



MEETING OF THE BOARD OF BARBERING AND COSMETOLOGY

MINUTES OF APRIL 20, 2008

Department of Consumer Affairs
1625 North Market Blvd.
Sacramento, CA 95834

BOARD MEMBERS PRESENT

Jerry Tyler, President
Richard Hedges, Vice President
Deedee Crossett
Socorro Farias
Frank Lloyd
Ken Williams

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Denise Johnson, Assistant Executive Officer
Theresa Rister, Board Analyst
Janene Mayberry, Admin. Asst.
LaVonne Powell, Legal Counsel

BOARD MEMBERS ABSENT:

Jerri Ann Walters
Marlene Gadinis

1. **Agenda Item #1, CALL TO ORDER/ROLL CALL**

Mr. Tyler called the meeting to order at 10:10 a.m. The roll was called. The board members and staff members present introduced themselves.

2. **Agenda Item, #2, PRESIDENT'S REPORT**

Mr. Tyler reported on his activities in the last quarter. He attended two media events for public outreach. He received a lot of positive phone calls following the events. He also attended a multicultural event in Southern California. It was very well attended. He noted all these events provide a good balance between consumer protection and furthering the interest of the industry. He continues to write the articles for California Stylist. The articles are also inserted into magazines in Texas, Ohio and Kentucky. California is being recognized as a leader. He thanked Ms. Underwood for her excellent editing. He also commended the board for their positive extensive work from all areas of the industry.

3. Agenda Item #3, EXECUTIVE OFFICER'S REPORT

Ms. Underwood provided updates for the board. Enforcement of AB 409 has resulted in suspension of 18 licensees. Unlicensed activity sweep in San Francisco was recently conducted. Out of 19 salons, 6 were unlicensed establishments, and 10 of them employed unlicensed individuals. 19 individuals were cited for unlicensed activity during this sweep. A press conference was held at Ms. Crossett's facility. Sweeps have been conducted in Sacramento and more will be done in the Southern California area in the next few months. Ms. Underwood reported Kari Frank has been named as the new licensing manager.

4. Agenda Item, #4, DEPARTMENT OF CONSUMER AFFAIRS REPORT (DCA)

None presented.

5. Agenda Item #5, APPROVAL OF BOARD MEETING MINUTES FOR JANUARY 13-14, 2008:

Upon a motion by Mr. Hedges, seconded by Mr. Williams, the minutes were approved by a 6-0 vote.

6. Agenda Item #6, REVIEW OF LICENSING STATISTICS

Ms. Underwood reviewed the licensing workload. The timespan is 6-8 weeks for licensing. Mr. Tyler expressed concern that the pass rate for the written examination has decreased to 69%. School funding is tied in to pass rates. Ms. Crossett noted the statistics include private and public schools.

Mr. Williams asked what the turnaround time was for a student to reschedule the written exam if they did not pass. Ms. Underwood stated it is 2-4 weeks. Once their check has cleared they can call the testing site and reschedule.

7. Agenda Item #7, DECISION ON ADOPTING THE NATIONAL EXAM

Ms. Underwood discussed the cost of the national exam and different options available. She noted the budget (to be discussed in Item 10) includes an ending balance of \$276,000 which is not enough to cover the increase in expenditures to go to the national exam. A budget change proposal process would have to be undertaken. Ms. Underwood noted the new fee increase took place in January so there has not been a full fiscal year with the fee increase. The budget has not yet stabilized. Mr. Hedges stated he initially believed the national exam would save money. He did not want to tamper with the budget and the need for new inspectors. He recommended the national exam decision be delayed until the budget stabilizes. Mr. Lloyd agreed. Ms. Underwood explained the national exam would be a new fee but was not included in the fee increase in January. Mr. Williams stated the national exam was more updated and relevant than the current exam. He stated it would be prudent to be able to provide the new test to the students; it may also

improve the pass/fail rate. Ms. Underwood agreed and stated the exams need to be updated no matter what. Ms. Crossett recommended asking NIC for a deeper discount due to the volume of the state.

Public Comment:

Kirby Morris, NIC, agreed the pricing can be discussed further. They have offered \$10/exam charge for the first year as opposed to \$15. He noted he could not go below \$7.80 at this time because that amount goes towards test development shared by all participating states. He believed it could be extended for 3 years. He stated he will bring the issue to his board in the near future. He agreed the California exams need to be updated. He wondered if PSI would decrease their fees if the national exam was used. Mr. Morris noted he also works for PSI who has the master contract for computer based testing. Ms. Underwood stated that PSI is a master contract and we are only a part of that contract. Ms. Underwood stated she will run the numbers with the possible lower fee. However, the budget change proposal will still need to be done.

Fred Jones, of PBFC, clarified their support of the national exam. "It was based on relevance, not on cost." He hoped there was more flexibility in the numbers presented. He noted the national exam is updated more frequently (yearly) than the exam offered by the state (3-5 years). He recommended Ms. Underwood meet with NIC and develop more concrete numbers.

Mr. Tyler stated he also supported the national exam because of its current relevance. It is updated yearly and has a global influence. Fiscal responsibility needs to be followed. Enforcement still needs to be emphasized.

Mr. Morris noted the increase in cost is usually covered by the student. However, Ms. Underwood noted the fees were recently increased.

Mr. Hedges made the motion to allow the board's budget to stabilize and make the determination to adopt the national exam in the spring of 2009, if negotiations with NIC and BBC staff reduce the cost of testing to comply with BBC's budget needs.

Ms. Underwood reiterated a budget change proposal (BCP) would need to be done. They are done one year in advance. Ms. Underwood stated it can be done at this time regardless of the board's decision to get the process started. However, Ms. Underwood was concerned about presenting two BCPs to the Department of Finance (one for the national exam and one for more inspectors). Ms. Crossett clarified if the board waits until 2009 to approve the national exam; it won't be available until 2010. By then, the current California exam will be out of the 3-5 year window to be updated. Ms. Underwood stated it is too soon to see the impact of the new fee increase on the budget.

Mr. Morris agreed to support whatever the board decides. He agreed inspections should be emphasized and the board needs to be fiscally responsible. He noted students can also take the national exam if they plan on moving.

Mr. Williams seconded the motion made by Mr. Hedges. The motion passed by a 6-0 vote.

8. **Agenda Item #8, DISCUSSION ON HAIR ENHANCEMENTS AND BRAIDING**

Mr. Tyler noted hair enhancement is the largest growing area in the industry. It is also growing internationally. Mr. Williams agreed and noted it needs to be regulated to ensure consumer protection. Incorrect procedures can cause many problems. Ms. Crossett noted there is a lot of fraud in the field. Human hair prices have increased due to a global shortage. 90% of the hair is purchased by the client.

Public Comment:

Hanna Carter has created an alternative for the consumer to restore their healthy hair. Her methods have been very successful over the past 10 years. Her institute has developed programs to address safety and health of the consumer. She specializes in reconstruction using natural products. They are directed toward both consumers and licensees. She noted braiders and hairweavers need professional training. She believed California needs to regulate the profession and offer certification. She believed it should be part of the cosmetology license. She stated her institute offers an intense 3 day training focusing on sterilization and safety. She believed practitioners of braiding and hair enhancement would have more respect if the board had regulations.

Mr. Tyler noted hair enhancement can improve dignity. Mr. Tyler passed around samples of hair said to be human hair. At this point there is no controlling authority to ensure it is 100% human hair. Mr. Tyler requested truth in advertising of the hair, providing MSDS (contents of the product). One of his samples was actually camel hair; this could affect someone with allergies. Braiding is the number one source of hair loss in the African American culture. All aspects must be understood such as circulation, hair follicles, etc. Proper education is needed and a possible certification with minimal training. Mr. Williams has developed a curriculum in braiding at his school. Mr. Tyler pointed out the average braid has 100-400 braids. They are secured by lighting and melting plastic. The resulting carcinogenic Dioxin is breathed in by the clients and braiders. The public needs to be educated.

Mr. Tyler made the motion to work with staff and the board 1) to develop regulation on what's being sold as human hair, 2) Work and move forward with developing certification to certify braiders so they can have dignity, work within their scope of practice, and 3) use outreach to educate the consumer.

Mr. Hedges was concerned if labeling was preempted by federal law. He agreed braiders should be certified and regulated fully as cosmetologists.

LaVonne Powell, Legal counsel noted the board cannot regulate manufacturers. She recommended focusing on licenses and educating consumers. She stated any decisions by the board need to be agendized to accept public input. She stated there are regulatory, statutory and political issues in the braiding industry that the board needs to consider. She recommended gathering empirical evidence (i.e. lawsuits).

Mr. Hedges asked the topics of labeling, braiding and safety be added to the agenda for August. He noted labeling is also a hot topic in the nail industry.

9. Agenda Item #9, REVIEW OF DRC STATISTICS AND SCHEDULE

Ms. Underwood gave brief summary regarding DRC Statistics. She has discussed with the Department of Consumer Affairs how to proceed after the Board is sunsetted. Mr. Hedges and Mr. Lloyd stated that they are committed to doing whatever it takes to delete the backlog. Mr. Williams asked about feedback regarding cite and fine. Ms. Underwood commented that it is too early to tell but that it should eventually cut the DRC process a lot. Mr. Tyler stated that the new cite and fine process has received good reviews from people in the industry.

10. Agenda Item #10, BUDGET UPDATE

Ms. Underwood gave brief update.

11. Agenda Item #11, PROPOSED REGULATIONS UPDATE

The following proposed regulations and their status were reviewed by staff and discussed by the Board: Summary of Suspension (AB409) (Formal rulemaking approved by OAL on 4/18/08. Regulations will be codified 5/16/08), Schedule of Administrative fines (Approved by OAL 3/24/08. Regulations will be codified 4/25/08), Interpreter and Interpreter Model (Preparing final rulemaking file), Externship Curriculum (Drafting Notice), Cosmetology Curriculum (Preparing final rulemaking file. Pending Board approval of revised language), Esthetician Curriculum (Preparing final rulemaking file. Pending Board approval of revised language), Manicuring Curriculum (Preparing final rulemaking file. Pending Board approval of revised language), Electrology Curriculum (Drafting Notice. Pending Board approval of revised language), Barbering Curriculum (Withdrew and currently revising Notice. Pending Board approval of revised language).

Public Comment:

Inaudible

12. Agenda Item #12, PROPOSED LEGISLATION UPDATE

Updates were provided for the following Legislation.

AB 518-Barbering and Cosmetology Threading- Oppose

AB 865-State Agencies Live Customer Service Agents- Support

AB 2689-Vietnamese Nail Worker Information and Training Act- Mr. Lloyd made the motion to support AB 2689. It was seconded by Mr. Hedges and approved by a 6-0 vote.

AB 2746-Private Postsecondary Education: California Private Postsecondary Education Act of 2008- Mr. Hedges made the motion to oppose AB 2746 unless amended to allow the Board resources for oversight and authority. It was seconded by Mr. Williams and approved by a 5-1 (Crossett) vote.

SB 797-Professions and Vocations- This bill is due to be amended.

SB 963-Regulatory Boards: Operations/Removal of Board Members (Will be heavily amended; several boards oppose)- Mr. Hedges made the motion to oppose SB 963. It was seconded by Ms. Crossett and approved by a 6-0 vote.

SB 1579-Medical Referrals- Mr. Hedges made the motion to watch SB 1579. It was seconded by Ms. Crossett and approved by a 6-0 vote.

Public Comment

Fred Jones of PBFC commented on AB 2689. He states that since we have an exam in another language that we should have Material Safety Data Sheets in the Vietnamese language. Negotiations are occurring on AB 2746. He believes that it is foolish to have dual oversight of this. On the subject of SB 1579, he gave a brief summary of this bill. He believes this new bill will give an incentive to the stylist for hair replacement referrals.

Vincent of Skyline College commented that he did much research when looking for a school and that there are many schools out there doing fraudulent things. A student could go into debt for the tuition from a school that did not provide a proper education because they did not have the proper information prior to enrollment.

Linda Flores of the California Cosmetology Association commented on SB 1579 and stated she believes we should not support this bill. She thinks she may jeopardize her license by referring a client to a specific person.

Ms. Crossett believes that the Board cannot handle the oversight of school. She stated that there is much fraud occurring and that the students need to be protected.

13. Agenda Item #13, REVIEW AND APPROVAL OF REVISED REGULATORY LANGUAGE

- Approval of Modified Language for Cosmetology Curriculum: Ms. Underwood reviewed the regulatory language in the cosmetology curriculum and recent changes. Ms. Crossett noted the language requires 1600 hours with 100 allowable hours of absences. She did not believe this was appropriate.

Public Comment:

Peter Westbrook, Riverside City College, did not believe the language "would not stand the test" the way it was written. He wondered where the 100 missed hours come from. He noted his students cannot miss more than 8% or they have to take a semester off.

Mr. Hedges recommended striking Item "d" from the language. It was agreed it should be left up to the schools. Ms. Crossett made a motion to delete Item "d" from all license types. Mr. Williams seconded the motion. It was approved by a 3-0-2 (Lloyd, Tyler) vote. It will now go out for a 15 day notice.

- Approval of Final Statement of Reasons and Modified Language for Esthetician Curriculum and Manicuring Curriculum: Public hearings have been held on this language. Upon a motion by Mr. Hedges and seconded by Mr. Williams, it was voted 5-0 to accept the final statement of reasons for Esthetician and Manicuring Curriculums excluding section "d". To clarify, legal counsel restated Mr. Hedge's motion as approval to accept the public comments for Esthetician Curriculum and Manicuring Curriculum. It was voted by a 5-0 vote.

14. Agenda Item #14, CONSUMER OUTREACH CAMPAIGN UPDATE

Ms. Underwood discussed a brief overview of the recent events attended by staff. Ms. Crossett was on a radio show hosted by David Horowitz. She talked about how consumers can protect themselves and what to look for in a healthy spa/salon environment. Mr. Hedges attended the Skyline's President's Meeting in April. He will also attend the May 5th open house at Skyline.

15. Agenda Item #15, INDUSTRY OUTREACH CAMPAIGN UPDATE

Ms. Underwood discussed a listing of the industry trade shows that staff has attended and will be attending in the future. Mr. Tyler noted he was interviewed by Viet Salon Magazine.

16. Agenda Item #16, REVIEW OF ENFORCEMENT STATISTICS

Enforcement statistics from January-March 2008 were presented in the board packet.

17. Agenda Items #17, REVIEW OF SELF-INSPECTION

The self-inspection sheet was presented with the changes incorporated from last month's meeting suggestions. Once approved it will be printed and translated. The board agreed the form was well done. It will help the licensees know the things to look for. Upon a motion by Mr. Lloyd, seconded by Mr. Tyler, it was voted 5-0 to approve the self inspection sheet.

18. Agenda Item #18, STATUS OF BOARD SUNSET

Ms. Underwood reported the status remains the same. The board is expected to sunset June 30. Legal counsel stated the sunset of this board was inadvertent. If the sunset proceeds, the board will remain in an advisory capacity.

19. Agenda Item #19, DISCUSSION ON PERMANENT MAKE-UP

Ms. Underwood stated the laws and regulations need to be clarified regarding permanent make-up. Legal counsel believed language can be developed to clarify the regulations for licensees and protect them. They are currently regulated by the county. Staff will bring back a proposal to the advisory committee. Legal counsel recommended holding off on the discussion until the proposed language was developed.

Public Comment:

Marjorie Grimm stated she has developed the regulations for Santa Clara County for body art, which encompasses tattooing, piercing and permanent cosmetics. The focus is on blood borne pathogen identifications. There is no test at this time. She noted the current regulations of the board place limitations on cosmetology acts, and permanent make up is not a cosmetology act but is regulated by the Department of Health at the county level. She hoped a compromise could be reached with the board that permanent cosmetics can be performed by a board licensee. She clarified her position that an esthetician and cosmetologist should be able to coexist. It could be financially detrimental to many people. She stated many people are being cited and asked when the board may be able to make a determination. She had many emails from fellow owners who had received cease and desist emails. It was recommended she forward her information to Ms. Underwood and her staff. Mr. Hedges recommended her fellow owners appeal their citations.

Roseann Cloud is not a licensee and operates an independent salon. She does only permanent cosmetics. She stated the board's decision will not affect her personally. She also would like to see a sign posted saying the "Board of Cosmetology does not regulate the procedures conducted in this room. Permanent cosmetics is governed by the health department." This would eliminate confusion. She did not believe the board should mandate a separate facility, as it would be very expensive for salon owners.

Debbie Walker is a salon owner. She has designated rooms in her salon, which are separated as the permanent cosmetic clinic, away from the salon. She stated it would be costly for some owners to have separate rooms. She supported the idea of a sign or even changing rooms to work with different activities.

Fred Jones of PBFC recommended the inspectors be allowed to check for licenses by the county. (Legal counsel stated this would be not possible.)

Peter Westbrook believed the operator needs to remove their license in order to not be out of scope of practice. They must explain this to the consumer.

Kirby Morris noted NIC offers two levels of examinations for permanent make-up certification. He recommended looking at Virginia.

The Board agreed this issue needs to be further discussed in detail. Mr. Hedges recommended hearing from the inspectors. Legal counsel questioned how much the board can regulate an operator if they are doing something not in the scope of practice but licensed by another agency.

20. Agenda Item #20, APPROVAL OF NEW TEXTBOOK

- Salon Fundamentals Nails-A Resource for Your Nail Care Career 2007 – First Edition Privot Point International Inc.: This textbook has been approved by staff and subject matter experts. Ms. Crossett noted the new textbooks are not always relevant to the tests, because the tests are due for renewal. This has been an ongoing complaint. Upon a motion by Mr. Lloyd, seconded by Mr. Williams, it was voted 4-0-1 (Crossett), Salon Fundamentals Nails-A Resource for Your Nail Care Career 2007 – First Edition Privot Point International Inc. Mr. Williams stated he typically keeps the older textbooks for supplemental knowledge.

21. Agenda Item #21, PUBLIC COMMENT

Kate Porter asked for clarification on the law using a smoother or remover when removing or smoothing calluses. She read an article that said metal files were no longer used. Mr. Hedges noted any abrasive metal can create an entryway for bacteria. Unfortunately, tools are not regulated. Ms. Porter noted the Business and Professions Code only says other device. She asked for it to be posted on the website. She also asked if she could display unlawful tools in a glass case to show her clients. Mr. Tyler recommended using photographs at this time, and the item will be placed on a future agenda.

Cynthia Melendez, Skyline Community College, asked that the topic of externships be placed on a future agenda. At Skyline College, students aren't able to participate in hands-on programs. Mr. Tyler recommended she speak with other community colleges and possibly get a partnership going to approach the legislature. Mr. Hedges recommended she speak with Richard Holliver, the president of the Community College Board.

David Hampton, Shasta School of Cosmetology, stated schools don't have anything to document their past/fail rate. This would be a good tool for students to use to choose a school to attend. He noted the board's web page on this is still under construction after 2 years.

22. Agenda Item #22, CLOSED SESSION TO DISCUSS ENFORCEMENT CASE

Decisions on Reinstatement and Disciplinary Cases.

23. Agenda Item #23, ADJOURNMENT

With no further business, the meeting was adjourned.