

**BOARD OF BARBERING AND COSMETOLOGY**

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**Board of Barbering and Cosmetology***San Diego State Building***1350 Front Street****Room B-109****San Diego, CA 92101****December 15, 2003****MINUTES****BOARD MEMBERS PRESENT:**

Dr. Della M. Condon, President  
 Mr. Joe Gonzalez, Vice President  
 Mr. Waddell M. Herron, Ph.D., Public Member  
 Mr. Richard Hedges, Public Member  
 Ms. Kim P. McInnes, Professional Member  
 Ms. Angela J. Reddock, Public Member

**STAFF MEMBERS PRESENT:**

Cindy Walton, Interim Executive Officer  
 Administrative Law Judge Greer Knoff  
 Marion Welch, Supervising Examiner  
 Angelica Flores, Associate Governmental  
 Program Analyst  
 Margie Shea, Staff Services Analyst  
 Hallie Fisher, Licensing & Policy Manager  
 James Jacobs, Supervising Inspector  
 Albert Balingit, Staff Counsel  
 Thalia Singleton, Executive Assistant

**BOARD MEMBERS ABSENT:**

Ms. Del Anderson, Public Member  
 Ms. Bonnie G. LaChappa, Public Member

**◆ CALL TO ORDER**

President Condon called the meeting to order at 9:30 a.m.. She greeted the audience and then asked the Board members to introduce themselves. Vice-President Joe Gonzalez, President Condon, Mr. Herron, Mr. Hedges and Ms. McInnes introduced themselves. Ms. Cindy Walton then introduced herself and the Board staff present. Ms. Walton then turned the meeting over to Administrative Law Judge Greer Knoff.

**◆ PETITIONS FOR REINSTATEMENT****Reinstatements**

MIDDLETON, Joseph Rea	Pending
NGUYEN, Donna Kim	Pending
LE, Phuong Tu-Huynh	Denied
NGUYEN, Thanh Thi	Pending

**◆ COMMENTS FROM MR. RICHARD POLANCO**

Mr. Polanco asked that his comments be entered into the record. He said his comments were in reference to a letter dated December 11<sup>th</sup>, 2003 to the Board from the Deputy Director of Legal Affairs

of this Bureau, Cyrus Rickerds, of General Services. Mr. Polanco quoted the second paragraph of the letter which states: "As you are aware the Department of General Services entered into a lease agreement at the direction of the Executive Officer of the Board." Mr. Polanco wished to clarify that the Board of Barbering and Cosmetology does not currently have an Executive Officer. He therefore concluded that the directive to enter into a lease could not have been given by the Executive Officer. Mr. Polanco said that the next question should be who gave the directive and did the Board of Barbering and Cosmetology approve the actions taken? Mr. Polanco went on to state that he had found that the directive was given by the Interim Executive Officer, Ms. Cindy Walton and that the directive was given without authorization or approval from the Board. He said that, in fact, the Board had opposed the move to the Glendale site. Mr. Polanco quoted a section from the third paragraph of the letter: "This site was found by both DGS . . . and DCA . . . to meet Board's specifications." Mr. Polanco stated that this wasn't true. He said that to date the Board had not issued specifications for site improvements. He said that the Board meeting and Board agenda would confirm this. He believed that the specifications were that of the Bureau. Mr. Polanco wanted to know why the Board would be kept in the dark on this matter. He believes that only representatives from DGS and DCA and the former Executive Officer of the Bureau can answer that question and said that they will either to the Board, to a legislative oversight committee or the Bureau of State Audits. He said that unless the issue was resolved between DGS, DCA and the Board it would be taken elsewhere for a remedy. Mr. Polanco quoted another section of the letter: "It [the lease] was properly legal- it was properly and legally approved by DCA and at the DCA's direction, the DGS entered into a legal binding lease on behalf of the Board in August of 2003." Mr. Polanco asked how the Department of Consumer Affairs could bind the Board into a lease when the Board had no knowledge that it was a party to a contract. Mr. Polanco added that the letter said the Board's lease would commence in January of 2004 and that it would be responsible for approximately \$3.6 million dollars in lease payments and \$830,000 in tenant improvements. He said, that the terms and conditions of the lease agreement were never supported or agreed to by the Board. Mr. Polanco read a section from the third paragraph of the letter which said: "The problem now facing facing all three entities, the Department of Consumer Affairs, Department of General Services, and this Board is that to date the Board has refused to locate into the newly leased Glendale facility." Mr. Polanco objected to this, stating that the letter makes it sound as if the Board was the cause of the problem, when, he said, the genesis of the problem is the former Director of the Department of Consumer Affairs, the former Executive Officer of the Bureau and the Interim Executive Officer who appeared to intentionally violated the Legislature's intent pertaining to the issue of relocating the testing site. Mr. Polanco stated that the Budget Hearings of 2002 and the Budget control language prohibit such a relocation and therefore prohibit the spending of over \$3 million dollars. Mr. Polanco quotes the letter: "There is no legitimate basis to void the lease." He declared this to be wrong. He said the lease was negotiated without the Board's authorization or knowledge. He said the lease was signed and the board had no knowledge they were a party to the agreement until after the fact. Mr. Polanco went on to state that the lease was signed by public officials who had full knowledge of the legislature's intent to prohibit such an action. He said that the public officials must be held accountable and that he believes there is legitimate basis to undo the lease. Again, Mr. Polanco quoted the letter in which it stated, "Cancellation of the lease would result in the Board paying the landlord significant sums of money, particularly since there does not appear to be any legitimate basis to void the lease." He said that the Board was being railroaded and asked that it not be allowed. Mr. Polanco asked the Legal Counsel to prevent the Board from being left "holding the bag". Mr. Polanco then quoted the letter again: "As to Board members being subject to individual personal liability under the Government Code and the Budget Act and the finding of California Supreme Court Decision of 1997 on the issue of exercising due care by public officials." He argued that the Board did not authorize any expenditures so how could they be held liable? He said he hopes that the Department of General Services will have a change of heart and work with the Board to undo the lease. Mr. Polanco pointed out that the Board voted not to support the expenditure of the Glendale site at its first meeting. Mr. Polanco stated that the Chairperson of the Board was aware that the expenditure could be invalid because she had participated in the legislative hearings where the community and support groups attended in opposition to a possible expenditure. She also participated in the advisory level to the Bureau and she opposed the move and therefore opposed the expenditures for the improvements and the lease. Mr. Polanco stated that the Board was never given the opportunity to exercise the standard of due care from this

issue. He claimed that it was the mission and intent of public officials from the Department of Consumer Affairs and the Department of General Services and the Bureau to steam roll the expenditure over the Board and the Legislature. He claimed that they did not inform the Legislature because they knew what they were doing was wrong. He recommended that the Board direct Legal Counsel to move forward in gathering facts that could help undo the lease. He also recommended that the Board direct counsel to contact DGS so that they could work with the Board to void the lease. Mr. Polanco also suggested that the Board should give serious consideration in contacting the appropriate Legislative Oversight Committee and inform them that the Board intends to honor the will of the Legislature as it pertains to the issue of relocating the test site.

#### ◆ **ADJOURNMENT – LUNCH**

#### ◆ **CHANGES TO AGENDA**

President Condon suggested that the Board make some changes to the agenda. She suggested that the Board take agenda item numbers 12 and 14 and then number 11 since items 12 and 14 have an impact on any decisions. The Board agreed.

#### ◆ **ANNOUNCEMENTS AND REMARKS**

President Condon commented that she had received a letter from a young woman sharing some concerns about the exam site. Following the letter, President Condon visited the exam site and she thought that the staff was operating effectively and efficiently and that the students seemed to be enjoying themselves. She said that she thinks the facility is serving the Board “very, very well.” She then asked the Board members if they had any announcements or remarks.

Ms. Reddock announced that she had relocated her business office and that she would forward that information to Ms. Walton.

Mr. Hedges asked that the staff send the young woman who wrote the letter a response to let her know that the Board had investigated and the situation had been remedied. President Condon informed Mr. Hedges that the Board staff had already prepared a letter and were mailing it soon.

President Condon announced Ms. McInnes would like to join the Enforcement and Inspections Subcommittee.

Vice-President Gonzalez asked a question regarding the minutes from a meeting on September 29<sup>th</sup>. He wanted to know if there had been any reports to the Audit Commission. Ms. Walton, Interim Executive Officer answered that the first report had been sent on April 4<sup>th</sup> and was followed by one dated May 27<sup>th</sup> and December 12, 2003.

There were no other announcements or remarks.

#### ◆ **UPDATE ON RECRUITMENT OF THE EXECUTIVE OFFICER**

President Condon said that the committee members, including herself and Vice-President Gonzalez and Mr. Hedges, had received a list of applicants. President Condon said that there was a large number of applicants and they would be holding interviews before and after the holidays. There were no questions regarding this process.

#### ◆ **AGGREGATE SCORING TASK FORCE REPORT**

Vice-President Gonzalez reported that the task force meeting had a good turnout and there were a lot of good ideas exchanged.

President Condon shared her opinion that it was very unfortunate that people who were very skilled with their hands would fail the written test by a couple points. She did say, however, that they didn't want to compromise the integrity of the written test because it was important that licensees know how to solve problems and understand chemicals. She went on to discuss the importance of the way the written tests are constructed. She shared Dr. Tracy Farrell's recommendation which was that the Board's primary issue is the protection of the safety of the public and to allow good technicians to get into the industry. President Condon said that many of the groups involved recommended that the Board look at the practical exam and the sanitation portion of the exam to see if the applicant had performed in a safe and sanitary manner. If they passed that portion of the exam but had missed the written exam anywhere from 1 to 5 points they can have anywhere from 1 to 5 points from the practical exam applied to the written exam and that would allow them to pass. President Condon said that from an instructor's point of view this change would really create an emphasis in the instruction on sanitation and safety. President Condon relayed that the Board's psychometrician was comfortable with that recommendation. She asked if anyone would be interested in making a motion to institute a new regulation.

Mr. Hedges said he would be interested in making that motion. Before he did though he wanted to comment on the task force meeting. He said he felt very good about the meeting. He felt that nobody wanted to dilute the test but to make a difference for those people that were close. Mr. Hedges then motioned that the Board accept the suggestions made at the meeting on the 29<sup>th</sup> at Riverside and alter the scoring of the exams to follow for those exceptions.

President Condon stated that the motion had been made and asked if they had a second.

Mr. Hedges said he would second.

President Condon stated that the motion had been made and seconded and that she had a question. She asked for clarification on the motion. She asked, "to allow those exceptions, are you relating to the process that I just described?" Mr. Hedges responded that he was. President Condon then asked if there were any comments or questions on the motion from the Board.

Mr. Balingit asked if the Board could enunciate the motion for the staff as to exactly what the motion is instead of just incorporating it by reference.

Mr. Hedges said that the motion is to amend the method of scoring to allow for up to five points from the practical exam to be applied to the written exam with the proviso that the Board isolate the sanitation sections of the test.

President Condon asked if everyone understood the motion. She asked if the five points applied to the written exam would still retain the minimum score for passing the written exam. The response was yes.

There was some confusion and discussion on the motion. Mr. Hedges clarified that the motion was to allow the five points from the practical exam—after isolating the sanitation portion of the exam—and that the applicant had demonstrated a proficiency in the sanitation portion of the test, so that the applicant could carry 5 points over from the practical to the written so long as they did well on the sanitation.

The question was asked what the standard would be for the sanitation portion. The response was that there is a standard.

President Condon then asked for comments from the Board. Vice-President Gonzalez said, "I second it". President Condon stated that a motion had been made and seconded. She then opened the discussion for comments from the Board members.

Vice-President Gonzalez asked Mr. Balingit if that is clear. Mr. Balingit said "that's pretty clear".

Dr. Farrell said that the Office of Examination (OER) recommendation is two-fold, One: to allow up to a five point carryover and two: to use criteria reference testing methodology. She said that simply allowing a five point carryover is not psychometrically sound and it couldn't be supported by OER. She said the recommendation is contingent upon those two pieces and that it is employing criterion referenced testing that is establishing a minimum passing score for each new form of the exam and that it is to be in compliance with Section 139 of the Business and Professions Code as well as testing standards. She said that so far the Board had only discussed one piece of the recommendation.

Mr. Hedges stated that he would accept a friendly amendment in order to clarify the motion. President Condon said she would like to hear recommendations from Dr. Farrell.

Dr. Farrell suggested that the pass point on each part of the examination shall be determined for each form of the examination by a criterion referenced passing score procedure, which is that the passing score is based on entry level performance and it's determined by subject matter experts. It's not arbitrary and it's not set in your regulations. It's something that will vary depending upon the difficulty she said. Dr. Farrell went on to state that her office recommends that the Board change its regulations to simply state that the passing score should be determined by a criterion referenced methodology and that up to five points from the practical portion that addresses disinfection and sanitation be allowed to carry over from the practical to the written exam.

President Condon asked if the amendment should be reworded to say criterion referenced testing as the model. Dr. Ferrel said that it could be worded that way. President Condon then asked Mr. Hedges if he would accept that as a friendly amendment. He said he would absolutely accept it. Vice-President Gonzalez seconded it. President Condon asked those in favor of the amendment to signify by saying Aye. Several voices said "Aye." President Condon asked for those opposed. None were opposed. President Condon then announced that they would allow comment before voting on the motion.

Vivian Ashtel Gruders of San Diego spoke on the issue. Ms. Gruders asked for clarification on the point totals for the sanitation and disinfection portions of the test. President Condon informed Ms. Gruders that the applicant would have to have attained a passing score on the sanitation section and pass it in the practical. Ms. Gruders said she thought it was still a little confusing and that she would like to see a little more study done on the subject in order to see if they could be a little more definite with it.

Patricia Jones, also spoke on the issue. Ms. Jones thinks that the testing should be left as it is because she said that she thinks that a level of professionalism is what the industry is missing. She thought that a lot of the problems people run into are because they don't understand the regulations. Ms. Jones thinks the scores are too low already. In short, Ms. Jones was opposed to aggregate scoring.

Mark Moreno spoke on the issue next. Mr. Moreno asked for clarification on the motion. He said that Dr. Farrell's memo indicated that the Board can require an applicant to achieve a passing score on one part of the exam before taking the other part of the exam and he wanted to know if this was part of the motion. He also wanted to know if the memo in general was a part of the motion. He wanted to know if the memorandum meant that the applicant had to pass the practical before they could take the written or does it mean sections of each test? He also asked if the applicant received a minimum score on the disinfection and sanitation portion of the test if that would eliminate the five point carryover. President Condon said that it was her understanding that if the applicant passed the patron protection and sanitation portion of the exam by whatever score is determined to be passing then those five points would be available to add to the written score. President Condon added that the applicant also needed to pass the practical exam. Mr. Moreno asked if the five extra points must come from "that one area or from the entire . . . test". President Condon said it doesn't matter where they come from, that the five points are just given, that the five points aren't taken away from one portion and thereby lowering their score in that section.

Another individual, Rachel Furman spoke after Mr. Moreno. She felt that instead of discussing aggregate scoring the Board should be working on new curriculum and to look at the test to see if it's too easy or too hard.

President Condon said that they'd be happy to articulate the plan once the Board makes a final motion and then that could be shared with the students and the schools. The Board wasn't sure which direction it would go so they could not formally specify the score protocol.

President Condon asked if someone was ready to call for the question. Mr. Hedges called for the question, and President Condon asked for those in favor of the motion signify by saying "aye". Voices responded by saying "aye". Ms. Reddock opposed. There were no abstentions. President Condon announced that the motion had carried.

#### ◆ **COMMENTS FROM MR. JOSEPH, INTERIM DIRECTOR OF DCA**

President Condon then said she would like to amend the agenda and address agenda item Number 13. President Condon announced that Mr. Joseph, the Interim Director of the Department of Consumer Affairs was there and called him forward to speak.

Mr. Joseph thanked President Condon and members of the Board for extending an opportunity for him to speak given the tightness of his schedule and their busy schedule. He introduced himself as the Interim Director of the Department of Consumer Affairs. He stated that he had only been in his position for a week and that five days ago, he was not aware of the Glendale facility site issue. However, he has become familiar with it since. He added that his role here is not one of attacking the merits of this particular site, or to argue on behalf of the site or argue against it. He indicated that what he wanted to do was offer was some perspective on the situation that presents itself to the Board, Department of Consumer Affairs (DCA) and the Department of General Services (DGS). Mr. Joseph said that it was his understanding that the search for a new site had been ongoing for about 10 years in order to meet the growing applicant load. Mr. Joseph said that there had been 19 separate properties looked at east of the 605 which is the demarcation point of interest. Mr. Joseph said that page two of Kathleen Hamilton's letter to President Condon had not been available earlier but that he'd like to read it into the record. Before he did though he pointed out that Mr. Polanco's letter indicated that Mr. Goldstene's testimony cited student safety as a real concern for the need to move. A review of his testimony indicates that he made no such comment. He said that accordingly there was no need to provide evidence such as a Police report to support his position. Mr. Joseph also said that Mr. Polanco's letter indicated that there was strong opposition to the Bureau's proposal when, in fact, there was only one speaker at a Budget Subcommittee Hearing who spoke in favor of locating the testing facility in another location. He also stated that not a single communication had ever been received either by DCA or by the Bureau that opposed the Bureau's finally securing a location to handle the Barbering and Cosmetology exams. Mr. Joseph said that Mr. Polanco's statement that the committee approved Budget control language clearly stating that if the Bureau is going to establish a new testing facility it must be east of the 605 Freeway is inaccurate. Mr. Joseph said that prior to enactment of the 2002 Budget Act, a May 30<sup>th</sup> 2002 amendment to the Senate version did contain language that would have required the Bureau to work with an Advisory Board to determine the location of the examination facility in Southern California. However, the language was not approved by the full Budget Committee and wasn't included in the Budget Act. Mr. Joseph provided a copy of SB-1261 which highlighted the proposed control language and a copy of the Budget Act. According to Mr. Joseph, Senator Polanco, while serving as chair of the Budget Subcommittee, informally requested that the Bureau expand the search area to include sites east of the 605 Freeway, which the Bureau did as a matter of courtesy. Mr. Joseph pointed out that there has never been a requirement that the site be located in any particular area. Mr. Joseph also said that we take exception to Mr. Polanco's assertion that the Bureau did not follow the intent of the Legislature. He said that those allegations are categorically untrue. He said that Mr. Polanco's statements not only impugn the work and integrity of the Bureau, they also misstate the Legislative intent. Mr. Joseph also claimed that the Bureau's attempts to fulfill Mr. Polanco's requests actually slowed the process of opening a new testing site thereby depriving new graduates the

opportunity to practice their new occupation in a timely fashion. He claimed that the Bureau did exactly what Mr. Polanco had requested. Mr. Joseph said that with regard to Mr. Tyler's communication that the DCA engages in unilateral behind-the-scenes deals is offensive and obviously inaccurate. He said that the process by which State buildings are leased is a public and neutral one that is subject to multiple layers of review and approval through State Government. Mr. Joseph went on to point out that the information given to the board that the new testing site has 1/3 the capacity of the existing site is inaccurate. He said the new site is actually 5,000 square feet larger and has a greater capacity than the current site. It also meets the parking requirements established in the site selection specifications. Mr. Joseph said he would also like to address a letter that had been written by Mr. Cyrus Rickerds, Deputy Director of Legal Affairs in the Department of General Services. Mr. Joseph says that the letters spells out the legal implications of not moving forward with the lease. Mr. Joseph said that failure to honor the lease could effect all the people who participated including this Board, its predecessor, the Bureau, the Department of Consumer Affairs and the Department of General Services. Mr. Joseph said that the Board of Barbering and Cosmetology may be beholden to the terms of the contract even if the Board doesn't move into the building. He said that the total amount could reach \$4.2 million dollars, which could be mitigated if the Lessor is able to find a new tenant.

Mr. Joseph said that all State entities have a responsibility to the public treasury generally and especially in difficult fiscal times. Mr. Joseph said that ultimately Mr. Rickerds presents the question or the burden that failure to perform on the contract could present personal liabilities to all those who breach the contract in place. Mr. Joseph said that Mr. Rickerds' letter cites both statutory and case law that support his finding. Mr. Joseph said that puts a tremendous burden far beyond what any Board member serving the public should face. Mr. Joseph also pointed out that the current month-to-month lease at the Wilshire Boulevard facility is set to terminate in August of 2004 and there is a chance that the Lessor could terminate the occupancy relationship with the Board which would result in the Board not having a facility in which to conduct exams. Mr. Joseph said that he understood that the facility was not one the Board would choose and that it wasn't to their liking but that breaching the contract would present a much more serious problem to the students, applicants and potentially themselves.

President Condon thanked Mr. Joseph for his time and for coming. She said that she wanted to share a few things with him. She said that California is in dire economic straits and that it's important to make good financial decisions. President Condon said that the lease was a very poor financial decision. She also said that the information that had been shared with Mr. Joseph was inaccurate and that he was not aware of the true circumstances of the issue. President Condon said that the landlord of the Los Angeles site is willing to renegotiate the current lease which is less than half the cost of the new lease without the expenditure of almost a million dollars. She then said that the Board never took the position to break a long held lease. President Condon said that the Board never had the opportunity to exercise the duty of care in relation to the lease because it was kept from them. President Condon said that she had found a number of statutes in the Legislature that had been broken by members of DCA staff. She also said that the letter from Mr. Rickerds is full of incorrect information. She disagreed that the Board had ever made a statement indicating that the Board refused to honor the lease. She said that the Board has simply asked that an appropriate site be found. President Condon said there was a lot of information that had not been shared with Mr. Joseph and that was really unpleasant. She said that she had a recommended resolution. She said that first, she does not hold DGS responsible. She said that DGS was given incorrect information and she believed she knew who was responsible for giving them that information. President Condon said she recommends that with the support of the Board and its legal staff, they develop a list of questions on the issue and submit those questions to the Attorney General's Office because she believed that the legal staff of DCA has an interest in protecting itself as does the legal staff at DGS. She said she believed that they needed to go to the Attorney General's Office and ask for an investigation into how this happened and what the responsibilities of the Board would be for a contract that was kept from them. She recommended that they abide by the advice of the Attorney General's Office.

Mr. Joseph said that he would be happy to pursue President Condon's recommendation. He said he was concerned about the timing as to how that might work but that he would look into the matter. He

pointed out that the Board had a conflict in the way President Condon presented the recommendation in that the legal counsel for the Board is also part of the legal counsel of DCA. Mr. Joseph believed that any attorney in DCA would be objective but he recognized President Condon's concern. Mr. Joseph said he was concerned by the allegations that certain employees of DCA had violated a statute or have broken a law. He said he would like to pursue that with them at a separate time.

Vice-President Gonzalez said that on December 3<sup>rd</sup> or 4<sup>th</sup> he received a phone call at 3:00 p.m. from the Director of DCA who spoke to him for an hour and a half in an attempt to change his mind about a motion that had been made. According to Vice-President Gonzalez, the Director of the DCA said she was going to call each of the Board members. He said he was advised to inform Legal that he had been contacted by the Director. Vice-President Gonzalez said that he had seen the Los Angeles site and didn't find anything wrong with it. Vice-President Gonzalez said that a lot of the information that the Board and the public had received was false. Vice-President Gonzalez reiterated his opinion that he would like to have the matter turned over to the Attorney General's Office and that he would like to ask Legal how to handle the situation. He thinks it was wrong for a state official to contact a member of the Board.

Mr. Joseph accepted what Vice-President Gonzalez stated about the facilities because he had not seen either himself. However, Mr. Joseph pointed out that when Vice-President Gonzalez stated that the current facility is adequate, that is a matter of preference, that it is his viewpoint and that clearly over the past ten years there had been other viewpoints.

Vice-President Gonzalez responded that he thought that's what his position called for.

Mr. Joseph said he appreciated Vice-President Gonzalez's position. Mr. Joseph said that he was also part of the Medical Board of California and so he understood the Board's responsibilities. He said that a Board inherits certain events, decisions and policy directions that were promulgated prior to that Board being appointed or particular members being appointed. He said that sometimes those events do need to go forward and pointed out that they would set a course that would someday be inherited by their successors. Mr. Joseph said he appreciated that Vice-President Gonzalez felt that the new lease was an ill-advised procurement but that Vice-President Gonzalez' predecessors had a different point of view which was as legitimate at that time as his was now.

Vice-President Gonzalez said that the Director wanted him to contact the Board members and to change their minds and felt those legalities needed to be addressed and that to continually try to drain the budget for reasons that the Board couldn't see is uncalled for.

Mr. Joseph reminded Vice-President Gonzalez that a procurement process started by their predecessors is not illegal, it is within their rights, and their authorities as they found it to be appropriate to procure additional or different facilities for their program.

Vice-President Gonzalez stated that they would just have to agree to disagree on that matter.

Mr. Hedges said that he was appointed to the Board in February and for a long time was the only appointee. He said that he had many conversations with Mr. Goldstene and that over a long period of time he was never told about this situation. Mr. Hedges said that it seemed to him that such a consequential issue should have been raised with a Board member if for no other reason than to try to get them on their side. Mr. Hedges said that the Board had its first meeting on the 11<sup>th</sup> and that the lease was finally and completely consummated on the 11<sup>th</sup> but that he still didn't find out about it until the following Board meeting. Mr. Hedges said that at the very least he thought this was sloppy.

Vice-President Gonzalez said that he agreed with the Board Chairperson's suggestion to have an impartial third party try to resolve this issue rather than trying to resolve the issue there. He said he would like to have a mediator or an arbitrator decide the issue.

Mr. Joseph agreed that this was a good idea but said there were still two issues to discuss. One issue is how they would resolve, go forward, how do they work cooperatively and effectively for the present and future. Mr. Joseph said he is a strong believer in bringing in anyone that could help with that. Mr. Joseph said the more immediate issue is the time issue in place—the lease that is in place.

There was additional discussion about the construction that is already taking place in the Glendale site.

President Condon said that as she sees it one individual is not culpable in what has occurred as far as she knows. She didn't think that an arbitrator would help them accomplish their goals. She said she thought that there were some constitutional wrongs. She said that the AG's Office should look into this issue because they don't represent DCA or DGS. She said again that she urges the Board to sit with legal counsel and identify the right questions to ask the AG.

Mr. Joseph restated that time is very short and that there is a lease.

The question was asked of Mr. Joseph if the Board could advise their legal counsel to make efforts to contact the landlord and ask them to stop work until a resolution has been reached. Mr. Joseph said he would not allow them to do that because he was going to DGS to determine if that contact had ever been made with the landlord. He said that it was a good question but that it fell inside the DGS realm. The question was then posed that the Board would really like is to find out if there is anyway they could stop things until a resolution had been reached. Mr. Joseph said that they would look into other legal options that week.

Angela Reddock asked what economical impact there would be if the contract was breached.

Mr. Joseph said that the Board should read Mr. Rickerds' letter very carefully because it may present economic damage to the Board and the Board members. He said they had to read carefully what it said about personal liability. Mr. Joseph explained that even if the Board disagrees with why the lease was ever signed it would be the current Board's actions which would be violating the lease and that it doesn't go back to the former Bureau because they were moving forward with the expectation of fulfillment of the lease. Angela Reddock said they should see if they could make contact with the landlord and if anything can be done legally and then ask an independent attorney to assess responsibility as the current Board.

Vice-President, Joe Gonzalez asked if there was a motion before the Board. President Condon answered no. An unidentified male said he would commit to doing that. There was a lot of discussion between unidentified persons. The meaning of the discussions is unclear.

Mr. Balingit said he believed that the President Condon had indicated that she would be willing to accept an impartial third party. Dr. Condon said that was incorrect, that the impartial third party is the AG's Office.

Mr. Balingit said that it takes two parties to adopt a resolution and asked if they were asking the Department to also live by the Attorney General's decision. President Condon said she believed the Board is willing to live by that. An unidentified male said that everyone could speak for themselves but that he personally would live with the recommendations. President Condon said she would too. An unidentified male said "yeah".

Mr. Joseph asked if that was their motion. President Condon said that yes, the motion had been made and if there was no public comment on the motion it would stand. An unidentified male said that they couldn't hear because a lot of people were leaving then. They had no idea what the motion was. President Condon said the motion is that she work with Mr. Balingit to develop a list of questions on the issue to be submitted to the Attorney General's Office. An unidentified male asked if the motion was going to the Attorney General to investigate or to arbitrate. President Condon said those questions needed to be developed and that she didn't want to state those questions there. She said that they

needed to feel free to work with her and Mr. Balingit, in whom she had confidence and trust, to develop the right questions and answers and if the Department would like to work with them in developing those questions.

Mr. Joseph asked if those questions asked would address whether or not the Attorney General sees options under the law different from the ones Mr. Rickerds saw. He said that if it was going in another direction that it could take 6 to 8 months to determine whether phone calls could be made or who did what. He reminded them that he had the concern of time.

President Condon said she heard his concern but didn't want to place Mr. Rickerds' letter as the basis for asking their questions because it was factually incorrect. She said the main question they would be addressing would be what is the Board's responsibility in relation to the lease and how it was arrived at. She said that given Mr. Balingit's comment that it takes two parties to agree to an outcome and if DCA is willing to accept the AG's opinion on the issues that Mr. Joseph could certainly assist them in formatting the questions.

Mr. Joseph said he would be happy to participate if that's what they would like. He said he didn't have the same level of distrust of Mr. Rickerds' factual foundations that made up his opinions. Mr. Joseph said for the record that at that time Mr. Rickerds' letter was the best legal advice that he had. Mr. Joseph said that even though he respected the Attorney General and that he looked forward to whether or not there is a contrary view, at that moment he felt he must represent the Department in a way that avoids the potential pitfalls.

Mr. Joseph said that the Department is not making a decision not to honor the contract. He said that a court of law looks at abrogation of the agreement as baseless for the Board and it is his responsibility to keep the State out of that position.

President Condon said she heard what he said and thanked him. She asked the Board if they wanted to vote on the motion.

Mr. Joseph asked if there was any public comment.

President Condon said that all in favor of the motion should signify by saying "Aye".

Board members said "Aye".

President Condon asked for those opposed and if there were any abstentions. The motion was carried. President Condon then said that because of time they should move on to Agenda Item Number 14. The Board agreed.

#### ◆ BOARD CONTRACTS PENDING REVIEW/APPROVAL BY THE BOARD

Ms. Walton told the Board that the first item for review and approval is the Experior contract. She informed them that it expired November 20<sup>th</sup> of that year and it needed their review and approval if they wanted to continue the contract.

President Condon asked the Experior representatives to come forward and state their names.

Ms. Nancy Vernon, Experior Assessment and Ms. Christine Benasy, Experior Assessment came forward and stated their names.

Ms. Vernon thanked President Condon for inviting them to attend the Board meeting. Ms. Vernon said that she had requested a meeting to address the Board's concerns about computer based testing and that she was looking forward to having that meeting. She said they were committed to working with the Board of Barbering and Cosmetology in the State of California. She said that once they'd had a

meeting and been able to understand the concerns of the Board they would like to submit a formal proposal.

President Condon asked if there were any questions.

Vice-President Joe Gonzalez asked if they would feel more comfortable sitting up at the table. They declined.

Vice-President Gonzalez said that there's a total of \$195,604. An unidentified female said that is correct. He also said that's for estimated candidates. Item number 1 is \$4,666 and there's 20-2800 (unclear) 40. He said the total estimate was for a six month period.

Vicki Phillips –Stout, (OER) said that no it was not. She said that the previous contract had expired November 30<sup>th</sup> of that year and they were currently providing services without a contract but that she was instructed to complete the term to January 31<sup>st</sup>, 2004 so the amount reflected services through January 31<sup>st</sup>.

Vice-President Gonzalez asked for clarification and Ms. Phillips-Stout said it was for a two month period. Mr. Gonzalez asked if that was for a two month period and he was told that is correct. He said that for two months it is \$195,604 and asked if that was correct. Ms. Phillips-Stout said that was correct.

Mr. Gonzalez said he went to a December 3<sup>rd</sup> memorandum to Cindy Walton, the subject is examination statistics, and computer-based examination. He said that on page 1 that the DDC survey results the total number of candidates tested 10,218. He asked if that was correct. An unidentified female said that those figures were for the six month period from June 1<sup>st</sup> through November 30<sup>th</sup>.

Vice-President Gonzalez asked what the yearly contract is and said the estimate isn't very clear.

Ms. Phillips-Stout said that when the Bureau of Barbering and Cosmetology was originally pursuing computer-based testing the estimated annual (unclear) was 30,000 and that included all candidates. They decided that 35,000 candidates could test because the candidates would be able to test sooner. She said that based upon those estimates the Department of Finance submitted a Budget Change Proposal for approximately 2 million dollars and that would cover examinations for 35,000 applicants. She said that the candidate population has been averaging 2,000 a month.

Vice-President Gonzalez said they were asking the Board to look at a two month request and he wanted to know what the total of the contract would be.

Ms. Phillips-Stout said he should take the two month figure and multiple it by six. Vice-President Gonzalez asked if she could do that and she said she couldn't at that time because she didn't have a calculator at that time. Vice-President Gonzalez said that if they were making a decision that day that it was important to know how much of the budget they would be spending.

Dr. Tracy Ferrel, Ph.D. said that the Board had adequate monies due to the BCP. She said they actually had two BCP's. One of them was done a number of years prior roughly in the amount of \$500,000 and there was another BCP in the amount of \$690,000 that was added to cover computer-based testing. She explained that the budget had been expanded to allow for ongoing examination development and computer-based testing. She apologized for not having the full six months but was advised that the Board was only moving forward for two months and that was why they had the agreement order. If they needed additional months, she said, they'd be happy to give them that information.

President Condon stated that the approval was just for the period ending in January and then they could consider a future contract with a different date. She said that was not made clear but that she now understands.

Dr. Ferrel said that their purpose was to give the statistics asked for in prior meetings to show the progress of computer-based testing and the overall impact on the candidate population.

Ms. Phillips-Stout said that if the contract were amended to extend the time period the costs would remain the same so they could take the two-month figure and multiple by six and the figure would be just under \$1.2 million dollars.

Vice-President Gonzalez asked if the \$1.2 million was for one year. He was told that is correct.

Ms. Phillips-Stout said that is only an encumbrance. The actual amount would depend upon how many examinations were delivered. The \$1.2 million is a budget cap.

Vice-President Gonzalez said he misunderstood. He believed they were there to discuss signing a contract for an entire year. He asked if they were talking about signing only through January.

Ms. Phillips-Stout said that the current contract goes through January but that she could give them figures that would take it through November 30<sup>th</sup> of 2004.

Vice-President Gonzalez asked to address that issue. He asked if they would be entering a three year contract.

Dr. Ferrel and Ms. Phillips-Stout told him that was not the case.

Dr. Ferrel said that the contract would be to November 30<sup>th</sup>, 2004. She said that the Master Services Agreement that had just been extended for an initial year and it expires November 30<sup>th</sup>, 2004. She said their other clients had added that additional time to their contract. She said that the Board of Barbering and Cosmetology had some questions about computer-based testing and only authorized an additional two months on the contract but that Experior would be happy to extend the contract to November 30<sup>th</sup>.

President Condon said that they are only considering the extension until January 31<sup>st</sup>, 2004 and that because of the agenda's length she recommend that someone make a motion to approve this contract through 2004 and then they would take up the successor contract or not in the future.

Richard Hedges said that he made a motion that they approve it. He said he makes a motion for the current contract through January 31<sup>st</sup>, 2004.

President Condon said that they had a motion that the current contract going from December 1<sup>st</sup>, 2003 go through January 31<sup>st</sup>, 2004 be approved and asked if they had a second.

Kim McInnes seconded the motion.

President Condon said it had been moved and seconded. She asked if there was any discussion by members of the Board and if there were any comments from the public.

Mary Mann, said that she had a question on behalf of the National Interstate Council of State Board's of Cosmetology (NIC). She then asked if there would be a request for a proposal.

President Condon said that it would be appropriate if they decide to enter into additional contracts for testing and that it would depend on whether or not they entered into any additional contracts or not.

Ms. Phillips-Stout explained that the current contract the Board had with Experior was through a Master Services Agreement and the benefit of an MSA is that you don't have to do an RFP. She said that if

they explore other bids that they would need to allow at least a year in order to get through the entire process.

Dr. Ferrel said she was assuming that they'd be looking at additional contracts at the January 26, 2004 meeting which would be five days prior to the expiration of the contract. She said that the vendor requires a 30-day notification if they choose to terminate.

President Condon asked for further comments from the public. She said a motion had been made and seconded. She asked that all in favor signify by saying "Aye".

Board members replied "aye".

Dr. Condon asked for those opposed.

Vice-President Gonzalez said he was opposed.

Dr. Condon asked for abstentions. The motion was carried. She said they should have some discussion and possible action regarding same-day testing and licensing. She said it was an agenda item on a previous meeting that resulted in a motion.

Dr. Condon asked if they were entertaining that motion.

Mr. Hedges said he didn't think they were in trouble with the previous motion, but would rather make it than argue about it and he would like to have that motion read again.

Dr. Condon said that it was okay and they could have the motion again by Ms. Walton. Ms. Walton asked that motion (unclear) back to them from last time.

Mr. Gonzalez said that they hadn't been graced with a copy of the minutes.

Ms. Walton asked if they had the motion from the last time.

Mr. Hedges said the same day testing motion.

Ms. Singleton said that it was made at the September 29<sup>th</sup> meeting.

Mr. Hedges then said it was the October meeting that they didn't have the meeting minutes. Ms. Singleton said that was because the minutes had not been completed for the October 26<sup>th</sup> and 27<sup>th</sup> meeting.

Ms. Walton said she remembered the Board had made a motion to initiate same-day testing/licensing in not less than 90 days but not more than 120 days. She asked if she was correct. Mr. Hedges said he believed she left one portion out. Ms. Walton asked which portion she left out and Mr. Hedges asked if she had a copy of it. Ms. Walton said she only had only part of it and that what she had said they were to initiate testing within 90 days and under no circumstances less than 120 days.

Mr. Hedges said that's a general comment of that.

Mr. Hedges said that he believed that what had been left out was that the Board return to statutory requirements of same-day testing.

President Condon said she thought that captured it.

Vice-President Gonzalez asked if both the practical and the written examination would be given on the same day to clarify. He was told by Mr. Hedges that was correct.

Mr. Hedges said that he would like to change the new motion to instead say it would be accomplished within 90 days.

Ms. Reddock asked if that was because of the time they had taken.

Mr. Hedges said because of the time that had passed.

Dr. Condon said that a motion had been made and asked if they had a second.

Mr. Hedges asked Mr. Balingit of a concern.

Mr. Balingit replied that satisfies it because it is (unclear) possible action regarding same-day testing and licensing and that (unclear) notes that the issue was going to be discussed.

Dr. Condon said that a motion had been made and seconded. She said there was no further discussion of the members of the Board and would open it up to the public.

An unidentified female said that her concern would be the people who had already taken the practical and who are waiting for their written date. She said that some of her students had to wait four months for a practical or a written test. She was concerned about where they would have to take the test. She said she loved the (unclear) testing but that she would like to know what happens to the interim group that has taken the practical already.

Dr. Condon said she was sure that the staff would work out those glitches. She then called on Dr. Ferrel to speak.

Dr. Ferrel said that her information pertained to Agenda Item No. 12. She said that based upon information she had gathered from within the Board staff, other staff in DCA and OIS the projected time frame for switching away from computer-based testing would be a minimum of four months. She said that it was very important for the Board to be clear in terms of their expectations because it could mean going back to paper and pencil testing and it could not. She said that if it does they would be looking at a long way in terms of the Information Technology group to undo things, to print tests, to hire proctors and that's one of the reasons why her office wanted the Board to be aware of the interest in Experior and the commitment to sit down and work with them to explore same-day testing and licensing. She said she was very concerned with the 90 days considering that state of contracting, hiring, budget and all the other logistics. She said she thought it would place a tremendous burden on the Board staff to do that and that a number of issues needed to be looked at more fully. She said she thought it was premature to set a 90-day time limit.

Mr. Waddell Harris asked Dr. Ferrel if she was referring to time to take the test.

Dr. Ferrel said no. She said that right now the system is programmed so that applicant's test results are transmitted into an applicant tracking system and their eligibility is submitted to Experior. She said that there is a very involved system in place that produces the license and that system would have to be changed and based upon her research it would be very difficult to do in 90 days. Dr. Ferrel told the Board that they had done some research at the Board's direction and she wanted to point out that the issue isn't as simple as it sounds.

Mr. Hedges said that the original motion at their last meeting was for 90 days but that the same argument was made so they had extended it to 120 days. He said there had been some time lapse now so those days should have been generated toward working on this.

Dr. Ferrel said that they had steps outlined but in terms of actually implementing them they would need more direction because of state proctors, budget and contracting issues. She said that if the Board would allow more time, meet with Experior and discuss concerns about same-day testing they could work together to meet the goal but it would require more time.

Dr. Condon said there was someone else who wished to speak and that they had to be out of there at a certain time.

Ms. Phillips-Stout said that if the Board wanted to revert to paper and pencil testing and licensure they should know that they would be very limited in the number of candidates they could examine and that it would not be near what they were currently accomplishing.

Dr. Condon asked if that meant cutting the wait down to two months instead of eight months.

Ms. Phillips-Stout said she didn't see how that could be –

Dr. Condon said something inaudibly.

Ms. Phillips-Stout said the wait time is not related to CBT.

Ms. Reddock asked what the turn around time would be for grading exams and if that is extended.

Ms. Phillips-Stout said they'd still receive their results right there on the site (inaudible).

Mr. Hedges said that he had trouble with that and he asked if she was saying that computer-based testing is excluded from use if they have same-day testing.

Ms. Phillips-Stout said that was not necessarily the case. She said they were hoping that the Board would consider continuing computer-based testing and they were not hearing that that could happen in 90 days. She said that the Board was talking about undoing information technology systems which once done away with will take even longer to get them back. She said they needed to think of their direction.

Dr. Condon said they had another member of the public that wished to speak.

An unidentified female said they were told that the switch to computer-based testing would mean that applicants would be licensed in a maximum of 14 weeks. She said that the computer-based testing was supposed to speed up the process. She said the reality of the situation is that all these people need to go to work. She said the (unclear) not to wait this amount of time is ludicrous. She said it was ridiculous that people were pushing pencils and looking at statistics and saying it was going to take so and so and such and such to turn the system around.

Ms. Vernon said she would like to state that computer testing is a product that Experior does have available and they work with other states to deliver same-day products. She said there were some many points of the chain between Experior and California and they were working with Dr. Ferrel and Ms. Phillips-Stout staff to determine ways to reduce the time between education and licensure. She said there is a lot to look at but it can be done. They just need to work with OER.

Mr. Mark Moreno asked if she was saying that computer-based testing can be placed within the facility so that there can be same-day licensing.

Ms. Vernon said that those are pieces that can be considered. It's just a matter of working with OER.

Vice-President Gonzalez asked if she could give him the names of one or two states that are using their tests currently and that he assumed there were at least one or two.

Ms. Vernon told him there are 18 states that Experior is currently administering tests in. She said that the only state that specifically says they want same-day examinations is Maryland.

Vice-President Gonzalez asked if they have same day testing now and he was told they do.

Mr. Moreno asked if there would be an adjustment in the \$195,000 figure (unclear) facility versus 7 that the –

Ms. Vernon said the details would need to be looked at thoroughly if they were going to discuss what a contract would look like.

Dr. Condon thanked her very much. She said that if there were no further comments from the public she would seek comments from the Board. She asked if there was any discussion.

Ms. Reddock said she respected the motion but also heard what the staff and what the industry was saying. She said they should work together and make it happen and not be unreasonable in their expectations and not shoot themselves in the foot by trying to make something happen and along the way end up making the process slower. She said that with all due respect to the 90 days she would be interested to hear what the staff had to say about what could be reasonably done.

Mr. Hedges said that he thought they could leave the motion as it is and they could give them time if they absolutely needed it but that he would like to get this issue on the road (unclear) between last time and (unclear).

Mr. Gonzalez said that the question was asked at the October 26<sup>th</sup> and 27<sup>th</sup> meeting and they were told 90 days. He said they did ask the staff and they said 120 days and that was 2 months ago. He said it seemed like that was fine and that here they were 2 months later and he hoped that all 120 days that's less 60.

Ms. Hallies Fisher said that with all due respect to Mr. Gonzalez, they had met with members of DCA and it's initiated some of the action towards the motion that was made on October 26<sup>th</sup> but on the advice of legal counsel who told them it was not a valid motion because it was made outside the Open Meeting Act they were directed not to proceed until a formal motion could be made and was appropriately noticed to the public which is why they basically lost those 60 days.

Dr. Condon found that fascinating. As did Mr. Gonzalez.

Dr. Condon thanked Ms. Fisher for making that information available.

Mr. Moreno said the time is 6 months to return to paper testing and same-day licensing. He asked how long it would take Experior to come in and have computer-base same-day licensing.

Ms. Vernon said that was a good question that would require (unclear) significant research.

Dr. Condon said the comment needed to be noted and thanked Mr. Moreno for making an astute observation.

A person name Libby Bruce didn't understand why the Board couldn't go back to paper and pencil testing. She asked why they didn't have that still in effect.

Dr. Condon said she appreciated that and that Mr. Moreno's question was really on point. She said they were going to be thrown out of the room pretty soon because of the time of day and that they would need to conclude the motion. She asked if they were ready to take votes. She said that all in favor should signify by saying "aye". Several voices said "aye". Dr. Condon asked if there were any opposed and for abstentions. An unidentified female said something inaudibly. Dr. Condon said there was one abstention and the motion was carried. She said she'd like to ask (unclear) it was critical to move on one or two contracts that day.

Ms. Walton said that she felt a critical contract was a janitorial service and that they really did need to renew the contract.

Dr. Condon asked her if she could give a summation of the contract.

Ms. Walton said it is a pretty general contract where the janitorial service would dump garbage and clean bathrooms.

Vice-President Gonzalez asked if they had received bids.

Ms. Walton said that the Department's contract unit typically gets three bids and this was the lowest bid.

Mr. Balingit said he wanted to clarify that something must have been miscommunicated because it was represented that he had advised the Board, the staff not to proceed with that but his advice was to the Board on this issue so there must have some kind of miscommunication he said.

Dr. Condon asked if there were any further comments on this motion. Ms. Reddock moved that they renew the contract with B & C Janitorial Services. Vice-President Gonzalez seconded the motion. Dr. Condon announced that the motion had been moved and seconded and asked if there was anyone from the public that wishes to comment on the janitorial contract. She asked if the question had been called for and Mr. Hedges questioned it. Dr. Condon asked for those in favor of the motion to say "aye". Voices replied "aye". She asked for those opposed and for abstentions. There were none and Dr. Condon announced that the motion had carried.

Mr. Hedges said he wanted to go over the minutes from the September 15<sup>th</sup> meeting.

There was some discussion about issues that need to be worked out between unidentified persons. Mr. Balingit pointed out that the 100 day limit would run out in 5 or 6 days.

Dr. Ferrel asked if they could cover "15" before going into closed session because she wanted to present the Board with some reports.

Dr. Condon said she could give present them but asked her to do so in under two minutes.

Dr. Ferrel presented the Board with validation reports for the electrologist, esthetician and manicurist professions and told them they were now in compliance with Section 139. She said she had copies for each Board member and said she encourages them to distribute them to the public when they choose to adopt them. They update the scopes of practice, can be used in schools and should be used to update the exam plans and should be provide information to the campuses she said.

Vice-President Gonzalez asked the staff who advised them to stop the initiation of a program within the 120 days.

Ms. Fisher said they had not stopped. She said they had conducted meetings but the Department would not go forward until the Board had been advised through Mr. Balingit that this motion was outside the Open Meeting Act and that they were not to proceed until a formal motion could be made with the appropriate notice to the public.

Vice-President Gonzalez asked for clarification. He said, that the request at the Board meeting was stopped.

Ms. Fisher said it was not stopped but that there are other players involved besides just the Board of Barbering and Cosmetology. She said there is the OER and the OIS who maintains all of the computer systems and they have to have a formal request and they could not proceed until it was properly noticed to the public.

Mr. Balingit was asked for comment. He said that all his communications on this matter was put in a memo to them but that unfortunately he did not have – He said that he did not have the authority to rescind that motion.

Ms. Fisher said they were prepared to present an update on the progress toward same-day testing and licensing. She said they do have a timeline, a work plan and they have redirected staff in order to evaluate applicants and get candidates ready. She said she had an entire presentation ready for them but that they hadn't given her the opportunity to give them an update.

Ms. Reddock asked Dr. Condon if it would be possible for a committee to take the issue up with staff.

Dr. Condon said that was a good idea and suggested that the licensing and examination sub-committee meet with staff and take the update. She apologized for not having time to hear the presentation. She also apologized to Mr. Hedges for not having the time to look at the meeting minutes from September 15<sup>th</sup>. Mr. Hedges agreed to move on to the proposed decisions in closed session. [tape ends]