of this review, a representative of DORA contacted regulators in most of these states. Without exception, these regulators reported that there were no discernable problems since their practical examinations had been repealed. They reported no increase in complaints or discipline, and no increase in certain types of practice violations. In short, these regulators reported positive outcomes from their lack of a practical examination since it made it easier for practitioners to become licensed.

The only problem reported from a lack of a practical examinations was in the area of licensure by endorsement. The regulator from Connecticut reported that Connecticut licensees had reported problems in obtaining licensure by endorsement in other jurisdictions because Connecticut's licensure requirements did not include passage of a practical examination.

While this is cause for some concern, it is necessary to recall that the purpose of regulation by the State of Colorado is to enhance public safety without unduly hampering the ability of practitioners to obtain licensure in Colorado. It is unduly burdensome to require all Colorado licensees to pass an unnecessary practical examination so that the few of them who seek licensure by endorsement in another state have an easier time of it. Additionally, as the legislatures of more states realize that public safety can be ensured without a practical examination, this will become less of an issue.

Finally, and by way of example, it is worth noting that the General Assembly requires practical examinations for very few professions. Nurses and physicians, for example, are not required to pass practical examinations prior to licensure. Candidates for such licenses demonstrate their practical skills prior to graduation from their respective educational programs, but such can also be said for the practices regulated by the Division Director.

Because the practical examinations are fundamentally flawed and because they are not necessary to protect the health, safety or welfare of the people of Colorado, the General Assembly should repeal the requirement that candidates for licensure as barbers, hairstylists, cosmetologists, cosmeticians and manicurists take and pass practical examinations.

Recommendation 4 – Repeal the separate, legally distinct, practices of barbering and hairstyling and the licenses associated with them, and create the single, combined practice of barbering-hairstyling and a barber-hairstylist license .

In the 1999 sunset review of the Board, DORA recommended the creation of a new license for hairstylists and the General Assembly accepted this recommendation. The justification for this new license was fairly straightforward. Prior to 2000, individuals who wanted only to style hair, whether it be cutting, coloring, relaxing, waving, etc., had to obtain either a cosmetology license or a barber license.

Both of those license types, however, contained within their scopes of practice, practices extraneous to cutting and styling hair and, thus, required a considerable time and financial commitment as far as training was concerned. Recall that within the scope of practice of cosmetology, are the scopes of practice of hairstylists, manicurists and cosmeticians. Recall also that barbers may, but hairstylists may not, shave the faces and trim the beards of clients. Thus, individuals who only wanted to style hair were required to receive training in areas that were in addition to those services they wanted to offer.

However, in terms of scopes of practice, training requirements and examination items, the distinction between barbers and hairstylists has failed to materially develop as intended. Ironically, and contrary to the purported purpose of creating the hairstylist license-type, licensed barbers actually receive more training in haircutting, hairstyling and hair texturing than do licensed hairstylists.

The practice of barbering includes, when done on the upper part of the body for cosmetic purposes, shaving or trimming the beard, cutting the hair, giving facial or scalp massage or treatment with oils, creams or lotions, or other chemical preparations either by hand or with mechanical appliances; dyeing the hair or applying hair tonic; applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or shoulders, when done for payment, or without payment for the public generally.

The practice of hairstyling includes cleansing, massaging or stimulating the scalp with oils, creams, lotions or other cosmetic or chemical preparations, using the hands or with manual, mechanical, or electrical implements or appliances; applying cosmetic or chemical preparations, antiseptics, powders, oils, clays or lotions to the scalp; cutting, arranging, braiding, applying hair extensions to or styling the hair by any means; cleansing, coloring, lightening, waving or straightening the hair with cosmetic or chemical preparations, using manual, mechanical or electrical implements or appliances when done for payment, or without payment for the public generally.

Section 12-8-114(3), C.R.S., specifies that candidates for barber licenses and candidates for hairstylist licenses must obtain at least 1,000 hours of training.

The Division Director’s Rule 7 delineates the areas of training in which candidates must acquire hours in order to qualify to sit for the licensing examinations. For candidates applying for licensure on or after July 1, 2006, barbers must obtain 50 credit hours and hairstylists must obtain 40 credit hours in the areas outlined in Table 21.

**Table 21
Required Credit Hours for Barber and Hairstylist Licensure**

	Barber	Hairstylist
Treatment of hair & scalp	2	Not Applicable
Facial massage & treatments	3	Not Applicable
Shaving	3	Not Applicable
Haircutting	9	8
Hairstyling	9	7
Permanent waving & chemical hair relaxing/chemical texture services	8	4
Hair coloring	8	8
Licensing laws	1	1
Management, ethics, interpersonal skills & salesmanship	1	1
Disinfection, sanitation & safe work practices	6	9
Shampooing, rinsing & conditioning	Not Applicable	2
Total Credit Hours	50	40

As Table 21, illustrates, there is considerable overlap in the required subject areas for these two license types. However, the number of credit hours required varies in four key areas: haircutting, hairstyling, hair texturing and sanitation practices.

Note also that candidates for a hairstylist license must obtain 10 fewer credits than barber candidates. Of these 10 credits, six are in facial massage and face shaving. Barber candidates, but not hairstylist candidates, must also obtain two credits in hair and scalp treatments – services that are also within in the scope of practice of hairstylists.

Prior to the revision of Rule 7 in March 2004, Promissor, in cooperation with the Office, contracted with a group of subject matter experts (SMEs) to conduct a series of job study analyses for each license type to determine the frequency with which practitioners engage in various practice areas. The results of these studies then served as the basis for redesigning the licensing examinations as well as the training requirements for each license type.

According to this reasoning, then, and based on the training requirements, barbers perform haircutting, hairstyling and hair texturing services more frequently than hairstylists. Similarly, even though barbers perform these services more frequently as well as performing face shaving, beard trimming and facial massages, which involve the use of additional implements, they need to know less about disinfection and sanitation practices than hairstylists.

These conclusions are not only internally inconsistent; they are inconsistent with DORA's own findings. During the course of this sunset review, a representative of DORA spoke with various interested parties, including licensees. Without exception, all of these individuals stated that barbers are more likely than hairstylists to perform more simple haircuts and styles, often achieved with the use of clippers, rather than shears. Additionally, barbers are less likely than hairstylists to perform coloring or texturing services.

The OES also questions the validity of the job study analyses. A representative of the OES cited to the primarily academic backgrounds of the SMEs, expressing concern that such backgrounds likely skewed results, whereas actual practitioners would have given a more realistic picture of what licensees actually do. In essence, the job study analyses used to determine training requirements were performed by the same educators that would offer that training, rather than practitioners.

All of this also ignores the fact that, regardless of how much time various licensees may spend on certain areas of practice, those areas of practice remain within the scope of practice. Licensed practitioners should be competent in every area in which they may practice, not just those in which they are most likely to practice.

Therefore, since the two license types share substantially similar scopes of practice, the only subject areas that are legitimately at issue are facial massage and treatments, face shaving and beard trimming.

Since the legal ability to massage and shave the face and trim beards is the primary distinction between these two license types, these practice areas should be removed from a combined barber-hairstylist scope of practice. As Recommendation 5 discusses, the legal authority to massage and shave the face and trim beards should be handled in a different manner.

Finally, as Table 22 clearly illustrates, the practical examinations for the two license types are remarkably similar.

Table 22
Examination Test Items by License Type:
Barbers and Hairstylists

Examination Item	Barbers	Hairstylists
Air Forming – Curling Iron (22 minutes)	X	X
Air Forming – Round Brush (20 minutes)	X	X
Hairstyling/Braiding (10 minutes)	X	X
Air Forming – Flat Iron/Pressing Comb (22 minutes)	X	X
Hair Coloring – Retouch (10 minutes)	X	X
Hair Coloring – Highlighting (13 minutes)	X	X
Hair Coloring – Virgin (10 minutes)	X	X
Bleaching – Virgin (10 minutes)	X	X
Bleaching – Retouch (10 minutes)	X	X
Bleaching – Highlighting (13 minutes)	X	X
Chemical Relaxer – Virgin (10 minutes)	X	X
Chemical Relaxer – Retouch (10 minutes)	X	X
Haircut – Thinning (15 minutes)	X	X
Haircut – Scissor Cut (15 minutes)	X	X
Haircut – Scissors Over Comb (15 minutes)	X	X
Haircut – Razor Cut (15 minutes)	X	X
Haircut – Clipper Over Comb (15 minutes)	X	X
Permanent Wave (15 minutes)	X	X
Haircut – Barber Cut #1 (15 minutes)	X	X
Haircut – Barber Cut #2 (15 minutes)	X	X
Haircut – Barber Cut #3 (15 minutes)	X	X
Haircut – Barber Cut #4 (15 minutes)	X	X
Haircut – Barber Cut #5 (15 minutes)	X	X
Haircut – Barber Cut #6 (15 minutes)	X	X
Haircut – Barber Cut #7 (15 minutes)	X	X
Cosmetician Procedures – Face Massage (10 minutes)	X	

Note that, with the exception of facial massage, the potential practical examination test items for these two license types are identical. This illustrates the striking similarity and overlap in practice areas for these two license types and conflicts with the idea that the examination is premised on the job study analyses discussed earlier. Since the legal authority to offer shaving and facial massages can be handled in an entirely different manner, there is no reason to retain two distinct license types for what is essentially the same practice.

Opponents of combining the license types posit that, while the two practices may look similar in terms of required education, examination test items and scopes of practice, in reality, hairstylists and barbers simply do things differently. This not only conflicts with the discussion above, but it is also irrelevant to the state’s regulation of these practices.

The first sunset criterion asks whether regulation is necessary to protect the health, safety or welfare of the public. Thus, the legislative focus is on public protection, not practitioner technique. A common refrain throughout this sunset review asked the question: “is the purpose of regulation to ensure that the public receives good haircuts, or safe haircuts?” DORA concludes, based on the sunset criteria and based upon conversations with numerous industry and practitioner representatives, that the state should be more concerned with the safety of the aforementioned haircut, rather than with its quality. Thus, the technique a particular practitioner utilizes to cut hair is irrelevant, so long as it is safe.

Because the scopes of practice, training requirements and practical examination test items for the barber and hairstylist license types are so overwhelmingly similar, the General Assembly should combine these two license types into a single license type and repeal the practices of shaving of the face, trimming of the beard and facial massage from the scope of practice of the new, combined barber-hairstylist license.

In implementing this recommendation, current holders of barber and hairstylist licenses should be granted new barber-hairstylist licenses without any additional training or examination requirements. Additionally, current holders of barber licenses should be permitted to continue performing facial massage, face shaving and beard trimming services, since such individuals have already received training in such practice areas.

Recommendation 5 – Authorize the Division Director to promulgate training requirements for those barber-hairstylists, cosmetologists and cosmeticians who desire to offer face shaving, beard trimming and facial massage services.

Recommendation 4 of this sunset report recommended removing shaving of the face, trimming of the beard and facial massage from the scope of practice of the newly created barber-hairstylist license. This Recommendation 5 is intended as a corollary to Recommendation 4 in that it would authorize barber-hairstylists, as well as cosmetologists and cosmeticians, to obtain additional training so as to offer these services.

Recall that one of the purposes behind creating the hairstylist license was that many candidates simply wanted to work with hair; they had no desire to offer face shaving or beard trimming services. By removing these practices from the scope of practice of the new barber-hairstylist license, the original purpose of the hairstylist license is preserved. Furthermore, by authorizing the Division Director to promulgate training requirements for those barber-hairstylists that desire to offer face shaving, beard trimming and facial massage services, the original scope of practice for barbers is also preserved, should individuals decide to pursue such training.

While Recommendations 4 and 5 may seem to accomplish little, since they combine the two license types, remove face shaving, beard trimming and facial massage services from the scope of practice, only to make such practices possible through additional training, they serve to address the second sunset criterion. The second sunset criterion asks whether existing regulation is the least restrictive form of regulation consistent with the public interest. Recommendations 4 and 5, taken together, provide a less restrictive and more flexible form of regulation for the practices of face shaving, beard trimming and facial massage by permitting those with proper training to perform such services and not arbitrarily limiting the authority to perform them to barbers only.

It is not well known the extent to which face-shaving services continue to be offered, but it is generally recognized that demand for such services is declining. This decline is reasonable, given a variety of safety-related factors. Face shaving involves a blade around the face and neck area of the client. This could make clients uncomfortable due to the close physical proximity of a potentially deadly implement to such vital areas of the body. Additionally, the risk of cuts and knicks, which can introduce blood-borne pathogens, such as HIV or Hepatitis, when implements are not properly cleaned and sterilized, can also lead to a decline in demand.

Furthermore, the quality of razors available to consumers today enables the public to get shaves that are as close or closer than traditional shaves by barbers. This would also be a factor leading to reduced demand.

Finally, and importantly, the practical examination for barbers does not include an examination item for shaving.

Given these presumptions, is it reasonable to require barbers or barber-hairstylists to continue to receive training in services that they may never perform and which the practical examination does not even test? DORA concludes that requiring such training restricts the ability of practitioners to enter this field.

However, because the demand for such service is declining does not mean that demand has completely evaporated. On the contrary, demand continues to exist, just not at the level that would indicate a need for required training of all barber licensees.

Thus, this recommendation advocates for a more flexible regulatory approach. If a licensee desires to offer such services, that licensee should be able to acquire the necessary training and then offer the services. Because of the health-related factors enumerated above, proper training continues to be vitally necessary.

This Recommendation 5 also advocates for enabling cosmetologists and cosmeticians to receive the proper training in order to offer face shaving and beard trimming services to their clients (under their current scopes of practice, they can offer facial massages). Again, this is due to the second sunset criterion.

There is no valid public policy reason to exclude cosmetologists and cosmeticians, both of which already receive extensive training regarding facial treatments, to also offer face shaving and beard trimming services to their clients.

During the course of this sunset review, a few individuals indicated that cosmetologists are occasionally asked by their male clients whether they can also shave or trim beards. Due to the current scopes of practice, such licensees must decline, but this indicates that there may be latent demand for these services and, as already stated, there is no valid public policy reason as to why a properly trained cosmetologist or cosmetician should not be able to shave the face or trim the beard of a client.

For all the reasons enumerated above, the General Assembly should authorize the Division Director to promulgate training requirements so that barber-hairstylists, cosmetologists and cosmeticians may perform face shaving, beard trimming and facial massage services. Even if the General Assembly rejects Recommendation 4, this Recommendation 5 should be implemented with respect to cosmetologists and cosmeticians.

Recommendation 6 – Repeal the requirement that places of business register with the Division Director.

Section 12-8-114.5(1), C.R.S., requires that all places of business “shall” register with the Division Director, who is likewise required to maintain a registry and to collect a fee in connection therewith. The Division Director has implemented this provision by requiring the payment of a one-time, \$35-registration fee, plus renewals every two years. Registration entails little more than providing the Office with each owner’s name and address, as well as the address of the place of business.

However, section 12-8-114.5(2), C.R.S., states:

Failure of an owner of a place of business to register shall not be basis for disciplinary action; however, the owner of a place of business shall be liable for the director’s costs associated with the enforcement of this section.

The first clause of subsection (2), all but negates the requirement to register as mandated by subsection (1), since failure to adhere to the mandate cannot result in disciplinary action. Therefore, despite the “shall” language of subsection (1), the registration requirement is essentially voluntary.

The second clause of subsection (2) is also odd. Subsection (1) authorizes the Division Director to collect a fee in connection with the registration of places of business, and then subsection (2) directs that the owners of places of business are responsible for the Division Director’s costs associated with enforcing the voluntary registration requirement.

Thus, the entire issue of registering places of business is fraught with legalistic complications, all of which beg the question as to whether such registration is even necessary. DORA concludes that such registration is unnecessary.

The Division Director lacks the ability to revoke or otherwise discipline the registration of a place of business. The only tangible reason for imposing this voluntary registration requirement is so that the Division Director is kept informed of the location and number of places of business in the state. However, there is no valid public policy reason for imposing such a regulatory burden on places of business.

It cannot even be argued that registration makes it possible or easier for the Division Director to determine the physical location of a licensee for purposes of inspections because, since inspections are based on complaints, virtually all complaints also provide the name and address of the place of business at which the complained-of licensee works. Additionally, licensees are not required to inform the Division Director of where they work.

When inspections were random, registration of places of business was helpful, but even in this, Office staff concedes, registration was not necessary. Typically, random inspections focused on geographic regions whereby the inspectors simply inspected all the places of business that they could visually identify in a particular area. The registry may have been consulted, but it was not the only manner by which random inspections could be scheduled. Under the current model, the registry is primarily consulted to determine registration status and, thus, whether a fine against the place of business for failure to register is justified.

Additionally, the registration provisions have caused confusion for some business owners who are also licensees. The Office reports that it is not uncommon for a licensee to presume that since that licensee renewed the registration for the place of business, the licensee was also renewing his or her license to practice. This has resulted in the inadvertent lapsing of the license to practice and a subsequent violation of the Act when that licensee continues to work under an expired license.

Because the registration of places of business is fraught with complications, serves no public policy goal and places an unnecessary regulatory burden on the owners of places of business, the General Assembly should repeal section 12-8-114.5, C.R.S., in its entirety.

Recommendation 7 – Require that written examinations be redesigned to focus solely on health and safety issues.

Section 12-8-110(3), C.R.S., specifies that the practical and written examinations for all license types “shall emphasize health and safety issues.” However, the written examinations not only fail to fulfill this legislative mandate, but whether a candidate passes the written examination is overly dependent on which version of an examination is administered, not the candidate’s knowledge or level of preparation.

As a result of inquiries to the OES regarding this issue in connection with this sunset report, the OES conducted its own analysis of the written examinations,⁴ dividing questions into “health & safety,” “style” and “health/safety & style” categories. Examination items characterized as “health & safety” are those that address only health and safety issues. Examination items characterized as “style” are those that do not address health and safety issues, and rather address issues involving technique and style. Finally, examination items characterized as “health/safety & style” are those that manage to address both issues.

In administering the written examinations, Promissor has developed two test forms for each license type. Test forms for the same license type may or may not include some of the same examination items across forms, but in any event, the items would be presented in different order. The use of test forms makes it difficult for candidates to report to others what questions were on a particular examination because others would not necessarily know whether and what test items would appear on the examination that they ultimately take, thus frustrating any attempt to cheat.

However, when developing multiple examination forms, care must be taken to ensure that they are substantially equivalent in terms of difficulty. This is necessary to ensure that passage of the examination is determined by how well prepared the candidate is, rather than which examination form is administered.

Table 23 indicates the pass rates on the various examination forms and the number of candidates who took them for all license types for written examinations administered by Promissor between September 8, 2003 and March 15, 2004.

Table 23
Pass Rates by Examination Form

License Objective and Examination Form (A or B)	Number of Candidates	Pass Rate (%)
Barber A	36	22
Barber B	33	48
Cosmetologist A	390	87
Cosmetologist B	371	82
Cosmetician A	106	87
Cosmetician B	100	90
Hairstylist A	63	56
Hairstylist B	62	48
Manicurist A	297	53
Manicurist B	259	47

Statistical intricacies aside, according to OES, a pass-rate differential greater than three to five percent between examination forms is cause for concern. When the number of candidates utilizing a form reaches a few hundred, three percent is acceptable, and five percent for a lower number of candidates per form is acceptable.

⁴ Recall that OES did not participate in the development of the written examinations.

With this in mind, the written examinations for four of the five license types are suspect because the pass rate differences between forms is 5 percent for cosmetologists with over 300 candidates per form, 6 percent for manicurists with close to 300 candidates per form, 8 percent for hairstylists with only approximately 60 candidates per form and 26 percent for barbers with approximately 35 candidates per form. OES is also concerned about the cosmetician examination, but for other, statistically-based reasons.

While the pass rates for the cosmetology, manicurist and hairstylist examinations are more variable than what is psychometrically desired, the large pass rate differences between the two forms of the barber examination is reason for concern.

In July 2004, in response to inquiries related to this sunset review, OES conducted an in-depth analysis of the barber written examination by which time 55 candidates had utilized each examination form. The pass rate differences between forms had dropped, but remained alarmingly high at 22 percent with 25 percent passing Form A and 47 percent passing Form B. This clearly indicates that Form A contains items that are more difficult than those on Form B.

Even more troubling is the fact that OES's analysis revealed that candidates were better prepared than the historical group of candidates who tested in the past. In addition, the OES analysis showed that current candidates were better prepared on "health & safety" items than they were on the "style" or "health/safety & style" items used on each of the current test forms. Finally, the OES analysis revealed that, currently, there are more "style" items on both forms than there are "health & safety" items.

All of this leads to the conclusion that even for barber candidates who are well prepared, their chances of passing the written examination are determined more by which examination form they are given than their actual knowledge of health and safety issues. Psychometrically and policy-wise, this is problematic.

Although this discussion has focused on the barber written examinations, OES has similar concerns about the current test forms for the other license types, especially cosmeticians and hairstylists.

The Act requires examinations to emphasize health and safety issues. According to Promissor's "Candidate Handbook," dated October 2003, the written examinations for the following license types contain the indicated percentage of questions addressing "infection control/safety" issues: hairstylist – 28 percent; barber – 29 percent; cosmetologist – 29 percent; manicurist – 34 percent and cosmetician – 37 percent.

OES analysis is more or less consistent with Promissor’s handbook in that none of the examinations emphasize health and safety issues. There are variances, however, in what those figures are. The charts that follow illustrate the findings of OES.

Chart 1
Analysis of Barber Written Examination Test Items

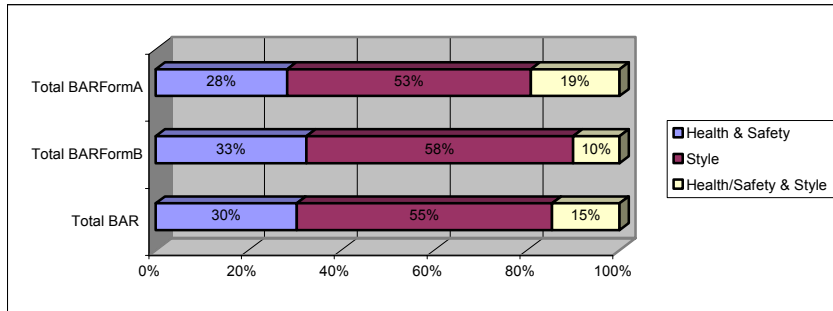


Chart 2
Analysis of Cosmetologist Written Examination Test Items

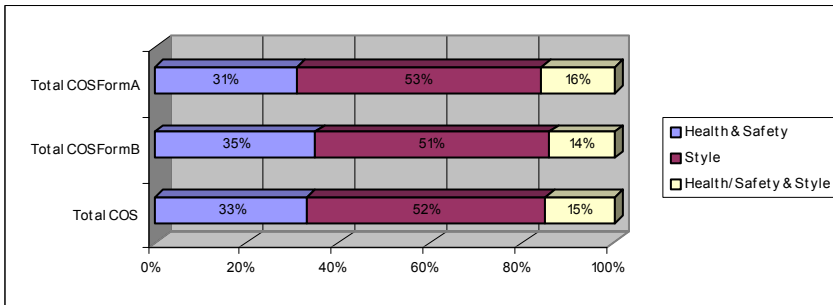


Chart 3
Analysis of Cosmetician Written Examination Test Items

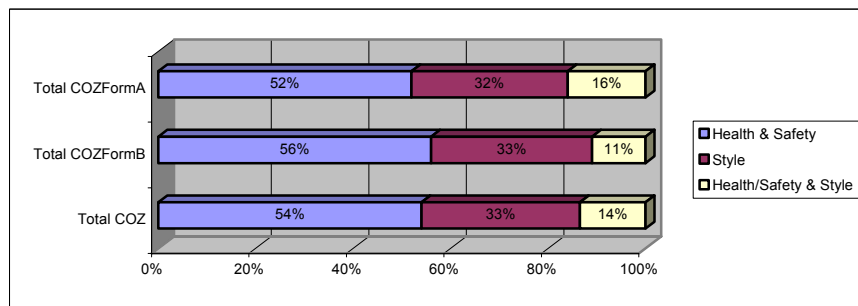


Chart 4
Analysis of Hairstylist Written Examination Test Items

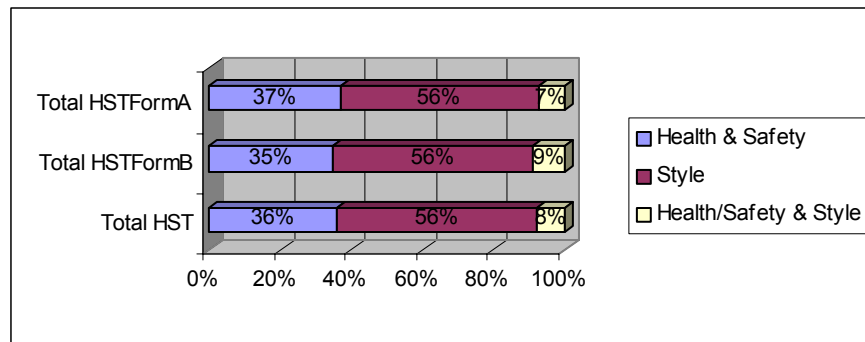
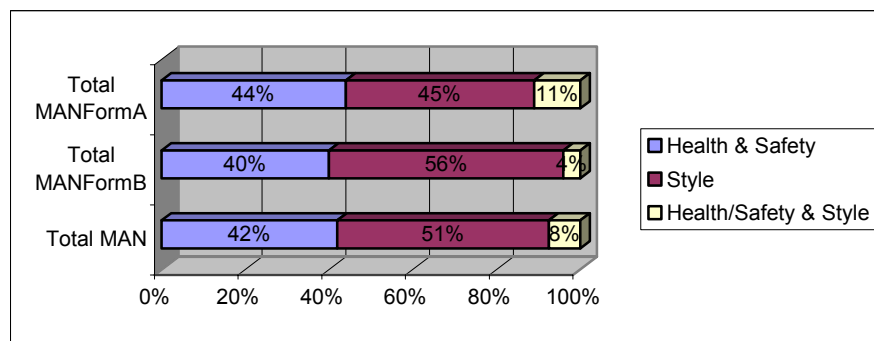


Chart 5
Analysis of Manicurist Written Examination Test Items



According to these charts, the majority of test items on the barber, cosmetologist, hairstylist and manicurist written examinations address style issues, not health and safety issues. Only the cosmetician written examination contains a majority of health and safety test items.

Thus, according to the analyses of written examination test items conducted by both Promissor and the OES, the written examinations do not satisfy the statutory directive that such examinations emphasize health and safety issues.

Some may argue that the use of the word “emphasize” in the statute leaves room for interpretation. Such arguments, however, are based on semantics, rather than true legislative intent. Legislative intent, in this case, is clearly expressed in the Act’s legislative declaration in section 12-8-102, C.R.S., which states, “The purpose of this article is to protect the public’s health, safety and welfare.” This intent is reiterated in the General Assembly’s directive that all examinations emphasize health and safety.

In declaring that the Act’s purpose is public protection, not public fashion, the General Assembly expressed that individuals should be licensed so long as they can provide services safely; the quality of services is irrelevant to regulation.

However, because the written examinations contain far more style items than health and safety items, a candidate could answer all of the health and safety items correctly and still fail the examination. Thus, the current written examinations require a demonstration that the candidate can also provide quality services. This is contrary to the General Assembly's intent, as expressed in the legislative declaration.

Amending the Act to state that all licensing examinations administered pursuant to the Act shall "solely" address health and safety issues should rectify this situation. While some may debate the meaning and ambiguous nature of "emphasize" in the Act, use of "solely" cannot be similarly debated. Use of "solely" would mean that examinations would contain health and safety items to the exclusion of all other types of items.

Since the General Assembly has declared the purpose of the Act to be the protection of the public health, safety and welfare, since it is clear that the word "emphasize" in the Act, as it pertains to licensing examinations, has been ignored and questioned as ambiguous, and since the written examinations suffer from serious psychometric defects, the General Assembly should amend the Act to express that all licensing examinations administered pursuant to the Act shall "solely" address health and safety issues and that in redesigning these examinations, steps should be taken so as to address the psychometric issues discussed above.

Recommendation 8 – Amend the definition of "cosmetician" to reflect that licensure is necessary only when such services are offered for compensation or to the public generally.

The definitions for "barbering," "cosmetology," "hairstyling," and "manicuring" all contain language that makes such definitions, and thus licensure, applicable "when done for direct or indirect payment or done without payment for the public generally." In essence, such language exempts from the Act those individuals who perform such services on friends and relatives in their own homes on a non-commercial basis. This allows mothers and fathers, for example, to cut the hair of their children without violating the Act.

However, the definition of "cosmetician" contains no such qualifying language. Therefore, arguably, anyone who has ever given a friend a facial, or helped apply make-up for no compensation and without offering such services to the general public, has violated the Act. There is no valid public policy justification for this difference.

The General Assembly should amend the definition of "cosmetician" to require licensure only when such services are offered for payment either directly or indirectly, or when done without payment for the public generally.

Recommendation 9 – Repeal the requirement that licensees display their licenses and require them instead to have their licenses at an accessible location.

Section 12-8-119, C.R.S., requires that licenses “shall be conspicuously displayed in such licensee’s principal office or place of business or employment.” The justifications for this requirement, however, are few and not compelling.

First, it is argued, displaying a license helps the consumer confirm that the person from whom services are being rendered is properly licensed. This assertion assumes that consumers know who must be licensed and the scopes of practice of the various occupations under review here. It also ignores the fact that the person performing services can simply assume the name that appears on a license or display a forged license, thus deceiving a consumer that is savvy enough to actually inspect a displayed license.

Additionally, during the course of this sunset review, a representative of DORA observed an inspection of a place of business at which two forged licenses were found. The first license appeared authentic, but had an impossible expiration date. The second license seemed legitimate and the name on the cosmetology license corresponded to the name on the individual’s driver’s license, and the photo on the driver’s license corresponded to the individual in question. After the inspection, however, the Office discovered that both the cosmetology license and the driver’s license were forgeries. In other words, requiring the display of licenses offers little to no protection to the public.

Finally, it is argued that displaying a license assists inspectors during the course of an inspection in identifying whether a particular individual is properly licensed. As discussed above, both cosmetology licenses and driver’s licenses can be forged, thus negating the assertion that a displayed license assists during an inspection. In fact, as far as inspections are concerned, it is irrelevant whether the license is displayed on a wall or whether it is simply available for examination.

While an inspection can be conducted without examining a license, such examination of the license is helpful. It does assist the inspector in, at the very least, creating a presumption that the person is licensed and informs the inspector as to the name of the individual and the type of license held by that individual. Thus, this Recommendation 9 advocates for repealing the requirement that licenses be displayed and, rather, advocates that licensees simply have their licenses available for examination at all times during which they are offering services. This would permit a licensee to display the license, or the licensee could simply keep the license in a pocket or a purse.

Only three other DORA-regulated occupations require licensees to display their licenses: chiropractors, optometrists and pharmacists. Physicians, dentists, nurses and other professions and occupations that could, if not licensed, inflict considerable harm are not required to display licenses. Why the occupations under review here are so required is not known.

Since requiring licensees to display their licenses is burdensome and since such a requirement does not protect the public, the General Assembly should repeal this requirement and instead require that licensees simply have their licenses readily accessible at any time during which they are rendering services.

Recommendation 10 – Clarify that all of the Act's provisions apply equally to barbers, cosmetologists, hairstylists, cosmeticians and manicurists.

As the Act has been amended over the years to add new requirements and new license types, various inconsistencies have arisen. For example, section 12-8-110(2), C.R.S., directs that candidates for licensure for barbering, hairstyling and cosmetology take and pass examinations. No mention is made of manicurists or cosmeticians. Yet section 12-8-110(5), C.R.S., provides that practical examination proctors for the relevant barber, hairstylist, cosmetologist, manicurist or cosmetician examinations must be licensed as such. Taken on its own, one could reasonably conclude from subsection (2), that the General Assembly did not intend for manicurists or cosmeticians to take licensure examinations. When read in conjunction with subsection (5), however, it becomes reasonably apparent that the General Assembly did intend for licensure examinations for cosmeticians and manicurists.

There are several other such inconsistencies throughout the Act. For example, sections 12-8-114 (training requirements) and 12-8-118, C.R.S. (requirements for licensure by endorsement), both discuss requirements for all five license types. On the other hand, sections 12-8-119 (display of license), 12-8-120 (license required to practice), and 12-8-127 (fining authority), C.R.S., mention only barbering and cosmetology.

Regardless of these inadvertent inconsistencies, the Division Director has historically applied all provisions of the Act to all five license types. This has been premised on the idea that, although hairstylists, manicurists and cosmeticians may not always be specifically enumerated, they can be considered lesser-included practices of cosmetology. That is, the definition of “cosmetology” includes the practices of hairstylists, manicurists and cosmeticians, therefore, statutory references to “cosmetology” in the provisions mentioned above, are equally applicable to these lesser-included practices.

While this logic is reasonable, it is not beyond refute. It is not unreasonable to conclude that at some point, a diligent attorney could argue that had the General Assembly intended for manicurists to display their licenses, the General Assembly would not have directed that barbers and cosmetologists do so and not manicurists.

Therefore, so as to avoid potential legal challenges in the future, the General Assembly should amend the Act so as to make all relevant provisions equally applicable to all five license types.

Recommendation 11 – Amend the Act so as to refer to “estheticians” rather than “cosmeticians.”

The Act currently regulates barbers, cosmetologists, hairstylists, manicurists and cosmeticians. Under Colorado law, licensed cosmeticians may give facials; apply makeup; provide skin care; apply eyelashes; remove superfluous hair from the body; and beautify, massage, cleanse or stimulate the face, neck, arms, bust or upper part of the body. Traditionally, and in most other jurisdictions, these services are most often provided by estheticians. In fact, even in Colorado, most cosmeticians are colloquially referred to as “estheticians.”

The second college edition of *The American Heritage Dictionary* defines “cosmetician” as “a person whose occupation is manufacturing, selling or applying cosmetics.” Clearly, the scope of practice for cosmeticians in Colorado far exceeds this simple definition.

Furthermore, the U.S. Department of Labor’s *Occupational Outlook Handbook* lacks an entry for “cosmeticians.” Rather, it speaks in terms of “estheticians.”

Indeed, during the course of this sunset review, representatives of DORA spoke with various individuals who advocated for changing the Act to speak in terms of “estheticians”, rather than “cosmeticians” because the former word better describes the services offered by this regulated group than does the latter word.

Additionally, because the literal definition of “cosmetician” is so limited, it can create confusion among consumers who specifically seek out the services of an esthetician, rather than a cosmetician. Traditionally, cosmeticians do little more than apply makeup. Estheticians, on the other hand, provide the wide range of services that Colorado law has assigned to “cosmeticians.”

Importantly, implementation of this recommendation would neither add to nor limit the scope of practice of cosmeticians; it would simply change the name of this practice area to more accurately reflect what such licensees do.

The General Assembly should amend the Act so as to refer to “estheticians,” rather than “cosmeticians,” because, in the end, the Act actually regulates the practice of esthetics.

Recommendation 12 – Restate the educational requirements that candidates for licensure must satisfy before sitting for the licensing examinations to reflect credit hours, rather than clock hours.

Section 12-8-114(3), C.R.S., requires candidates for licensure “to furnish proof of training of not less than the number of hours of course completion in the subject area in which the applicant seeks licensure.” The paragraph goes on to enumerate that candidates for a cosmetology, barbering and hairstyling licenses must have 1,000 hours of training, cosmetician candidates must possess 550 hours of training, and manicurist candidates must have 350 hours of training.

While the enumerated requirements do not specifically state that they refer to clock hours, such is implied in the sheer number of hours indicated. When speaking in terms of education, clock hours typically refer to “seat time,” which is the amount of time a student must sit in a class, regardless of whether the student learns what is taught. Thus, for example, a cosmetology candidate must receive at least 1,000 hours of instruction.

The other common measure of training time is credit hours. While still based on the number of hours of instruction, credit hours are not awarded unless certain competencies are demonstrated. Competencies are typically demonstrated by an end of class, final examination. Upon passage of the examination, credit is awarded. Credit hours are typically utilized at institutions of higher learning, such as colleges and universities, and one credit hour is generally awarded for each hour of instruction per week.

However, section 12-8-114(2), C.R.S., permits the Division Director to promulgate training requirements in addition to those established in subsection (3). Historically, the Division Director has exercised this authority and has done so in terms of clock hours. In March 2004, however, the Division Director promulgated new rules pertaining to training that speak in terms of credit hours.

Since the accrual of credit hours is based, for the most part, on a candidate’s ability to demonstrate mastery of the skills taught in a given class, credit hours provide greater public protection. This is because hours are not simply awarded based on the amount of time the candidate sits in the proverbial seat. A demonstration of competency is required before a credit hour is awarded.

Therefore, changing the training requirements to credit hours from clock hours is preferable and will serve to enhance public protection. The Division Director, however, lacks the express statutory authority to enforce this requirement, since the Act presumably envisions that training be measured in clock hours. Thus, in order to give the Division Director’s new rules effect, the General Assembly should amend the Act to speak in terms of credit hours, rather than clock hours.

Recommendation 13 – Restate the list of prohibited activities to include as grounds for discipline the excessive or habitual use or abuse of alcohol or controlled substances, rather than addiction to or dependence upon alcohol or controlled substances.

Pursuant to section 12-8-132(1)(d), C.R.S., a licensee may be disciplined upon a finding that the licensee:

Is addicted to or dependent on alcohol or habit-forming drugs or is an habitual user of controlled substances, as defined in section 12-22-303(7), C.R.S., or other drugs having similar effects, if the use, addiction, or dependency is a danger to the public;

This provision should be amended to simply prohibit the habitual or excessive use or abuse of alcohol or controlled substances, and references to “addiction” and “dependency” should be repealed.

In *Robinson v. California*, 370 U.S. 660 (1962), the U.S. Supreme Court held that narcotic addiction is an illness and that any state law that seeks to punish a person because of an illness violates the Eighth and Fourteenth Amendments. Although this case involved a criminal prohibition, it may be considered persuasive in the administrative context.

Furthermore, in *Colorado State Board of Nursing v. Crickenberger*, 757 P.2d 1167 (Colo. App. 1988), the Colorado Court of Appeals addressed a provision in the Nursing Practice Act substantially similar to the one at issue here. In vacating the Nursing Board’s disciplinary action, the court held that the plain language of the statute requires addiction at the time of hearing.

These two cases, taken together, suggest that disciplinary action based on addiction is not the best way to discipline practitioners who abuse alcohol or controlled substances.

In *Colorado State Board of Medical Examiners v. Davis*, 893 P.2d 1365 (Colo. App. 1995), the Colorado Court of Appeals held that disciplinary action based on excessive use of alcohol or a controlled substance does not require current addiction or use of alcohol or controlled substances at the time of the disciplinary hearing.

Thus, disciplinary action based on excessive use of alcohol or controlled substances achieves the same goal as action based on addiction, but is easier to establish.

Since it may be unconstitutional to discipline a practitioner based on addiction to controlled substances or alcohol and since “excessive use” does not require current addiction or use at the time of the disciplinary hearing, the General Assembly should repeal the prohibition against addiction to and dependency on alcohol or controlled substances, and instead prohibit the excessive or habitual use of such substances, which accomplishes the same goal.

Recommendation 14 – Repeal sections 12-8-107(2) and (3), C.R.S., which permit the Division Director to submit annual reports to the Governor.

Sections 12-8-107(2) and (3), C.R.S., provide:

(2) The director may prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, C.R.S., a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the director.

(3) Publications of the director circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

According to the Program Director, no report has ever been submitted to the Governor pursuant to section 12-8-107(2), C.R.S. Additionally, this provision is unnecessary because the Division Director would be able to submit such a report without the express statutory authority to do so.

Subsection (3) addresses publications that are circulated outside of the executive branch. Section 24-1-136, C.R.S., essentially lays out the processes that executive agencies must follow when publishing reports. Again, section 12-8-107(3), C.R.S., is unnecessary because if the Division Director were to publish such reports, the circulation of those reports is already subject to the requirements of section 24-1-136, C.R.S.

Since neither of these sections is necessary to fulfill their intent, the General Assembly should repeal both provisions.

Appendix A – Sunset Statutory Evaluation Criteria

- (I) 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;
- (II) 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;
- (III) 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;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) 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;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) 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;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.