

**CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY**

BOARD TELECONFERENCE MEETING

MINUTES OF JANUARY 25, 2021

BOARD MEMBERS PRESENT

Lisa Thong, President
Dr. Kari Williams, Vice President
Jacquelyn Crabtree
Andrew Drabkin
Derick Matos
Calimay Pham
Christie Tran
Steve Weeks

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Carrie Harris, Deputy Executive Officer
Sabina Knight, Board Legal Representative
Allison Lee, Board Project Manager
Marcene Melliza, Board Analyst

1. Agenda Item #1, CALL TO ORDER/ ROLL CALL/ ESTABLISHMENT OF QUORUM

Lisa Thong, Board President, called the meeting to order at 9:14 a.m. and confirmed the presence of a quorum.

2. Agenda Item #2, BOARD PRESIDENT'S OPENING REMARKS

Ms. Thong reminded everyone that the Board's mission and purview is consumer safety. This is the lens through which all Board matters are discussed.

3. Agenda Item #3, BOARD MEMBER REMARKS – Informational only

Board Members wished everyone well and stated they looked forward to returning to work in this New Year.

4. Agenda Item #4, DISCUSSION AND POSSIBLE APPROVAL OF DECEMBER 7, 2020, BOARD MEETING MINUTES

Ms. Thong referred to Agenda Item 14, Closed Session, and asked to strike the sentence "Ms. Thong stated no action was taken" and stated the meeting adjourned immediately after the closed session.

MOTION: Ms. Crabtree moved to approve the December 7, 2020, California State Board of Barbering and Cosmetology Meeting Minutes as presented. Mr. Weeks seconded. Motion carried 7 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Crabtree, Drabkin, Matos, Pham, Thong, Tran, and Weeks.

5. **Agenda Item #5, EXECUTIVE OFFICER'S REPORT**

Licensing Statistics
Examination Statistics
Disciplinary Review Committee Statistics
Enforcement Statistics
Budget Updates
Outreach Updates
Practice Status Survey Results
Sunset Review Update
COVID-19 Update on Impact of Board Operations

Kristy Underwood, Executive Officer, congratulated Mr. Weeks on his reappointment to the Board by the Senate. She reviewed the statistics and update reports, which were included in the meeting packet, as follows:

- The rate of applications received has gone down.
- The Governor's stay-at-home orders have increased the number of complaints received.
- The Governor proposed a fee waiver in the Governor's Budget for licensees for the next two years as part of COVID-19 economic relief. The Governor's Budget is not yet finalized. Until then, licensees should continue to pay their fees.
 - Ms. Underwood suggested inviting a representative from the California Department of Consumer Affairs (DCA) to review how the fee waiver will work.
 - A Q&A section on the fee waiver has been added to the website.

Questions and Discussion

Mr. Drabkin referred to page 4 of 14 in the meeting packet, Written Exam Results by Language, and stated the cosmetology Spanish pass rate for apprentice programs is similar to school programs but the English pass rate is tremendously lower. He asked if there was a reason for the drop in the English pass rate for apprentice programs.

Ms. Underwood stated, because the examinations are delayed due to the Governor's stay-at-home orders, individuals are being examined who have been either out of the apprentice program or out of school for quite some time. Also, the number of students taking the exam is low.

Mr. Drabkin asked for an update on the upcoming Sunset Review Hearing.

Ms. Underwood stated the hearing is anticipated in late February or March. She stated a quick Board meeting may be required to approve the Board's responses to anything received from the Sunset Committee.

6. **Agenda Item #6, DISCUSSION AND POSSIBLE RECOMMENDATIONS ON OPTIONS TO ADDRESS CURRENT PRACTICAL EXAMINATION BACKLOG**

Ms. Underwood stated approximately 7,000 applicants are waiting to take the examination. Electrologists will have priority since they have been waiting the longest

and then individuals whose examinations were canceled due to the COVID-19 pandemic. Exam sites will continue at half-capacity to maintain social distancing for the safety of candidates and examiners. She welcomed Tami Stokes, President, National Interstate Council of State Boards of Cosmetology (NIC), who was invited to this meeting to help suggest solutions to this issue.

Ms. Stokes stated the NIC will implement remote training for new Board staff in mid-February. In addition, the NIC has created a remote practical exam to help with the backlog. Approximately 200 certified NIC examiners across the nation are willing to help California respond to this backlog by administering remote practical exams for six to eight weeks. She stated she will work with staff on implementation details.

Questions and Discussion

Mr. Weeks stated he would rather that candidates be California-certified rather than certified for the state the NIC examiner is from. He asked if temporary locations can be located for practical exams such as salons that have unfortunately had to close due to the COVID-19 pandemic.

Ms. Underwood stated staff is looking at alternative possibilities such as using community college facilities, but the Board does not have the necessary staffing. Also, the national exam security protocols must be ensured at alternative locations.

Mr. Weeks asked if schools are continuing to turn out graduates.

Ms. Underwood stated schools are operating remotely.

Mr. Weeks stated a more fundamental concern on the examination process is that the 7,000 individuals in the queue only include individuals who have applied for testing. He stated there may be more applicants who have not yet applied since the testing had stopped due to the COVID-19 pandemic. He stated concern that there may be higher failure rates on the exam since applicants have been out of school for so long.

Ms. Underwood stated schools are offering refresher courses for their graduates.

Mr. Weeks stated other California state boards have licensing requirements such as medical, dental, contractors, real estate, insurance, etc. He asked if other state boards have adjusted their pass/fail criteria based on the late testing.

Ms. Underwood stated the Board is one of the few boards remaining that have a practical exam. Most of the other boards have continued testing throughout the shut-downs. The NIC has control over adjusting the pass/fail criteria.

Sabina Knight, Board Legal Representative, stated other boards have not adjusted their pass/fail rates. Some boards are working with testing vendors to extend their hours for test-takers.

Ms. Stokes agreed that no other states have lowered their pass rates. There is no basis to lower standards due to the consumer safety component. It is appropriate to offer refresher courses.

Mr. Weeks asked if the Board could sponsor refresher courses for individuals getting ready to take the exam.

Ms. Underwood stated the NIC webcast is posted on the website, which is the best refresher course available. She stated the Board could send information out to ensure that students review the webcast.

Public Comment

Wendy Cochran, Founder, California Aesthetic Alliance, and Founder, California Estheticians – Esthetician Advocacy, agreed with Mr. Weeks that the 7,000 figure does not include individuals who have not yet applied for the exam. The speaker stated some students have been waiting to take the exam for over a year and a half. Thousands of dollars of their education are being wasted. The speaker stated it is the job of the schools to graduate individuals who are competent, able, and ready to be licensed and enter into the workplace. The speaker asked why the California Bureau for Private Postsecondary Education (BPPE) and the schools are not standing up for students by asking for a temporary lifting of the practical examination to get these people into the job market and helping the economy. The speaker asked for an emergency order lifting the practical examination.

Dana Elise, Owner, Dana Elise Solutions, stated they are currently working in collaboration with the electrolysis schools and the American Institute of Education to help electrologists kickstart their careers. The schools provide qualified, competent individuals and the collaborative commits to hire the students upon graduation. They are placed under strict supervision and receive rigorous training. The speaker agreed that a written exam should be mandatory but stated the practical exam should be eliminated since schools should not allow students to graduate without the skills needed to perform professionally and it is not appropriate at this time of the COVID-19 pandemic. The speaker spoke in opposition to lowering the standards.

Fred Jones, Legal Counsel, Professional Beauty Federation of California (PBFC), stated the practical exam is in statute and it would take a legislative change to eliminate that requirement. Aggregate scoring, which is embedded in statute, may require a waiver of regulation, but it allows students who do well on the practical portion to make up for a poor score on the written portion. Schools are invested in their students passing the exam – their licensing depends upon it. Most responsible schools are offering refresher courses for students who have been waiting for months to take the exam.

Fred Jones stated the PBFC is resistant to eliminating the practical portion of the exam. Practical skills are most important to determine if services can safely be provided to consumers. The amount of theoretical knowledge does not matter if students cannot put that knowledge into practice while providing services. The speaker suggested moving back to aggregate scoring of the exam, which will emphasize those practical skills.

Caycee, a manicurist graduate who graduated in November of 2020, asked about the options for the practical exam.

Wendy Cochran reminded everyone that, under the emergency order, somehow the state was able to suspend the fact that individuals can only work under the roof of a licensed establishment so they could now work outside. The speaker asked why it would be out of the question for the state to provide an emergency order requesting to suspend the practical exam if the Board is one of the only agencies in the DCA that offers a practical. The speaker asked the Board to request suspension of the practical exam under an emergency order.

7. Agenda Item #7, UPDATE FROM THE DECEMBER 18, 2020, HEALTH AND SAFETY ADVISORY COMMITTEE MEETING

Ms. Underwood stated the Health and Safety Advisory Committee met on December 18th to discuss updating the Health and Safety Rules and Regulations. The Advisory Committee focused on revising the regulations so they are practical and easier to understand while still protecting consumers. The Advisory Committee will further discuss the regulation revisions at future meetings and recommendations will then be brought before the Board for approval.

8. Agenda Item #8, UPDATE FROM THE JANUARY 12, 2021, LEGISLATIVE AND BUDGET COMMITTEE

Ms. Underwood stated the Legislative and Budget Committee met on January 12th to discuss the possible recommendations regarding future legislative changes and instructor requirements for board-approved private schools.

9. Agenda Item #9, LEGISLATIVE AND BUDGET COMMITTEE RECOMMENDATION: SUPPORT: DELEGATE AUTHORITY TO THE EXECUTIVE OFFICER TO PURSUE CONVERSATIONS WITH THE LEGISLATURE REGARDING AUTHORITY OVER SCHOOLS AND INCREASED REQUIREMENTS FOR INSTRUCTORS

Ms. Underwood stated the Legislative and Budget Committee recommended that the Board authorize the Executive Officer to pursue conversations with the Legislature regarding authority over schools and increased requirements for instructors.

Mr. Drabkin moved the Committee recommendation. Ms. Crabtree seconded.

Public Comment

Fred Jones stated the PBFC encourages the Board to ask policy-makers to expand the externship program as a means of addressing the barriers-to-entry concerns expressed by some legislators.

Fred Jones stated an issue that needs to be addressed this year by the Legislature is a provision within Assembly Bill 5, dealing with the right of salons to utilize independent contractors. The original bill was written with a two-year sunset on the ability of nail salons to be treated equally to allow them to utilize independent contractors within their salons. That expires at the end of this year. The speaker asked the Board to support the PBFC's efforts to request either as part of the Sunset Review process or a standalone bill to at least extend if not remove the nail salon sunset so all licensed professionals are treated equally.

MOTION: Mr. Drabkin moved to authorize the Executive Officer to pursue conversations with the Legislature regarding authority over schools and increased requirements for instructors. Ms. Crabtree seconded. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Crabtree, Drabkin, Matos, Pham, Thong, Tran, Weeks, and Williams.

10. Agenda Item #10, UPDATE FROM THE JANUARY 21, 2021, APPRENTICESHIP TASK FORCE MEETING

Ms. Underwood stated the Apprenticeship Task Force, established at the last Board meeting, met on January 21st to discuss possible regulatory changes to the Apprenticeship Program. The Task Force included program sponsors. Recommendations were made to include additional individuals on the Task Force at future meetings. The Task Force will further discuss the regulation revisions at future meetings and recommendations will then be brought before the Board for approval. The next meeting is scheduled for February 18th.

11. Agenda Item #11, DISCUSSION AND POSSIBLE ACTION REGARDING RULEMAKING PROPOSALS

- **Update on Status Regarding Rulemaking Proposal to Amend Title 16, CCR, section 950.10 (Transfer of Credit or Training)**
- **Update on Status Regarding Rulemaking Proposal to Amend Title 16, CCR section 961 (Instructional Materials-NIC Guides)**
- **Update on Status Regarding Rulemaking Proposal to Amend Title 16, CCR sections 962, 962.1 and 962.2 (Externs)**
- **Update on Status Regarding Rulemaking Proposal to Add Title 16, CCR section 965.2 (Personal Service Permit)**
- **Update on Status Regarding Rulemaking Proposal to Amend Title 16, CCR sections 970 and 971 (Substantial Relationship Criteria, Criteria for Rehabilitation)**
- **Update on Status Regarding Rulemaking Proposal to Amend Title 16, CCR section 972 (Disciplinary Guidelines)**
- **Update on Status Regarding Rulemaking Proposal to Amend Title 16, CCR section 974.1 (Disciplinary Review Committee)**

Ms. Underwood stated the Personal Service Permit and the Substantial Relationship Criteria Regulation Packages are officially with the Office of Administrative Law. The Transfer of Credit, Externs, Disciplinary Guidelines, and Disciplinary Review Committee Regulation Packages are currently under internal review.

Ms. Underwood asked for approval on changes made to Title 16, CCR Section 961, Instructional Materials.

MOTION: Ms. Crabtree moved to approve the proposed text for a 45-day public comment period and delegate to the Executive Officer the authority to adopt the proposed regulatory changes if there are no adverse comments received during the public comment period, to follow established procedures and processes in doing so, and delegate to the Executive Officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file. Mr. Drabkin seconded. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board members voted "Yes": Crabtree, Drabkin, Matos, Pham, Thong, Tran, Weeks, and Williams.

Public Comment

Rod Hatefi stated they were surprised that the Board is passing the new rule to allow personal services to be conducted outside the salon while licensees are currently abiding by the rules and not working while freelancers are doing hair out of garages and homes. It is hard to believe that tax-paying salons are being put to the side while freelancers are given the advantage during this time of restriction. Members of the public should know that licensed professionals cannot come to a consumer's home to do their hair. The proper place to do hair where it is inspected and monitored is at a licensed hair salon.

Michelle Saunders, licensed cosmetologist, owner of a nail salon, and mobile celebrity manicurist, stated it is safe to perform beauty services in homes.

Fred Jones stated Hollywood has an exemption as do shut-ins. Other than those exemptions, it is illegal to work outside of a licensed establishment for monetary gain. The Board has put out notices to that effect in recent months. The speaker stated the Legislature has mandated that the Board adopt a Personal Service Permit to allow for limited freelancing work outside of safe, well-regulated, and inspected establishments. The speaker encouraged salon owners who are concerned to look at the regulatory language being adopted. The Board has done their best to be responsible in protecting the consumer of these services but the decision for a Personal Service Permit was made by the Governor and the Legislature.

12. Agenda Item #12, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Fred Jones stated the PBFC has worked to develop an effort to get money into the pockets of licensees by partnering with an SBA-approved lender and created an online portal with a 1-800 phone number assistance to help individuals through the Paycheck Protection Program (PPP) process. Nearly 11,000 licensed professionals have started the process to take advantage of this online portal. \$100 million is projected to be put into the pockets of desperate licensed professionals. The vast majority of that will be fully forgivable.

Fred Jones stated the PBFC filed a lawsuit against the Governor to reopen safe salons and has put together a coalition of restaurants and salons to refile a federal lawsuit. The PBFC has done its best to defend, promote, and assist this industry.

13. Agenda Item #13, SUGGESTION FOR FUTURE AGENDA ITEMS

Mr. Matos suggested a discussion on booking apps used in the state and how to regulate the usage of those apps to licensed professionals.

Ms. Pham suggested learning more about NIC's online version of the practical exam and how it compared to an in-person practical exam.

Ms. Thong suggested a data analysis on the practical exam scores to match up the pass/fail rates with citations and whether or not there is a bearing on health and safety violations for citations based on how high an individual scored on their practical.

14. Agenda Item #14, ADJOURNMENT

Ms. Underwood stated Board Members Andrew Drabkin, Lisa Thong, and Dr. Kari Williams have termed out. She thanked them for their service and wished them well.

There being no further business, the meeting was adjourned at 10:53 a.m.