KY BOARD of COSMETOLOGY

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November 9, 2023 ***Via E-Mail***

Sen. Reginald Thomas
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RE: Bill Draft 24RS BR 30

Sen. Thomas:

As we discussed in our meeting on October 10, your draft bill was presented to the Board at its November 6 meeting and reviewed at length. Also as promised, this letter is being sent to let you know where the Board stands on the draft bill as a whole. I will take each proposed change in order as presented and explain the Board's position on those proposals.

Board Composition

The Board cannot support a change from five board members to six. (Page 1, lines 11-21). As noted previously, an even number is generally ill-advised as it creates the possibility of tie votes and gridlock in decision-making. The requirement that the additional member be a licensed nail technician is also problematic as it is unfair to the other licensees the Board regulates - estheticians. Nail technicians make up approximately 10% of the Board's salon licenses 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.

Testing

The Board cannot support the open-ended aspect of alternate testing languages, as described in the bill draft. (Page 2, lines 21-22). 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 cannot support the interpreter requirement described on Page 2, lines 23-27, and line 1 on Page 3. 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 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.

The use of smartphone applications or other third-party devices would also be unworkable. (Page 3, line 1). 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 draft bill 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 about what application or device to use.

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 2-4). 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 5-6). 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. 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. Once this review is complete, the Board will pass those results on to you as quickly as possible.

The Board cannot support capping the testing fees at $35 per examination, per applicant. (Page 3, lines 7-8). 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. A cap like the one suggested would be unfair to all other test takers, as this deficit would inevitably be passed on to them.

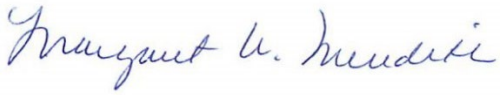
Licensee Discipline

The Board cannot support any of the provisions described on Page 4, lines 9-15. 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. 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 being compiled now that the Board is happy to provide once that review is complete. This data shows that the Board is not taking a heavy hand with all cases and is not issuing fines and other discipline of a punitive nature for first-time violators. 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 the draft bill 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