



Board Of Cosmetology Oversight Functions

Research Report No. 492

Legislative Oversight And Investigations Committee

Kentucky Legislative Research Commission

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Board Of Cosmetology Oversight Functions

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Abstract

This report reviews oversight functions of the Kentucky Board of Cosmetology, as well as structural issues that could inhibit oversight functions. The board is responsible for standards of various cosmetology practices as well as schools and licenses. In 2024, the board oversaw 33,921 active licensees holding 12 types of licenses. Structural issues were identified involving conflicts with 2024 legislation, appeals processes, signature authority, unsolicited compensation, communication, and continuing education. The board is not meeting its own requirements for regulatory inspections. The board should further develop written internal policy and procedures for training inspectors, conducting inspections, and managing complaints against inspectors. Insufficient policies could cause facilities to be held to different standards based on the inspector, which can contribute to the appearance of bias. Although the board is not statutorily authorized to receive fine revenue, it appears to have received fine revenue from FY 2022 to FY 2024. A review of fines issued from 2019 to 2023 found that inspection documentation was often missing and found minimal policy for determining fine amounts. Vague fine policies can create the appearance of arbitrariness. Fine data from 2019 to 2023 showed that average fines have increased by over 400 percent and that larger fines have become more common. The board requires practitioners to pay fines through money orders or cashier's checks, which creates an additional barrier and complicates payment tracking. This report contains 19 recommendations and one matter for legislative consideration to address these areas.

Foreword

Legislative Oversight and Investigations Committee staff appreciate all those who provided assistance with this report. Kentucky Board of Cosmetology staff provided the benefit of their time. Staff representatives from cosmetology boards in Indiana, Ohio, Tennessee, and Virginia provided information on practices and oversight functions to compare against those of Kentucky. Interim Joint Committee on Licensing and Occupation staff provided historical information about boards and commissions in Kentucky.

Jay D. Hartz
Director

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Frankfort, Kentucky
November 14, 2024

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Summary

On March 6, 2024, the Legislative Oversight and Investigations Committee (LOIC) requested that staff examine selected oversight functions of the Kentucky Board of Cosmetology. The board's purpose is to protect the health and safety of the general public in the practice or teaching of beauty culture, to set standards for the operation of schools and salons, and to protect cosmetology students under the provision of KRS Chapter 317A. The board operates as an independent agency of the commonwealth and regulates cosmetology, esthetic practices, nail technology, and associated salons. As of July 16, 2024, the board oversaw 33,921 practitioners. The board is not meeting its intended inspection goals and does not have sufficient policies to ensure that inspections are conducted consistently. Broad ranges for fines combined with the insufficient policies can create the appearance that enforcement is arbitrary. Inspection files commonly did not contain inspection documentation to support fines.

Major Objectives

The major objectives for this study were to review

- the process for inspections of cosmetology facilities,
- the process for determining and issuing fines, and
- any board structural issues that may contribute to concerns with inspections or fines.

Major Conclusions

- Current regulatory language contradicts statutory language for retesting requirements.
- Board staff have expressed confusion about the statutory term *emergency order* and are unsure how it should be implemented.
- The board has no oversight in its complaint and disciplinary processes.
- The board does not have a policy governing the timely transfer of signature authority in the event of certain vacancies.
- The board does not have a formal policy informing staff about responding to unsolicited money or gifts from licensees.
- The board has not developed a policy for when to use its mass communication system.
- The board does not require any continuing education of its licensees.
- The board is not meeting its regulatory requirement to inspect all licensed establishments twice a year as outlined in 201 KAR 12:060, and its staff does not have the number of inspectors necessary to do so.
- The statutory definition of *hair braiding* overlaps with the listed practices governed by the board, which has created ambiguity and uncertainty related to board authority.
- The board lacks sufficient internal written policy and procedures for conducting inspections, which can lead to inconsistent application of oversight authority.
- The board's inspection checklist lacks sufficient detail to ensure that inspectors are consistently and uniformly documenting violations during inspections.

- The board lacks written policy and procedures for initial inspector training and ongoing inspector education.
- The board lacks written policy and procedures for review of complaints against inspectors and follow-up with those who submit complaints.
- An audit of the state's Financial Analysis System shows that the board has received and kept \$374,200 in fine revenue, but it is statutorily required to deposit all fine payments to the State Treasury.
- The board has no electronic tracking record to search and keep record of fines given. It relies on an inefficient paper file and sticky-note system.
- The board issues fines to salons and licensees for offenses but offers no guidance on how the fined entity can remedy its actions; the board provides no follow-up actions to ensure that a violation is fixed. It requires only that the fine be paid.
- The board does not include salon inspection sheets in every fine file. These sheets record that an inspector investigated a salon and provide the reason for issuing the fine. Without them, there is no proof or justification for the fine.
- The board has very broad fine ranges not tied to any specific offenses. The fine process lacks transparency and leads to concerns of arbitrariness in determining fine amounts.
- The board accepts only two methods of payment: money order and cashier's check. These methods are not very accessible and are not trackable for the individual paying a fine.

Matters For Legislative Consideration And Recommendations

Senate Bill 14 from the 2024 Regular Session amended KRS 317A.120 to create new retesting requirements for nail technicians. Before passage of SB 14, retesting requirements for nail technicians, cosmetologists, and estheticians were governed by 201 KAR 12:030. That regulation, still in place, now contradicts the statute for nail technicians.

Recommendation 2.1

The Kentucky Board of Cosmetology should amend 201 KAR 12:030 to align with KRS 317A.120, as amended by Senate Bill 14 from the 2024 Regular Session.

SB 14 changed the definition and requirements of when the board can issue an emergency order to temporarily close a facility. Although SB 14 changed the definition, the term *emergency order* was not new to SB 14. Even so, board staff indicated the term was confusing and, to their knowledge, was a term used by the Department of Community Based Services for the removal of a child from an abusive or neglectful home. Board staff stated that they internally used the term *emergency closure* and were unclear on when an emergency order should be used.

Recommendation 2.2

By July 1, 2025, the Kentucky Board of Cosmetology should create a policy to clarify the meaning of *emergency order* and when such orders should be used.

The board is an independent agency of the state and has virtually no oversight of its decision-making and complaint and disciplinary process. The board has significant discretion in many areas of decision making. Final decisions of the board can be appealed to Franklin Circuit Court. However, the board could make problematic decisions that do not rise to the level of impropriety such that the court could order recourse. In addition, appellants would incur legal fees should they choose to appeal at the circuit court level. To ensure that practitioners have an avenue in case the board levies excessive fines, the board should develop policies for administrative appeal hearings that are easily accessible and understandable to its licensees.

Recommendation 2.3

By July 1, 2025, the Kentucky Board of Cosmetology should develop policies to allow administrative hearings for appeals, and it should post the process on its website.

Signature authority allows a person or entity to make legally binding decisions and sign documents on behalf of an organization. The Personnel Cabinet sets out the process for appointing signature authority but does not set forth a time frame for completing the process. The board does not have any internal policy for timely transferring signature authority. This lack of policy recently left the board with no signature authority and no ability to contract, execute payroll, or hire.

Recommendation 2.4

The Kentucky Board of Cosmetology should create a policy for a timely transfer of signature authority in the event of staff changes or vacancies.

Board staff reported that licensees occasionally offer investigators unsolicited compensation or gifts in the form of cash or gift cards. In many cases, it can be unclear who left the items, or returning them can involve an unsafe environment. Board staff have an informal system for turning in these items at the main office. Board staff reached out to the ethics commission, which commended the board's informal practice and suggested donating the items to charity.

Recommendation 2.5

The Kentucky Board of Cosmetology should establish a written policy outlining processes for holding and disposing of unsolicited compensation given to inspectors and other staff.

The board has a system with the ability to send out mass emails to all of its licensees but does not have a policy for when to use this system. The lack of policy can result in information not being disseminated when using the system would be beneficial.

Recommendation 2.6

The Kentucky Board of Cosmetology should develop a policy for how and when to communicate information through its mass communication system.

The board does not require any continuing education of its licensees. Prior to 2012, annual continuing education was required—6 hours for licensees, and 8 hours for cosmetology instructors. Continuing education allows practitioners to stay up to date on changes in the field as well as best practices, and it mitigates the risk that practitioners will use outdated practices or will be unaware of changes in the field.

Recommendation 2.7

By July 1, 2025, the Kentucky Board of Cosmetology should review examples of continuing education in other states, consider the benefits and costs of the requirements, and promulgate regulations on continuing education if necessary.

201 KAR 12:060 requires that each establishment licensed by the board be inspected at least twice a year. According to board staff, regulatory inspection frequency is not in compliance with regulation due to an insufficient number of inspectors. Most inspections are prompted by complaints submitted to the board. Board staff have stated that the majority of complaints are for nail salons, and prioritizing complaints leads to the appearance of unfairly targeting nail salons. Continuing to heavily rely on complaint-based inspections may cause businesses and schools to go uninspected for long periods. Board staff stated that their records indicated that some locations had not been inspected since 2014.

Recommendation 3.1

The Kentucky Board of Cosmetology should revisit the inspection requirements set forth in 201 KAR 12:060 and amend them to standards that can be reasonably met while ensuring all practitioners are reviewed regularly.

Prior to 2016, natural hair braiding was a cosmetic practice that required licensing under the Kentucky Board of Cosmetology. After SB 269 was passed during the 2016 Regular Session, natural hair braiding was no longer covered by the board, and its exemption has been amended in KRS 317A.020(1)(d). In recent years, the distinction between hair braiding and licensed cosmetic practice has created issues for the board. Currently, hair braiding is subject to no oversight or regulation unless the practitioner actively works in a board-certified salon or facility. The statutory definition of *natural hair braiding* overlaps with the listed practices governed by the board, creating ambiguity and uncertainty in enforcing the board's authority.

Matter For Legislative Consideration 3.A

The General Assembly may wish to consider amending KRS 317A.010 or KRS 317A.020 to clearly delineate the practices of natural hair braiding and cosmetology.

The board's policies and procedures for inspections are broad and overarching and leave much to subjective interpretation. There are few instructions on how an investigator should conduct an inspection and few requirements ensuring uniform documentation. As a result, salons can receive different outcomes for the same violations because inspectors interpret the rules in

different ways. Inspectors have stated that more guidance and oversight would help them fulfill their job duties.

Recommendation 3.2

The Kentucky Board of Cosmetology should adopt more detailed written policies and procedures for conducting inspections to ensure statutory and regulatory compliance and the consistent application of oversight authority. Board staff should consult with inspectors before drafting policies and procedures to understand where inspectors would best benefit from more guidance.

The board's inspection form provides only a basic checklist for inspectors to follow. The checklist is broad and does not allow future viewers to determine specific issues that the inspector observed. Virginia provided an example of its checklist for cosmetology inspections, which contains more detail than Kentucky's form. The checklist should be structured so that inspections are carried out uniformly and that oversight is applied evenly. In addition, only 54 percent of the case files reviewed by LOIC staff included completed inspection forms, making it unclear whether such forms were completed in the first place. The results of the checklist should be documented in the event that review is needed to show inspectors are using forms properly, as well as to show the reasons for fines.

Recommendation 3.3

The Kentucky Board of Cosmetology should ensure that its inspector checklists are sufficiently detailed and that inspectors consistently file them.

The board does not have internal written policies for inspector-specific training, education, or experience beyond the requirement that inspectors hold an active cosmetology license. Formal training requirements for inspectors can help ensure that inspectors perform their inspections in alignment with the law. The lack of training paired with ambiguous internal policies and standards for inspections creates a large risk of error and misconduct. Written policies and procedures for initial inspector training would mitigate the risk of misconduct due to a lack of knowledge or understanding of the parameters of the job; ongoing training would allow inspectors to stay abreast of any changes in the law and would increase awareness of ongoing trends in the industry.

Recommendation 3.4

The Kentucky Board of Cosmetology should develop written policies and procedures for initial inspector training and ongoing inspector education.

The board does not have formal written policies or procedures for how to evaluate complaints against inspectors. According to staff, such a complaint would lead to a review, and follow-up questions would determine whether the issue cited in the complaint was founded. If a complaint is deemed to be valid, staff follow Personnel Cabinet policies to document the incident. Due to the lack of policies, it is unclear how the board would decide whether a complaint is valid. The

lack of policy for following up with a complainant following internal review also makes the process more obscure. Without clear policy and procedures, the complaint review process is less likely to be carried out consistently and objectively.

Recommendation 3.5

The Kentucky Board of Cosmetology should develop written policies and procedures for review of complaints against inspectors and should follow up with those who submit complaints.

Statute grants the board authority to impose administrative fines if there is proof that an applicant, permittee, or licensee committed a violation. The board retains licensing fees and other fees, depositing them into the Kentucky Board of Cosmetology trust and agency fund to be administered by the board. However, the board is required to deposit all payments collected in lieu of suspension to the State Treasury to be credited to the general fund. Despite statute requiring that fines be credited to the general fund, a search of the statewide accounting system showed that the board received \$374,200 in fines. There is no evidence that the board has spent the fine revenue.

Recommendation 4.1

Kentucky Board of Cosmetology staff should work with the Office of the Controller in the Finance and Administration Cabinet to determine how the \$374,200 in fine revenue can be returned to the general fund, as established in KRS 317A.140(2).

Recommendation 4.2

Kentucky Board of Cosmetology staff should develop a policy for processing fine revenue that is inadvertently received. The policy should be provided to board members for adoption.

The board does not have any method for tracking fines issued. The database the board uses is meant to track license renewals and is not searchable. The agency has kept physical files and attempts to track violation history by keeping notes on the physical violation reports. There was a period when the physical files were not stored at the board's location, and staff is unsure whether all files were returned. The lack of a digitized system makes it difficult for the board to track changes in ownership or repeat offenses. It also creates a risk of mistakes or overlooking ownership changes and past offenses that could be easily found in a digital system.

Recommendation 4.3

The Kentucky Board of Cosmetology should implement an electronic tracking system to organize and search fines given.

Review of the board's documents shows that both agreed orders and formal letters from the board are often not specific with regard to violations leading to fines. Neither agreed orders

nor the formal letters provide requirements or instructions on rectifying the issues found. To continue practicing, a licensee need only pay a fine.

Recommendation 4.4

The Kentucky Board of Cosmetology should provide guidance or require corrective measures in either the agreed orders or the formal letter to licensees to correct the violation that prompted the fine.

Inspection sheets are the basis for the fines that the board issues. Despite the importance of inspection sheets, they are not consistently kept in board files. Of the 770 documented agreed orders from 2019 to 2023, 46 percent did not have the salon inspection sheet. Staff indicated that no files were digitized, so the contents of the hard-copy files were the extent of all records kept. Without the inspection sheets, there is no way to provide an explanation for the decision to fine a salon or licensee. Lack of proper documentation increases the risk that the board is accused of improper actions, as it would have no way to defend its decisions.

Recommendation 4.5

Kentucky Board of Cosmetology staff should ensure the proper documentation of salon inspection sheets in all agreed order files.

Licensees are provided limited reasoning behind fine amounts. The formal letter and agreed orders they receive outline the general offenses and the amount they are required to pay. Statutory violations can result in fines of \$50 to \$1,500 per violation. Administrative violations can warrant a fine of \$25 to \$750 per violation. The fine ranges are not tied to specific violations and do not list the processes and reasoning the board uses to factor in repeat offenses and the severity level of the offense. This lack of transparency can lead to perceptions of arbitrariness in the determination of fine amounts. Several boards from the states surrounding Kentucky mitigate these issues by having a specific fine amount or fine range for individual offenses.

Recommendation 4.6

The Kentucky Board of Cosmetology should develop smaller fine ranges tied to specific violations and include set progressions for repeat offenders and more severe offenses.

Recommendation 4.7

The Kentucky Board of Cosmetology should include the fine amount for each offense cited in the agreed orders and formal letter instead of a total amount.

Should a licensee try to pay a fine, the only accepted methods are money order or cashier's check. Many licensees have complained that these methods are inconvenient and hard to track. Board staff expressed intentions of updating fine payment requirements so that practitioners may pay fines online. Although online payment had not been implemented by the drafting of this

report, it would be an improvement as online payments allow for easier tracking and prevent potential loss of payments through the mail.

Recommendation 4.8

The Kentucky Board of Cosmetology should update its method of fine payment by adding an option to pay the fine through an online portal.

Chapter 1

Kentucky Board Of Cosmetology

The objective of this study was to review oversight functions of the Kentucky Board of Cosmetology.

On March 6, 2024, the Legislative Oversight and Investigations Committee (LOIC) directed staff to examine oversight functions of the Kentucky Board of Cosmetology. LOIC staff reviewed board files, met with board staff, and observed board meetings in order to understand the board's functions.

Board Functions

The board was created in 1974 to protect against misrepresentation, deceit, or fraud in the practice or teaching of beauty culture and to set standards for schools and salons, among other reasons.

Previously known as the Kentucky State Board of Hairdressers and Cosmetologists, the board was created in 1974 for the purposes of protecting the health and safety of the general public; protecting the public against misrepresentation, deceit, or fraud in the practice or teaching of beauty culture; setting standards for the operation of schools and salons; and protecting the students under the provisions of KRS Chapter 317A.¹ The board operates as an independent agency of the commonwealth and regulates cosmetology, cosmetologists, schools of cosmetology, esthetic practices, nail technology, student estheticians, nail technicians, instructors of cosmetology, instructors of esthetic practices, instructors of nail technology, cosmetology salons, esthetic salons, and nail salons.²

Senate Bill 14 of the 2024 Regular Session expanded the Board of Cosmetology to seven members appointed by the governor.

Historically, the board has been composed of five members: two cosmetology salon owners, one cosmetology teacher who owns no interest in a cosmetology salon, one owner or person with a financial interest in a licensed cosmetology school who is also a member of a nationally recognized association of cosmetologists, and one citizen at large who is not associated with or financially interested in the practices or business regulated.³ During the regular session of 2024, Senate Bill 14 expanded the board to add two members: one licensed nail technician and one licensed esthetician.⁴ The governor appoints all members.⁵ Currently, the positions of cosmetology teacher and licensed esthetician are vacant.

Table 1.1
Membership Of Kentucky Board Of Cosmetology
October 10, 2024

Position	Name
Salon owner	Mickey Hobbs
Salon owner	Lindsey Morgan
Cosmetology teacher	Vacant
School owner	Lianna Nguyen
Citizen at large	Kerry Harvey (chair)
Nail technician	Michael Carter
Esthetician	Vacant

Source: Kentucky Board of Cosmetology. "About Us," n.d. Web.

The board has seven administrative staff members and eight inspector positions.

As of October 10, 2024, the board has seven administrative staff members and eight inspector positions.⁶ The administrative staff consists of an executive director, an executive staff adviser, two program coordinators, an employee who tracks school hours and student enrollments, an administrative executive secretary, and a fiscal manager.⁷ The position of general counsel is currently contracted out. In the eight inspector positions, there are currently only seven inspectors, one of whom is in training; the eighth position is open.

The board maintains records only of active licenses, not historic licensees from previous years.

The board maintains records of active licenses, but not historic licensees from previous years. In 2024, the board oversaw 33,921 active licenses. These licenses are divided into 12 types, listed in Table 1.2. Cosmetologist licenses are the most common, at 58.1 percent, followed by salon licenses at 20.8 percent.

Table 1.2
Board Of Cosmetology Licensee Numbers
July 16, 2024

License Type	Licensees
Cosmetologist	19,698
Salon	7,067
Nail technician	4,053
Esthetician	1,624
Eyelash artistry	616
Cosmetology instructor	470
Limited facility	107
Threading	105
Makeup artistry	99
School	68
Esthetics instructor	10
Nail technician instructor	4
Total	33,921

Source: Staff analysis of Kentucky Board of Cosmetology licensing data.

All fees collected by the board are to be placed in the Kentucky Board of Cosmetology trust and agency fund, with any unexpended funds carrying forward.

The board is funded by the Kentucky Board of Cosmetology trust and agency fund within the State Treasury. All fees collected by the board are to be deposited into the fund, and the board administers the fund. The costs and expenses of the board, including compensation to members of the board and its officers and employees, are paid out of the fund. Any fund amounts not expended at the close of a fiscal year are carried forward into the next fiscal year and do not lapse. Money deposited into the fund is not to be appropriated or transferred by the General Assembly for other purposes.⁸

From FY 2019 to FY 2023, the board typically had an end-of-year surplus.

Data from FY 2019 to FY 2024 from the state’s Financial Analysis System was analyzed to determine the financial status of the Board of Cosmetology. Over the 5-year period, the board generally ran a surplus that totaled \$2.7 million. In FY 2019, the board ran a small deficit. Revenue significantly increased from FY 2019 to FY 2020, at 56.9 percent. Expenditures had a more modest increase of 17.1 percent from FY 2021 to FY 2022.

**Table 1.3
 Board Of Cosmetology Surplus and Deficits
 FY 2019 To FY 2023 (In Millions Of Dollars)**

Transactions	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	Total
Revenue	\$1.5	\$2.4	\$2.4	\$2.8	\$2.7	\$11.7
Expenditures	1.6	1.7	1.7	2.0	2.0	9.0
Surplus/(deficit)	(-\$0.1)	\$0.7	\$0.7	\$0.8	\$0.7	\$2.7

Note: Total revenues do not equal the sum of revenues due to rounding.
 Source: Staff analysis of Financial Analysis System data.

Major Objectives

The major objectives for this study were to review

- the process for inspections of cosmetology facilities,
- the process for determining and issuing fines, and
- any board structural issues that may contribute to concerns with inspections or fines.

Study Scope

Stemming from committee testimony and community complaints, the original scope for the study was oversight functions of the board, which were considered to be inspections and the resulting fines from inspections. While LOIC staff were reviewing these

procedures, board staff discussed multiple underlying issues with operations that impeded their ability to conduct work. These issues fell outside oversight, but not addressing them would prevent inspections from being appropriately conducted. As a result, the scope was expanded to cover structural issues that could interfere with oversight.

Major Conclusions

This study has 19 major conclusions.

This report has 19 major conclusions:

- Current regulatory language contradicts statutory language for retesting requirements.
- Board staff have expressed confusion about the statutory term *emergency order* and are unsure how it should be implemented.
- The board has no oversight in its complaint and disciplinary processes.
- The board does not have a policy governing the timely transfer of signature authority in the event of certain vacancies, which can affect its ability to perform its duties.
- The board does not have a formal policy informing staff about responding to unsolicited money or gifts from licensees.
- The board has not developed a policy for when its mass communication system should be used.
- The board does not require any continuing education of its licensees.
- The board is not meeting its regulatory requirement to inspect all licensed establishments twice a year as outlined in 201 KAR 12:060, and its staff does not have the number of inspectors necessary to conduct the required inspections. Instead, most conducted inspections are prompted by complaints submitted to the board.
- The statutory definition of *natural hair braiding* overlaps with the listed practices governed by the board, which has created ambiguity and uncertainty related to board authority.
- The board lacks sufficient internal written policies and procedures for conducting inspections, which can lead to inconsistent application of oversight authority.
- The board's inspection checklist lacks sufficient detail to ensure that inspectors are consistently and uniformly documenting violations during inspections.
- The board lacks written policies and procedures for initial inspector training and ongoing inspector education.
- The board lacks written policies and procedures for review of complaints against inspectors and follow-up with those who submit complaints.

- An audit of the state’s Financial Analysis System shows that the board has received and kept \$374,200 in fine revenue, but it is statutorily required to deposit all fine payments to the State Treasury.
- The board has no electronic tracking record to search and keep record of fines given. It relies on an inefficient paper file and sticky-note system.
- The board issues fines to salons and licensees for offenses but offers no guidance on how the fined entity can remedy its actions; the board provides no follow-up actions to ensure that the violation is fixed. It requires only that the fine be paid.
- The board does not include salon inspection sheets in every fine file. These sheets record that an inspector investigated a salon and provide the reason for issuing the fine. Without them, there is no proof or justification for the fine.
- The board has very broad fine ranges not tied to any specific offenses. The current fine process lacks transparency and leads to concerns of arbitrariness in determining fine amounts.
- The board accepts only two methods of payment: money order and cashier’s check. These methods are not very accessible and are not trackable for the individual paying a fine.

Structure Of This Report

Chapter 2 reviews structural issues discovered with the board while LOIC staff reviewed inspection procedures and fines. It discusses conflicts with legislation passed during the 2024 Regular Session, transitionary authority, unwanted compensation, communication with practitioners, and continuing education. It contains seven recommendations and one matter for legislative consideration.

Chapter 3 outlines inspection procedures of the board: statutory requirements, internal policies, and training of inspectors. The chapter discusses the current staffing and gaps in the aforementioned areas. It contains five recommendations and one matter for legislative consideration.

Chapter 4 provides information on fines issued by the board. It reviews 4 years of data from the state’s Financial Analysis System as well as internal files from the board. It contains eight recommendations.

Chapter 2

Structural Issues

While reviewing inspection and fine procedures, board staff discussed multiple underlying issues that could prevent it from adequately providing oversight.

During the LOIC review of inspection and fine procedures, Board of Cosmetology staff discussed multiple underlying issues that could prevent it from adequately providing oversight. This chapter discusses conflicts with 2024 legislation, signature authority, communication, and continuing education. This chapter contains seven recommendations.

Statutory Changes To The Board

The board's regulatory language contradicts statutory language for retesting requirements. Statutory language created separate retesting requirements for nail technicians.

Senate Bill 14 from the 2024 Regular Session added statutory language governing retesting requirements for nail technicians. Regulations for nail technician applicants now conflict with statute. Prior to the passage of SB 14, 201 KAR 12:030 governed retesting requirements for nail technicians, cosmetologists, and estheticians. The regulation states that any applicant who fails the theory test or the practical demonstration can retake the examination.⁹ An examinee who fails three times must wait 6 months before retaking either portion of the exam.¹⁰ An examinee who still does not pass after the third attempt must take a supplemental course in theory studies at a board-licensed school before retaking the exam.¹¹ An examinee who takes the supplemental course may attempt twice more to pass the exam.¹² An examinee who does not pass the exam after these two attempts is prohibited from taking the exam for 3 years from the date of the final attempt.¹³

Although 201 KAR 12:030 is still in effect, SB 14 amended KRS 317A.120, changing the retesting requirements for nail technician applicants but not for cosmetology or esthetician applicants. KRS 317A.120 now states that nail technician applicants who fail either the written theory test or the oral practical demonstration are eligible to retake the exam 1 month after receiving the actual notice of failure.^{a 14} Nail technician applicants who fail their first two attempts must wait longer to reapply than comparable cosmetology or esthetician applicants, while nail technicians who fail more than twice wait less time

^a Actual notice is the legal concept that notice is given directly to a party or is personally received by a party, as opposed to constructive notice, under which the law considers the party to have received notice whether or not they truly did.

than comparable applicants. While the regulation contains the former requirements for nail technicians, it could create confusion for applicants who are not aware of the statute.

Recommendation 2.1

Recommendation 2.1

The Kentucky Board of Cosmetology should amend 201 KAR 12:030 to align with KRS 317A.120, as amended by Senate Bill 14 from the 2024 Regular Session.

SB 14 also changed the definition of *emergency order* in KRS 317A.020. Board staff expressed confusion regarding the new language, and the board should take action to ensure that staff can perform their duties in alignment with the intended purpose of the language.¹⁵

Beginning in 2022, KRS 317A.020 allowed the board to issue an emergency order to temporarily close a facility. The language prior to SB 14 stated that the board could issue an emergency order in accordance with KRS 13B.125 against any facility licensed by the board if there was probable cause that the order was in public interest and there was substantial evidence of immediate danger to the health, welfare, and safety of any customer, patient, or the general public.¹⁶

Senate Bill 14 of the 2024 Regular Session requires that emergency orders be based on verified probable cause or on substantial evidence documented by the board rather than on probable cause alone.

SB 14 changed the definition and requirements of emergency orders to require that emergency orders be based on verified probable cause or substantial evidence documented by the board that the emergency order is in the interest of public health, welfare, and safety of any customer, patient, or the general public.¹⁷ The new language also requires that, once an emergency order is issued, the board must comply with regulatory administrative hearing procedures to determine the reinstatement of operations of the facility.¹⁸ Unless there is an immediate and present danger to the health and safety of the public, a warning notice should be issued prior to imposing punitive action against an otherwise lawful salon.¹⁹

Board staff stated that the term *emergency order* was used by the Department of Community Based Services and was not language the board used.

Board staff expressed concern about the language of SB 14.²⁰ The bill uses the term *emergency order*, which to their understanding was a term used by the Department of Community Based Services for the removal of a child from an abusive or negligent home.²¹ Board staff expressed that they use the term *emergency closure*, which they define as shutting down a salon that engages in unsafe practices, exhibits hostile behavior to inspectors, or constantly

violates regulations.²² Both the title of the closure and the definition appeared to be points of confusion for board staff.

The term *emergency order* has been used in KRS 317A.020 prior to SB 14.

SB 14 did change the circumstances under which an emergency order should be issued, but it did not change the title of the order. The term *emergency order* has been used consistently in KRS 317A.020 since 2022. Prior to 2022, the statute did not give the board the authority to issue either emergency orders or emergency closures. The staff's confusion concerning emergency orders could prevent staff from carrying out responsibilities. The board should ensure that staff understand both what an emergency order is and when they should use it so that they may effectively perform their job duties.

Recommendation 2.2

Recommendation 2.2

By July 1, 2025, the Kentucky Board of Cosmetology should create a policy to clarify the meaning of *emergency order* and when such orders should be used.

Minimal Oversight Of Board Decisions

The board is an independent agency and has no oversight of its complaint and disciplinary process.

KRS 317A.030 establishes the board as an independent agency of the state government. The board has very little oversight of its decision making and complaint and disciplinary process. Complaints submitted to the board are to be reviewed by the complaint committee. The committee consists of no more than two board-appointed board members who review complaints, initiate investigations, participate in informal proceedings to resolve complaints, and make recommendations to the board for disposition of complaints.²³ Respondents are to be provided a copy of the complaint and have 10 days from the receipt of the complaint to respond.²⁴ Once the complaint committee has reviewed a complaint, the respondent's response, and any other relevant information, the complaint committee is to recommend the board's dismissal of the complaint, order further investigation, issue a written admonishment for a minor violation, or issue a notice of disciplinary action.²⁵ Respondents may file a request with the board for a hearing; otherwise, the board may resolve the matter through informal means, including an agreed order of settlement or mediation.²⁶

There is no formal appeals process for the board's decisions outside of Franklin Circuit Court.

KRS 317A.070 governs the board's appeals process, which requires the board to hold hearings upon the request of a licensee or applicant directly affected by the board's decision. Final

orders of the board may be appealed to Franklin Circuit Court; until this point, however, the board itself handles all issues and complaints. It is not necessarily uncommon for agencies to have administrative processes, but the makeup of the agency does affect the efficacy of these systems. The number of board members and staff members is small, and the members overseeing appeals also constitute a sizable fraction of the board as a whole.

There is no evidence of policy for appeals to Franklin Circuit Court. Staff did not identify an administrative appeals process, and the board's website does not describe an appeals process.

Although statute allows for decisions to be appealed to Franklin Circuit Court, there is no evidence that this procedure is in place. KRS 317A.070(2) directs potential appellants to KRS Chapter 13B, regarding administrative hearings. Board staff indicated that there was no appeal process for fines outside of court actions. In the past, the board has allowed a reconsideration process or an appeal. Reconsiderations used the same board members as the original decision.²⁷ The board's website does not describe an appeals process, though it contains a link to statutes and regulations that eventually leads to KRS 317A.070(2).

If concerns arise about actions of members of the board, there is no supervisory or other oversight authority to use unless there is a viable legal claim. The board could make problematic decisions that do not rise to the level of formal misconduct. In an area where the board has almost unlimited discretion, such as fine amounts, a decision that might seem unfair or arbitrary is not necessarily illegal or so egregious that Franklin Circuit Court would hear the case. Also, while final orders of the board are ultimately appealable to Franklin Circuit Court, an appellant would have to incur legal fees to make such an appeal.

Cosmetology boards in four of six bordering states have more robust checks and balances.

Of Kentucky's six bordering states, four appear to have more robust checks and balances on their cosmetology boards. In both Illinois and Virginia, boards are placed under a higher administrative authority rather than operating as independent entities, as in Kentucky. Illinois's board operates under the Department of Financial and Professional Regulation, and Virginia's operates under the Department of Professional and Occupational Regulation. This administrative design creates natural oversight structures of both boards' decisions.

Like Kentucky, Tennessee and West Virginia have structured their boards as independent entities. Unlike Kentucky, these states have more comprehensive hearing and appeals processes for board decisions. Tennessee provides that the hearing of any contested case may be held in the presence of an administrative judge or hearing officer.²⁸ Likewise, West Virginia may also choose to

have an administrative law judge conduct appeal hearings.²⁹ The addition of an administrative law judge or a hearing officer adds another level of impartiality to the process and offers a check on the board's powers.

Recommendation 2.3

Recommendation 2.3

By July 1, 2025, the Kentucky Board of Cosmetology should develop policies to allow administrative hearings for appeals, and it should post the process on its website.

No Policy For Signature Authority Transfer

There is no policy regarding the timely transfer of signature authority should there be changes or vacancies.

The board does not have a policy governing the transfer of signature authority in the event of certain vacancies, which can affect the board's ability to perform its duties. Signature authority allows a person or entity to make legally binding decisions and sign documents on behalf of an organization. The Kentucky Personnel Cabinet sets out the appointing authority within boards and commissions.³⁰ Generally, the board chair serves as the official appointing authority and may authorize the executive director to act on behalf of the board.³¹ The election of a new board chair requires updates to signature authority documents.³² Proper appointing authority must be maintained in order for personnel actions to be approved and processed.³³

The Personnel Cabinet provides processes for the transfer of signature authority but not time frames for completing the process.

While there are processes in place for appointing a chair and for assigning signature authority, there are not processes for time frames to do so. The board does not have any internal policies regulating a timely process for appointing a chair and assigning signature authority. Without these policies, should the board be left without a chair and executive director, it could be left with no ability to function, as was true from March 25 to May 6, 2024. The board's executive director at the time took Family and Medical Leave Act (FMLA) leave from March 25 to June 16, 2024, and the board had no appointed chair during part of that time. At the April 8, 2024, board meeting, the topic of appointing a chair arose but was dismissed because some board members wanted to wait until the two remaining open board positions were filled.³⁴ This decision left the board with no signature authority and therefore with no ability to contract, execute payroll, or hire. Payroll was maintained only because, according to the board, the executive director would sign despite being on FMLA leave.³⁵ Had the executive director become completely unavailable, the board and its staff would have been left with minimal ability to function.

The creation of internal policies outlining timely transfer of signature authority would prevent long stretches of time in which the board and board staff cannot function due to the absence of signature authority.

Recommendation 2.4

Recommendation 2.4

The Kentucky Board of Cosmetology should create a policy for a timely transfer of signature authority in the event of staff changes or vacancies.

No Policy For Unsolicited Compensation

Inspectors are sometimes left or given unsolicited compensation or gifts by licensees.

Board staff report that investigators have been offered unsolicited compensation or gifts by licensees in the form of cash or gift cards.³⁶ If declined, these gifts will sometimes be shoved in the investigators' hands, thrown in their car, or left on their windshield. In many of these cases, it was unclear who left items and what they expected to receive in return. In addition, these incidents sometimes occurred in an environment that would cause inspectors to feel unsafe in returning these items.³⁷

Board staff have only an informal process for managing unsolicited compensation or gifts.

Board staff have an informal system for their personnel to turn in anything given to them and to keep the gifts at the main office.³⁸ Board staff reached out to the ethics commission, which commended this practice and suggested donating the gifts to charity.³⁹ There is no formal policy for how board staff should handle such gifts. Considering that this issue is ongoing, the board should create a formal, written policy so there will be no confusion on the proper protocol for dealing with unsolicited compensation and gifts.

Recommendation 2.5

Recommendation 2.5

The Kentucky Board of Cosmetology should establish a written policy outlining processes for holding and disposing of unsolicited compensation given to inspectors and other staff.

No Policy For Mass Communication

The board can send mass emails to all of its licensees but has no policy on when this system must be used.

The board has the ability to send out mass emails to all of its licensees but does not have a policy for when information should be shared using this system. This lack of policy creates ambiguity and can result in information not being communicated to licensees

when changes can affect them. For example, a special board meeting was scheduled on July 25, 2024, and board staff confirmed that licensees were not notified of this meeting through the mass communication system.⁴⁰ The meeting was announced on the board’s website shortly before it was held, but no other formal notice was issued to licensees.⁴¹ An internal policy outlining information or events that licensees must be notified via email would ensure that pertinent information is sent out in a timely manner and not overlooked.

Recommendation 2.6

Recommendation 2.6

The Kentucky Board of Cosmetology should develop a policy for how and when to communicate information through its mass communication system.

Continuing Education Requirements

The board does not require any continuing education of its licensees.

Currently, the board does not require any continuing education from its licensees. Before 2012, KRS 317A.050 required continuing education on a yearly basis for license renewal—8 hours for cosmetology instructors and 6 hours for nail technicians.⁴² House Bill 311 of the 2012 Regular Session removed these requirements. Four of the six states bordering Kentucky require continuing education: Illinois, Ohio, Tennessee, and West Virginia.⁴³ Continuing education allows practitioners to stay up to date on changes in the field as well as best practices and helps to mitigate the risk that practitioners will use outdated practices or be unaware of changes happening in the field.

Recommendation 2.7

Recommendation 2.7

By July 1, 2025, the Kentucky Board of Cosmetology should review examples of continuing education in other states, consider the benefits and costs of the requirements, and promulgate regulations on continuing education if necessary.

Chapter 3

Oversight Functions And Inspections

This chapter reviews policies and procedures related to inspections, inspector training, and complaints against inspectors.

This chapter examines the Kentucky Board of Cosmetology's policies and processes for carrying out its oversight functions and inspections. It begins with an overview of the board's statutory and regulatory authority to oversee the cosmetology industry and investigate complaints. It reviews the board's policies and procedures related to inspections, inspector training, and complaints against inspectors. The chapter contains five recommendations and one matter for legislative consideration.

Statutory And Regulatory Requirements

The Kentucky Board of Cosmetology is charged with investigating alleged violations and conducting inspections. It promulgates administrative regulations governing schools and salons of cosmetology, nail technology, threading, and esthetics.

The Kentucky Board of Cosmetology is charged with investigating alleged violations brought to its attention and conducting inspections.⁴⁴ Statute also requires the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, threading, and esthetics, and to protect the health and safety of the public.⁴⁵ KRS 317A.060 states:

- (1) The board shall promulgate administrative regulations including but not limited to administrative regulations that:
 - (a) Protect the health and safety of the public;
 - (b) Protect the public against incompetent or unethical practice, misrepresentation, deceit, or fraud in the practice or teaching of beauty culture;
 - (c) Set standards for the operation of the schools and salons;
 - (d) Protect the students under this chapter;
 - (e) Set standards for the location and housing of beauty salons or cosmetology schools in the state. This subsection does not apply to the instructional programs in cosmetology in the state area vocational and technical schools;
 - (f) Set standards for the quantity and quality of equipment, supplies, materials, records, and furnishings required in beauty salons, esthetic salons, nail salons, and cosmetology, esthetic practices, and nail technology schools;
 - (g) Establish the qualifications of instructors of cosmetology, instructors of esthetic practices, instructors of nail technology, and apprentice teachers;

- (h) Establish requirements for the hours and courses of instruction at cosmetology schools and esthetic practices schools and nail technology schools;
 - (i) Establish requirements for the examinations of applicants for licenses;
 - (j) Establish the requirements for the proper education and training of students;
 - (k) Address the course and conduct of school owners, instructors, instructor training certificate holders, licensed cosmetologists, estheticians, nail technicians, beauty salons, esthetic salons, nail salons, cosmetology schools, schools of esthetic practices, and schools of nail technology; and
 - (l) Establish a code of ethics for persons licensed by the board.
- (2) Administrative regulations pertaining to health and sanitation shall be approved by the Cabinet for Health and Family Services before becoming effective.

201 KAR Chapter 12 establishes inspection, health, and safety requirements for schools and salons of cosmetology, nail technology, threading, and esthetics. Board staff may enter licensed establishments to determine regulatory compliance.

201 KAR Chapter 12 establishes inspection, health, and safety requirements for schools and salons of cosmetology, nail technology, threading, and esthetics. 201 KAR 12:060 states that any board member, administrator, or inspector may enter establishments licensed by the board or any place purported to be practicing cosmetology, nail technology, threading, or esthetics, during normal working hours or at any time when the establishment is open to the public to determine if an individual, salon, or school is complying with statute and regulation. Specific regulatory language for infection control, health, safety, and equipment sanitation is provided in 201 KAR 12:100 and 201 KAR 12:101.

The board can order inspections if it determines that a submitted complaint warrants further investigation as described in 201 KAR 12:190.

The board can order inspections on persons or entities after receiving a complaint as described in 201 KAR 12:190. Complaints against “respondents” must be submitted to the board and include a detailed description of alleged violations of KRS Chapter 317A or 201 KAR Chapter 12. The board may form a complaint committee composed of no more than two board members to review complaints, initiate investigations, participate in informal proceedings to resolve complaints, and make recommendations to the board for the disposition of complaints. The complaint committee reviews submitted complaints and ultimately makes a recommendation to the board about whether to dismiss the complaint, further investigate, issue a written admonishment for a minor violation, or issue a notice of disciplinary action against the respondent in question. The public

can submit complaints by filling out a form provided on a portal on the board website.⁴⁶ Once complaints are submitted, the board's online portal forwards them to staff via email.⁴⁷

Statutory And Regulatory Issues

Board inspection frequency is not in compliance with 201 KAR 12:060, which requires the board to inspect each licensed establishment at least twice a year.

The board is not complying with its own regulations for inspections. 201 KAR 12:060 requires that each establishment licensed by the board be inspected at least twice a year. These regular inspections are referred to as regulatory inspections. According to board staff, regulatory inspection frequency is not currently in compliance with regulation due to an insufficient number of inspectors. As of October 10, 2024, the board had seven inspectors on staff but was anticipating this number to rise to eight once the hiring process for an additional inspector concludes. Board staff estimated that roughly 16 inspectors would be necessary in order to conduct inspections on each licensed establishment at the required frequency of at least twice a year. Staff stated that each inspector represents a cost of approximately \$80,000 in total compensation.⁴⁸

The board primarily conducts inspections following complaints instead of on a periodic basis. Most complaints are about nail salons, which can lead to an appearance of unfairly targeting nail salons and result in other establishments going without inspection for long periods.

Statute allows the board to conduct inspections based on complaints.⁴⁹ While the language of the statute is permissive and the regulatory language is mandatory, board staff report that almost all inspections are responses to complaints.⁵⁰ An email to inspectors on August 4, 2023, stated that inspections may be conducted only for new openings or after a complaint.⁵¹ When staffing allows for an inspection without an initiating complaint, the board prioritizes establishments that have gone without an inspection longest.⁵² Board staff stated that the majority of the complaints are for nail salons, leading to the appearance that the board is unfairly targeting nail salons.⁵³ Continuing to rely on complaint-based inspections may result in businesses and schools going uninspected for long periods of time. According to staff, records indicated that some locations had not been inspected since 2014.⁵⁴

The board could modify its regulations to reflect a more attainable inspection frequency relative to the board's capacity to do so.

The board could modify its regulations and formalize its current process of prioritizing establishments that have gone the longest without inspection when opportunity allows. If the board does not wish to expand its inspection staff to meet the current requirement, or does not have the funding to do so, the regulatory language could be amended to reflect a more attainable frequency relative to the board's capacity.

Recommendation 3.1**Recommendation 3.1**

The Kentucky Board of Cosmetology should revisit the inspection requirements set forth in 201 KAR 12:060 and amend them to standards that can be reasonably met while ensuring all practitioners are reviewed regularly.

Natural Hair Braiding Overlaps With Cosmetology

Since the 2016 Regular Session, the distinction between hair braiding and licensed cosmetic practice has created conflicts for the board.

Prior to 2016, natural hair braiding was a cosmetic practice that required licensing under the Kentucky Board of Cosmetology.^b After SB 269 was passed during the 2016 Regular Session, hair braiding was no longer covered by the board, and its exemption has been amended in KRS 317A.020(1)(d).⁵⁵ In recent years, the distinction between hair braiding and licensed cosmetic practice has created conflicts for the board due to overlapping definitions. Currently, hair braiding is subject to no oversight or regulation unless the practitioner actively works in a board-certified salon or facility.

The statutory definition of natural hair braiding overlaps with the listed practices governed by the board creating ambiguity and uncertainty related to board authority,

KRS 317A.010 defines *cosmetology* as the practice of hair styling, esthetics, and nail technology.⁵⁶ *Natural hair braiding* means a service of twisting, wrapping, weaving, extending, locking, or braiding hair by hand or with mechanical devices. Natural hair braiding is commonly known as ‘African-style hair braiding’ but is not limited to any particular cultural, ethnic, racial, or religious forms of hair styles.⁵⁷

Hair braiding involves specific practices that are governed by the board such as using conditioners, shampoos, and minor trimming of natural hair.⁵⁸ The use of chemical agents to effectively alter hair structure is prohibited, but the use of mechanical devices such as curling irons is allowed.⁵⁹ All of these practices under the hair braiding definition are found in 201 KAR 12:082, section 1(3) as basic requirements for licensed cosmetologists to be certified by the board.⁶⁰ Currently, the statutory definition of *natural hair braiding* overlaps with the listed practices governed by the board, creating ambiguity and uncertainty regarding enforcement of the board’s authority.

^b The formal definition refers to *natural hair braiding*, however for this report we refer to it as *hair braiding*.

Matter For Legislative Consideration 3.A

**Matter for Legislative
Consideration 3.A**

The General Assembly may wish to consider amending KRS 317A.010 or KRS 317A.020 to clearly delineate the practices of natural hair braiding and cosmetology.

Inspection Policy And Procedures

The board provides little formal direction on conducting inspections.

The board provides little formal direction to its inspectors in the area of conducting inspections. Statute offers no guidance for inspectors. Board regulations grant inspectors the authority to inspect salons and generally outline salon requirements but give no insight on how an inspector should conduct an investigation.⁶¹ The board does have an internal policy for conducting inspections, but the policies are not specific and provide little tangible guidance for inspectors to follow. The board has three documents that provide guidance for inspectors: the Inspector Training Manual, the Inspector Manual of Standard Operating Procedures (IMSOP), and the Policies and Procedures Manual.⁶²

The IMSOP provides some inspection policy and procedures pertaining to route planning, working in the field generally, and an overview of the general inspection:

1. Inspector arrives with laptop or tablet, cell phone and Wi-Fi access.
2. Pictures shall be taken of salon door with time/date as well as any potential issues.
3. Inspection checklist and all documentation is completed on-site.
4. Digital or manual signatures of salon owner or manager and board representative is obtained, as applicable.
5. Inspector dates and time stamps the report, auto sends it to the office, and KBC Salon Program Coordinator is notified.
 - a. If inspection is 100 percent send to the front office assistant to print/mail/process.
 - b. If any violations are found send all documentation to Executive Administrative Secretary to print/mail/process.
 - c. If violation with no fine email all documentation send [sic] to the Salon Program Coordinator to check for correct KAR/KRS, spelling, and grammar then print/mail/process.
6. Enter into [sic] all information into the inspection tracking spread sheet.⁶³

The Inspector Manual of Standard Operating Procedures provides an inspection checklist consisting of basic information collected by inspectors.

The IMSOP provides an example of the Salon and School Checklist, which gathers basic information such as the legal name of the owner and establishment, address, Social Security number and tax identification, the number of managers and instructors, and business and county licenses. The checklist requires inspectors to verify that all employees have an active license posted with a picture.

There are few instructions for how inspectors should conduct inspections and few requirements ensuring uniform documentation.

According to the board's manager of inspectors, inspectors have stated that more guidance and oversight would be helpful.⁶⁴ The policies and procedures provided by the board are broad and overarching and leave much to subjective interpretation. There are few instructions on how an investigator should go about conducting an inspection and few requirements ensuring uniform documentation. As a result, it is possible that salons receive different outcomes for the same violations because inspectors interpreted the rules in different ways.

Recommendation 3.2

Recommendation 3.2

The Kentucky Board of Cosmetology should adopt more detailed written policies and procedures for conducting inspections to ensure statutory and regulatory compliance and the consistent application of oversight authority. Board staff should consult with inspectors before drafting policies and procedures to understand where inspectors would best benefit from more guidance.

The form that inspectors complete during inspections should provide direction and standards for inspectors to follow.

Inspectors are to fill out a form during inspections. This form should provide direction and standards for inspectors when inspecting salons. The form currently used by the board includes spaces for basic identifying factors of the inspected facility as well as a checklist for the sanitation standards listed in 201 KAR 12:100. An example of the form appears in Figure 3.A.

**Figure 3.A
 Salon Inspection Checklist**

<u>201 KAR 12:100. Sanitation Standards</u>	
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Wet Disinfectant: Registered hospital grade bactericidal, virucidal and fungicidal disinfectant Comment: _____
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Disinfected Implement Storage Clean, Free of Debris, and Properly Labeled
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Implement Cleanliness Comment: _____
<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> N/A	Hand Sanitizer Available at Each Nail Station
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Chemical Safety Comment: _____
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Covered Waste Containers with liner
<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> N/A	Sharps Disposal Container for Hazardous Material (Required for all esthetic facilities)
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Closed, dustproof cabinet for clean towels and linens
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Closed, side-vented hamper or receptacle provided for all soiled towels and linens
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Walls/ Fixtures Clean
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Floors Clean and Free of Debris
<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> N/A	Restroom(s) Clean
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Salon Equipment Clean and in Proper Repair Comment: _____
<u>Additional Comments:</u> _____	

Source: Kentucky Board of Cosmetology. Salon Inspection Form. Aug. 2024.

The form used by inspectors provides only a basic checklist and lacks specificity that would allow for uniformity in inspections criteria and the future ability to interpret inspection documentation.

The board’s form provides only a basic checklist for inspectors to follow. The checklist provided is broad and does not allow future inspectors, board members, or other readers to determine specific issues that the inspector observed. Virginia provided an example of its checklist for cosmetology inspections, which gathers more detail than Kentucky’s form. Virginia’s checklist is initially divided by overarching areas of inspection: display of license, administrative, building or structure, and sanitation and safety. Each section then has a checklist and a space for further comments. Where Kentucky’s checklist has “implement cleanliness” as a single checkbox, Virginia’s form is split into multiple items, including

- electrical clipper blades disinfected before and after each use;
- wet disinfection unit is in a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed; and
- each barber, master barber, cosmetologist, nail technician, and wax technician must have a wet disinfection unit at his station.

The specificity of Virginia’s checklist allows both for uniformity in inspection criteria and for the ability for an outside party to understand what specific issues an inspector is seeing and citing.⁶⁵

Only 54 percent of fines from 2019 to 2023 included an inspection form, suggesting that inspectors may not have regularly used the checklist during that period.

Even if Kentucky’s checklist is sufficient, the checklist is useful only if it is used and if that use is documented. An LOIC review of the board’s files related to fines issued from 2019 to 2023 found

that a completed inspection form was included in only 54 percent of the files. These files were the extent of all the data the board kept; if the inspection form was not provided in those files, there is no way to determine whether the inspection form was ever completed.⁶⁶ The lack of records of inspection checklists makes it unclear whether inspectors regularly used the checklist when out in the field.

Inconsistent use of an underdeveloped checklist could lead to differing interpretation of inspection standards, an appearance of partiality, and poor documentation.

Inconsistent use of inspection checklists may lead to some facilities being cited for certain offenses when others are not, as well as differing interpretations of the law, which may create an appearance of partiality from the board. The checklist should be structured so that inspections are consistently and uniformly carried out and that oversight is applied evenly. The results of the checklist should be documented in case review is needed both to show that inspectors are using them properly and to provide reasoning for fines.

Recommendation 3.3

Recommendation 3.3

The Kentucky Board of Cosmetology should ensure that its inspector checklists are sufficiently detailed and that inspectors consistently file them.

Inspector Training And Instruction

The board's lack of internal policy for inspectors extends to inspector training.

The board's unclear internal policies for inspectors become even more problematic when paired with a lack of training or instruction for inspectors. The main document detailing job-specific policies and procedures for inspectors is the IMSOP, which focuses on general employee considerations such as attendance, time, and travel vouchers. The IMSOP covers roles and responsibilities of inspectors such as completing inspection sheets on-site, initiating a complaint investigation within 2 business days of notification, and checking in daily with the board's main office. On a daily basis, inspectors are required to inspect a minimum of five establishments, depending on density of assignments, and to submit complete and detailed reports through the inspection software program.⁶⁷

No internal policy document outlines the process of initial or ongoing training.

The board does not appear to have internal written policies for inspector-specific training nor any education or experience beyond the requirement that inspectors hold an active cosmetology license.⁶⁸ Board staff stated that new inspectors receive training with other staff for their first 4 weeks or until they feel comfortable with conducting inspections on their own. In addition, board staff

have stated that regular meetings and updates are communicated to staff and annual training items are “brought up.”⁶⁹ The process of initial and ongoing trainings described by board staff is not outlined in any board policy document. The lack of documentation can lead to inconsistent training during staff transitions.

In one instance, inspectors acted beyond their legal authority in confiscating electronic devices under suspicion of fraudulent reporting a falsifying record.

A review of eMARS showed an expenditure labeled “data recovery for non-state-owned school.”⁷⁰ Board staff stated that they had seized a phone and a computer from a licensed school due to suspicion of fraudulent hours reporting and falsifying student records. Staff cited KRS 317A as their statutory authority to do so, but KRS 317A.145(3) simply states that the board has the authority to obtain copies of books, papers, and records.⁷¹ A lack of robust training and policies may have contributed to inspectors acting beyond their legal authority.

Board staff suggested training inspectors on use of body cameras.

Board staff also reported that there was a lack of training for inspectors with regard to the use of body cameras. Board staff stated that the inspectors do not trust the body cameras. The use of these cameras is new, and the inspectors continue to be unsure of whether cameras are actively recording. Rather than using the body cameras, inspectors often rely on their board-issued tablets to record conversations. Board staff stated that trainings would make inspectors more comfortable with relying on the body cameras.⁷²

Formal training requirements would help ensure that inspectors act within their authority and would mitigate the risk of inspector misconduct.

Formal training requirements for inspectors can help ensure that inspectors perform their inspections in alignment with the law. The lack of training paired with ambiguous internal policies and standards for inspections creates a large risk of error and misconduct. Written policies and procedures for initial inspector training would mitigate the risk of misconduct due to a lack of knowledge or understanding of the parameters of the job, and ongoing training would allow inspectors to stay abreast of any changes in the law as well as increase awareness of ongoing trends in the industry.

Recommendation 3.4

Recommendation 3.4

The Kentucky Board of Cosmetology should develop written policies and procedures for initial inspector training and ongoing inspector education.

No Policy For Complaints Against Inspectors

The board does not have formal written policies or procedures for how to handle complaints against inspectors.

The board does not have formal written policies or procedures for how to handle complaints against inspectors. When asked

how board staff respond to a complaint, board staff stated that inspections are recorded on body cameras worn by inspectors or on another device. If a complaint is submitted, a review would be conducted and follow-up questions would be asked to determine whether the issue cited in the complaint was founded. Board staff does not have a storage process for video taken by body cameras, and there is no clear policy or procedures requiring that inspectors use their body cameras or record inspections.

Without clear policy and procedures, the complaint review process is less likely to be carried out consistently and objectively.

If a complaint is deemed valid, personnel cabinet policies are followed to document the incident.⁷³ Due to the lack of policies, it is unclear how the board would decide whether a complaint is valid. There is also no policy for following up with a complainant following internal review, making the process more obscure.⁷⁴ Currently, complainants take it on faith that the board will investigate complaints against staff and take appropriate disciplinary action. This lack of policy and procedure becomes all the more problematic when coupled with the fact that the board has no external oversight to ensure proper follow-through. Without clear policy and procedures, the complaint review process is less likely to be carried out consistently and objectively.

Recommendation 3.5

Recommendation 3.5

The Kentucky Board of Cosmetology should develop written policies and procedures for review of complaints against inspectors and should follow up with those who submit complaints.

Chapter 4

Board Fines

This chapter reviews board policies and procedures regarding fines, as well as fine amounts issued from 2019 to 2023.

This chapter examines Kentucky Board of Cosmetology policies and procedures regarding the determination and issuing of fines. It first outlines the statutory and regulatory authority for the board to issue fines, as well as the guidelines for fine amount and actions considered a finable violation. It analyzes data from all fines issued from 2019 to 2023 to identify trends and patterns. The analysis found that the average dollar amount of fines issued to salons, schools, and licensees has increased over 400 percent during the 5-year period. It contains seven recommendations.

Statutory And Regulatory Authority For Fines

KRS 317A.140 grants the board authority to impose administrative fines if there is proof of a violation.

KRS 317A.140 grants the board the authority to impose administrative fines if there is proof that an applicant, permittee, or licensee

- has a felony conviction;
- has exhibited gross malpractice or incompetence;
- has exhibited mental or physical health that would endanger public health or safety;
- has engaged in false or deceptive practice or misrepresentation including advertising;
- is practicing in an unlicensed salon or in a salon knowing that the salon is not in compliance with [KRS 317A] or the administrative regulations of the board;
- has engaged in immoral conduct, unprofessional conduct, or violation of the code of ethics;
- is teaching in an unlicensed school or in a school knowing that the school is not in compliance with [KRS 317A] or the administrative regulations of the board; or
- is failing to comply with the administrative regulations of the board.⁷⁵

The board retains licensing and other fees and deposits them into the Kentucky Board of Cosmetology trust and agency fund to be administered by the board.⁷⁶ However, the board is required to deposit all payments collected in lieu of suspension to the State Treasury to be credited to the general fund.⁷⁷ In other words, statute allows the board to keep fees, but it cannot keep fines.⁷⁸

Even though statute requires that fines be credited to the general fund, the board received \$374,200 in fines from FY 2022 to FY 2024.

Even though KRS 317A.140 requires that fines be credited to the general fund, a search of the statewide accounting system showed that the board received \$374,200 in fines from FY 2022 to FY 2024, as shown in Table 3.A. For FY 2022, the board received fine revenue only in November and December. For FY 2024, the board received fine revenue only in July and August. The board received fine revenue in every month of FY 2023.

**Table 4.1
Board Of Cosmetology Fine Revenue
FY 2022 To FY 2024**

Fiscal Year	Fine Revenue
2022	\$26,525
2023	297,325
2024	50,350
Total	\$374,200

Source: Staff analysis of eMARS Revenue Analysis Report-FAS Power BI.

Board staff confirmed with the Office of State Budget Director that the funds were being returned to the board's restricted fund. It is unlikely that the funds were spent.

The board received fines only irregularly in FY 2022 and FY 2024 and does not appear to have received any fines prior to 2022. According to board documents, the board issued fines prior to 2022 and issued more fines from FY 2022 to FY 2024 than what it improperly collected.⁷⁹ The board also had a surplus of funds in its agency fund from properly collected fees, so it is unlikely that the board made additional purchases that would have been covered by the improperly collected fines.⁸⁰ Thus, the improperly collected fines could have been a mistake. Board staff confirmed with the Office of State Budget Director that the funds were being returned to the board's restricted funds. The staff member was not aware of any policy regarding possession of fine revenue.⁸¹

Recommendation 4.1

Recommendation 4.1

Kentucky Board of Cosmetology staff should work with the Office of the Controller in the Finance and Administration Cabinet to determine how the \$374,200 in fine revenue can be returned to the general fund, as established in KRS 317A.140(2).

Recommendation 4.2

Recommendation 4.2

Kentucky Board of Cosmetology staff should develop a policy for processing fine revenue that is inadvertently received. The policy should be provided to board members for adoption.

Process For Fines

The board decides fine amounts after its subcommittee reviews inspection documentation.

When performing an inspection, inspectors complete an inspection checklist and all documentation on site.⁸² Inspectors submit a written report noting any violations observed during their inspection as well as recommendations for fines.⁸³ The report is reviewed by the complaints committee, which is a subcommittee of no more than two board members who review complaints, initiate investigations, participate in informal proceedings to resolve complaints, and make recommendations to the board for the disposition of complaints.⁸⁴ The board then decides on the fine amount or other disciplinary action.⁸⁵

The board does not have a digital system for tracking past fines.

Although board staff said the board sometimes issues higher fines for repeat offenders, it has no method for tracking all fines it issues. The database that the board uses is meant to track license renewals and is not searchable. The agency has kept physical files and attempts to track violation history by keeping notes on the physical violation reports.⁸⁶ At one time, the physical files were not stored at the board's location, and staff are unsure whether they received all of the files back when they were returned to the board's office.⁸⁷ The lack of a digitized system makes it difficult for the board to track changes in ownership or repeat offenses and creates a danger of mistakes and overlooking ownership changes and past offenses that could be easily and quickly found in a digital system.⁸⁸

Recommendation 4.3

Recommendation 4.3

The Kentucky Board of Cosmetology should implement an electronic tracking system to organize and search fines given.

Fine Data

A review of the board's physical records from 2019 to 2023 showed that most files contained a combination of the following documents:

- Formal letter from the board
- Agreed order
- Salon inspection form
- Scans of received fine payments
- Emails between the board and salon or licensee fined
- Pictures taken by board investigators

When a violation is documented and acted upon by the board, board staff write the agreed order outlining the violation and the fine amount the respondent is expected to pay.

An agreed order is a legal document that both parties of a case sign and submit to the court, where it becomes an order or decree of the court.⁸⁹ When a violation is documented and acted upon by the board, board staff write the agreed order outlining the violation and the fine amount the respondent is expected to pay. A formal letter from the board should accompany the agreed order explaining in layman's terms the violation and fine amount and instructing the respondent to sign the agreed order and pay the listed fine. The formal letter often warns the recipient that failure to sign the agreed order and pay the fine may result in disciplinary action from the board. Once the respondent signs the agreed order, it is submitted to the court.

The agreed orders and formal letters often contained descriptions of violations that were limited in specificity and did not provide requirements or instructions on rectifying violations.

Review of the board's documents showed that both agreed orders and formal letters from the board were often not specific when describing violations that led to fines. Neither agreed orders nor the formal letters provided requirements or instructions on rectifying violations. The documents required only that respondents pay their fine to continue being able to practice.

Recommendation 4.4

Recommendation 4.4

The Kentucky Board of Cosmetology should provide guidance or require corrective measures in either the agreed orders or the formal letter to licensees to correct the violation that prompted the fine.

Inspection Sheets Often Missing

Of the 770 documented agreed orders from 2019 to 2023, 353 files (46 percent) did not include a salon inspection sheet. Without this inspection sheet, the original basis for a past fine is lost.

Inspection sheets, in addition to prior violation history, are used as the basis for determining fine amounts. The documentation provided by inspectors informs the board members on the status of facilities and licensees. Despite the importance of inspection sheets, they are not consistently kept in board files. Of the 770 documented agreed orders from 2019 to 2023, 353 files (46 percent) did not include a salon inspection sheet. Staff indicated that no files were digitized, so the contents of the hard-copy files were the extent of all records kept by the board.⁹⁰ Without inspection sheets, the files are incomplete and there is no way to explain the board's decision to fine a salon or licensee. Lack of proper documentation increases the risk that the board may be accused of improper actions as it would have no way to defend its decisions. Poor recordkeeping, particularly of important documents with pertinent information, creates a myriad of problems including ambiguity and lack of continuity in decision making, inability to audit or review decisions, and increased risk

of misconduct claims. The board can mitigate these issues by ensuring that inspection sheets are properly documented in their files.

Recommendation 4.5

Recommendation 4.5

Kentucky Board of Cosmetology staff should ensure the proper documentation of salon inspection sheets in all agreed order files.

Fine Analysis Difficult Due To Inconsistencies

The information included in the board's case files lacked consistency. Fines were rarely broken down by individual violation.

The information included in the board's case files alongside agreed orders lacked consistency. Language varied when used to describe the same information and was often vague. The board rarely provided a breakdown of fines in the case file and never provided a breakdown in agreed orders or formal letters. All fines were presented as a single aggregate figure, including in instances where multiple distinct violations were described.

Analysis of variance in fine amounts for each type of violation could not be conducted due to inconsistent information, a lack of fine breakdowns, and inconsistent language.

An analysis of variance in fine amounts for the same types of violations could not be conducted due to variability in provided information and no separation of fine amounts by individual offense. Without knowing exact fine amounts for each violation in each case, this analysis is not possible. The inconsistent language used in agreed orders and formal letters also made it difficult to group similar charges.

The variables taken from the files were

- date,
- year,
- salon or practitioner name,
- salon type,
- whether the file included a salon inspection form,
- fine amount, and
- violations listed.

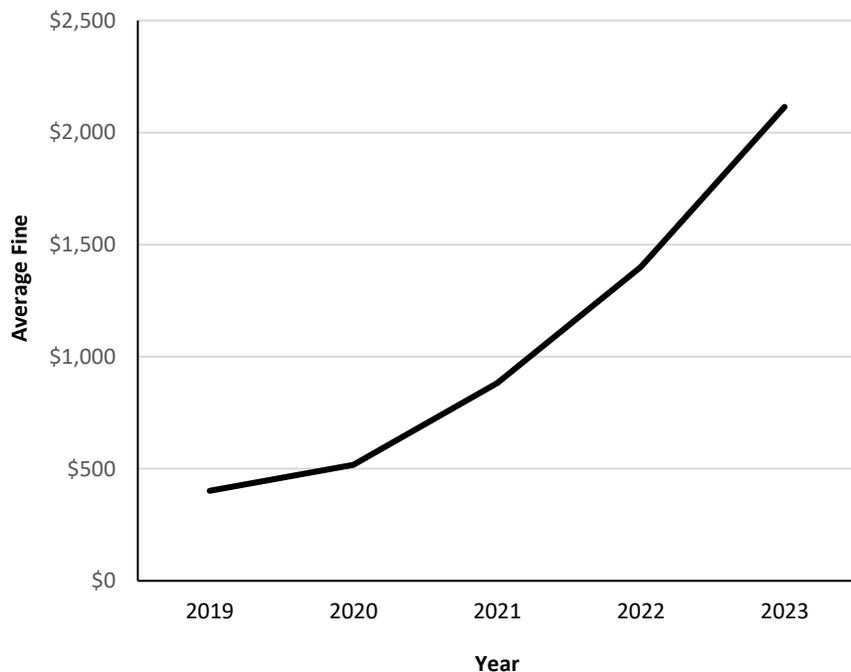
No assessment of whether any type of salon was being disproportionately investigated or fined could be conducted.

No assessment of whether any type of salon was being disproportionately investigated or fined could be conducted. Salon type should be indicated on the inspection forms, but almost half did not complete this entry, leaving the salon type unknown and unable to be categorized for analysis. There is nothing to clarify whether inspectors mark the category of salon based on the salon's license or simply base the designation on what they assume to be the case.

The average fine amount increased by over 400 percent from 2019 to 2023.

Fines have increased 426.5 percent over the past few years. According to the former general counsel of the board, this increase was implemented purposely since approximately 2017.⁹¹ The lowest fine of the 770 reviewed entries was \$125, and the highest was \$10,000. The agreed orders do not break down fine amounts for each charge and instead only list a fine total, so the average fine amount was calculated for each year to determine whether fine amount totals were increasing. There were fewer files in 2020, as most salons were shut down due to the pandemic. More files were present for 2021 as the board began to return to normal operations. Fines from 2019 to 2023 increased by over 400 percent. The average fine in 2019 was \$401.68, and the average in 2023 was \$2,114.72. Figure 4.A shows the average fine amount by year.

**Figure 4.A
Average Fine Amount By Year
2019 To 2023**

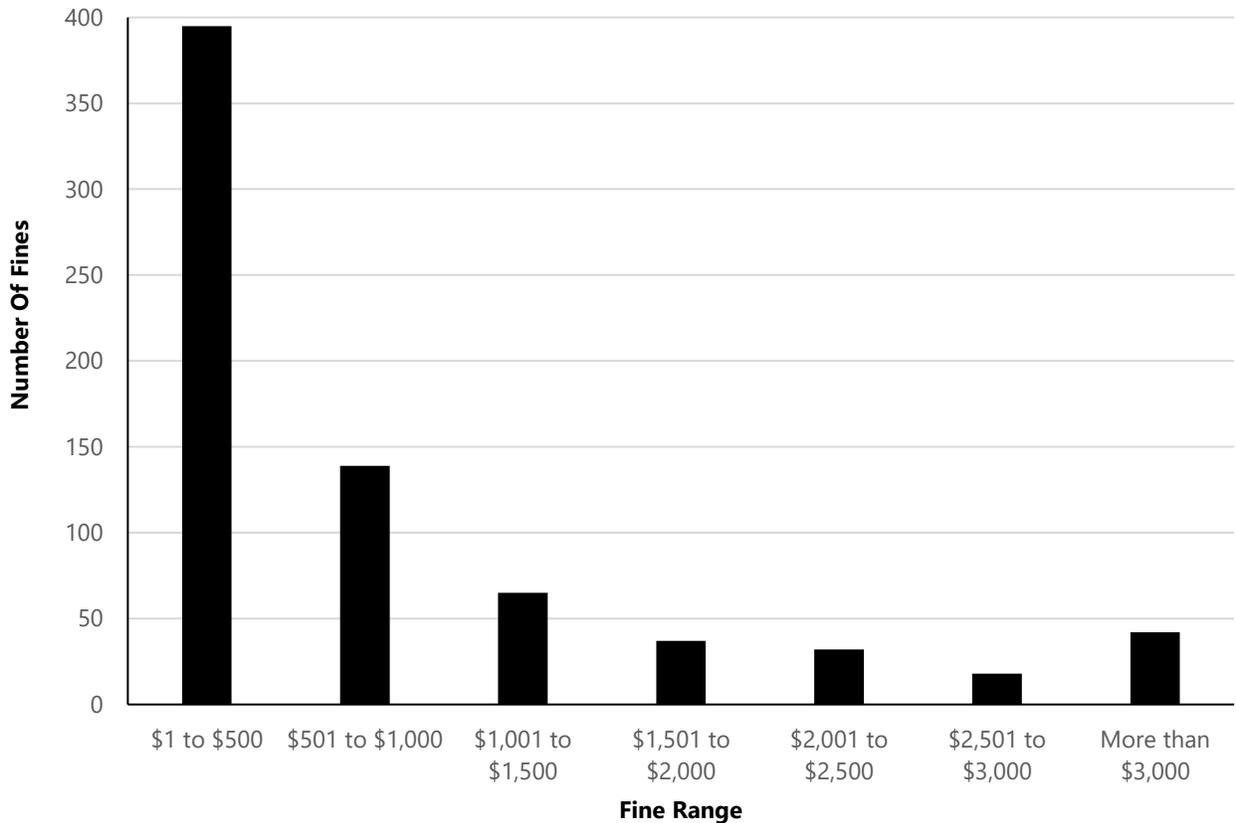


Source: Staff analysis of 2019 to 2023 Kentucky Board of Cosmetology agreed orders.

From 2019 to 2023, 54 percent of fines were \$500 or less.

To account for outliers in the data that could potentially skew yearly averages, Figure 4.B presents bar charts depicting the frequency of fine amounts by showing the number of fines in various ranges in 2019 to 2023. When viewed across the 5-year period, fines tended to be near the lower ranges, with 54 percent at \$500 or less, meaning that over half were less than \$500. Higher fines were less common, though two were for more than \$9,500.

Figure 4.B
Frequency Of Fine Amount By Fine Range
2019 To 2023

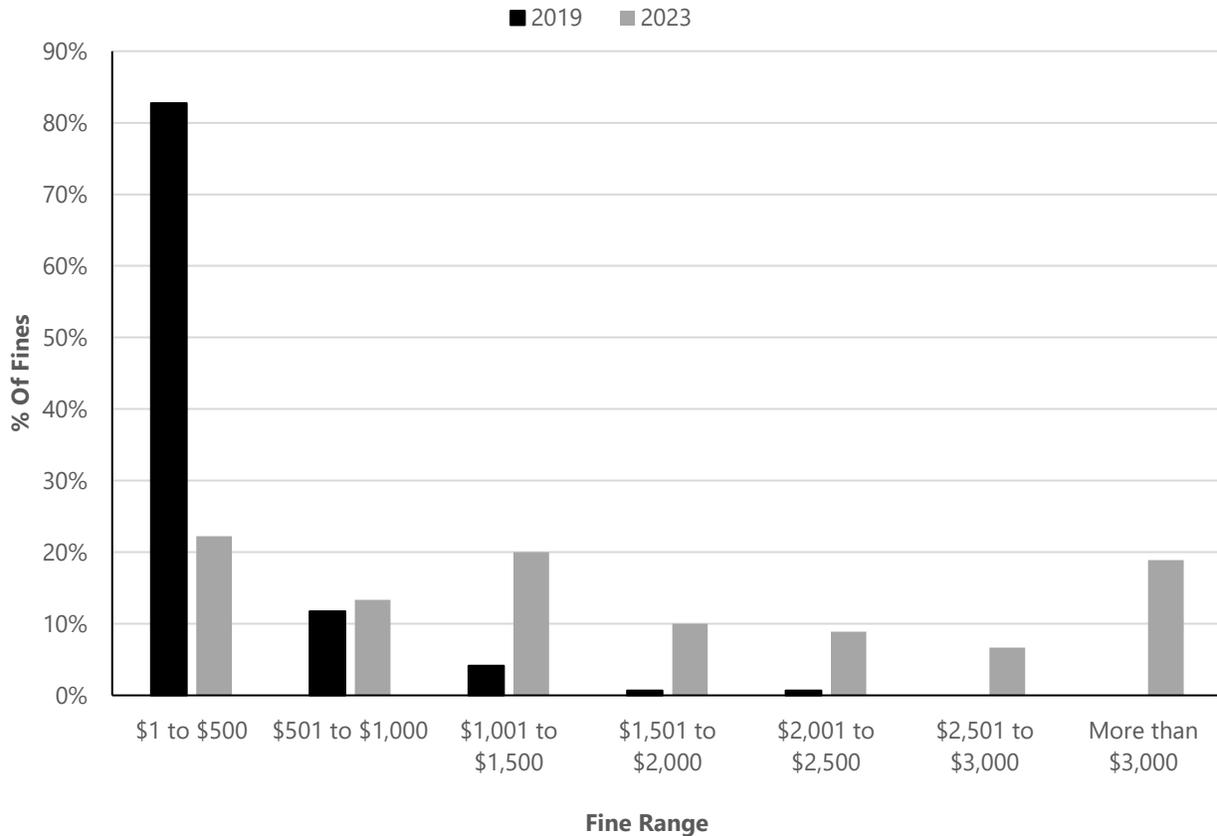


Source: Staff analysis of 2019 to 2023 Kentucky Board of Cosmetology agreed orders.

Fine amounts increased between 2019 and 2023, and the frequency of larger fines increased. In 2019, 83 percent of fines were less than \$500; by 2023, the percentage decreased to 22 percent.

However, when looking at the years individually, fine amounts increased from 2019 to 2023, with higher-dollar fines becoming more frequent. Figure 4.C shows the frequency of fine amounts in 2019 and 2023. In 2019, fine amounts of \$500 or less accounted for 83 percent of fines; by 2023, they represented only 22 percent. The frequency of higher-dollar fines increased by 2023. In 2019, no fines were above \$2,500. By 2023, 26 percent of fines were above \$2,500.

Figure 4.C
Frequency Of Fine Amount By Fine Range
2019 And 2023



Source: Staff analysis of 2019 to 2023 Kentucky Board of Cosmetology agreed orders.

Neither statute or board policy provides specific methodology for determining fine amounts, which results in a lack of transparency and can create the appearance of arbitrariness in board determinations.

Licenses are provided limited reasoning behind fine amounts. The formal letter and agreed orders they receive outline the general offenses and the amount they are required to pay. Statute provides little guidance to the board. KRS 317A.990 outlines the ranges of fine amounts for the type of violation. Statute does not assign a range to each violation but gives ranges for two categories. Statutory violations can result in fines of \$50 to \$1,500 per violation, and administrative violations can warrant fines of \$25 to \$750 per violation.⁹² There can be multiple violations per fine citation. The board determines the amount per violation. The fine ranges are not tied to specific violations and do not include the processes and reasoning the board uses to factor in repeat offenses and severity level of the offense. This lack of transparency can lead to concerns of arbitrariness in the determination of fine amounts. Several boards from the states surrounding Kentucky mitigate these issues by having a specific fine amount or fine range for individual offenses.

Ohio statute provides a more detailed outline for how fines are determined and issued.

Ohio Revised Code provides a more detailed outline for how fines are to be determined and issued. Its statute states that the board may impose separate fines for each offense and details the amounts that fines may not exceed in the case of a first-time offense or repeat offender.⁹³ Table 4.2 presents the table used to determine fine amount in consideration of violation occurrence.

Table 4.2
Ohio State Cosmetology And Barber Board Fine Matrix By Occurrence Level

Occurrence	Violation	Additional First-Time Violations In The Same Inspection
First	Violation is issued; facility is reinspected within 30 days. If issue is resolved at reinspection, matter is closed administratively with a warning letter.	Same as the primary violation in the same inspection.
Second	\$250	\$100 each
Third	\$500	\$200 each
Fourth	\$1,000 or suspension/revocation and filing of criminal charges, if applicable.	\$300 each

Source: Jared Yee, agency counsel, Ohio Cosmetology and Barber Board. Email to McKenzie Ballard, Aug. 2, 2024.

Ohio has also developed a violation matrix that includes a specific dollar amount for each occurrence of a specific violation.⁹⁴ Table 4.3 shows an example of fine amounts based on a specific violation and occurrence level.

Table 4.3
Ohio State Cosmetology And Barber Board Violation Matrix For Unlicensed Practice Or Business

Occupation	Violation	Fine
Cosmetology	First	\$250
	Second	\$500
	Third	\$1,000, criminal charges if applicable
Barbering	First	\$500
	Second	\$1,000
	Third	\$1,000, criminal charges if applicable

Source: Ohio Rev. Code Ann. secs. 4709.02(A)-(G), 4713.14(C)(1)-(5), 4713.14(E)(1)-(2), 4713.14(I), and 4713.14(P); Jared Yee, agency counsel, Ohio Cosmetology and Barber Board. Email to McKenzie Ballard, Aug. 2, 2024.

Virginia uses a sanction guideline chart to determine fine amounts. Indiana also uses a more specific fine determination system.

The Virginia Board for Barbers and Cosmetology uses a sanction guideline chart to determine the fine amount for an offending salon or licensee. This document lists each violation and the regulation or statute that references it and provides a specific minimum and maximum fine range as well as an average fine amount for each violation.⁹⁵ For example, failure to display license, certification or

permit is a finable offense under Virginia Code Ann. 41-20-260.A, and offenders can be fined \$100 to \$150, with the average being \$100. An Indiana official indicated that the state uses a set fine amount for each violation per its legal orders, but she did not provide an example or documents.⁹⁶

The Kentucky board's lack of guidelines and lack of consistency in record keeping exposes it to criticism, disputes, and even potential legal action if it cannot adequately defend its decision making to licensees.

Kentucky's fining process is vaguer than the processes used in surrounding states. The lack of guidelines paired with the lack of consistency in record keeping opens the board to criticism on its decisions on fine amounts. The board risks disputes and even legal action if it cannot adequately defend its decisions to fine licensees and salons.

Recommendation 4.6

Recommendation 4.6

The Kentucky Board of Cosmetology should develop smaller fine ranges tied to specific violations and include set progressions for repeat offenders and more severe offenses.

Recommendation 4.7

Recommendation 4.7

The Kentucky Board of Cosmetology should include the fine amount for each offense cited in the agreed orders and formal letter instead of a total amount.

Payment Of Fines

The board accepts fine payment only through money order or cashier's checks, which licensees find inconvenient and hard to track.

The board's only methods for paying fines are money orders and cashier's checks. The formal letters sent by the board with agreed orders indicate these requirements and state that the board does not accept personal checks. Many licensees have complained that these methods of payment are hard to track and make it very inconvenient to pay their fine.⁹⁷ Board staff expressed intentions of updating fine payment requirements so practitioners may pay fines online.⁹⁸ Online payment was not implemented by the drafting of this report, but it would be an improvement, allowing easier tracking and preventing potential loss of payments through the mail.

Recommendation 4.8

Recommendation 4.8

The Kentucky Board of Cosmetology should update its method of fine payment by adding an option to pay the fine through an online portal.

Endnotes

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- ¹⁸ KRS 317A.020(7)(d)(2).
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- ⁵⁹ Ibid.
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- ⁷⁶ KRS 317A.080.
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