

**South Carolina Department of Labor,  
Licensing and Regulation**

**Executive Order 2013-02  
Final Report**

**May 15, 2013**

**Holly G. Pisarik  
Director**





South Carolina  
Department of Labor, Licensing and Regulation



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To: Governor Nikki Haley and the Regulatory Review Task Force

From: LLR Director Holly Pisarik

Date: May 15, 2013

Pursuant to Executive Order 2013-02 establishing the Regulatory Review Task Force, my staff and I have thoroughly reviewed current statutes, regulations, rules, and policies, and all comments received from our Board and Commission members, licensees and other members of the public. From that review, we are pleased to provide more than 60 recommended changes to the statutes and regulations governing our 300,000-plus licensees and other agency stakeholders. We believe our recommendations will help lessen the regulatory burdens on businesses and licensees across our state without affecting the safety of those involved.

This report also serves as the deregulation report I am statutorily required to prepare each year. Pursuant to S.C. Code § 40-1-50, "the director of the South Carolina Department of Labor, Licensing and Regulation ("Department") shall annually prepare a report indicating those regulated trades, occupations, and professions that do not meet the spirit and intent of S.C. Code § 40-1-10."

Last year, the Agency submitted a report to the Governor and General Assembly that recommended the de-regulation of several occupations and professions. No legislative action resulted from the report.

This year, the Agency focuses on the extent to which certain occupations and professions are regulated. Section 40-1-10 prohibits any statute or regulation from being imposed upon a profession or occupation "except for the exclusive purpose of protecting the public interest" and limits the extent to which a profession or occupation can be regulated. In several respects, the existing law regulates beyond the level necessary to protect the health, safety and welfare of the public.

This report is intended to give a concise overview of the issues with recommendations for change; however, the Agency is happy to provide supplemental information upon request that may be necessary for the Regulatory Review Task Force's consideration.

This review process has been invaluable to me and my staff. We thank you for this opportunity and look forward to the Task Force's final report.

# South Carolina Department of Labor, Licensing and Regulation

## Executive Order 2013-02

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**South Carolina Department of Labor, Licensing and  
Regulation**

**Executive Order 2013-02**

**1.0 Executive Summary**

## Executive Summary

The South Carolina Department of Labor, Licensing and Regulation (LLR or Agency) is a regulatory agency with specific oversight of 41 professional and occupational licensing boards, the State Fire Academy, the State Fire Marshal's Office and the Division of Labor, which includes South Carolina OSHA, Payment of Wages, Child Labor, Elevators and Amusement Rides, and the Office of Immigrant Worker Compliance. The Agency has a direct impact on many citizens and businesses in this state on a daily basis – from licensing doctors and nurses to inspecting amusement rides and elevators to overseeing worker safety.

While LLR's mission, as set out in statute, is to protect the public through regulation of certain professions and occupations, we are mindful that the right of the State to abridge the right of a person to engage in a lawful profession can only be done when it is necessary for the preservation of the health, safety, and welfare of the public. LLR recognizes that regulations often can be overly burdensome on businesses and the public and go beyond regulating for the public health, safety, or welfare.

For that reason, LLR welcomed the opportunity to thoroughly review its current statutes, regulations, rules, and policies pursuant to Governor Nikki Haley's Executive Order 2013-02, which established the Regulatory Review Task Force.

The Agency began its review process by sending an electronic letter on February 22, 2013, to all Board and Commission members, along with a letter from Governor Haley requesting their participation in the review of their respective statutes and regulations. In concert with members of the Agency's 41 Boards and Commissions, LLR scheduled more than 40 public hearings to ensure the voices of all interested license-holders and other members of the public were heard.

In addition, on March 4, 2013, LLR issued a letter to all stakeholders and members of the public seeking feedback from all recipients. The letter also included a schedule of Board meetings and hearings scheduled to review other Agency programs. This letter was electronically sent to licensees who had provided the Agency with a valid email address, to all professional associations with an interest in the Agency, and other stakeholders. The letter and hearing dates were posted on the Agency's website. LLR requested written comments from all stakeholders and established a dedicated email address for that purpose: [RegulationComments@llr.sc.gov](mailto:RegulationComments@llr.sc.gov). The Agency received more than 400 written and oral comments that helped shape its final recommendations.

As a result of this review process, LLR, in concert with the Boards, Commissions, and the public, is recommending more than 75 changes to statutes and regulations governing its 300,000-plus licensees and other stakeholders. LLR believes its recommendations will help lessen regulatory burdens without affecting the safety of those involved.

The Agency's recommendations contained in this report were made after thorough review of: all statutes, regulations and policies; all written comments; and all oral comments made during the public hearings. (A full copy of the written comments and summaries of the hearings can be found in the Appendix).

LLR is unique in its makeup. By statute, LLR is responsible for all administrative, fiscal, investigative, clerical, secretarial, and license renewal operations for the Boards and Commissions outlined in Title 40. Boards and Commissions are solely responsible, however, for promulgating regulations relating to their respective professions. Because of this unique statutory scheme, LLR has included the Board's most responsive recommendations in the body of the report and an appendix that summarizes all of the Board recommendations, even those that aren't directly responsive to the Governor's Executive Order.

In addition to providing administrative and fiscal support functions, LLR's director is required, pursuant to S.C. Code § to 40-1-50(A), to annually "prepare a report to the Governor and the General Assembly indicating those regulated trades, occupations, and professions" that do not meet the requirement of protecting the public interest. Because of the statutory requirement and in conjunction with Governor Haley's Executive Order, LLR also reviewed the statutes and regulations independently of the Boards' review. In many instances, LLR agreed with the Board recommendations; however, in some cases, LLR believed a particular Board did not go far enough in revising or deleting a statute or regulation, and that the statute and regulation did not relate to the health, safety, or well being of the public. In those cases, LLR made a separate Agency recommendation repealing, deleting, or amending the statute or regulation in part or in whole.

This process is not new to the Agency. The Agency went through a similar process last legislative session wherein it cleaned up all regulations, submitted a deregulation report, and took all policies and procedures off the Agency's website and asked all Boards and Commissions to review their policies. Thus, for some Boards and Commissions there are no recommendations. The review of statutes, regulations, and policies is an ongoing process.

Because this report encompasses Board, Commission, Agency, and Public recommendations for over 40 Boards, Commissions, and programs, the amount of information is voluminous. The report, therefore, is organized by the professions with the most statutory and regulatory changes. While not all public recommendations and Board discussion items are included in the body of the report, all unedited hearing summaries and public comments are included for the Task Force's review and consideration.

Board and Commission concerns and recommendations have served as a catalyst for immediate and future changes in several Agency procedures that will serve as a benefit to both the licensees and the public. A frequently-raised concern was the length of time the Agency takes to investigate complaints. The Agency began tracking investigative

cycle times in July of 2012. Since then, cycle times have been reduced generally across the boards and commissions. For example, cycle times for the Board of Accountancy have been reduced from 426.8 days (for 12 cases) to 177.2 days (for 16 cases). Likewise, cycle times for the Real Estate Commission have been reduced from 178.1 days (for 116 cases) to 138.5 days (for 204 cases). The Agency is striving to further improve these numbers. Another Board or Commission concern has been the qualifications of the Agency's investigators. The Agency is now exploring additional industry training opportunities for investigators to ensure these employees are properly educated to perform the tasks assigned to them in their respective investigative fields.

Numerous Boards and Commissions noted their dissatisfaction with the Agency's website, stating it should be updated more frequently, is not user-friendly, and often contains broken links. At least two Boards expressed the desire for a smart phone app for the site, particularly its licensee lookup function, and other Boards and Commissions emphasized the need for online applications for licensure. The Agency is overhauling its entire site, and welcomed the timely suggestions for improvements that would better serve its user-base. The Agency began implementing online applications in 2012. As of today, six Boards or Commissions have all of their applications online, and seven Boards or Commissions will go live within the month. The Agency has an internal goal date of September 1, 2013, for implementation of all Board and Commission applications online. The Boards and Commissions have taken an active role in devising solutions for common concerns. At their hearings, some of the Boards and Commissions delegated authority to their chair or to staff to perform tasks, such as issuing cease and desist letters and letters of caution, to expedite certain processes. Some expanded the authority of their administrators to approve licensure at staff level, and others provided suggestions on how to schedule meetings to be more respectful of the licensees' time.



**South Carolina Department of Labor, Licensing and  
Regulation**

**Executive Order 2013-02**

**2.0 Findings, Recommendations,  
and Justifications**

**A. Division of Professional and  
Occupational Licensing Boards**

## South Carolina Board of Cosmetology

### **Board Recommendation:**

The Board discussed multiple issues and made many good recommendations, including broadening the types of courses allowed for continuing education, eliminating continuing education requirements, allowing alternative instructors and training, allowing temporary permits for schools, allowing online continuing education, eliminating the comity licensure requirement under S.C. Code Reg. § 35-5(G), allowing students to test prior to completing the required 1,500 required education hours, and eliminating the inactive status established in S.C. Code § 40-13-250; however, the Board did not reach a consensus on any of these issues.

### **Public Comments:**

Likewise, there were numerous comments from the public regarding many issues, including broadening the courses allowed for continuing education (CE), allowing alternative instructors and training, allowing all online continuing education, keeping CEs generic in nature, sanctioning CE providers when not in compliance, not limiting the number of CE providers, allowing schools to test on-site, and allowing students to obtain more than 8 hours of training a day.

### **Agency Recommendations:**

Last year, the Agency recommended repealing the Cosmetology Practice Act and abolishing the Cosmetology Board in its 2012 Regulatory Report. As an alternative, the Agency recommended sanitation and health inspections be conducted by DHEC. See the relevant portions of the Agency's 2012 Regulatory Report attached hereto as Appendix B. For the reasons stated in that report, the Agency recommendation remains the same. Last year, however, no legislative action resulted from that report. In the event the Cosmetology Practice Act and accompanying regulations are not repealed, the Agency recommends scaling back the extent of regulation. To that end, the Agency recommends the following:

#### **ISSUE 1: Barber and Cosmetology Boards Merger**

**Recommendation:** The Agency recommends the combination of the State Board of Cosmetology and the State Board of Barber Examiners.

**Justification:** Combining the two Boards will reduce the complexity of the licensing scheme for licensees and the redundancy in having separate boards.

The scope of practice of the two professions is similar. A cosmetologist's practice is broader than a barber's in only three respects: (1) the application of chemicals to the hair; (2) the application of facials; and (3) work on parts of the body other than the face and neck, to include legs, feet, arms, and hands. The Barber Practice Act, however, includes the licensure of a master hair care specialist, who may apply chemicals and perform manicures. See S.C. Code §§ 40-7-20 and 40-7-260. A barber assistant may give shampoos and manicures. See S.C. Code § 40-7-280.

Because of the overlap in practices, the two Boards should be combined, the licensing structure condensed, and the two practice acts simplified. Twelve other states have combined the two practices: Alabama, Delaware, Hawaii, California, Maine, Missouri, New Hampshire, New Mexico, New York, Oregon, Vermont, and Virginia.

## **ISSUE 2: Hours for Licensure**

**Recommendation:** The Agency recommends amendment of S.C. Code § 14-13-230 to reduce the number of hours required for licensure for cosmetologists, estheticians, and nail technicians.

**Justification:** Reducing the hours to obtain a cosmetologist, esthetician, or nail technician license will make it easier financially for those interested in the profession to gain the skill necessary to enter the job market. In addition, it will reduce the amount of student debt for new cosmetologists.

For licensure, a cosmetologist must obtain 1,500 hours, estheticians must obtain 450 hours, and nail technicians must obtain 300 hours, all at a Board-approved school. According to testimony by industry representatives before the Senate LCI Subcommittee, each student must spend \$16,000 to \$20,000 in order to obtain the necessary education. Cosmetologists will say they learn not only the “art of hair, skin, and nails” but take classes in “client safety, sanitation/infection control procedures, physiology, myology, anatomy, and countless other sciences.”<sup>1</sup> However, most people style their own hair every day and commercial hair dyes are sold to the public for home use at beauty supply stores. Nail technicians essentially paint finger and toenails and apply artificial nails. Estheticians practice skin care. These are functions that many people perform at home without any training.

The cosmetology lobby has been successful nationally, and in South Carolina, championing the need for a high number of educational hours, but the hour requirements are excessive when compared to other professions. For example, according to the South Carolina Department of Health and Environmental Control, an Emergency Medical Technician (EMT) can be licensed with 200 hours of education. An EMT is authorized to work on airways, ventilation, and oxygenation, perform CPR and defibrillation, immobilize for spinal injuries, administer medications, maintain non-medicated IVs, assist with childbirth, and monitor blood glucose and blood pressure, in addition to other things. However, one is required to take 300 hours to acquire the necessary skill to perform manicures and pedicures under the current regulatory scheme.

Further, a paramedic can be licensed with 1,000 hours of education. A licensed paramedic may do all the same things as an EMT, as well as perform intubation,

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<sup>1</sup>See [www.change.org/petitions/south-carolina-governor-nikki-haley-stop-the-deregulation-of-cosmetology-barbering-and-other-related-fields](http://www.change.org/petitions/south-carolina-governor-nikki-haley-stop-the-deregulation-of-cosmetology-barbering-and-other-related-fields)

cardiac monitoring, venous blood sampling, and blood chemistry analysis. Yet, it takes 1,500 hours to learn how to style and dye hair.

Although South Carolina's requirements are in line with some other states, the Agency still believes they are excessive. There are other states that require fewer hours. Florida and New Jersey, for example, require 1,200 hours for licensure as a cosmetologist. Florida requires 240 hours to become a licensed nail technician and 260 hours for an esthetician. Pennsylvania requires 1,250 hours for cosmetology, 200 hours for nail technicians, and 300 hours for estheticians. Virginia requires 1,500 hours for cosmetology, but only 150 hours for nail technicians.

In addition, as will be discussed in the next section, some states permit licensure through apprenticeship for applicants, with no formal coursework required.

### **ISSUE 3: Apprenticeship Track**

**Recommendation:** The Agency recommends amendment of the Cosmetology Practice Act to allow apprenticeship as an alternative avenue to licensure.

**Justification:** Other professions in South Carolina, such as barbers and auctioneers, permit licensure through an apprenticeship. Additionally, other states, including Maryland, Georgia, Michigan and California, allow apprenticeships for cosmetology. An apprenticeship allows the interested person to gain on-the-job training and skill, without requiring the person to pay as much as \$20,000 to attend cosmetology school.

### **ISSUE 4: Inspections**

**Recommendation:** The Agency recommends that S.C. Code § 40-13-290 and part of S.C. Code Reg. § 35-20(A) (2)-(3), which permit salon inspections, be repealed.

**Justification:** Eliminating the requirement for salon inspections will reduce the time and expense associated with unannounced inspections. In addition, there is little evidence that inspections protect the health or welfare of the citizens of South Carolina.

Last year, the Agency spent \$419,449 to conduct 8,751 inspections of salons and cosmetology schools. Most of the salon inspections yielded a high percentage of unlicensed practice in the nail technician industry. In addition, although some salons were found to be out of compliance with the lengthy sanitation regulations, none of the issues found resulted in any verified public harm. Of the 8,751 inspections, 23 cases involved sanitation, 41 cases involved unlicensed practice, and 74 cases arose against salons and salon managers for allowing unlicensed persons to practice. Ultimately, it seems that the Agency primarily inspects for unlicensed practice.

Although LLR licenses physicians, dentists, optometrists, physical therapists, nurses and other healthcare professionals, neither the Agency nor any other State agency is statutorily authorized to randomly inspect the private practices of these professionals to

ensure sanitary conditions for patients.<sup>2</sup> Thus, in South Carolina, we spend more than \$400,000 a year inspecting salons and schools, but not a penny to inspect dental<sup>3</sup> or medical practices for general sanitation conditions. Surely, if the Legislature has decided inspections of medical and dental offices are unnecessary where teeth are cleaned, cavities are filled, gynecological exams are performed, children are examined, and shots are administered, inspections of cosmetology salons are equally unnecessary.

The Agency does want to make a note regarding school inspections. In order for students to have access to federal loans for funding, the U.S. Department of Education requires State oversight of schools. If the State is going to require formal training to become a licensed cosmetologist, nail technician or esthetician, the Agency recommends keeping school inspections.

### **ISSUE 5: Booth Renters**

**Recommendation:** The Agency recommends deleting “a rental booth” from the definition of “salon” found in S.C. Code § 40-13-20(1).

**Justification:**

A cosmetologist, nail technician, or esthetician must, with very few exceptions, practice their trade in a licensed salon. Within one salon, the State requires a number of licenses: one for the salon; one for each cosmetologist, esthetician, or nail technician practicing within the salon; and one for each booth renter within the salon. A booth renter is one who rents space from a salon owner, but is not employed by the salon. This licensing scheme creates redundancies.

There is no “booth renter” license clearly outlined within the Cosmetology Practice Act. The Board has interpreted the definition of a salon, “a building or any place, or part of a place or building including, but not limited to a rental booth, in which cosmetology is performed . . .,” to require a booth renter to be licensed separately as a salon, essentially a salon within a salon. Again, the booth renter’s license is in addition to the cosmetology, nail, or esthetician’s license held by the booth renter.

Each of the 3,681 booth renters within the state must pay a \$100 fee for each booth rented, resulting in \$368,100 in revenue to the Agency every two years. Booth renters are inspected simultaneously with the salon of which they are a part. Of the booth rental

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<sup>2</sup> DHEC inspects X-ray equipment contained within a medical or dental practice, but does not inspect other aspects of the practice or for general sanitation conditions. S.C. OSHA has the authority to inspect to ensure employees are provided a safe and healthy worksite free of hazards which may cause injuries and illnesses to workers, but does not inspect to ensure patient safety.

<sup>3</sup> If passed, S. 0407 will require inspections of dental offices; however, there is no current inspection requirement.

inspections conducted last year, only 3 individuals were cited, all for unlicensed practice. Not one booth renter was cited for a sanitation issue.

Whether a cosmetologist works as an employee or rents a booth at a salon does not impact the health, safety, or welfare of the people of South Carolina, and therefore, should not involve the State. The Board of Cosmetology licenses the salon, so it makes little sense to license a booth renter who happens to work in the licensed salon as a salon owner.

## **ISSUE 6: Continuing Education**

### **A. Reduce Continuing Education Requirements**

**Recommendation:** The Agency recommends amendment of S.C. Code Reg. § 35-23(A) to reduce the amount of continuing education requirements.

**Justification:** Currently, S.C. Code Reg. § 35-23 requires cosmetologists, nail technicians, and estheticians to complete 12 hours of continuing education “during the preceding licensing year.” The Board interprets this to mean twelve hours of credit are required every two years. Despite the difference in hours required for initial licensure as a cosmetologist, nail technician, or esthetician, the regulations require 12 hours for all of these professions. Continuing education requirements are expensive and take licensees away from their jobs. One member of the public commented that continuing education is worthless, people sleep during the courses, and those who are interested in learning will pursue education regardless of the requirements. Other states require less. Georgia, for example, requires only five hours every two years.

### **B. Reduce Many of the Continuing Education Program Requirements**

**Recommendation:** The Agency recommends significantly scaling back the continuing education program requirements.

**Justification:** S.C. Code Reg. § 35-24 requires, among other things, that education programs provide adequate space and chairs, curtail smoking while a program is ongoing, require two forms of identification before admittance, including one government issued form of identification, and a monitor be on duty at all times. The Agency is unaware of any other profession that micro manages its continuing education programs to this extent.

### **C. Permit Continuing Education Carryover**

**Recommendation:** The Agency recommends amendment of S.C. Code Reg. § 35-23(A) to allow licensees to carry hours forward to the next renewal period.

**Justification:** Many other professions afford licensees this opportunity. Carrying credits to the next renewal cycle is efficient because it allows licensees to plan and budget more effectively. It is cost effective for the licensee and time effective

for the businesses employing them. A licensee should not be forced to lose credits that were paid for because the hours are not permitted to carry over into the next renewal cycle.

#### **D. Continuing Education Exemption**

**Recommendation:** The Agency recommends amendment of S.C. Code § 40-13-250 to permit a licensee who achieves exemption status to: 1) not have to prove the status every renewal period; 2) provide that exemption status cannot be lost once it is achieved; and 3) seek exemption status as soon as the licensee becomes eligible, rather than waiting until the next renewal cycle.

**Justification:** S.C. Code § 40-13-250 provides exemptions to the continuing education requirements for licensees who: (1) have held a license for 15 years and are 60 years old; or (2) have held a license for 30 years and are at least 50 years old.

The Board takes the position that a licensee must show proof of the exemption requirements at each renewal cycle. Proof of initial qualification for the exemption should be sufficient. The Board's requirement is burdensome on both the licensee and the Agency.

The Board also believes that if a licensee is late renewing, or allows the license to lapse for a short time, the exemption is lost, regardless of the reason, including illness, family, or financial. This makes little sense. A change in the statute will prevent the unduly harsh punishment of a licensee who is eligible for exemption and who has decades of experience, but who has allowed a lapse in licensure to occur. In addition, the Board takes the position that a licensee must achieve the necessary milestone, either via age or years practiced, then complete continuing education requirements, and, finally, apply for the exemption at the next renewal cycle. The recommended amendment will allow for a more common sense approach and will ease the financial burden on licensees who have to pay to receive 12 hours of continuing education credit when they have become eligible for exemption. The proposed amendment also rewards members of the profession who have gained significant industry knowledge and who have contributed to the industry over the course of an extended career.

#### **ISSUE 7: Equipment Requirements**

**Recommendation:** The Agency recommends that much of S.C. Code Reg. § 35-2, which specifically identifies a cosmetology school's required items, be repealed.

**Justification:** The building requirements provide that a cosmetology school must have one teacher's desk and chairs, one file for records, one blackboard or dry eraser board, three shampoo bowls, eight hair dryers, etc. These requirements are too specific, burdensome and arbitrary. It is unreasonable that a school could be out of compliance because it has seven hair dryers and no teacher's desk. These requirements reflect over regulation. The State does not need to decide what belongs in a cosmetology

classroom. School operators should be able to identify items needed to furnish a classroom.

### **ISSUE 8: Board Approval of School Rules**

**Recommendation:** The Agency recommends that S.C. Code Reg. § 35-10(H)(1), which requires Board approval of any change in school rules or regulations, be repealed.

**Justification:** Again, this is simply over regulation. Schools operate independently of the Board and should be able to change school rules or policies as the school operators see fit. Moreover, a proposed modification's adoption may be unnecessarily delayed by the Board's meeting schedule.

### **ISSUE 9: Instructor License**

**Recommendation:** The Agency recommends amendment of S.C. Code § 40-13-310 to delete any reference to the Board being able to set forth minimum qualifications for an instructor's license and repeal accompanying regulations. S.C. Code Reg. §§ 35-4, 35-8, 35-9, and 35-23(D).

**Justification:** These regulations require instructors to complete 750 hours of instructor training, in addition to the 1,500 hours required to be a cosmetologist. The Agency can think of no other profession that licenses its instructors separately from the profession itself. For example, the State does not issue separate physician instructor and physician licenses. The medical schools hire instructors they deem qualified and fit to teach medical students. In addition, the Board requires 24 hours of continuing education every two years for an instructor's license. The separate instructor's license and continuing education requirement impose a financial burden and time constraint for those interested in teaching. It also limits the pool of applicants from which schools can hire. School operators should be able to determine whom they believe is best qualified to teach their students.

At a minimum, the portion of Regulation S.C. Code Reg. § 35-4 requiring an instructor to be a licensed cosmetologist should be repealed. Cosmetology students are required to study, among subjects, things, anatomy, dermatology, public relations, salesmanship, and psychology. Based on the current regulation, a medical doctor would be precluded from teaching an anatomy class without first obtaining both a cosmetology and an instructor's license.

### **ISSUE 10: Apparel Requirement**

**Recommendation:** The Agency recommends that S.C. Code Reg. § 35-20(G) (1), which currently requires that the uniform and attire of a licensee assisting a customer be "clean and appropriate at all times," be repealed.

**Justification:** Cleanliness and appropriateness of attire, while important, are issues to be addressed in the workplace between the employee and employer. Additionally, these are issues that will be addressed by consumers as they manifest their desire to have



services provided by sanitary and well-dressed licensees. State regulation of this aspect of the profession is unnecessary.

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***

## State Board of Barber Examiners

**Board Recommendations:** The Board did not identify any statutory or regulatory changes that need to be made at this time. The Board offered several comments about the operations of the South Carolina Department of Labor, Licensing and Regulation (LLR), which the Agency will work with the Board to address.

**Public Comment:** One member of the public suggested the Cosmetology and Barber Boards be combined and suggested that master hair care specialists be allowed to perform microdermabrasion.

**Agency Recommendations:** Last year, the Agency recommended repealing the Barber Practice Act and abolishing the Barber Board in the Agency's 2012 Regulatory Report. As an alternative, the Agency recommended sanitation and health inspections conducted by DHEC. See relevant portions of the Agency's 2012 Regulatory Report attached hereto in Appendix B. For the reasons stated in that report, the Agency's recommendation remains the same. Last year, however, no legislative action resulted from this report. In the event the Barber Practice Act and accompanying regulations are not repealed, the Agency recommends scaling back the extent of regulation. To that end, the Agency recommends the following:

### **ISSUE 1: Merging Barber and Cosmetology Boards**

**Recommendation:** The Agency recommends the combination of the State Board of Cosmetology and the State Board of Barber Examiners.

**Justification:** Combining the two Boards will reduce the complexity of the licensing scheme for licensees and the redundancy in having separate boards.

The scope of practice of the two professions is similar. A cosmetologist's practice is broader than a barber's in only three respects: (1) the application of chemicals to the hair; (2) the application of facials; and (3) work on parts of the body other than the face and neck, to include legs, feet, arms, and hands. The Barber Practice Act, however, includes the licensure of a master hair care specialist, who may apply chemicals and perform manicures. See S.C. Code §§ 40-7-20 and 40-7-260. A barber assistant may give shampoos and manicures. See S.C. Code § 40-7-280.

Because of the overlap in practices, the two Boards should be combined, the licensing structure condensed, and the two practice acts simplified. Twelve other states have combined the two practices: Alabama, Delaware, Hawaii, California, Maine, Missouri, New Hampshire, New Mexico, New York, Oregon, Vermont, and Virginia.

### **ISSUE 2: Hours for Licensure**

**Recommendation:** The Agency recommends amendment of S.C. Code § 40-7-230(B) (3) and (C) (3) to reduce the number of hours required for licensure as a registered barber.

**Justification:** Reducing the hours to obtain a barber's license will make it easier and more cost effective for citizens to gain a skill and enter the workforce.

To become a registered barber, one must either take 1,500 educational hours or practice as a barber apprentice for 1,920 hours. Essentially, a barber is licensed to cut hair and shave one's face and neck.

In contrast, an EMT can be licensed with 200 hours of education. An EMT is authorized to work on airways, ventilation, and oxygenation, perform CPR and defibrillation, immobilize for spinal injuries, administer medications, maintain non-medicated IVs, assist with childbirth, and monitor blood glucose and blood pressure, in addition to other things. Further, a paramedic can be licensed with 1,000 hours of education. A licensed paramedic may do all the same things as an EMT, as well as perform intubation, cardiac monitoring, venous blood sampling, and blood chemistry analysis. The disparity of educational requirements is unduly burdensome to barbers.

### **ISSUE 3: Inspections**

**Recommendation:** The Agency recommends that S.C. Code § 40-7-330 and accompanying S.C. Code Reg. § 17-15, which require inspections of barber shops and schools, be repealed.

**Justification:** Eliminating this requirement will reduce the time and expense associated with unannounced inspections.

Last year, LLR spent \$224,469 conducting 2,037 inspections of barber shops and barber schools, ostensibly to ensure sanitary conditions for patrons. During these inspections, however, only three licensees were cited for sanitation issues – two for ripped upholstery on barber chairs and one for failing to completely seal the door between the barber shop and the grocery store next door.

Further, although LLR licenses physicians, dentists, optometrists, physical therapists, nurses, and other healthcare professionals, neither LLR nor any other State agency is statutorily authorized to randomly inspect the practices of these professionals to ensure sanitary conditions for patients.<sup>4</sup> Thus, in South Carolina, we spend more than \$200,000 a year inspecting barber shops, but not a penny to inspect dental<sup>5</sup> or medical practices for general sanitation conditions. Surely, if the Legislature has decided inspections of medical and dental offices are unnecessary where teeth are cleaned, cavities are filled, gynecological exams are performed, children are examined, and shots are administered, inspections of barber shops are equally unnecessary.

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<sup>4</sup> DHEC inspects x-ray equipment contained within a medical or dental practice, but does not inspect other aspects of the practice for general sanitation conditions. S.C. OSHA has the authority to inspect to ensure employees are provided a safe and healthy worksite but does not inspect to ensure patient safety.

<sup>5</sup> If passed, Senate Bill 407 will require inspections of dental offices; however, there is no current requirement.

#### **ISSUE 4: Hair braiding**

**Recommendation:** The Agency recommends that S.C. Code § 40-7-255, which requires an individual to be registered to practice hair braiding in South Carolina, be repealed.

**Justification:** Eliminating this registration category will make it easier and less expensive for citizens to practice a skill and enter the workforce.

By definition, registered hair braiders are simply “weaving or interweaving...natural human hair for compensation.” They are not allowed to cut, color, permanently wave, relax, remove, apply chemical treatment, or use hair extensions or wefts. See S.C. Code § 40-7-20(2). In order to obtain a hair braider’ registration, one must complete a six-hour class, pass an examination, and pay a \$25 fee. This registration must be renewed every two years by paying a \$25 renewal fee. See S.C. Code § 40-7-255. In addition, the place where a hair braider practices his or her occupation is subject to inspection. See S.C. Code Reg. § 17-50.

In South Carolina, there are 1,479 registered hair braiders, accounting for \$36,975 revenue to the Agency every two years. Since this license type was created in 2005, there have been a total of six cases involving hair braiders, all involving either unlicensed practice or scope of practice. All six cases have resulted from an LLR inspection, not from a complaint from the public. Three of these cases have been dismissed and three are pending. Since the creation of the registration, there has not been one single allegation of unsanitary conditions or harm to a patron related to hair braiders. Thus, in exchange for the \$147,900 revenue generated by this registration type over the last eight years, South Carolina citizens have received administrative staff and inspections, none of which have identified a threat to public safety.

#### **ISSUE 5: Practice Definition**

**Recommendation:** The Agency recommends that S.C. Code § 40-7-20(e), which defines the practice of barbering to include “cutting, shaping, fitting, styling, and servicing hair pieces, toupees, and wigs,” be repealed.

**Justification:** Eliminating this definition will allow citizens to practice a skill that does not appear to be tied to the protection of public health, welfare or safety without the burdensome requirements of obtaining a barber’s license. In the current licensing scheme, one would have to take 1,500 hours of education or 1,920 hours of an apprenticeship to style a wig or a toupee.

#### **ISSUE 6: Physical Examinations**

**Recommendations:** The Agency recommends that S.C. Code §§ 40-7-230(A) (2), (B) (2), and (C) (2), which require a physical examination as a condition of licensure, be repealed. The Agency further recommends the repeal of S.C. Code Reg. § 17-30, which requires a chest x-ray for licensure.

**Justification:** Eliminating these requirements will reduce the expense of obtaining a license. The Cosmetology Practice Act does not have a similar licensure requirement, although a cosmetology license is very similar and reflects the same exposure to the public. The Agency is only aware of two other professions, Athletics and Harbor Pilots, who require physical examinations as a condition of licensure. Conversely, other professionals having the same, if not greater physical contact with their clients, such as physicians and nurses, do not bear this burden. Accordingly, these requirements are unduly burdensome to barbers.

#### **ISSUE 7: Barbering Definition**

**Recommendation:** The Agency recommends the amendment of S.C. Code § 40-7-20(c) to delete 'shampooing' from the definition of the practice of barbering.

**Justification:** Eliminating this definition will allow citizens to practice a skill that does not appear to be tied to the protection of public health, welfare, or safety without the burdensome requirements of obtaining a license. In the current licensing scheme, one would have to take a physical exam, complete a six-week training course, and take an exam to shampoo hair. Shampooing hair has already been exempted from the practice of cosmetology, so one could shampoo hair without a license in a salon, but not a barber shop. See S.C. Code § 40-13-360.

#### **ISSUE 8: Textbooks**

**Recommendation:** The Agency recommends that S.C. Code Reg. § 17-8(C), which requires students training under a registered barber to purchase the same textbooks as if they were in school and to study at least one hour per day, be repealed.

**Justification:** Eliminating this requirement will reduce the expense of obtaining a license by on-the-job training.

#### **ISSUE 9: Monthly Reports**

**Recommendation:** The Agency recommends that S.C. Code Reg. § 17-11, which requires a school or college or registered barber by whom the training is given to file monthly progress reports on each student in training, be repealed.

**Justification:** Eliminating this requirement will make it less burdensome on schools and colleges. Certification of completion at the end of either the educational or on the job training program serves the same purpose and should be sufficient.

#### **ISSUE 10: Health Certificate**

**Recommendation:** The Agency recommends that S.C. Code Reg. §§ 17-50(17) and (18), which require a health certificate from a physician, be repealed.

**Justification:** Eliminating this requirement will reduce the expense of obtaining a license. The Cosmetology Practice Act does not have a similar licensure requirement, even though a cosmetologist has a similar license with the same exposure to the public. The Agency is only aware of two other professions, Athletics and Harbor Pilots, who

require physical examinations as a condition of licensure. Conversely, other professionals having the same, if not greater physical contact with their clients, such as physicians and nurses, do not bear this burden. Accordingly, these requirements are unduly burdensome to barbers.

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***

## South Carolina Contractor's Licensing Board

### **ISSUE 1: Construction Cost for Licensure**

**Initial Note:** S.C. Code § 40-11-30 requires a contractor to be licensed if he or she performs or offers to perform contracting work if the total cost of construction is greater than \$5,000.

**Board and Agency Recommendation:** The Board and Agency recommend raising the requirement for licensure from \$5,000 to \$15,000.

**Justification:** This statute has not been amended since 1998 and fails to reflect the current cost of doing business. Amending the statute to raise the amount required prior to licensure will permit contractors to perform smaller jobs without requiring them to fulfill all of the obligations of licensure.

**Public Comments:** At least two contractors provided public comment disagreeing with raising the total cost of construction requiring licensure, stating it will expose the public to additional risks.

### **ISSUE 2: Examination Timeframe**

**Initial Note:** S.C. Code § 40-11-230 only permits an applicant for licensure to take the examination twice in a twelve-month period and, thereafter, only once in six months.

**Board and Agency Recommendation:** The Board and Agency recommend increasing the testing limitation from two times to four times in a twelve-month period.

**Justification:** Increasing the number of times an applicant can take the examination within a twelve-month period simplifies the occupational entry standards for potential contractors. It also increases the likelihood that those wishing to be employed in the industry will be licensed within a one-year period, rather than remaining unemployed or underemployed.

### **ISSUE 3: Audited Financial Statements**

**Initial Note:** Pursuant to S.C. Code § 40-11-260, Group Five licensees are required to provide on initial applications, a financial statement audited by a licensed CPA or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP. On renewal, the Group Five licensees must provide a financial statement reviewed by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP.

**Board and Agency Recommendation:** The Board and Agency recommend amendment of S.C. Code § 40-11-260 to allow furnishing a bond to satisfy the proof of

net worth requirements as an alternative to providing a CPA-reviewed financial statement.

**Justification:** The cost of providing a CPA-reviewed financial statement is between \$3,500 and \$4,000. Group Five contractors are currently required to provide this statement every two years. Furnishing a bond in lieu of the statement will provide adequate protection to the public, while reducing the licensee's financial burden.

#### **ISSUE 4: Job Size Restrictions**

**Initial Note:** S.C. Code § 40-11-260 sets forth the job size restrictions for each level of contractor. Under General Contractors, Group One contractors may not perform or offer to perform jobs exceeding \$30,000. Group Two contractors may not perform or offer to perform jobs exceeding \$100,000. Group Three contractors may not perform or offer to perform jobs exceeding \$350,000. Group Four contractors may not perform or offer to perform jobs exceeding \$750,000. Group Five contractors may perform and offer to perform jobs in an unlimited amount. Under Mechanical Contractors, Group One contractors may not perform or offer to perform jobs exceeding \$17,500. Group Two contractors may not perform or offer to perform jobs exceeding \$30,000. Group Three contractors may not perform or offer to perform jobs exceeding \$50,000. Group Four contractors may not perform or offer to perform jobs exceeding \$125,000. Group Five contractors may perform and offer to perform jobs in an unlimited amount.

**Board, Public, and Agency Recommendation:** The Board has endorsed legislation to increase the job size restrictions for each Group Level, as reflected in S. 6. Under General Contractors, Group One will not change. Group Two will increase from \$100,000 to \$150,000. Group Three will increase from \$350,000 to \$425,000. Group Four will increase from \$750,000 to \$850,000. Group Five is unlimited and will not change. Under Mechanical Contractors, Group One will not change. Group Two will increase from \$30,000 to \$50,000. Group Three will increase from \$50,000 to \$100,000. Group Four will increase from \$125,000 to \$200,000. Group Five is unlimited and will not change.

S. 6, reflecting these changes, was filed and reported favorably out of the Senate LCI subcommittee. It has not advanced further this session.

**Justification:** The job size restrictions have not been increased for each Group Level since 1998. Jobs that cost \$100,000 in 1998 may well cost \$150,000 today. The goal of these changes is to reflect the cost of doing business in today's dollars.

#### **ISSUE 5: References**

**Initial Note:** To qualify for licensure, an entity must provide to the Agency, among other things, a reference from a bank or other financial institution in accordance with S.C. Code § 40-11-240(B) (4). This is in addition to a detailed statement of the entity's current financial condition.



**Board and Agency Recommendation:** The Board and Agency recommend the elimination of the bank reference letter requirement.

**Justification:** The bank letter provides no additional support for the contractor's creditworthiness. To the extent financial information is required, it is provided by the statement of current financial condition. Financial information is also required each year at renewal, so this requirement is redundant.

#### **ISSUE 6: License Classifications, Sub classifications**

**Initial Note:** The Contractor's Board has received a number of complaints regarding the license classifications and sub classifications set forth in S.C. Code § 40-11-410. To that end, the Board established clarifying policies on its interpretations of the classifications. However, the policies were removed in 2011 and are subject to review to ensure they comport with the statutes and regulations. At least two members of the public have complained that they have continued to rely upon the prior interpretations of the classifications, set forth in policy, to their detriment.

**Board and Agency Recommendation:** The Board has formed a committee to review S.C. Code § 40-11-410 with the intent on amending it. The Agency agrees with that plan and further recommends that any policies established interpreting this or other sections be adopted by regulation.

**Justification:** Adopting policies into law will ensure notice to the public and enforceability by the Board.

**Summary of Written Comments:** A number of additional public comments were received. Some comments related to internal practices of the Agency, such as a perceived lack of enforcement against companies working without a license or companies paying license holders a fee to use their license, but not actually employing the license holder. Similarly, a contractor complained that the architectural and engineering boards are not enforcing S.C. Code § 40-10-250, which requires architects to engage the services of a fire protection engineer to provide the design parameters of the project, and when they do provide the engineering, the engineer is not competent in fire protection. Another recommendation was to dissolve LLR's Office of Investigations and Enforcement and leave disputes to the court system.

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***

## South Carolina Residential Builders Commission

### ISSUE 1: Specialty Contractor Registration Requirements

**Initial Note:** S.C. Code § 40-59-20(7) and S.C. Code Reg. § 106-1 define residential specialty contractor to include plumbers, electricians, HVAC installers and repairers, vinyl and aluminum siding installers, insulation installers, roofers, floor covering installers, masons, dry wall installers, carpenters, stucco installers and painters/wallpaperers.

To get a specialty contractor registration, an applicant simply fills out an application, pays a fee and provides three letters of reference. Although the Commission has the ability to require an examination, it has only done so for HVAC installers and repairers, plumbers, and electricians. See S.C. Code § 40-59-220(D) and S.C. Code Reg. § 106-2. In addition, some of the specialty designations are out of date. For example, a granite countertop installer has a specialty license in cabinetry because the registration for granite does not exist in statute or regulation.

**Commission Recommendation:** The Commission is concerned with the minimal credentials required of residential specialty registrants and/or the need for residential specialty registrations; however, the Commission has not come to a consensus on the issue.

**Agency Recommendation:** The Agency recommends the repeal of S.C. Code §§ 40-59-20(7), 40-59-220(D), 40-59-240(B), and S.C. Code Reg. § 106-1 to eliminate the licensure requirement for specialty contractors and the limitation to three specialty registrations at a time. The Agency further recommends statutory amendment to include a separate licensing category for HVAC installers and repairers, plumbers, and electricians.

**Justification:** In 2005, the Commission changed its regulations to require HVAC installers and repairers, plumbers, and electricians to take an exam to receive a registration. See S.C. Code Reg. § 106-2. Since that time, the Commission has not required examination of any other specialty contractor area of practice.

Thus, to get a specialty registration, there are no minimum qualifications. An applicant simply fills out an application, pays a fee, and supplies three letters of reference. The Board administrator and several Commissioners are on record saying the letters are of little value. Because no examination is required and many people practice in areas that do not have a specialty classification in line with what they are doing (for example, granite installation mentioned above), the public has a false sense of security. A homeowner would reasonably expect that someone who holds a license or registration has a higher level of training and/or experience than someone who does not. The public would be better served by knowing they need to research the person doing work in their homes, instead of relying on the registration for protection.

In addition, the statute only allows people to choose three registrations at a time before requiring a residential builder's license. Since the Commission does not require training

to have most specialty registrations, there is no reason to limit how many one person can have.

Historically, people have practiced in these areas by learning the skill on the job. As a result, there is no efficacy for requiring a registration where the applicant has not met a threshold of minimum qualifications. The specialty contractor registration provides no protection to the public and is an administrative and economic burden for the applicant.

## **ISSUE 2: Filing Complaints**

**Commission and Agency Recommendation:** S.C. Code § 40-59-80 provides that a complaint alleging misconduct against a licensee “must be in writing and sworn to by the person filing the complaint.” The Commission and Agency recommend deletion of the requirement that a complainant submit a sworn complaint.

**Justification:** The public should not have to jump through hoops simply to file a complaint against a licensee who is alleged to have committed misconduct. There is no necessity for this requirement and it adds nothing to the substance of the complaint. Very few other Boards have similar requirements.

## **OTHER NOTES:**

- The Commission received numerous complaints regarding the expense of local business licenses and/or permits for home inspectors and specialty contractors. Home inspectors and specialty contractors travel the state doing different jobs and are required to pay a fee for each town or city in which they do business. One complainant stated they would prefer paying one state-wide privilege fee, as is done in North Carolina. The fee is approximately \$50, but that is the only fee paid. This issue is outside the scope of the Agency’s ability to change.
- Another comment focused on the requirement for specialty contractors to obtain a bond if the cost of the project exceeds \$5,000. The commenter asked the Commission to raise this requirement to \$15,000 because most projects exceed \$5,000 in today’s market. Because the Agency recommends deleting the specialty contractor requirement, the Agency did not consider this change.
- The Commission received several complaints regarding the surety bond requirement because it increases the costs of the residential builder or home inspector. One commenter asked how often the Commission calls on a bond. The bond is called on in approximately 15-20% of cases, and, in many cases does not cover the amount of damage.
- One commenter asked the Commission to start requiring a license to install residential swimming pools.

**\* Full Public Comments and a Hearing Summary can be found in Report’s Appendix A.**

## South Carolina State Athletic Commission

**Initial note:** The Athletic Commission formed a task force approximately two years ago to begin reviewing its regulations and statutes. That group has met regularly since its formation and made significant progress on updating, amending, and in some cases, omitting regulations, in order to provide the best service possible to its licensees and the public. Most of the following recommendations have been or will be submitted for review during this legislative session or next.

### **ISSUE 1: Physical Requirements**

**Commission/Agency Recommendation:** The Commission proposed eliminating the annual physical requirement for Mixed Martial Arts (MMA) contestants, set forth in S.C. Code Reg. § 20-27.03, instead requiring only the pre-fight physical. MMA contestants who exceed the age restriction, however, would still have the annual physical requirement. The Commission further proposed eliminating annual physicals, abdominal exams and breast exams for female boxing contestants, which are now required in S.C. Code Reg. § 20-20.1. The Agency supports the Commission's proposal.

**Justification:** Eliminating the requirement of a several hundred dollar physical reduces the cost to MMA contestants without compromising safety. Currently, physicians are assigned to all events and must perform thorough pre-fight and post-fight physicals on the day of the event. In addition, annual blood tests, an ophthalmic eye exam, and negative pregnancy tests for female fighters would still be required prior to competing in an event.

Further, the Commission regularly deals with contestants forging documents to fulfill the annual physical requirement, rather than complying with the requirement. The pre-fight and post-fight physicals, however, are performed by a S.C. licensed physician at and prior to the event with an LLR/Commission representative present, eliminating the potential for fraud. The same logic applies to S.C. Code Reg. § 20-20.1.

### **ISSUE 2: MRI/ CT Scan**

**Commission/Agency Recommendation:** Currently, S.C. Code Reg. § 20-3.20 requires a CT scan for contestants who are knocked out or technically knocked out twice within a twelve-month period. The Commission recommends amending this section to allow a neurologist to decide whether an examination is necessary based on symptoms displayed by the contestant. If sufficient symptoms exist, an MRI, which is preferred by the Commission, may be requested. The Agency agrees with the Commission's proposed recommendation.

**Justification:** Amending this regulation reduces the expense for those contestants who do not display symptoms that would necessitate an exam as determined by a neurologist.

### **ISSUE 3: Submission of Contracts**

**Commission/Agency Recommendation:** The Commission currently requires all club contracts to be submitted by boxers and managers. S.C. Code Reg. §§ 20-27.03 and 20-20.1. The Commission has proposed revising this to require submission of contracts only upon request. The Agency agrees with the Commission's recommendation.

**Justification:** Eliminating this requirement reduces paperwork and associated costs.

#### **ISSUE 4: Over-aged Fighters**

**Agency Recommendation:** The Agency recommends amendment of S.C. Code Reg. § 20-27.03 to increase the age at which one is considered an over-aged fighter from 35 to 40. The language should be further clarified that a contestant is not deemed over-aged while he is 39, but rather at the time of his 40th birthday. The Board did not make this recommendation.

**Justification:** This recommendation is in line with other states. North Carolina, Kentucky, Florida and New Jersey use 40 as the threshold. Ohio uses 39 as the threshold. Georgia uses 37 as the threshold. Nevada uses 36 as the threshold. Iowa and Oklahoma have no age limitation.

**OTHER NOTES:** Below are other issues the Commission is already working to address:

- In S.C. Code Reg. § 20-1.1, the definition for "off the street boxing" was inadvertently deleted. This should be amended to reflect the definition as it appears in S.C. Code § 40-81-20.
- Amend S.C. Code § 40-81-40 to clearly state that the administrator assigns the commission representative whose duty it is to assign referees, judges, etc.
- Amend S.C. Code § 40-81-270 and S.C. Code Reg. § 20-20.1 to state that the number of rounds for a female boxing event be established in regulation and then amend the regulation to mirror the ABC unified rules.
- The weight classes for OFTSB listed in S.C. Code § 40-81-425(5) are incorrect. Remove the incorrect classes, state that the weight classes should be in accordance with the regulation, and then put the correct information in the regulation.
- Add language to S.C. Code § 40-81-470 to make all suspension decisions by a licensed physician final.

**\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.**

## South Carolina Board of Physical Therapy

### **ISSUE 1: Exam Attempts**

**Initial Note:** S.C. Code § 40-45-270(H) provides: “No person may be licensed under this chapter if the person has failed the examination three or more times, whether or not the exam was taken in South Carolina.” The current statute automatically denies the possibility of licensure after three failed attempts and the Board has no discretion in the statute to deviate from this rule.

**Board Recommendation:** The Board supports increasing the number of times an applicant can take the test, but did not give a formal recommendation at the regulatory review hearing. The Board has indicated previously it would support an increase to five attempts.

**Public Comment:** The current restriction is arbitrary and does not provide the Board with any flexibility for candidates who may have extenuating circumstances. One comment the Agency received, was from a North Carolina licensed physical therapist who has been practicing for nine years and was a recipient of the North Carolina Physical Therapy Association Excellence in Clinical Practice Award. Due to the brutal murder of a close family member just before taking her board exam and other pressures, including her husband losing his job, she failed the North Carolina exam four times. Ultimately, she passed the exam and was licensed in North Carolina. Under the Board’s current statutory scheme, this physical therapist will never be able to practice in South Carolina, despite having practiced for nine years in another state and winning an award from her peers.

**Agency Recommendation:** The Agency supports increasing the number of attempts, but believes a provision should be added that permits the Board to increase the number of attempts based upon a showing of good cause. In the alternative, the provisions regarding the number of attempts could be repealed. See S.C. Code §§ 40-45-230(G) & (H).

The effect of this statute is to limit the number of times an applicant can take the licensing test and no provision in the statute exists for any exemption. An applicant, therefore, pays for physical therapy training but will never be a licensed physical therapist in the state after three failed attempts. This statute also prevents the Board from granting South Carolina licensure to physical therapists who are licensed and in good standing in other states. Accordingly, this restriction should be amended or deleted.

### **ISSUE 2: South Carolina Practice**

**Initial Note:** S.C. Code § 40-45-270 provides a very limited exemption for physical therapy students, physical therapy assistant students, physical therapists or physical therapy assistants who are employed by the federal government, and licensed out-of-state educators to practice in South Carolina without a South Carolina license. Other situations exist in which out-of-state licensed physical therapists need to travel to South

Carolina and practice for a limited time period. Such professionals should not have to go through the process of obtaining a license in South Carolina.

**Board Recommendation:** The Board did not consider this issue.

**Public Comment:** In some cases, a physical therapist should not be required to pay a fee and go through the South Carolina licensing process, such as when a physical therapist is employed with a traveling sports team or performing arts company, a physical therapist provides a video consultation via telehealth, or, in the case of natural disaster in the physical therapist's home state. Another possible situation exists in the event of a natural disaster or other declared emergency where South Carolina may need additional physical therapists for a temporary period of time.

**Agency Recommendation:** The Agency recommends amendment of the statute to permit a physical therapist who is licensed in another jurisdiction of the United States or credentialed in another country to practice. In South Carolina if that person is providing physical therapy to individuals with an athletic team or organization or a performing arts company temporarily practicing, competing, or performing in the State for no more than sixty days in a year.

Further, the Agency recommends amending the statute to permit a physical therapist who is licensed in another jurisdiction of the United States and who enters this state to provide physical therapy during a declared local, state or natural disaster or emergency, but for no longer than sixty days. The Board may extend the time period in its discretion.

**Justification:** The current statute permits certain classes of physical therapists to practice physical therapy in South Carolina without a South Carolina license, but the exemptions are limited. An out-of-state licensed physical therapist who intends to practice in the state briefly should not be required to go through the time-consuming and expensive process of getting a South Carolina license. The South Carolina licensing requirement unduly burdens out-of-state physical therapists who are in state for a short duration. In addition, there may be local, state, or natural disaster that may require physical therapists to come to South Carolina.

**OTHER NOTES:** The South Carolina Physical Therapy Association (SCAPTA) recommended the repeal of S.C. Code § 40-45-110(A)(4), which provides for discipline or refusal to grant a license to an applicant who "in the absence of a referral from a licensed medical doctor or dentist, provides physical therapy services beyond thirty days after initial evaluation and/or treatment date without the referral of the patient to a licensed medical doctor or dentist" and endorsed S.C. Code § 40-45-110(A)(1).

SCAPTA also commented that it believes S.C. Code § 40-45-110(A)(1), which prohibits fee splitting and referral for profit, "has been helpful to small business and economic development in the state ...[the statute] has prevented anti-competitive physician-owned physical therapy monopolies from forming in the state." The Agency received a comment from the South Carolina Orthopedic Association (SCOA) taking a contrary position on the statute. The SCOA believes that this statute "places an undue burden

on private orthopedic practices, creates a[n] unfair competitive disadvantage for physicians in private practice; and denies choice of medical provider and it creates an undue burden on the citizens of South Carolina as they seek therapy services.”

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***



# South Carolina Board of Examiners in Psychology

## ISSUE 1: Areas of Specialization

**Board/Agency Recommendation:** The Board and Agency recommend the repeal of S.C. Code § 40-55-20, which provides that the Board must determine areas (clinical, counseling, industrial/organizational, community, school, social, and experimental) of specialization of the applicant to practice psychology, and amend S.C. Code § 40-55-20, the board appointment statute, to reflect changes.

**Justification:** S.C. Code § 40-55-20 provides for outdated specialty areas that are no longer the norm in the profession. By deleting a provision that is no longer relevant to the profession, more people will be able to enter the profession without the restriction of specialization. The statute that sets forth the requirement for Board composition also reflects this make up, and it is difficult to find psychologists who have the required area of specialization to be on the Board.

## ISSUE 2: Board Reappointments

**Board/Agency Recommendation:** The Board and Agency recommend amendment of S.C. Code § 40-55-30, which provides: "No member of the Board shall be eligible for reappointment for a period of four years following the completion of his term."

**Justification:** This provision prevents Board members from serving consecutive terms. The Board believes this recommendation prevents experienced Board members from remaining in service. The Board meets only twice a year, so it takes several years for members to gain experience. By allowing reappointment, a Board member will gain experience and be able to serve more effectively.

## ISSUE 3: Completion of Licensure Requirements

**Board/Agency Recommendation:** S.C. Code Reg. § 100-1(B)(7) provides that an applicant must satisfactorily complete all requirements for licensure "within two years from the date of Board approval of the Preliminary Application for Licensure or the applicant may be required to submit a new application, fee and documentation." The Board and Agency recommend changing the application process to three years and adding language giving the Board discretion to increase the time based on hardship.

**Justification:** The applicant must complete, within two years, all requirements for licensure or pay additional fees and turn in additional paperwork with supporting documentation.

Currently, after completing a preliminary application, which documents graduate course work and training, an applicant has two years to fulfill the proper supervision requirement, get references, pass an examination and complete other requirements. Allowing three years to fulfill these requirements and granting the Board discretion to give additional time will allow additional flexibility in the licensure process for applicants.

## South Carolina Board of Funeral Service

### ISSUE 1: Funeral Merchandise

**Initial Note:** A retail sales outlet is an establishment where funeral merchandise is sold to the general public. See S.C. Code § 40-19-20(19). Funeral merchandise includes, but is not limited to, caskets, cremation caskets, urns, and burial clothing. See S.C. Code § 40-19-20(12). A permit for a retail sales outlet can be issued if the applicant: 1) submits an application, 2) passes an **inspection approved by the Board**, 3) pays a fee, and 4) is in compliance with S.C. Code § 40-19-290, which requires a retail sales outlet to have a card or brochure stating the price with each piece of funeral merchandise and to maintain a trust account for the deposit of funds until the merchandise is delivered. See S.C. Code § 40-19-265(C). (emphasis added).

The Board has interpreted the language in S.C. Code § 40-19-265(C) “inspection approved by the Board” to mean that the Board has authority to require additional facilities than those set forth in statute for a retail sales outlet permit. Those additional requirements are set forth in S.C. Code Reg. § 57-15. Although it is not clear from the plain language of the regulation which requirements apply to a retail sales outlet, the Board also requires handicapped accessible restrooms and water fountains to and throughout the facility, six adult caskets on the premises displayed or available for display, multiple copies of price lists, and a completed facility permit displayed. See S.C. Code Reg. §§ 57-15(3), (7)-(9).

Simply put, to sell caskets or other funeral merchandise in the State, one must be licensed, inspected, and maintain a facility with a price list, restrooms, water fountains, and a display (or have available for display) of six caskets.

**Public Comment:** Several comments were received regarding the Board's requirements for a retail sales outlet permit. Essentially, the commenters advocate repealing the permitting requirement for the sale of funeral merchandise, arguing that the permit is not related to public safety, but rather economic protectionism.

The Agency notes that the Board has never turned down a permit for anyone who completes the application process; however, it may be difficult for an individual who wishes to make and sell low-budget caskets to comply with the licensure requirements. Further, there are no minimum requirements for a burial container in South Carolina. One may be buried in a shroud, a box, or nothing at all if local zoning ordinances allow for it.

**\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.**

## South Carolina Board of Accountancy

### ISSUE 1: H. 3459

**Initial Note:** The proposed legislation relating to the South Carolina Board of Accountancy provides that the Department of Labor, Licensing and Regulation will designate certain personnel for the exclusive use of the Board, is prohibited from assigning other work to these personnel without approval of the Board, and that the personnel may be terminated by the director or a majority of the Board; will amend S.C. Code § 40-2-30, relating to the practice of accountancy, so as to provide that a certified public accountant licensed by the Board is exempt from licensure requirements of private security and investigation agencies. Further, it will amend S.C. Code § 40-2-70, relating to powers and duties of the Board, so the Board may conduct periodic inspections of licensees or firms and will amend S.C. Code § 40-2-80, relating to investigations of alleged violations, so as to provide the Department the ability to direct the investigator assigned to the Board to investigate an alleged violation to determine the existence of probable cause meriting further proceedings.

**Board/Association Recommendation:** The Board and the South Carolina Association of Certified Public Accountants (SCACPA) recommend enactment of H. 3459.

**Agency Recommendation:** While the Agency worked with the sponsor of this bill on amendments to the original version, the Agency is generally opposed to legislation requiring a certain number of personnel per board.

### ISSUE 2: Continuing Education (CE) Requirements

**Public Comment and Recommendations:** The public recommends modification of the continuing education requirements set forth in S.C. Code § 40-2-250 and S.C. Code Reg. § 1-08. Proposed amendments include: (1) deletion of limitation on self-study hours; (2) expansion of hours credited to instructors who teach accounting university and college courses at the undergraduate and graduate level; and (3) inclusion of a definition of “successful completion” for award of continuing education hours.

**Justification:** S.C. Code Reg. § 1-08(A)(2) limits the number of hours one may earn through self-study courses to 50%, or 20 hours of the current 40-hour requirement. Teachers of university and college undergraduate and graduate credit courses are being granted credit at the rate of ten hours for each three semester hours (or prorated equivalent) course taught. Credit is not granted for accounting principles, basic financial accounting, basic managerial accounting, or any other introductory accounting course, at either the undergraduate or graduate level. Credit for teaching university, college, and graduate credit courses is limited to 25% percent of the required hours for a reporting period. See S.C. Code Reg. § 1-08(B)(5). The only restrictions set forth in S.C. Code § 40-2-250 are the limitation of personal development subjects to 20% of the required hours and carryover of excess hours to 20 hours per year.

**\* Full Public Comments and a Hearing Summary can be found in Report’s Appendix A.**

## South Carolina Board of Dentistry

### **ISSUE 1: Licensure by Credentials**

**Board Recommendation:** The South Carolina Board of Dentistry did not recommend any changes to its statutes, regulations or policies.

**Agency Recommendations:** The Agency recommends revision of S.C. Code Reg. § 39-1(D) to reduce the fees for dentists licensed in other jurisdictions who are seeking licensure in South Carolina from \$2,000 to \$300, which is the fee charged to in-state licensees. The Agency further recommends revision of S.C. Code § 40-15-275(A)(3) to delete the requirement for applicants for licensure by credentials to have actively practiced dentistry, defined as a minimum of 1,200 hours per year, for a minimum of five years immediately preceding the date of application, and S.C. Code § 40-15-275(A)(4) to delete the requirement for applicants for licensure by credentials to have completed the seventy hours of continuing education over the past five years.

**Public Comments:** The Agency received multiple comments regarding the current regulatory scheme, including concerns about the current fee schedule, the requirements for licensure by credentials, and limitations upon the practice of dental hygienists.

**Justification:** The Agency's recommended revisions of S.C. Code § 40-15-275 and S.C. Code Reg. § 39-1(D) are intended to make it less burdensome to practitioners who are already licensed and in good standing in other states and jurisdictions to attain licensure in South Carolina.

**\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.**

# South Carolina State Board of Registration for Professional Engineers and Surveyors

## ISSUE 1: Quality-based Selection (QBS) System; S. 497

**Board Recommendations:** The Board supports moving to a QBS system similar to that used for architects. The Board noted North Carolina currently requires QBS for engineers. The QBS process awards projects to the most qualified professional, rather than the one submitting the most competitive price.

**Public Comments:** The Agency received public comments endorsing the idea of QBS, but expressing concern that proposed legislation (S. 497), specifically with the proposed additions of S.C. Code §§ 40-22-30(D) and 40-22-35, is flawed. Regarding proposed S.C. Code § 40-22-30(D), two professional engineers recommended the deletion of the language making it unlawful “to broker or coordinate engineering services, surveying services or both for a fee.” Both cited the negative impact on marketing engineering services and in the coordination of engineering services, particularly as part of a design build project. Proposed S.C. Code § 40-22-35 will prevent engineers and surveyors from entering into a contract for professional services on “public work” on any basis other than direct negotiation. The engineers who offered comment expressed concern that many public bodies do not subscribe to the QBS process.

**Justification:** The QBS process awards projects to the most qualified professional, rather than the one submitting the most competitive price.

## ISSUE 2: Fees

**Board Recommendation:** The Board recommends the revision of S.C. Code Reg. § 49-103 to include “not to exceed” language to allow the Board to lower fees. This proposed revision reflects a restoration of language previously included in the regulation.

**Justification:** This revision will empower the Board to lower fees, which will reduce the regulatory burden of registrants.

## ISSUE 3: Electronic Seals

**Public and Agency Recommendation:** The public and Agency recommend the revision of S.C. Code Reg. § 49-207 to authorize the use of electronic seals wherever seals are required.

**Justification:** This revision will allow engineers and surveyors to review, seal and transmit documents electronically, which will expedite all transactions associated with the documents in question and enable the professionals to work from anywhere.

# South Carolina Board of Environmental Certification

## ISSUE 1: Trainee Operator Licenses

**Initial Note:** The Environmental Certification Board's Practice Act, set forth at S.C. Code § 40-23-10, et seq., requires that trainee operators be eighteen, have completed high school or the equivalent, fill out an application, and pay a fee. The requirement prevents high school students from training to be a particular type of operator. It also prevents high school students from receiving any credit toward actual work experience to receive a license or certification.

**Board Recommendation:** The Board recommends the age requirement be changed to seventeen. The Board discussed students working while in high school so they could get the training needed for certification or licensure, but did not formally recommend deleting the high school provision.

**Public Comment:** The requirement prevents the profession from cultivating a pool of future operators who are high school seniors and interested in entering the profession. One comment noted that the statutes should be changed to omit the high school or the equivalent standard and to permit seventeen-year-olds to work as trainees under supervision.

**Agency Recommendation:** The Agency recommends repealing the requirement for trainee operator licenses as one of the requirements for the initial licensure for certain classes of licenses. The Agency further recommends amendment of S.C. Code Reg. § 51-5 to require that all unlicensed employees be supervised by licensed operators. Currently, the regulation provides that anyone licensed under a trainee license must be supervised by a licensed operator.

If the Board and public's recommendations are followed to lower the age requirement and delete the high school or equivalency requirement, all that would be needed to get a trainee license is a completed application and a fee. The Board requires no testing and performs no background check on the individual applying for the trainee license. The facility that employs the trainee is responsible for supervising the trainee, as would be the case with or without the trainee license.

In order to obtain the next level up from the trainee license, current statutes and regulations require an examination, one year of operating experience, an affidavit of employment documenting the experience, and a valid trainee license. See S.C. Code §§ 40-23-300(B)(3) and 40-23-310(B)(2); S.C. Code Reg. §§ 51-3(F)(2) and 51-3(G)(1). Because the one-year operating experience already exists to reach the level of licensure or certification, the trainee license is redundant and serves no legitimate purpose.

## ISSUE 2: Continuing Education

**Initial Note:** The regulation requiring continuation of education credits does not permit credits to be carried over to the next renewal cycle.

**Board Recommendation:** The Board did not discuss this at its meeting.

**Public Comment:** Environmental professionals should be able to carry over six of their required twelve hours to the next reporting period. This will allow environmental professionals to justify spending money for training in one year that may not be available the next year and to have hours built up in case a personal emergency arises.

**Agency Recommendation:** The Agency recommends amendment of S.C. Code § 40-23-230(C)(3) and S.C. Code Reg. § 51-4(F) to permit a licensee to carry forward six continuing education credits to the next renewal cycle.

S.C. Code Reg. § 51-4(F) currently requires each renewal applicant to provide evidence of completion of twelve hours of relevant continuing education every two years.

Other than an administrative burden on the Agency when completing random audits to ensure compliance, there appears to be no reason continuing education credits should not be carried forward, as is done in other professions. The ability to carry credits to the next cycle is more efficient for licensees and has the potential to save licensees money because no credits hours are wasted.

**OTHER NOTES:**

One commenter asked the Board to get rid of the “E” license requirement. Presumably, this referred to S.C. Code § 40-23-300(E)’s requirement of six months of operator experience plus passing an exam for licensure. The next level is “D” and requires one year of actual operating experience. The reason for the “E” requirement is DHEC’s distinction between Group I and Group II public water treatment facilities. The Board has determined that a Group I operator requires a minimum of six months of actual experience and a Board exam, while the Board has determined that Group II needs one year of actual operating experience and the passing of an exam. Removal of the Class E license will be more restrictive for Group I operators because the certification requirement for that class would be more stringent.

The Board also received a comment from an association regarding the low pass rate for water and wastewater operator certification. The commenter suggests that water organizations partner with the Board to evaluate current tests. This issue will be placed on a future meeting agenda for the Board to discuss.

***\* Full Public Comments and a Hearing Summary can be found in Report’s Appendix A.***

## South Carolina Board of Registration for Foresters

### **ISSUE 1: Reference to Profession**

**Board and Agency Recommendation:** Several sections in the statute and regulations still reference Foresters as an independent Board. For example, S.C. Code § 48-27-110 requires the Board to submit a report to the Governor. Other sections refer to a board secretary. See S.C. Code § 48-27-70. The Board recommends updating the language to reflect the current structure of the Agency.

**Justification:** This change will bring clarification to licensees and members of the public who are trying to navigate the Foresters' statutes and regulations and make statutory and regulatory requirements consistent.

### **ISSUE 2: Renewal**

**Board and Agency Recommendation:** S.C. Code § 48-27-190 requires annual renewal. The Board currently operates under a biennial renewal period. The Board and Agency recommend amending the language to reflect biennial renewal.

**Justification:** This will bring clarification to licensees and members of the public who are trying to navigate the Foresters' statutes and regulations and make statutory and regulatory requirements consistent.

**Public Comments:** Multiple comments have been received by members of the profession requesting deregulation of the board. There were numerous other comments received in support of regulation.

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***



# South Carolina Board of Registration for Geologists

## ISSUE 1: Seals

**Initial Note:** S.C. Code Reg. § 131-11 requires each registered professional geologist to obtain a seal, which may be an embosser or a rubber stamp, bearing the registrant's name, registration number and the legend "Registered Professional Geologist."

**Board/ Public/ Agency Recommendations:** The Board discussed the possible use of electronic seals. S.C. Code § 40-77-290 requires each registered professional geologist to obtain a seal, but does not specify the medium by which the seal is affixed. However, S.C. Code Reg. § 131-11 designates that the seal must be an embosser or a rubber stamp. Accordingly, no statutory change is required to accommodate this request, but the regulation would need to be amended to permit use of electronic seals.

**Justification:** Use of electronic seals will facilitate efficient transmission of documents and reflect use of technological advances in the industry. Although the Board has not promulgated regulations to effectuate this change, they are receptive to making this change, perhaps during the next legislative session.

## ISSUE 2: Continuing Education

**Initial Note:** S.C. Code Reg. § 131-12(B) requires that every registrant obtain thirty-two hours of continuing education per biennium. A maximum of eight hours may be carried forward to the ensuing renewal period if a registrant exceeds the biennial requirements in any renewal period.

**Board Recommendation:** The Board acknowledged that some applicants may complain about the number of hours necessary to satisfy the requirement for continuing professional competency. However, the Board expressed its satisfaction with the current continuing education requirements.

**Public Comments:** A professional geologist stated that continuing education is burdensome. Her concerns are that Georgia has no such requirement, it takes four or more days to complete the coursework, which consists of 32 hours, and it costs money and takes time. Another professional geologist complained about having continuing education requirements because they are expensive, time-consuming, and insulting to the profession in his opinion.

**Agency Recommendation:** The Agency recommends the reduction of the Continuing Education needed.

**Justification:** The American Institute of Professional Geologists reports that only seven states require continuing education: Alabama (30 hours per biennially); Delaware (24 hours biennially); Kansas (30 hours biennially); Minnesota (24 hours biennially); New Hampshire (24 hours biennially); and Texas (30 hours biennially). South Carolina

requires the most with 32 hours required biennially. A lack of education or training does not appear to be problematic in this profession as the Agency has 644 registered geologists, and there have been only five disciplinary cases in the last six years. Most states do not require continuing education. A reduction of continuing education requirements will offer licensees a break while still requiring adequate post-licensure training.

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***

# South Carolina Board of Landscape Architectural Examiners

## ISSUE 1: Reducing Fees

**Board/ Agency Recommendations:** In 2010, fees moved from regulation to statute. S.C. Code § 40-28-80(B) provides that LLR “shall prescribe reasonable fees, *not to exceed* the following prescribed limits...” (emphasis added). The Board currently has a surplus and would like to reduce fees for the next renewal cycle. The Board recommends reducing the initial fee to \$100 annually and the individual license fee to \$75. The Board does not need a statutory change to do this.

**Additional Agency Recommendation:** The Agency also recommends deleting from S.C. Code § 40-28-80 the provision permitting an additional fee, not to exceed \$100, be charged to out-of-state applicants for certain licensure requirements.

**Justification:** Reducing the amount the Board can charge out-of-state licensees will make South Carolina more business friendly to out-of-state businesses seeking to do business in our state. Reducing fees will also eliminate the financial burden for the entities seeking to receive a certificate of authorization.

**Public Comments:** The Agency received one public comment. The commenter said that S.C. Code § 40-28-70 permits the practice of landscape architecture only through firms, as opposed to an individual, holding a valid certificate of authorization. The commenter stated that this is a financial and administrative burden, specifically to out-of-state businesses with no physical presence in the state and that licensing the individual landscape architect adequately protects the public.

**\* Full Public Comments and a Hearing Summary can be found in Report’s Appendix A.**

## South Carolina Board of Long Term Health Care

**Board Recommendation:** The Board did not make any statutory or regulatory recommendations, but did state it plans to submit proposed changes to statutes and regulations for consideration during the 2013- 2014 legislative session.

### **ISSUE 1: Distance of Facilities**

**Initial Note:** S.C. Code Reg. § 93-65(B)(4) currently mandates that “a second facility must be ten or fewer beds and be within the same five number zip code or no further than a twenty mile radius of the combination site, and the work hours of the administrator must be equitably distributed daily during normal business hours” when an administrator is responsible for more than one site. This provision prevents an administrator from working at two facilities that are more than 20 miles apart.

**Agency Recommendation:** The Agency recommends amendment of S.C. Code Reg. § 93-65(4) to delete the zip code restriction and increase the 20-mile radius to 45.

**Public Comments:** The Board received comment that the zip code and 20-mile radius restriction is too limiting and should be lifted for multi-site facilities.

**Justification:** This recommendation of a 45 mile radius is consistent with the definition of “readily available” for physicians supervising APRNs in S.C. Code § 40-47-20(43). It also allows greater flexibility for multi-site facilities and facilities in small communities.

**\* Full Public Comments and a Hearing Summary can be found in Report’s Appendix A.**

## South Carolina Manufactured Housing Board

### ISSUE 1: Lapsed/Inactive License Renewals

**Initial Note:** S.C. Code § 40-29-220 provides that if a license lapses or is inactive for more than six months, the applicant must meet all requirements for a new license in order to be relicensed. See *also*, S.C. Code Reg. § 79-6(A)(2), which states, “If a licensee fails to renew within six months the applicant/authorized official is required to qualify as a new applicant.”

**Board and Public Recommendation:** The joint recommendation is to extend the time to renew from six months to twelve months before qualification as a new applicant is required.

**Justification:** This proposal gives a licensee more time to correct the error of failing to renew before having to qualify as a new applicant again, thereby reducing unnecessary administrative work for both the licensee and the Board staff.

### ISSUE 2: Classifications

**Initial Note:** S.C. Code Reg. § 79-2 establishes nine classifications for licenses regulated by the Board: manufacturer, retail dealer, retail salesperson, retail multi-lot salesperson, apprentice salesperson, show permit/temporary, installer, repairer and contractor.

**Board, Public, and Agency Recommendation:** The Board recommends bundling or combining multiple licenses and giving fee discounts for holders of multiple licenses. Examples reflective of the dual licensure held by some licensees would include combining contractor with retail salesperson or multi-lot salesperson or combining installer with retail salesperson.

**Justification:** While it would create new licensure categories, it would ultimately provide a discount in fees for licensees.

### ISSUE 3: Re-test Timeframe

**Initial Note:** S.C. Code Reg. § 79-29(B) provides that “passing examination results for any person who takes the examination will remain in effect for a six-month period: a person who has not applied for license during that period will be required to be reexamined before a license application will be accepted.”

**Public and Agency Recommendations:** Mark Dillard, Executive Director of the Manufactured Housing Institute, suggested the Board extend the number of months from six to twelve. The Agency supports this recommendation.

**Justification:** This would allow new applicants additional time to complete the application process before being required to re-test, alleviating a burden on those attempting to enter the occupation.

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***

## South Carolina Massage/Bodywork Panel

### ISSUE 1: Education Requirement

**Agency Recommendation:** While requiring a high school diploma or its equivalency seems consistent with licensure requirements of other states, the Agency recommends reducing the requirement to a 10<sup>th</sup> grade education.

**Public Comments:** The Panel received a complaint from a potential licensee that requiring a high school diploma or equivalency is a hardship on the applicant. In addition to these qualifications for licensure, S.C. Code § 40-30-110 also requires an applicant to have 500 educational school hours and to pass a national or Panel-approved examination.

**Justification:** Reducing the educational requirements will make it easier for citizens to obtain licensure and enter the workforce. This profession is one that is technique intensive and the training needed can be obtained during the required supervised massage/bodywork school setting. Cosmetologists and barbers, two similar, technique-intensive professions, require a tenth and ninth grade education, respectively, for licensure.

### ISSUE 2: Merging Panels

**Panel and Agency Recommendation:** The Panel has proposed legislation to merge the statutorily authorized disciplinary panel authorized by S.C. Code §§ 40-30-65 and -70 with the statutorily authorized advisory panel, authorized by S.C. Code §§ 40-30-40 and -50.

**Justification:** Currently, none of the seats on the disciplinary panel have been filled and the advisory panel does not have the statutory authority to hear and resolve disciplinary matters. As a result, cases sit without any resolution because there is no properly authorized body to dispose of them.

### Other Notes:

S.C. Code § 40-30-80 sets forth a fee schedule for the Panel, but provides that fees *should not exceed*, for example, \$50 for an application or \$100 for an initial license. Because the statutory language permits fee reduction, the Panel has reduced its license fee in an effort to lift some of the financial burden from applicants and may do so permanently.

**\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.**

## South Carolina Board of Medical Examiners

### ISSUE 1: Registration of Cardiovascular Invasive Specialist

**Board and Agency Recommendation:** The Board and Agency recommend the Registered Cardiovascular Invasive Specialist Act, S.C. Code §§ 40-47-1510-1620, et seq., be repealed. Currently, there is only one registrant in the entire State.

**Justification:** Inasmuch as only one person is registered, it is unnecessary to maintain this regulatory scheme. This professional is sufficiently regulated by the practice protocol established by her employer. Accordingly, this Act is unnecessary and redundant of the supervision required by the facility which employs her.

### ISSUE 2: H. 3618

**Board and Public Recommendations:** The Board of Medical Examiners and the public support enactment of H. 3618, which substantively revises the Physician Assistants Practice Act.

This is a bill to amend the South Carolina Code of Laws, by adding S.C. Code § 40-47-938 so as to provide circumstances in which a physician may enter a supervisory relationship with a physician assistant; to amend S.C. Code § 40-47-910, relating to definitions in the Physician Assistants Practice Act, so as to add and revise certain definitions; to amend S.C. Code § 40-47-940, relating to application for licensure, so as to delete certain application requirements; to amend S.C. Code § 40-47-945, relating to conditions for granting permanent licensure, so as to delete requirements that an applicant appear before the board with his supervising physician and his scope of practice guidelines, and to delete the prohibition against the approval of a supervising physician of on-the-job training or tasks not listed on the application for limited licensure as a physician assistant; to amend S.C. Code § 40-47-955, relating to physical presence requirements of the supervising physician of a physician assistant, so as to delete existing requirements concerning on-site settings and to provide where and how a physician assistant may practice, to revise provisions concerning off-site settings, and to revise certain requirements of a supervising physician; to amend S.C. Code § 40-47-960, relating to minimum requirements for scope of practice guidelines for physician assistants, so as to include the immediate consultation between the physician assistant and his primary or supervising physician; to amend S.C. Code § 40-47-965, relating to the authority of a physician assistant to request or receive professional samples of drugs authorized under his scope of practice guidelines, so as to delete the prohibition against requesting or receiving professional samples of Schedule II controlled substances; to amend S.C. Code § 40-47-970, relating to the prescribing of drugs by a physician assistant, so as to delete a prohibition against prescribing Schedule II controlled substances; to amend S.C. Code § 40-47-975, relating to the authority of a supervising physician to request permission from the board for a physician assistant under his supervision to receive on-the-job training, so as to delete existing language and provide that a supervising physician may determine whether a physician assistant under his supervision needs additional training or education, that the physician and physician assistant may jointly determine the means of providing this training or



education, and that certain related information must be submitted to the Board of Medical Examiners and the Physician Assistant Committee for the approval of each; to amend S.C. Code § 40-47-995, relating to the termination of a supervisory relationship between a physician and physician assistant, so as to provide that upon this termination the practice of the physician assistant must cease until new scope of practice guidelines, rather than a new application, are submitted by a new supervising physician to the Board; and to repeal S.C. Code § 40-47-980 relating to the treatment of patients in chronic care and long-term care facilities.

**Justification:** The proposed revisions to the Physician Assistants Practice Act are intended to promote greater independent practice by the physician assistants and to foster greater collaboration between physician assistants and their supervising physicians. Importantly, these revisions will remove current burdens upon practice.

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***

## South Carolina Board of Nursing

### **ISSUE 1: APRN**

**Initial Note:** The South Carolina Board of Nursing regularly receives complaints about issues arising from its regulation of advanced practice nurses (“APRN”), including, but not limited to, limitations upon the APRN’s scope of practice and requirements for supervision by a licensed physician or dentist.

**Board Recommendation:** The Board affirms the Joint Statement of the Board of Nursing and the Board of Medical Examiners.<sup>6</sup> The Board of Nursing recognizes that some practitioners are confused by the disparity between the language set forth in the Medical Practice Act and the Nurse Practice Act regarding the limitation upon the number of APRNs a physician may supervise. See S.C. Code § 40-47-43 and S.C. Code § 33-34(C)(2), respectively. The Board of Nursing recommends modification of its internal processes, including (1) revision of the APRN Change of Practice Form to include an affirmative statement from the primary and alternative supervising physicians that they will not supervise more than three APRNs *at any given time* and (2) expansion of the input fields utilized by the Board of Nursing staff to allow identification of all potential supervising physicians within a practice setting for a designated group of APRNs, so long as the ratio of supervising physician or dentist to APRN does not exceed 3:1 *at any given time*, so that compliant practitioners may be approved at the staff level and avoid an unnecessary appearance before the Board of Nursing. These modifications facilitate consistent interpretation of S.C. Code §§ 40-47-43 and 40-33-34(C)(2).

**Public Comment:** Numerous members of the public offered comments proposing similar revisions of the regulatory scheme governing APRNs, including S.C. Code Ann. §§ 40-33-20 and 40-33-34.

**Agency Recommendation:** The Agency supports the Board’s recommendations and suggests the Board of Nursing prepare an Advisory Opinion setting forth its interpretation of the limitation upon the number of APRNs a physician or dentist may supervise to mean “three *at any given time*.” In the meantime, the Agency has modified its internal processes to reflect this recommendation.

### **Other Notes:**

The Board of Nursing has expressed concern about the availability of resources to provide appropriate clinical experiences for nursing students. This concern is highlighted by the growing number of applications for approval of new nursing school programs in areas where clinical experiences are limited due to the number of students already placed in those settings through established programs.

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<sup>6</sup> See <http://www.llr.state.sc.us/POL/Nursing/PDF/Joint%20Statement.pdf>

Institutional applicants for new nursing education programs should provide additional input from proposed clinical sites regarding the practice setting's existing commitments to nursing students and resources available to honor those commitments, as well as specific information from the institution regarding the percentage of proposed clinical experiences to be offered in a simulated setting versus an actual clinical setting. Although no statutory or regulatory revisions are recommended at this time, the stakeholders are concerned that clinical resources may be inadequate to accommodate the growing need created by the influx of new programs.

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***

## South Carolina Board of Pharmacy

### **ISSUE 1: H. 3161**

**Board Recommendation:** The Board recommends enactment of H. 3161.

**Justification:** The current Pharmacy Practice Act does not clearly comport with prevailing standards for the regulation of sterile and non-sterile compounding.

To protect the public from disasters such as those highlighted by the deaths arising from the improper regulation of the New England Compounding Center in the State of Massachusetts in 2012, South Carolina's regulation of compounding pharmacies must comport with the clearest and highest standards. The Board of Pharmacy wishes to ease the regulatory burden upon compounding pharmacies by clarifying the applicable standards and communicating the standards to those within the industry. The Board worked on the proposed legislation for more than two years to ensure it thoroughly and fairly addresses the regulatory needs of this specialized practice.

### **ISSUE 2: H. 3444**

**Board Recommendation:** The Board recommends enactment of H. 3444.

**Justification:** Out-of-state pharmacies do not currently face the same inspection requirements as in-state pharmacies. The Agency received concerns that S.C. Code §§ 40-43-60 (C) and 40-43-83(E) create disparate regulatory schemes for in-state and out-of-state pharmacies. Specifically, S.C. Code § 40-43-60(C) requires biennial inspection of in-state pharmacies, but S.C. Code § 40-43-83(E), which applies only to out-of-state mail-order pharmacies, states the Board "may enter into agreements with other states or with third parties for the purpose of exchanging information concerning the permitting and inspection of entities located in this jurisdiction and those located outside this State." The proposed legislation levels the playing field for in-state and out-of-state pharmacies and offers greater protection of public safety by ensuring out-of-state pharmacies comply with the same high-level inspection standards as in-state pharmacies.

### **ISSUE 3: S.C. Code of Regulations, R. 99-43**

**Board Recommendation:** The Board has expressed a willingness to amend S.C. Code Reg. § 99-43 and the necessary revision of the fee schedule established by the Agency pursuant to S.C. Code § 40-1-50 upon enactment.

**Justification:** The current regulatory scheme offers only four types of facility permits: pharmacy, non-dispensing drug outlet, medical gases/legend devices, and non-resident pharmacy. S.C. Code Reg. § 99-43 should be amended to add two additional permits for sterile and non-sterile compounding pharmacies. The addition of these permits readily identifies those pharmacies engaging in compounding, whether sterile or non-sterile, and promotes the changes of the Pharmacy Practice Act set forth in the proposed legislation discussed above. Additionally, this amendment will allow the Board of Pharmacy to revise its fee schedule so that pharmacies with less burdensome

inspection requirements will pay a lower fee than pharmacies engaged in non-sterile and sterile compounding, which require more extensive inspection.

#### **ISSUE 4: Pharmacy Technicians**

**Public Recommendations:** Public comments suggested the following revisions regarding pharmacy technicians:

- 1) delete the cap on the number of pharmacy technicians a pharmacist may supervise as set forth in S.C. Code § 40-43-86(B)(4)(b);
- 2) delete the requirement that a certified pharmacy technician obtain a “certificate, diploma, or degree from a formal academic pharmacy technician training program...accredited by American Society of Health System Pharmacist (ASHP)” pursuant to Board of Pharmacy policy;
- 3) implement a 45-day grace period for the registration of newly hired pharmacy technicians;
- 4) define “personal supervision” within the context of supervision required for pharmacy technicians; and
- 5) delete the requirement that four of the ten continuing education hours required for pharmacy technicians must be earned through attendance at lectures, seminars or workshops.

**Agency Recommendation:** A statutory amendment should be made to add a definition of “personal supervision” to S.C. Code § 40-43-30 that states “‘personal supervision’ means the supervising pharmacist maintains continuous personal eye and voice contact with the supervisee.” This amendment will alleviate confusion identified by public comments and ensure consistency within the Pharmacy Practice Act. Clarification of the supervisory responsibility of the pharmacist charged with the supervision of pharmacy technicians, certified pharmacy technicians, interns and externs should ensure greater compliance.

#### **OTHER NOTES:**

- Revision of the Pharmacy Practice Act, S.C. Code § 40-43-05, et seq.

**Board Recommendation:** The Board recommends revision of the South Carolina Pharmacy Practice Act. However, given the magnitude and importance of this revision, all parties recognize this is a process that will require a significant amount of time. The Agency recommends the Board undertake a comprehensive review of the Pharmacy Practice Act and regulations. However, the Agency recognizes this process must be thoughtfully and carefully undertaken and will require a significant amount of time to accomplish.

**Public Comment:** The Board received multiple comments suggesting the statutory and regulatory scheme be updated to allow South Carolina to keep pace with technological advances impacting the industry including, but not limited to, electronic health records, remote order entry, and automated processes.

**Justification:** The current statute was last updated in 1998 and does not reflect the advent of technology or other health care professions in the years since. The Pharmacy Practice Act and corresponding regulations should be reviewed and updated. The health, welfare, and safety of the public are best served through the marriage of technology and the practice of pharmacy.

- **Correctional Facilities**

**Board, Public and Agency Recommendation:** The Board, public, and Agency recognize the current regulation of pharmacies, medications, and healthcare professionals working within the correctional system, whether in county or state detention facilities, presents challenges unique to this system. They recommend stakeholders work together to recommend regulatory revisions to address these challenges. To that end, the Inmate Medication Ad Hoc Committee has been formed. This Committee is comprised of representatives from the South Carolina Department of Corrections, the Association of Counties, representatives from the South Carolina Boards of Medical Examiners, Nursing and Pharmacy, and pharmaceutical companies, who contract with these facilities. The Committee's first meeting took place on May 13, 2013. Topics discussed included: 1) Practitioner/Patient Relationship; 2) Designated Agent; 3) Stock Medications; 4) Emergency Kits; 5) Administration of Medications; and 6) Discharge Medications.

**Justification:** The South Carolina Department of Corrections and county detention facilities are tasked with meeting the healthcare needs of inmates, often times with very limited information and strained resources. Revisions may be necessary to make compliance with applicable statutes and regulations more attainable for practitioners and facilities within a correctional facility.

**\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.**

## South Carolina Board of Podiatry Examiners

### **ISSUE 1: Definitions**

**Board Recommendation:** The Board recommends updating definitions in S.C. Code § 40-51-20 to fit current practice.

**Justification:** The definitions and actual practice of the profession should be consistent.

### **ISSUE 2: Limitations on Amputations**

**Board Recommendation:** S.C. Code § 40-51-20 should be revised to remove the prohibition against amputations by podiatrists.

**Justification:** The current limitation is not consistent with the practice of podiatry in other states. This amendment will facilitate the free movement of podiatrists from other states into South Carolina. Further, it will reduce costs and restore the practice of podiatry to Medicaid eligibility.

### **ISSUE 3: Patient Physicals and Histories**

**Board Recommendation:** The Board recommends amendment of the statute and regulations to allow licensees to perform physicals and histories on the whole body of their patient prior to performing surgery

**Justification:** In the past, the Department of Health and Human Services required a history and physical within 30 days prior to a surgery; however, a podiatrist performing surgery on a patient could not perform the history and physical because their scope of practice is limited to the foot.

The Podiatry Board would like to expand the scope of practice to allow them to perform a history and physical for their own procedures.

**Public Comments:** Multiple comments were received by the Board supporting its above recommendations.

**\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.**

## Real Estate Commission

### ISSUE 1: Senate Bill 75, Credit Report

**Commission Recommendation:** S.C. Code § 40-57-110(C) requires applicants for licensure to submit to a credit report which indicates creditworthiness satisfactory to the Agency. The Commission recommends replacing the requirement of a credit check with the national background check.

**Justification:** The Commission believes a national background check would provide detailed information about an applicant's criminal history that would better protect the public from potential wrongdoers than a credit history that would only show prior financial problems and not criminal acts. This has been included in S. 75.

### ISSUE 2: Fees

**Initial Note:** Inactive licensees are required to pay a flat fee that exceeds any of the active license fees.

**Agency Recommendations:** For renewals, active salespersons pay \$60, active brokers or property managers pay \$80, and active brokers-in-charge or property-managers-in-charge pay \$120. Inactive licensees, regardless of classification, pay \$150. The Agency recommends charging inactive licensees the same renewal fee as active licensees.

**Justification:** This change will alleviate a financial burden for inactive licenses.

**Public Comments:** The Agency received some complaints that were general in nature, such as a statement that the real estate laws need to be "cleaned up" to reduce repetition and redundancy. To that end, the Real Estate Commission has worked for the past two years and has drafted and presented a clean-up bill to the General Assembly. It is unclear whether it will gain sponsorship this session. Similarly, one licensee complained that renewal was expensive. This report addresses several opportunities for fee reduction, and the Agency will continue to address budgeting issues to reduce licensee fees whenever possible. Another licensee expressed a desire for an online application, which is forthcoming within the calendar year.

Some complaints were more specific. One licensee stated South Carolina should have reciprocity with North Carolina. S.C. Code § 40-57-120 permits the Commission to enter into reciprocal agreements with real estate regulatory authorities of other jurisdictions which provide for waivers of education requirements or examinations if the Commission considers them to be the substantial equivalent of the requirements for South Carolina licensure.

One proposal received was that South Carolina should become a single level or "broker-only" state, where licensure occurs only at a broker level and not the



salesperson level. Some states, the first of which was Colorado in 1997, have moved in that direction; North Carolina is included among them. The benefit of broker level licensure is that it requires additional training prior to licensure. In South Carolina, for initial licensure as a salesperson, the applicant must complete 60 classroom hours of instruction in real estate principles and practices, with 30 post-licensure hours of instruction in advanced real estate principles and practices. S.C. Code § 40-57-100(A)(1). For initial licensure as a broker, the applicant must complete 150 hours of classroom instruction in advanced real estate principles and practices and prove job experience. However, once licensure occurs, the number of CE hours required for salesperson and brokers is the same for renewal – 8 hours biennially. S.C. Code § 40-57-130(B)(2). Even in broker-only states, there are several categories or status levels of the broker license, such as a provisional broker, a broker, a broker-in-charge, a firm, and a limited nonresident commercial broker. Therefore, it is questionable whether the additional training provides a career-long benefit or whether the single level of licensure alleviates any burdens in the industry.

One licensee stated she would like for all realtors to be required to obtain a GRI education and further wishes that a CRS certification be mandatory within five years of licensure. GRI is a national professional real estate designation requiring rigorous educational programs that include 92 hours of live course instruction from a statewide faculty selected because of extensive experience in their own areas of expertise. A Certified Residential Specialist (CRS), sometimes called the master's degree of real estate, requires advanced education in related areas such as finance, technology and marketing. These are commendable achievements and designations for anyone in the real estate profession; however, it would likely exclude a number of professionals who desire to work in the industry. It would be for the Commission and the General Assembly to determine if this is necessary for competent performance as a licensee.

***\* Full Public Comments and a Hearing Summary can be found in Report's Appendix A.***

**South Carolina Department of Labor, Licensing and  
Regulation**

**Executive Order 2013-02**

**2.0 Findings, Recommendations,  
and Justifications**

**B. Division of Fire and Life Safety**

# South Carolina Liquefied Petroleum Gas Board

## ISSUE 1: LP Gas Storage Requirements

**SECTION 40-82-240.** Dealer storage capacities and waiver.

(A) A dealer conducting business in the State:

(1) must have or have access to facilities with a storage capacity of a minimum of 30,000 water gallons located within close proximity to the area to be served...

(2) whose headquarters are outside of the State, must have storage capacity located in the State within close proximity to the area served in the State.

(B) The board may waive the minimum bulk storage facility requirement of subsection (A)....

The statute requires LP gas dealers to have storage capacity of 30,000 gallons located within close proximity to the area served and requires vendors from outside the state to have storage capacity within "close proximity." (Not defined in regulation). The board also may grant a waiver of the 30,000 gallon storage requirement. This provision of the statute was the subject of an LAC audit, which found the statute limited commerce, was anticompetitive, and, based on an opinion from the Attorney General's office, possibly unconstitutional.

**Board Recommendation:** The Board did not consider this issue.

**Public Comment:** None

**Agency Recommendation:** The Agency recommends the repeal of S.C. Code § 40-82-240.

**Justification:** The Legislative Audit Counsel conducted an audit in 2005 and found that liquefied petroleum gas should be regulated because it is a hazardous substance that is highly flammable. It is not the intention of the agency to rehash the 2005 LAC report or the 2008 follow up. However, the agency finds the research performed by the auditors on this issue extremely compelling.

On the issue of the 30,000 gallon requirement, the 2005 report states that based on an opinion by the 8<sup>th</sup> circuit, the South Carolina Attorney General's office found that the requirement would most likely violate the commerce clause of the U.S. Constitution because it unduly burdens commerce by impeding free private trade in the market place. In addition, citing to a specific example, the LAC report found that no proof of harm to the public exists in the absence of the requirement. The report mentioned that, interestingly, although the requirement for 30,000 gallon storage capacity exists, there is no requirement that a specific amount of LP Gas be kept on hand. Therefore, without a requirement of keeping actual LP Gas on hand, it appears that the basis for this requirement, i.e., the event of a shortage of LP gas, is suspect. There seems to be no

real necessity for this requirement, and the unintended consequence of this statute is that smaller LP Gas dealers are unable to enter the market.

## **ISSUE 2: Codes**

Currently, there are at least two sets of codes (IFC and NFPA) that govern this industry, which is confusing for licensees our statute only references NFPA standards. See S.C. Code § 40-82-70 (A)(3).

**Board Recommendation:** The Board recommends the State recognize NFPA Standards 54, 58, and 59 as the sole standards for regulation and enforcement in the state of South Carolina for the LP gas industry.

**Office of the Fire Marshal Recommendation:** The OFC recommends clarification of the statute and revision of the multiple standards through the Building Code Council process in regards to codes and standards that govern the industry.

**Justification:** There is a clear need for uniformity in the code for public safety and to clarify the rules for enforcement by the authorities. Currently, the propane industry is regulated by two codes – NFPA 54/58/59, which has traditionally been used to regulate the propane industry, and IFC Chapter 28, 2006 edition. There is too much ambiguity due to the multiple, conflicting, and confusing aspects of the codes, to the point that compliance is difficult and enforcement becomes cumbersome.

Having one code, NFPA 54, 58, and 59, makes practical application by industry and enforcement by the authorities simple and efficient, thus increasing the likelihood of consistent application of all regulations. This further facilitates actions that promote public safety and adherence to the standard by industry

The adoption of NFPA 54, 58, and 59 as the applicable code standard would likely encourage managed and safe growth of the LP Gas industry in SC. Long term, the effect of this change is the simplification of LP Gas codes as they relate to the propane gas industry in South Carolina. This simplification would allow industry and the fire service to focus on many of the practical issues that have been allowed to languish in the background. For example, providing inspection stickers for LP gas bulk storage tanks to allow more prominent notice to delivery drivers that the tank's owners were properly licensed and/or inspected.

One potential negative consequence is that NFPA 54, 58, and 59 contain some guidelines that are less restrictive than the current myriad of code standards used by the industry in this state. However, NFPA 54, 58, and 59 is the generally accepted national code for the regulation of the propane industry in the US, and has been used safely and successfully in the state of South Carolina for over 40 years.

## **Other Notes:**

The LAC report also noted that most other states do not have a separate LP Gas board and that agencies are responsible for regulating LP gas. The LAC report recommended eliminating the board and allowing the Fire Marshal to oversee the regulation of LP gas. The Agency will direct the state fire marshal to work with the LP Gas Board to resolve the issues and make a recommendation to resolve the LAC findings.

# Board of Pyrotechnic Safety

## Issue 1: Code/Regulations

### The Office of the Fire Marshal Recommends:

1. Clarification that only adopted NFPA codes guide how the Office of State Fire Marshal regulates fireworks statewide.
2. Deletion of S.C. Reg. § 71-8312 because it duplicates much of the current S.C. Reg. § 71-8305.
3. Consolidation of S.C. Reg. §§ 71-7405 and 71-8305.

### Public Comments:

The Board received three comments.

*"I have had unusual requests for the use of not only sky lanterns, but other pyrotechnic devices (ice fountains) that can be purchased online for use. I feel there is a need to define some of the regulations pertaining to this type of pyrotechnics."*

*"On behalf of the Fireworks Association of South Carolina (FASC) I would like to enter these remarks into the public record:*

*1) FASC recommends that the S.C. Board of Pyrotechnic Control not adopt a recent amendment by the NFPA that would restrict existing retail fireworks facilities to 7,500 sq ft; and any new retail fireworks facilities to 3,000 sq ft.*

*2) FASC recommends that the SC Board of Pyrotechnic Control adopt language that clearly states that retail fireworks activities in SC are controlled by the Board and that NFPA1124 is the governing standard of review for such retail activities."*

*"On behalf of the Shelton Fireworks of Blacksburg and Fair Play South Carolina, I would like to enter these remarks into the public record: Shelton Fireworks recommends that the SC Board of Pyrotechnic Control:*

- *Not adopt a recent amendment by the NFPA that would restrict existing retail fireworks facilities to 7,500 sq ft; and any new retail fireworks facilities to 3,000 sq ft.*
- *Adopt language that clearly states that the construction of retail fireworks buildings in SC are governed by the 2000 IBC building code. This code does not conflict with the intended purpose of the SC fireworks laws. The purpose being to provide safety guidelines for the construction of consumer fireworks retail and wholesale facilities, without causing havoc in the conduct of a normal course of business of selling fireworks retail or wholesale. Some of the counties in SC still governed by this code.*
- *Adopt language that clearly states that retail fireworks activities in SC are controlled by the Board and that IBC 2000 is the governing standard of review for construction of fireworks retail or wholesale facilities and storage quantities.*
- *NOT adopt language that states NFPA 1124 IS THE CONTROLLING STANDARD.*

*The review of the 2006 IBC Building Code regulations for fireworks structures! These regulations have created the question as to the quantity of fireworks storage allowed in retail and wholesale structures. This code limits the quantity of fireworks in a non-sprinkled structure to 125 lbs. and 250 lbs. Some SC counties have adopted this building code, which is causing havoc in the normal course of the business of selling fireworks! This code limitation allows no more quantity of fireworks than can be put on a kitchen table in any fireworks structure!"*

**Board Recommendations:** None. Prior to the Executive Order, the State Board of Pyrotechnic Safety formed a committee to review the codes and standards adopted and enforced. This committee recommended no changes to the current statute or regulations. The Board voted unanimously during the April 3, 2013, public hearing for no changes.

**Justification:** The Fire Marshal's recommendations to revise and consolidate the five statutes, five regulations, the South Carolina Code and the adopted standards will eliminate confusion and conflict. South Carolina has adopted the International Fire Code, 2006 Edition-Chapter 33 "Explosives and Fireworks" which is applicable statewide. The identified recommendations are to clarify and streamline the efficiency and effectiveness of the building and fire codes.

## Office of State Fire Marshal

### Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act

**Office of the Fire Marshal Recommendation:** The purpose of this Act is to test cigarettes to reduce the number of fires caused by cigarettes. Pursuant to S.C. Code § 23-51-70(A), the OFM recommends promulgation and implementation of regulations to establish processes necessary to effectuate the Act.

**Comment:** The Division of Fire and Life Safety met with the Tennessee State Fire Marshal's office to discuss how to more effectively test cigarettes. In addition, the possibility of multiple states entering into a Memorandum of Agreement to share data was discussed. This would eliminate multiple states performing the same testing, saving the state of South Carolina both time and money.

**Justification:** As a result of a nationwide support for the Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act, the Office of State Fire Marshal will be preparing a report, as required by statute, for the Legislature on the impact of the Act.

### State Arson Control Program

#### **Office of the State Fire Marshal Recommends:**

1. Repealing SC Code §§ 23-9-210 through-230 deleting the State Arson Control Program. Currently this program does not exist and S.C. Code § 23-3-15 vests SLED with exclusive jurisdiction for arson investigations with SLED.
2. Enactment of proposed legislation pending in the General Assembly, specifically, S.142.

#### **Public Comments:**

The Fire and Life Safety Stakeholders met April 19, 2013. The following three comments (names redacted) were received by the Division concerning this topic:

*"Clean up and clarify statutes and regulations. In 1982, an Ad Hoc Committee was established by Gov. Richard Riley. Through that group, progress was made to alleviate code conflicts. Then, the State Fire Commission only lasted 13 years.*

*Look at the duties of the State Fire Marshal. In fact, the law states that it is the duty of the State Fire Marshal to investigate the cause, origin and circumstance. This isn't being done.*

*Educate prosecutors and solicitors regarding these types of crimes.*



*In 1984, the State Arson Control Program was created and the State Fire Marshal contracted with SLED to do the lab work. Back then, we trained rural fire department personnel to recognize red flags. We helped educate prosecutors in Clarendon County. As such, the conviction rate increased.*

*Data collection – there is a big discrepancy in numbers. The Fire Marshal needs to get involved in fire investigations. The current recordkeeping is bad. Help is needed. The State Fire Marshal needs to focus on fire investigations and how to utilize the collected data.”*

*“Because of the recordkeeping, we don’t know if we have an arson problem. The “unknown” origin is 56 percent of all S.C. fires. We know that, on average, arson is one-third of all fires.*

*Let the State Fire Marshal investigate line of duty deaths (firefighters), any fire resulting in a fatality or significant loss.*

*Who does the local fire inspector work for? Who gives him the authority?*

*Discuss possibility of working with DHEC to move EMT to State Fire Marshal’s office.*

*Need to put all emergency response agencies under one division.”*

*“One major crime missing – arson. It is usually considered as “vandalism” by local law enforcement.*

*If there is a fire call at 2 a.m., I get the call about a fire – not the State Fire Marshal. Several years ago we talked about having a “ticket book.” However, an attorney told us that arson would only be a “civil” case. It needs to be considered a criminal case.”*

**Justification:** The Arson Control Program was established in 1983. In 1990, the Program moved to SLED; however, the statute providing the Fire Marshal had oversight of this program remained. Currently, this program does not exist because by statute, SLED has exclusive jurisdiction over arson investigations. Repealing the statute would help clarify which entity has control over arson investigations.

**Public Comments:** The Office of the Fire Marshal incorporated its comments into each section of this report. However, the OFM received one comment regarding the Fire Protection Acts administered by the Contractors’ Board.

*“In order to get my input and to begin some dialogue that, hopefully, will benefit all of the Fire Protection community, I am offering the following items for your review.*

1. S.C. Code. § 40-10-10 - *"The Fire Protection Sprinkler Systems Act must be administered by the South Carolina Contractors' Licensing Board..."* It has been my perceived position of the Contractors' Licensing Board that they could care less about sprinkler contractors or any of our needs. They have been very lax in investigating complaints and on many occasions have misinterpreted the law that sprinkler contractors worked very hard to get on the books.

2. S.C. Code § 40-10-40 - *There are several companies that have a qualifying party that is not a full-time managing employee, and in some cases, does not even reside in the same area as the company that he is registered for.*

3. S.C. Code § 40-10-41 (A) - *There have been occasions where a sprinkler company will open an office in South Carolina without any license. The parent company may be located in another state and may have a SC license, however this action is not legal. Even properly licensed companies that are domiciled in South Carolina must have a separate license for each branch office (see S.C. Code § 40-10-110 (32) & (33)).*

4. S.C. Code . § 40-10-43 (A) - *There is a sprinkler entity in the upstate that is a subsidiary of another company. The parent company has a license under another name, however the qualifier is employed by the subordinate company and it is the subordinate company that is bidding and contracting the work.*

5. S.C. Code § 40-10-43 (D) - *There are several sprinkler contractors that sub-contract with a number of unlicensed individuals to perform installation work. There are even individuals that will solicit work from sprinkler companies. These solicitations have been forwarded to the Contractors' Licensing Board, but we have never heard of any investigation.*

6. S.C. Code § 40-10-230 (5) - *"The backflow test must be conducted in accordance with applicable NFPA Standards."* The testing of a backflow device requires the closing of the control valves, which by definition creates "Impairment". In accordance with NFPA 25, Sec. 15.7, the restoration of any impairment requires that certain tests be conducted to verify that the system is in proper operating condition. To properly conduct these tests, the entity must be a licensed sprinkler contractor. If the statute allows anyone with a DHEC Certification to test backflow devices as a part of a sprinkler system, the tester must be a licensed sprinkler contractor or have engaged the services of a licensed sprinkler contractor to perform the required tests.

7. S.C. Code § 40-10-250 & 260- *There is no enforcement by the Architects or Engineers Boards for these sections. Many architects refuse to engage the services of a Fire Protection Engineer to provide the "Fire Sprinkler System Specification Sheet" for a project. Many times an architect will claim that a project is "Design-Build". However, there may be multiple General Contractors and each of them may have multiple Sprinkler Contractors. This alone will negate the concept of design-build and would require the services of a Fire Protection Engineer. On the rare occasions that an architect provides the fire protection engineer, the engineer selected is not competent in fire protection and thereby creates confusion within the bidding process.*

*The sprinkler contracting community does not disagree with the requirements of 40-10-250 & 260. We are simply over burdened by the architects and engineers not doing their job. The situation causes undue problems in bidding a project; costs time and money trying to convince an architect that they need to comply with the law and trying to educate an engineer that is grossly incompetent.*

*Shane I know this is a lot of information to digest and may not necessarily is appropriate for a way of cutting costs. However, if these types of things can be cleaned up and/or enforced, it would reduce the inconvenience, frustration and costs to the sprinkler contractors. This would ultimately reduce costs to the consumer.”*

**South Carolina Department of Labor, Licensing and  
Regulation**

**Executive Order 2013-02**

**2.0 Findings, Recommendations,  
and Justifications**

**C. Division of Labor**

## Elevators and Amusement Rides

### ISSUE 1: Special Inspector License

Currently, amusement ride regulations permit revocation of a special inspector's license if he or she uses or discloses information gained in the course of or by reason of his official position for any purpose other than making official inspections, including receipt of compensation to influence his inspections. Reg. 71-4800(5). Otherwise, there are no regulations permitting discipline of a special inspector or the denial of licensure for a special inspector.

**Agency Recommendation:** Amend Regulation 71-4800(5) to identify additional bases for license revocation or for denial of licensure for special inspectors. To this end, the Agency has published language in *The State Register* which will be considered by the General Assembly during the next session:

Any special inspector may have his or her license revoked or may have a license denied to him or her who:

- a. uses or discloses information gained in the course of or by reason of his or her official position for any purpose other than making official inspections;
- b. receives compensation to influence his or her inspections;
- c. uses a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act or omitted a material fact in obtaining licensure as a special inspector;
- d. has had a license to practice a regulated profession or occupation including special inspector in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined;
- e. has intentionally or knowingly, directly or indirectly, violated or has aided or abetted in the violation or conspiracy to violate this article or a regulation promulgated under this article;
- f. has intentionally used a fraudulent statement in a document connected with practice as a special inspector;
- g. has obtained fees or assisted in obtaining fees under fraudulent circumstances;

h. has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public;

i. lacks the professional or ethical competence to practice as a special inspector;

j. has been convicted of or has pled guilty to or *nolo contendere* to a felony or a crime involving drugs or moral turpitude;

k. has practiced as a special inspector while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him unfit to practice as a special inspector;

l. has sustained a physical or mental disability which renders further practice dangerous to the public;

m. has violated a provision of this article or of a regulation promulgated under this article.

**Justification:** To insure adequate protection of the public in the certification of special inspectors.

## **ISSUE 2: Amusement Rides Special Inspector Appeals Process**

Regulation 71-4800 provides no relief to a special inspector who has been aggrieved by the denial or revocation of his license.

**Agency Recommendations:** Amend Reg. 71-4800 to provide a right of review for special inspectors who have had licensure denied them or have had their licenses revoked. The Agency proposes the following language be added to the existing regulation:

Any special inspector whose license has been revoked or to whom a license has been denied may appeal this decision to the Director or his or her designee within thirty days of receipt of written notice of the decision revoking or denying his license. The Director or his or her designee will conduct a hearing to review the decision and will issue a written order of decision thereafter.

Any person aggrieved by the final action of the Director may appeal the decision to the Administrative Law Court in

accordance with the Administrative Procedures Act and the rules of the Administrative Law Court. Service of a petition requesting a review does not stay the Director's decision pending completion of the appellate process.

**Justification:** A right of appeal is necessary to satisfy due process.

### **ISSUE 3: Elevators Special Inspector License**

As is the case with the amusement rides regulations, the elevator regulations permit revocation of a special inspector's license if he or she uses or discloses information gained in the course of or by reason of his or her official position for any purpose other than making official inspections, including receipt of compensation to influence his or her inspections. Reg. 71-5400(3). Likewise, there are no regulations permitting discipline of a special inspector or the denial of licensure for a special inspector.

**Agency Recommendation:** Amend Regulation 71-5400 to identify additional bases for license revocation or for denial of licensure for special inspectors. To this end, the Agency has published language in *The State Register* which will be considered by the General Assembly during the next session:

Any special inspector may have his or her license revoked or may have a license denied to him or her who:

- a. uses or discloses information gained in the course of or by reason of his or her official position for any purpose other than making official inspections;
- b. receives compensation to influence his or her inspections;
- c. uses a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act or omitted a material fact in obtaining licensure as a special inspector;
- d. has had a license to practice a regulated profession or occupation including special inspector in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined;
- e. has intentionally or knowingly, directly or indirectly, violated or has aided or abetted in the violation or conspiracy to violate this article or a regulation promulgated under this article;
- f. has intentionally used a fraudulent statement in a document connected with practice as a special inspector;

- g. has obtained fees or assisted in obtaining fees under fraudulent circumstances;
- h. has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public;
- i. lacks the professional or ethical competence to practice as a special inspector;
- j. has been convicted of or has pled guilty to or *nolo contendere* to a felony or a crime involving drugs or moral turpitude;
- k. has practiced as a special inspector while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him or her unfit to practice as a special inspector;
- l. has sustained a physical or mental disability which renders further practice dangerous to the public;
- m. has violated a provision of this article or of a regulation promulgated under this article.

**Justification:** To insure adequate protection of the public in the hiring and retention of special inspectors.

#### **ISSUE 4: Special Inspector Appeals Process**

Regulation 71-5400 provides no relief to a special inspector who has been aggrieved by the denial or revocation of his license.

**Agency Recommendations:** Amend Reg. 71-5400 to provide a right of review for special inspectors who have had licensure denied them or have had their licenses revoked. The Agency proposes the following language be added to the existing regulation:

Any special inspector whose license has been revoked or to whom a license has been denied may appeal this decision to the Commissioner or his or her designee within thirty days of receipt of written notice of the decision revoking or denying his license. The Commissioner or his or her designee will conduct a hearing to review the decision and will issue a written order of decision thereafter.



Any person aggrieved by the final action of the Commissioner may appeal the decision to the Administrative Law Court in accordance with the Administrative Procedures Act and the rules of the Administrative Law Court. Service of a petition requesting a review does not stay the Commissioner's decision pending completion of the appellate process.

**Justification:** A right of appeal is necessary to satisfy due process.

**Public Comments:** Two complaints were received related to elevator inspections. One complaint came from the administrator of a Greenwood church who complained that entities are now required to contact, arrange, and pay for their own elevator inspections whereas in the past, the Agency had handled inspections. While the Agency understands the concerns raised, the decision to assign this task to special inspectors was one made in an effort to ensure the highest degree of safety to the public.

The other complaint came from an owner and operator of a Spartanburg hotel who expressed his dissatisfaction with the statute requiring annual inspections of elevators. He felt his elevator should be exempt of such an inspection because it was serviced monthly by the manufacturer/installer. The Agency commends all efforts to ensure the safety and proper functioning of elevators. However, to fulfill its mission of protecting the safety of the public, the Agency is still required to ensure that all elevators undergo an annual inspection within the guidelines established by the Agency.

## South Carolina Illegal Immigration Reform Act

### ISSUE 1: E-Verify Access

**Agency Recommendation:** Amend section 41-8-20(c) to allow small employers without Internet access to enter into an agreement with the South Carolina Department of Employment and Workforce Development to permit the Department to enroll the employer in E-Verify and to conduct employment verification of new hires.

**Justification:** Under 41-8-20(c), the Department of Employment and Workforce Development is mandated to provide private employers with “technical advice and electronic access to the E-Verify federal work authorization program’s website for the sole purpose of registering and participating in the program.” Some small employers lack the resources to E-Verify their employees but want to comply with the law. Tennessee’s E-Verify law has this requirement, and the agency believes this amendment will ease the burden on small businesses by making it easier to E-Verify new employees.