

BOARD FOR PROFESSIONAL & OCCUPATIONAL REGULATION



STUDY TO DETERMINE WHETHER THE AUTO BODY REPAIR INDUSTRY NEEDS TO BE REGULATED

Virginia

DPOR
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

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Background

At its meeting on March 6, 2006, the Board for Professional and Occupational Regulation considered a request from Delegate L. Scott Lingamfelter for a study of whether the auto body repair industry needs to be regulated. Doug Conner, President of the Virginia Auto Body Legislative Committee (VABLC), spoke to the Board regarding the more than 2,000 complaints related to automotive issues received by the Division of Consumer Services of the Virginia Department of Agriculture and Consumer Services. Mr. Conner noted that there are no professional regulations in place for the auto body repair industry and stated the public is not protected at this time. Matt Benka, representing the VABLC, also attended the meeting but did not wish to address the Board.

At its meeting on March 6, 2006, the Board for Professional and Occupational Regulation agreed to conduct the study.

Statutory Authority

Section 54.1-310 of the *Code of Virginia (Code)* provides the statutory authority for the Board for Professional and Occupational Regulation (the Board) to study and make recommendations to the General Assembly on the need to regulate professions or occupations and, if so, the degree of regulation that should be imposed.

The Board is authorized to advise the Governor and the Director on matters relating to the regulation of professions and occupations. In addition, the General Assembly may request the Board conduct a study. The General Assembly is the body empowered to make the final determination of the need for regulation of a profession or occupation. The General Assembly is authorized to enact legislation specifying the profession to be regulated, the degree of regulation to be imposed, and the organizational structure to be used to manage the regulatory program (e.g., board, advisory committee, registry).

The Commonwealth's philosophy on the regulation of professions and occupations is as follows: ***The occupational property rights of the individual may be abridged only to the degree necessary to protect the public.*** This tenet is clearly stipulated in statute and serves as the Board's over-arching framework in its approach to all reviews of professions or occupations:

. . . the right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgement is

necessary for the preservation of the health, safety and welfare of the public. (*Code of Virginia* § 54.1-100)

Further statutory guidance is provided in the same *Code* section, which states the following conditions must be met before the state may impose regulation on a profession or occupation:

1. The unregulated practice of a profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work or labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

Pursuant to § 54.1-311 of the *Code*, if the Board recommends a particular profession or occupation be regulated, or suggests a different degree of regulation should be imposed on a regulated profession or occupation, it shall consider the following degrees of regulation in order:

- 1. Private civil actions and criminal prosecutions** – Whenever existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the Board may first consider the recommendation of statutory change to provide more strict causes for civil action and criminal prosecution.
- 2. Inspection and injunction** – Whenever current inspection and injunction procedures are not sufficient to eradicate existing harm, the Board may promulgate regulations consistent with the intent of this chapter to provide more adequate inspection procedures and to specify procedures whereby the appropriate regulatory board may enjoin an activity which is detrimental to the public well-being. The Board may recommend to the appropriate agency of the Commonwealth that such procedures be strengthened or it may recommend statutory changes in order to grant the appropriate state agency the power to provide sufficient inspection and injunction procedures.
- 3. Registration** – Whenever it is necessary to determine the impact of the operation of a profession or occupation on the public, the Board may implement a system of registration.

4. **Certification** – When the public requires a substantial basis for relying on the professional services of a practitioner, the Board may implement a system of certification.
5. **Licensing** – Whenever adequate regulation cannot be achieved by means other than licensing, the Board may establish licensing procedures for any particular profession or occupation.

Pursuant to subsection B of § 54.1-311 of the *Code*, in determining the proper degree of regulation, if any, the Board shall determine the following:

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.
2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.
3. The number of states which have regulatory provisions similar to those proposed.
4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.
5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.
6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.
7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.
8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.
10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Criteria

Based on the principles of professional and occupational regulation established by the General Assembly, the Board has adopted the following criteria to guide evaluations of the need for regulation.

- 1. Risk for Harm to the Consumer** - The unregulated practice of the profession or occupation will harm or endanger the public health, safety or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices inherent in the occupation, (b) characteristics of the clients served, (c) the setting or supervisory arrangements for the delivery of services, or (d) from any combination of these factors.
- 2. Specialized Skills and Training** - The practice of the profession or occupation requires specialized education and training, and the public needs assurance of competence.
- 3. Autonomous Practice** - The functions and responsibilities of the practitioner require independent judgment and the members of the occupational group practice autonomously.
- 4. Scope of Practice** - The scope of practice is distinguishable from other licensed, certified and registered professions and occupations.
- 5. Economic Impact** - The economic costs to the public of regulating the occupational group are justified. These costs result from restriction of the supply of practitioners, and the cost of operation of regulatory boards and agencies.
- 6. Alternatives to Regulation** - There are no alternatives to State regulation of the profession or occupation which adequately protect the public. Inspections and injunctions, disclosure requirements, and the strengthening of consumer protection laws and regulations are examples of methods of addressing the risk for public harm that do not require regulation of the occupation or profession.

7. **Least Restrictive Regulation** - When it is determined that the State regulation of the occupation or profession is necessary, the least restrictive level of occupational regulation consistent with public protection will be recommended to the Governor, the General Assembly and the Director of the Department of Professional and Occupational Regulation.

Application of Criteria

In the process of evaluating the need for regulation, the criteria are applied differently, depending upon the level of regulation which appears most appropriate for the occupational group. The following outline delineates the characteristics of licensure, certification, and registration and specifies the criteria applicable to each level.

Registration. Registration requires only that an individual file his name, location, and possibly background information with the State. No entry standard is typically established for a registration program.

RISK: Low potential, but consumers need to know that redress is possible.

SKILL & TRAINING: Variable, but can be differentiated for ordinary work and labor.

AUTONOMY: Variable.

APPLICATION OF CRITERIA: Criteria 4, 5 and 6 must be met.

Certification. Certification by the state is also known as "title protection." No scope of practice is reserved to a particular group, but only those individuals who meet certification standards (defined in terms of education and minimum competencies which can be measured) may title or call themselves by the protected title.

RISK: Moderate potential, attributable to the nature of the practice, consumer vulnerability, or practice setting and level of supervision.

SKILL & TRAINING: Specialized; can be differentiated from ordinary work. Candidate must complete specific education or experience requirements.

AUTONOMY: Variable; some independent decision-making; majority of practice actions directed or supervised by others.

SCOPE OF PRACTICE: Definable in enforceable legal terms.

APPLICATION OF CRITERIA: Criteria 1-6 must be met.

Licensure. Licensure confers a monopoly upon a specific profession whose practice is well defined. It is the most restrictive level of occupational regulation. It generally involves the delineation in statute of a scope of practice which is reserved to a select group based upon their possession of unique, identifiable,

minimal competencies for safe practice. In this sense, state licensure typically endows a particular occupation or profession with a monopoly in a specified scope of practice.

RISK: High potential, attributable to the nature of the practice.

SKILL & TRAINING: Highly specialized education required.

AUTONOMY: Practices independently with a high degree of autonomy; little or no direct supervision.

SCOPE OF PRACTICE: Definable in enforceable legal terms.

APPLICATION OF THE CRITERIA: Criteria 1 - 6 must be met.

Alternatives to Professional and Occupational Regulation

When a risk or potential risk has been demonstrated but it is not substantiated that licensure, certification, or registration are appropriate remedies, other alternatives may be warranted. These alternatives should always be considered as less restrictive means of addressing the need to adequately protect the public health, safety, and welfare than restricting the occupational property rights of individuals.

Inspections and injunctions, disclosure requirements, and the strengthening of consumer protection laws and regulations are examples of methods for protecting the public that do not require the regulation of specific occupations or professions.

Methodology

The Board utilized its *Guidelines for the Evaluation of the Need to Regulate Professions and Occupations* as well as the following *Auto Body Repair Study Methodology*:

- Survey other jurisdictions and research applicable laws/regulations in those that regulate the auto body repair industry.
- Review the information from the Virginia Department of Agriculture and Consumer Services (VDACS) concerning complaints received regarding the auto body repair industry.
- Identify national and state trade organizations, and auto body repair shops, and inform them of the study and the comment period.
- Conduct a 60-day public comment period with four public hearings across the Commonwealth (Northern Virginia, Richmond, Tidewater, and Southwest).

- Obtain a list of insurance companies in Virginia from the State Corporation Commission (SCC) and issue a survey to the insurance companies.
- Research available consumer resource information regarding the auto body repair industry.

Summary of Research and Analysis

The Board utilized the study criteria contained in the *Guidelines for the Evaluation of the Need to Regulate Professions and Occupations* and the *Auto Body Repair Study Methodology*; in addition, the Board utilized the criteria contained in §§ 54.1-100 and subsection B of 54.1-311 of the *Code of Virginia*.

During the study, the Board considered whether auto body repair shops (the businesses themselves) or auto body technicians (those individuals who perform repairs on vehicles) warrant professional regulation.

The following is a summary of the results obtained by utilizing the *Auto Body Repair Study Methodology*.

- *Survey other jurisdictions and research applicable laws/regulations in those that regulate the auto body repair industry.*

Based on testimony at the public hearings and a review of information available via the Internet, the following jurisdictions regulate the auto body repair industry: Rhode Island; Florida; Ohio; California; New Jersey; and Massachusetts. In addition to those state statutes and/or regulations, the study identified the Auto Body Technician Trade Regulation of the Canadian province of Alberta.

- *Review the information from the Virginia Department of Agriculture and Consumer Services (VDACS) concerning complaints received regarding the auto body repair industry.*

Chapter 17.1 of Title 59.1 of the *Code of Virginia*, the *Automobile Repair Facilities Act*, covers auto body repairs. Per § 59.1-207.6 of the *Automobile Repair Facilities Act*, any violation of the *Act* is "...subject to any and all of the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title" [the *Virginia Consumer Protection Act*]. Enforcement of the *Virginia Consumer Protection Act* is performed by VDACS in concert with the Office of the Attorney General and the civil court system.

The Board sent a letter dated September 20, 2006, to the Consumer Protection Division Director of VDACS requesting complaint information regarding the auto body repair industry. In a reply dated September 29, 2006, VDACS indicated that during the past 36 months, the Office of Consumer Affairs (OCA) had received 45 consumer complaints regarding auto body repairs. During the same timeframe, the OCA received more than 12,000 complaints in total. Therefore, during this time period, the number of complaints received by the OCA regarding auto body repairs represents less than one-half of 1% of the total number of complaints received by OCA during the past 36 months (0.375%).

The majority of the 45 complaints referenced repair work (collision damage, auto painting, window installation, etc.) not being completed properly, with the consumer requesting a refund or additional work be completed. The vast majority of these complaints were resolved by the OCA in favor of the consumer, without court action.

- *Identify national and state trade organizations, and auto body repair shops, and inform them of the study and the comment period.*

The Virginia Auto Body Legislative Committee, Virginia Automotive Association, the past-president of the Washington Metropolitan Auto Body Association, Society of Collision Repair Specialists, and the Automotive Services Association were made aware of the study. In addition, Board staff mailed the study notice and a survey to all of the 1,451 auto body shops identified in Virginia.

Finally, Board staff researched information on the following trade associations via the Internet: the Inter-Industry Conference on Auto Collision Repair (I-CAR), the National Institute for Automotive Service Excellence (ASE), and the Collision Industry Conference (CIC).

- *Conduct a 60-day public comment period with four public hearings across the Commonwealth (Northern Virginia, Richmond, Tidewater, and Southwest).*

The 60-day period for public comment began on June 26, 2006, and ended on August 25, 2006. The Board conducted public hearings across the Commonwealth on the following dates in the following locations: June 28, 2006, in Richmond; June 30, 2006, in Arlington; July 11, 2006, in Hampton; and July 13, 2006, in Roanoke. A Notice of Comment was published in *Virginia Register of Regulations* and mailed to all of the 1,451 auto body shops identified in Virginia.

The following chart provides detail on the number of attendees at each of the four public hearings:

<u>Location</u>	<u>Date</u>	<u># of Attendees</u>	<u># of Speakers</u>
Richmond	June 28, 2006	25	7
Arlington	June 30, 2006	13	9
Hampton	July 11, 2006	36	12
Roanoke	July 13, 2006	18	7
Gross Totals (total number of attendees and speakers at each hearing)		92	35
Net Totals (total number of attendees and speakers at each hearing after eliminating those individuals who attended and/or spoke at more than one hearing)		85	28

In addition, the Board surveyed all of the 1,451 auto body shops identified in Virginia. Of the 1,451 surveys mailed, the Board received 284 completed surveys, 116 surveys were returned as undeliverable, and 12 surveys were returned stating the firm does not perform auto body work.

- Of the 284 completed surveys: 36 (13%) indicated regulation of auto body repair shops was necessary to protect the public; 152 (54%) indicated regulation of auto body repair shops was not necessary to protect the public; and 81 (29%) indicated uncertainty as to whether regulation of auto body repair shops was necessary to protect the public.
- Further, of the 284 completed surveys: 30 (11%) indicated regulation of auto body repair technicians was necessary to protect the public; 157 (55%) indicated regulation of auto body repair technicians was not necessary to protect the public; and 84 (30%) indicated uncertainty as to whether the regulation of auto body repair technicians was necessary to protect the public

The written comments and the testimony received at the public hearings can be categorized as follows:

<u>Source</u>	<u>Comment Summary</u>
Virginia Automobile Dealers Association	Opposes regulation/licensure of the auto body repair industry

Source	Comment Summary
Auto body repair industry	Over one-half of survey respondents (284) do not believe that regulation of the auto body repair industry is necessary, while a majority of the industry representatives who spoke at the public hearings (28) supported regulation of the industry
Insurance companies	Over one-half of the survey respondents (130) either do not believe, or were unsure whether, regulation of the auto body repair industry is necessary

- *Obtain a list of insurance companies in Virginia from the State Corporation Commission (SCC) and issue a survey to the insurance companies.*

The SCC provided a file with the names and addresses of insurance companies licensed to issue automobile insurance policies. Board staff prepared and mailed a survey to all of the 375 such insurers in Virginia. Of the 375 surveys mailed, the Board received 130 completed surveys, 10 surveys were returned as undeliverable, and 10 surveys were returned stating the insurer does not issue auto policies.

- Of the 130 completed surveys: 27 (21%) indicated regulation of auto body repair shops was necessary to protect the public; 51 (39%) indicated regulation of auto body repair shops was not necessary to protect the public; and 57 (44%) indicated uncertainty whether regulation of auto body repair shops was necessary to protect the public.
- Further, of the 130 completed surveys: 21 (16%) indicated regulation of auto body repair technicians was necessary to protect the public; 57 (44%) indicated regulation of auto body repair technicians was not necessary to protect the public; and 49 (38%) indicated uncertainty as to whether regulation of auto body repair technicians was necessary to protect the public.
- *Research available consumer resource information regarding the auto body repair industry.*

As stated previously, Board staff researched information on the following trade associations via the Internet: the Inter-Industry Conference on Auto Collision Repair (I-CAR), the National Institute for Automotive Service Excellence (ASE), and the Collision Industry Conference (CIC). These trade associations perform a public information function. Board staff also obtained a consumer information pamphlet from an automobile manufacturer.

The following is a summary of the results obtained by utilizing the principles contained in the *Guidelines for the Evaluation of the Need to Regulate Professions and Occupations*.

Pursuant to subsection B of § 54.1-311 of the *Code*, in determining the proper degree of regulation, if any, the Board shall determine the following:

1. *Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.*

The auto body repair industry may pose a risk to the health, safety or welfare of the public, if the work performed in repairing a vehicle is conducted incorrectly. However, based on evidence obtained during the study, the level of risk to the public appears low. During the course of the study, one consumer commented about improper repairs. Furthermore, according to VDACS, the number of consumer complaints about the auto body repair industry is negligible.

2. *The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.*

The Board received comment from one individual consumer not directly involved in the auto body repair industry. As noted previously, the written comments and the testimony received at the public hearings can be categorized as follows:

Source	Comment Summary
Virginia Automobile Dealers Association	Opposes regulation/licensure of the auto body repair industry
Auto body repair industry	Over one-half of the survey respondents (284) do not believe that regulation of the auto body repair industry is necessary, while a majority of the industry representatives who spoke at the public hearings (28) supported regulation of the industry
Insurance companies	Over one-half of survey respondents (130) either do not believe, or were unsure whether, regulation of the auto body repair industry is necessary

In particular, small auto body repair businesses replying to the survey indicated they are already regulated (and perhaps over-regulated in their view) through other means (primarily the Department of Environmental Quality, the Environmental Protection Agency, and the Occupational Safety and Health Administration for environmental and safety issues). The self-described small shops expressed reservations about increased costs associated with regulation, and concern that a regulatory program would make it more difficult to locate auto body repair technicians.

3. *The number of states which have regulatory provisions similar to those proposed.*

As noted earlier in the report, based on testimony at the public hearings and a review of information available via the Internet, the Board identified statutes and/or regulations for the following six jurisdictions regulating the auto body repair industry: Rhode Island; Florida; Ohio; California; New Jersey; and Massachusetts. In addition, the Board located information regarding the Auto Body Technician Trade Regulation of the Canadian province of Alberta.

4. *Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.*

The majority of the population will most likely need the services of the auto body repair industry at some time; however, for most individuals, the need for this service is infrequent.

5. *Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.*

Both the Inter-Industry Conference on Auto Collision Repair (I-CAR) and the National Institute for Automotive Service Excellence (ASE) were established to ensure competent practitioners are available to the public in order to effect safe repairs of motor vehicles.

6. *Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.*

Virginia insurance companies are prohibited from requiring their insured to utilize a certain auto body repair shop (see § 38.2-517 of the *Code of*

Virginia). However, insurance companies may offer lists of preferred auto body repair shops meeting their own standards, and extend incentives for consumers to select such shops (through, for example, extended warranties on the repairs or direct payment). This practice, while still permitting choice as required by statute, provides consumers with the option to select an auto body repair shop reviewed and endorsed by their insurance companies as competent. The survey of the auto body repair shops indicates that most consumers selected the auto body repair shop either from a customer referral or from an insurance company recommendation. The I-CAR and ASE designations provide the public with another tool in selecting competent practitioners. Finally, automobile manufacturers offer training and certification programs for auto body repair shops to assist the public in identifying the most suitable provider.

7. *Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.*

As discussed previously in this section of the report, based on evidence obtained during the study, the level of risk of harm to the public appears to be low. During the course of the study, one consumer commented about improper repairs. Further, the information provided by VDACS as to the number of complaints received regarding the auto body repair industry revealed a very small number of complaints. While this may not be directly attributable to the professional or occupational associations (it could be the result as well of market forces and recommendations from insurance companies), the end result is the same – the public appears to be adequately protected at the present time without a state-mandated regulatory program.

8. *Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.*

No evidence of harm to individual consumers was found during the course of the study indicating that current laws which pertain to public health, safety and welfare are ineffective or inadequate. As noted previously in the report, during the past 36 months the Office of Consumer Affairs (OCA) of VDACS received 45 consumer complaints regarding auto body repairs. During the same time, the OCA received more than 12,000 complaints in total. The number of complaints received by the OCA regarding auto body repairs represents less than one-half of 1% of the total number of complaints received by OCA during the past 36 months (0.375%).

9. *Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.*

The primary concerns of members of the auto body repair industry who advocate for regulation -- aside from a perception of harm to the health, safety and welfare of the public, which has not been substantiated -- fell into six main categories: training and commensurate salaries; required equipment; rates of reimbursement from insurance companies; compliance with environmental regulations; establishing a level playing field among shops; and a need for best practices. Such issues are matters of general business operations, with oversight by existing regulatory entities: the Department of Environmental Quality (DEQ), the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA) for environmental issues; the Department of Labor and Industry (DOLI) and the Department of Education (DOE)/Virginia Community College System (VCCS) for education related issues; and the State Corporation Commission (SCC) for oversight of the insurance industry. Concerns beyond public protection are not issues to be resolved through the regulatory scheme for professions and occupations. In addition, the CIC was established by the auto body repair industry for the identification of best practices for the auto body repair industry.

10. *Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.*

This criterion is not applicable to the study.

Pursuant to § 54.1-100 of the *Code*, in determining whether regulation of a profession is warranted for the exclusive purpose of protecting the public interest, the Board shall determine whether the following are true:

1. *The unregulated practice of a profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;*

As discussed previously in this section of the report, based on evidence obtained during the study, the level of risk of harm to the public appears to be low. During the course of the study, one consumer commented to the Board about improper repairs. Further, the information provided by VDACS as to the number of complaints received regarding the auto body repair industry revealed a very small number of complaints. While this may

not be directly attributable to the professional or occupational associations (it could be the result as well of market forces and recommendations from insurance companies), the end result is the same – the public appears to be adequately protected at the present time without a state-mandated regulatory program.

2. *The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work or labor;*

The knowledge, skills and abilities necessary to effectuate proper repairs are different than ordinary work or labor. However, such qualities are comparable to those required for mechanical repairs of automobiles (and the two types of work often overlap). The automobile repair industry is not subject to professional regulation by the Commonwealth.

3. *The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and*

As noted previously, insurance companies, customer referrals, trade associations, and automobile manufacturers all provide information to the public to assist in finding competent practitioners.

4. *The public is not effectively protected by other means.*

As discussed previously in this section of the report, based on evidence obtained during the study, the level of risk of harm to the public appears to be low. During the course of the study, one consumer commented to the Board about improper repairs. Further, the information provided by VDACS as to the number of complaints received regarding the auto body repair industry revealed a very small number of complaints. While this may not be directly attributable to the professional or occupational associations (it could be the result of market forces and recommendations from insurance companies), the end result is the same – the public appears to be adequately protected at the present time without a state-mandated regulatory program.

Application of Criteria

1. ***Risk for Harm to the Consumer*** - *The unregulated practice of the profession or occupation will harm or endanger the public health, safety or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices*

inherent in the occupation, (b) characteristics of the clients served, (c) the setting or supervisory arrangements for the delivery of services, or (d) from any combination of these factors.

Based on evidence obtained during the study, the level of risk of harm to the public appears to be low. During the course of the study, one consumer commented about improper repairs. Further, the information provided by VDACS as to the number of complaints received regarding the auto body repair industry revealed a very small number of complaints.

2. *Specialized Skills and Training* - *The practice of the profession or occupation requires specialized education and training, and the public needs assurance of competence.*

Virginia insurance companies are prohibited from requiring their insured to utilize a certain auto body repair shop (see § 38.2-517 of the *Code of Virginia*). However, insurance companies may offer lists of preferred auto body repair shops meeting their own standards, and extend incentives for consumers to select such shops (through, for example, extended warranties on the repairs or direct payment). This practice, while still permitting choice as required by statute, provides consumers with the option to select an auto body repair shop reviewed and endorsed by their insurance companies as competent.

An apprenticeship program for Auto Body Repairman exists in Virginia under the auspices of DOLI. In addition, J. Sargeant Reynolds Community College (JSRCC) offers an Associates of Applied Science in Auto Body Technology, and I-CAR, ASE and automobile manufacturers offer related coursework.

The survey of the auto body repair shops indicates that most consumers selected the auto body repair shop either from a customer referral or from an insurance company recommendation. The I-CAR and ASE designations also provide the public with a tool in selecting competent practitioners. Finally, automobile manufacturers offer training and certification programs for auto body repair shops to assist the public in identifying the most suitable provider.

3. *Autonomous Practice* - *The functions and responsibilities of the practitioner require independent judgment and the members of the occupational group practice autonomously.*

A large amount of the work of the auto body repair industry is overseen by insurance companies -- both by insurance companies who are paying for the repairs of vehicles of their insured, and insurance companies who issue "garage keepers" liability insurance policies for auto body repair shops.

In addition, as noted previously, the auto body repair industry is subject to oversight by existing regulatory entities: DEQ, EPA and OSHA for environmental issues; DOLI and DOE/VCCS for education related issues; and the SCC for oversight of the insurance industry. The CIC was established by the auto body repair industry for the identification of best practices for the auto body repair industry.

4. *Scope of Practice* - *The scope of practice is distinguishable from other licensed, certified and registered professions and occupations.*

The knowledge, skills and abilities necessary to effectuate proper repairs are different than ordinary work or labor. However, such qualities are comparable to those required for mechanical repairs of automobiles (and the two types of work often overlap). The automobile repair industry is not subject to professional regulation by the Commonwealth.

5. *Economic Impact* - *The economic costs to the public of regulating the occupational group are justified. These costs result from restriction of the supply of practitioners, and the cost of operation of regulatory boards and agencies.*

As discussed previously in this report, based on evidence obtained during the study, the level of risk of harm to the public appears to be low. During the course of the study, one consumer commented to the Board about improper repairs. Further, the information provided by VDACS as to the number of complaints received regarding the auto body repair industry revealed a very small number of complaints. In particular, small auto body repair businesses replying to the survey indicated they are already regulated (and perhaps over-regulated in their view) through other means (primarily DEQ, EPA, and OSHA for environmental and safety issues). The self-described small shops expressed reservations about increased costs associated with regulation, and concern that a regulatory program would make it more difficult to locate auto body repair technicians.

6. *Alternatives to Regulation* - *There are no alternatives to State regulation of the profession or occupation which adequately protect the public. Inspections and injunctions, disclosure requirements, and the strengthening of consumer protection laws and regulations are examples of methods of addressing the risk for public harm that do not require regulation of the occupation or profession.*

As discussed previously, based on evidence obtained during the study, the level of risk of harm to the public appears to be low – the public appears to be adequately protected at the present time without a state-mandated regulatory program. As noted earlier, insurance companies, customer referrals, trade associations, and automobile manufacturers all provide information to the public to assist in finding competent practitioners.

7. **Least Restrictive Regulation** - *When it is determined that the State regulation of the occupation or profession is necessary, the least restrictive level of occupational regulation consistent with public protection will be recommended to the Governor, the General Assembly and the Director of the Department of Professional and Occupational Regulation.*

This criterion is not applicable to this study.

Conclusion

The primary concerns of members of the auto body repair industry who advocate for regulation -- aside from a perception of harm to the health, safety and welfare of the public, which has not been substantiated -- fell into six main categories: training and commensurate salaries; required equipment; rates of reimbursement from insurance companies; compliance with environmental regulations; establishment of a level playing field among shops; and a need for best practices. Such issues are matters of general business operations, with oversight by existing regulatory entities: DEQ, EPA and OSHA for environmental issues; DOLI and DOE/VCCS for education related issues; and the SCC for oversight of the insurance industry. Concerns beyond public protection are not issues to be resolved through the regulatory scheme for professions and occupations. In addition, the CIC was established by the auto body repair industry for the identification of best practices for the auto body repair industry.

Based on evidence obtained during the study, the level of risk of harm to the public appears to be low -- the public appears to be adequately protected at the present time without a state-mandated regulatory program. Insurance companies, customer referrals, trade associations, and automobile manufacturers all provide information to the public to assist in finding competent practitioners. The existing complaint mechanism at VDACS appears to satisfy any consumer concerns about the auto body repair industry.