



Andy Beshear
Governor

Julie M. Campbell
Executive Director

January 25, 2024

Via E-Mail

Licensing and Occupations Committee Members
702 Capital Avenue
Frankfort, KY 40601

RE: SB 14

Dear Senate Committee Members:

The board discussed this bill with Senator Thomas in a zoom meeting on October 10. The draft bill version of SB 14 was presented to the Board at its November 6, meeting and reviewed at length. This letter is being sent to let you know where the Board stands on the specifics of the bill as filed. Each proposed change is addressed in order as presented in SB 14, and this letter explains the Board's position on those proposals.

Board Composition

The Board cannot support a change from five board members to seven, as outlined in the bill. (Page 1, lines 11-24). As noted previously to Senator Thomas, the requirement that the additional member be a licensed nail technician is problematic as it is unfair to the other licensees the Board regulates - estheticians. Nail technicians make up approximately 10% of the Board's salon licenses¹ and this proposal would not only over- represent those licensees, but it would also be a disservice to licensed estheticians.

In addition, all cosmetologists are trained and licensed to provide nail services and so do represent licensed nail technicians. Finally, the Board can find no specific distinction between the basic aspects of running a full- service beauty salon and one that provides only nail services, so that does not appear to be a reason to add a nail technician-only board member.

The Board could support an alternative, however. Under this alternative, the Board membership would remain five, but one of the two positions described in KRS 317A.030(2)(a)(1) would be changed to be filled by a person holding either a cosmetology, esthetics, or nail technician license. This would allow the Governor to appoint a person who holds one of those licenses but is not required to own a salon. The Board believes this would adequately and fairly represent those licensees. A second alternative would be to add two Board Members but make one a licensed esthetician and the other a licensed nail technician.

¹ See attached data sheet, page 1.

Demographics

The Board currently does not obtain demographic data as described in the bill (page 2, lines 14-16). This is because no decisions made by the Board are based on race, color, religion, sex, national origin, age, disability, or genetic information. The information would not be useful to the board and is completely unverifiable once obtained.

Testing

The Board cannot support the open-ended aspect of alternate testing languages, as described in the bill. (Page 2, lines 24-26). The Board can support allowing the theory examination for licenses in the languages offered by the Board's testing vendor. That vendor is currently PSI, and those languages are: Simplified Chinese, Vietnamese, Spanish, Portuguese, and Korean.

It should be noted, however, that testing vendors are subject to change as contracts are for limited periods of time and must be re-bid periodically. This may result in a vendor change, and with it a change in offered languages. The Board also believes this change can be made without a statutory or regulatory adjustment and would include all license exam types, not just the nail exam as requested in SB 14. It would be unfair to the candidates to only offer foreign language exams for one license and not all the license exams administered under our authority.

Given the rhetoric of SB 14's proponents, it is important to note that exam pass rates as a national statistic are much lower when taken in a foreign language than those exams taken in English.²

The attached data sheet shows a similar result for foreign language exams given by a Kentucky border state, which gives the same national exam as Kentucky.³ The data shows similar exam statistics for foreign language exams given by California, the country's largest cosmetology licensing board.⁴ Overall, the data shows that the Kentucky overall licensing exam pass rate is comparable if not higher than those in other states with the same examination.

Interpreters

The Board cannot support the interpreter requirement described (Page 2, line 27 and Page 3, lines 1-5). The practical examination does not allow for questions, as doing so would skew the test for all test takers. For example, an exam proctor may provide different answers to similar questions, and misunderstandings may happen concerning not only the answer but with the question as well. There are many reasons why this cannot be done, and there is not enough space here to describe them all. In short, it would compromise the integrity of the exam and create an unfair, inconsistent test for applicants. In addition, this would be logistically impractical and prohibitively expensive. There simply are not enough interpreters available who can be properly vetted. In addition, there are generally limits on the number of consecutive hours interpreters can

² See attached data sheet, page 2.

³ See attached data sheet, page 3.

⁴ See attached data sheet, page 4.

work. This would require even more interpreters and create circumstances where interpreters would have stop in the middle of an exam, to be replaced by another. Additionally, it is important to note the current Practical Exam pass rate for KY for the same three exams being discussed is 97% and does not need an adjustment as to language or accommodations for success.

The use of smartphone applications or other third-party devices would also be unworkable. (Page 3, lines 3-5). There is no way for the Board to ensure the accuracy of such applications, and those applications could possibly be used to compromise the examinations. This approach suffers from many of the same problems raised above with interpreters and is also unworkable given that questions are not permitted. Lastly, the provision in the SB 14 allowing for an applicant to have “veto” power over a possible decision concerning these devices would be completely unworkable for a variety of reasons, not the least of which would be inconsistencies in testing across all applicants, as the Board is forced into constant debates and negotiation about what application or device to use.

Re-taking of exams

The Board cannot agree to the creation of a requirement that applicants be eligible to retake a failed examination one month after failing the exam. (Page 3, lines 6-8). Under the Board’s current process, applicants can register to retake a failed exam within 24-48 hours of being notified of a failing score. That notice is sent either the same day or the next day after the exam.

The Board cannot agree to allowing an applicant to retake a failed examination an unlimited number of times. (Page 3, lines 9-10). The Board might be able to support the removal of the six-month delay in taking additional exams that is imposed after three failed attempts at an exam. Under this proposal, the 80-hour refresh course would still be required before any further test attempts. Likewise, the Board might be able to support the removal of the three-year delay in further testing.

Just as important, this issue implicates accreditation requirements for schools, and those requirements are different depending on whether the school is a private entity or a public one. The Board has asked those Board members who own or work at each type of school to review the matter more fully before a formal position is taken. Initial indications are that this provision would threaten accreditation for public schools such as those at Kentucky’s community and technical colleges.

Testing Fees

The Board cannot support capping the testing fees at \$35 per examination, per applicant. (Page 3, lines 11-12). As noted in our meeting on October 10, the Board’s contract with the testing vendor sets the cost to the Board at \$82 per test. Each exam fee is the same regardless of whether it is the first attempt or a retake examination. A cap like the one suggested would be unfair to all other test takers, as this deficit would inevitably be passed on to them.

Licensee Discipline

The Board cannot support any of the provisions described on Page 4, lines 13-19. The Board considers all cases involving violations on a case-by-case basis, reviewing several factors such as

severity, volume, and whether these violations have been cited in the past. Board inspection staff do not levy fines or discipline action against a salon. This process is wholly in the board's direct purview and not with staff. Frankly, this provision appears to be based on a completely inaccurate belief regarding how the Board handles disciplinary cases. Every substantive statement made by those testifying at recent Legislative committee and commission meetings is wholly inaccurate.

Data on how the Board has handled and is handling these cases has been presented at the recent meeting of the Commission on Race and Access to Opportunity, and additional data is attached to show an overall synopsis of the discipline actions taken in the past three years.⁵ This data shows that the Board is not taking a heavy hand with all cases and is not issuing excessive fines and other discipline of a punitive nature for first-time violators.

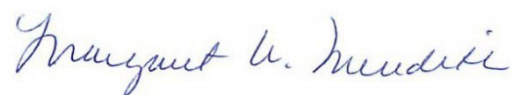
As the attached data shows, the Board has conducted approximately 7,200 inspections in the past three years. Thirty percent (30%) of these inspections were initiated by a complaint from a member of the public, and the rest were conducted through the Board's normal inspection procedures.

Of those approximately 7,200 inspections, only 5.8% resulted in a case where the Board voted to discipline a licensee, with an average fine of \$1,400. These fines almost always covered multiple violations of statutes and/or regulations. Of the total inspections, only 0.3% resulted a salon closure or revocation. More than half of that 0.3% had an outcome where the salon reopened. Thus, only 0.14% of all inspections resulted in a salon being permanently closed.

In order to effectively enforce the statutes and regulations it is required to enforce; the Board must have some flexibility to address the specific factual circumstances of each case. A "one size fits all" approach would not, in the Board's view, result in a fair application of the law and would not adequately protect the health and safety of the public.

I hope this explains the Board's position on SB 14 as it stands today. The Board is happy to answer any other questions you might have, and to discuss this further if you wish.

Best Regards,



Margaret Meredith
Board Chair

⁵ See attached data sheet, pages 5-7.