



State and Consumer Services Agency – Governor Edmund G. Brown Jr.

Board of Barbering and Cosmetology-Department of Consumer Affairs

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CALIFORNIA STATE BOARD OF BARBERING AND COSMETOLOGY

MINUTES OF JANUARY 21, 2011

**Doubletree Club Hotel
1515 Hotel Circle South
San Diego, CA 92108**

**Additional Meeting Location:
2406 Kalaniana'ole Ave. PH-11
Hilo, HI 96720**

BOARD MEMBERS PRESENT

Richard Hedges (via telephone)
Frank Lloyd Hilda
Ken Williams Gary
Christie Tran Theresa
Deedee Crossett
Marie Lemelle
Ted Nelson

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Youngblood, Assist. Executive Officer
Duke, Staff Counsel
Rister, Board Analyst

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

President Richard Hedges called the meeting to order. The board members and staff introduced themselves.

2. Agenda Item #2, PUBLIC COMMENT

David Van Dyke, Hilga Van Dyke Skin Care requested clarification on the Board's standing on the regulations regarding the highest percentage of glycolic that can be used by a professional. He was recently questioned by DCA regarding the ramifications of 70% glycolic being sold online. Ms. Crossett agreed the percentage was important but also indicated that it's the PH level that we should be concerned about. It was noted that the derma layer of the skin was not penetrated. Mr. Van Dyke believed a standard needed to be set to protect the public. Ms. Crossett agreed and stated they would be discussing the establishment of a technical advisory committee later in the agenda to further educate the inspectors. Mr. Van Dyke offered his assistance.

Adrian Jackson Wright, educator, introduced a new set of cosmetology textbooks and requested the board form a committee to review and approve the textbooks. She provided two textbooks for review. Ms. Underwood stated the policy was to provide 10 copies that are reviewed by a group of experts who would then make a recommendation to the board.

Amy Chow, provided information on the California Nail Salon Collaborative and its concerns. She would like to see more focusing on health and safety for the Asian community that would include more Vietnamese publications on the web and also suggested holding another town hall meeting.

Shari Davis of NCEA, supported the technical advisory board recommendation and offered her assistance.

3. Agenda Item, #3, BOARD PRESIDENT'S REPORT

Mr. Hedges discussed the booth rental license process. Additional funding could not be found for staff without legislation. Fred Jones of PBFC provided the framework.

Mr. Hedges reported he met with the DCA and OPES regarding further education on scoring methods for examination.

Mr. Hedges went on ride-alongs in December and was impressed by the inspectors' intelligence and dedication. He noted most inspectors had second jobs. The hiring freeze was still in place. He wanted to protect the inspectors and enable them to keep their cell phones in response to recent government directives.

Mr. Hedges noted he will not be running for Board president next election and recommended the positions be rotated among the members.

Public Comment

Fred Jones of PBFC thanked Mr. Hedges for his service as Board president. He also thanked all of the board members for their continuous work and long hours they have put in. He specially commended Mr. Lloyd for his service on the DRC.

Mr. Hedges reported this will be the last meetings for Mr. Nelson and Mr. Williams' as their appointments were expired. He commended both gentlemen for their work and input on the board. He hoped they would be available for the technical advisory committee.

4. Agenda Item #4, DCA DIRECTOR REPORT

Kim Kirchmeyer, DCA Deputy Director updated the Board on relevant activities of the DCA. She discussed the current transition, budget and hiring freeze. Inter-departmental transfers only are allowed. The Department is attempting to decrease cell phone usage per the executive order. They have asked all departments to submit their plans. She thanked Ms. Underwood for submitting her plan on time. She understood the field staff needed cell phones.

Ms. Kirchmeyer also discussed the Consumer Protection Enforcement Initiative. The department is gathering its second set of performance measurement and should be posted on the website in early February. She thanked the Board for posting the information online and providing the webcast.

Ms. Kirchmeyer discussed the implementation of the new BREEZE project, the replacement of the DCA licensing and enforcement system. The working sessions have been completed qualified vendors have been identified, and reviewed by subject matter experts. Final proposals are expected in February. BBC should be on board by the end of 2013. She thanked the Board and Ms. Underwood for allowing staff to work on the project.

Mr. Williams asked if the ability to pay online will be available. Ms. Kirchmeyer stated it would as well as the ability to check the status of a complaint or application.

Mr. Hedges thanked Ms. Kirchmeyer for recognizing Ms. Underwood. Ms. Kirchmeyer thanked Mr. Hedges for his direction of the board.

5. Agenda Item #5, SCORING METHODS FOR EXAMINATIONS – REGULATORY ACTION. Possible Action: Amendment to Section 932 of Article 4. Title 16, Division 9 of the California Code of Regulations

- Presentation by DCA's Office of Professional Examination Services

Bob Holmgren of the DCA OPES provided a detailed Power Point presentation of exam development and scoring methods. He spoke about various types of exams, background information, scoring items and combining scores. The DCA works on licensure exams which focus on job knowledge and readiness for safe independent practice. Minimum competence is tested. Single item exams test relevant content areas. He then discussed various tests and scoring factors. Standardization must be determined and followed. The criterion reference passing score (minimally acceptable competence) is used to determine the cut score. These scores are determined by subject matter experts, current licensees, who attend workshops given by the DCA. Mr. Holmgren provided an example using waiters and waitresses that is used during the workshops. The cut score is developed by determining the minimally acceptable competence, using the occupational analysis. Mr. Holmgren discussed the Cosmetology and Barbering exam cut scores from a mathematical perspective via graphs and charts.

In conclusion, Mr. Holmgren recommended an occupational analysis test plan and linkage with test questions. He recommended the use of the criterion reference to determine that passing score and standardize the scores. He recommended not using the aggregate scoring for barbers.

Board Comment

Ms. Crossett did not believe the model fit all learning types. Mr. Holmgren stated they used current licensees as subject matter experts to develop an examination and use appropriate language. The occupational analysis should specify the reading level required on the job. It will also determine the content areas and their relative weights. Ms. Crossett noted her concern was the weighting of the barbering vs. cosmetology. Mr. Holmgren explained from an exam development point of view, the manner of the question being asked (practical vs. written) is not as important as is the right question being asked. Are things being asked that are important on the job? Complaint analysis is a good resource to determine updated questions.

Mr. Hedges asked the percentage of barbers vs. percentage of cosmetologists. Ms. Underwood noted there are 273,374 cosmetologists and 21,530 barbers. The majority of inspectors are going to salons than barber shops. Barbers were cited for improper sanitation 18% of the time.

Mr. Hedges expressed his concerns about literacy requirements to read products and information after the test. Mr. Williams agreed this was a serious issue. A minimal reading threshold needs to be established to read labels and follow instructions. Ms. Crossett noted the top five violations for barbers were regarding health and safety. She believed minimal competencies should be set and the practical should prevail. Most accredited schools require GED or high school diploma. An entrance exam is required to test minimal competency.

Public Comment

Fred Jones of PBFC noted the board was not a policy making body. He agreed the practical shall prevail to determine competency because it is a practical hands-on industry. The subject matter experts write questions to determine the scope of practice to be a cosmetologist. They then determine which competency is tested better in a practical or written setting. He recommended one aggregate score that was weighted in favor of the practical. Only the barbers are in compliance with the law; they threatened a lawsuit when told aggregate scoring would be ended. He recommended the DCA talk to the legislature to take out the prevalency clause and reinstitute aggregate scoring. He recommended a minimum score on the written portion.

Jim Edwards with PBFC recalled aggregate scoring when one could ace the practical exam and not pass the written exam. When aggregate scoring was removed, the pass rate dropped and the unlicensed activity increased. He agreed with the reinstatement of aggregate scoring. He knew students who didn't pass the written then went to work unlicensed. He agreed to test for minimum competency. It was better to be licensed than working without a license.

Patti Gardner, a cosmetology instructor, believed the problem was at a school level where the books were written at a tenth grade level. The Los Angeles Times was written at a sixth grade level.

Peter Westbrook of RCC spoke in opposition of aggregate scoring according to the raw data presented. He noted the Board was tasked to look at public safety.

Mr. Nelson believed the barber exam does not completely go with aggregate scoring. The barber and cosmetology license should be equal with passing and/or failing.

Mr. Lloyd commented the practical exam would be very important to test on issues of health and safety. Ms. Underwood confirmed they were moving toward the new practical exam regardless of any new regulations.

Patti Gardner, an instructor, asked who would be chosen as subject matter experts and what the requirements would be. (Mr. Nelson noted the NIC would be in charge of developing the exam.)

Mr. Holmgren clarified what was meant by the practical shall prevail. He believed as long as a criterion based test score calculation was done, the amount of skill would prevail. Currently high scores in one competent area were compensating for low scores in another area. The test scores could be weighted but must first be standardized. The important portions of the job must be tested.

Mr. Hedges stated a test needed to be developed that ensured anyone working in the industry was minimally competent and still allowed the practical to prevail. He did not believe the Board needed to determine the numbers.

Ms. Crossett agreed this was important to protect the consumer. Mr. Holmgren agreed his department would be able to provide this.

Jim Edwards believed 51% of the practical exam was related to consumer protection.

Nadene Bruders noted 119 questions were for sanitation, disinfection, safety and following instructions, and 81 questions were basic knowledge of procedures.

Mr. Nelson made the motion to change the scoring on the new exam to 200 possible points and the written have 100 points for the barbering and cosmetology exams.

Mr. Hedges clarified criterion based testing was weighting questions based on their difficulty for the group that you're testing.

Mr. Nelson moved that the criterion referenced scoring method be utilized and weight the practical exam at twice the written exam. He then asked at what point do we ask NIC to weigh in?

Mr. Hedges reminded everyone that the legislature, Office of Administrative Law, and the DCA had to also weigh in on the issue. Ms. Crossett believed it would be good to get the process started. However, she did not believe the specific point amount needed to be determined yet.

Mr. Hedges proposed an alternate motion that the examination shall consist of a practical examination and a written examination. The Board shall establish passing scores for examinations based on criterion referenced scoring, keeping in mind that the practical must prevail. Mr. Williams seconded the motion.

Ms. Underwood cautioned the Board on setting regulations of the exact same language that was already in the statute. The DCA recommended this language and the line of "practical shall prevail" was already in the statute and is not needed in the regulation. It was redundant.

Mr. Hedges withdrew the phrase "the practical must prevail" and Mr. Williams confirmed his second.

Ms. Underwood confirmed NIC would use the appropriate practice to develop the practical exam including subject matter experts from California.

Fred Jones spoke to Lee Schroeder, CEO of SNT a development partner of NIC. He was told they used criterion referenced scoring, subject matter experts, but will not weight the exam. However, if the Board wanted to follow the law, they had to set a final weight of the cut scores. He believes the motion does not fall under the law.

Ms. Underwood clarified by using the suggested language all the exams would be the same. Mr. Williams recalled NIC asked the Board what percentage they wanted to use.

Gary Duke clarified they could use the language proposed and during public comment period good suggestions may be received regarding weighting. The public comment period can start now for 45 days.

Fred Jones noted criterion referenced scoring was not related to aggregate scoring. He believed a decision needed to be made on weighting and whether to endorse aggregate scoring. The current motion was vague and ambiguous and a restatement of current law. NIC provides the cut score but not the weight.

Mr. Hedges called for the question. Mr. Nelson wanted to give his last word by stating he has appreciated all that Mr. Hedges has done for the Board and also believes we are not following the law unless the Board factors in the weight. Gary Duke did not believe the Board was breaking the law with the barbering examination. He believed it was debatable how the cosmetology exam was scored, however the practical exam did prevail. He stated he needed to do more research to ensure that adopting criterion reference scoring was appropriate. Section 7338 did state the examination shall not be confined to any particular system or method.

Mr. Hedges reiterated his motion that the examination shall consist of a practical examination and a written examination. The Board shall establish passing scores for the examination based on criterion referenced scoring methodology. Mr. Williams recommended the addition that the Board will ensure that the language follows the law and is equipped to incorporate aggregate scoring. Mr. Hedges approved of the amendment to his motion. He clarified his motion to state that the examination shall consist of a practical examination and a written examination. The Board shall establish passing scores for the examination based on criterion referenced scoring methodology. The motion was approved by a 7-1 vote (Mr. Nelson).

At this point, Mr. Hedges turned the meeting over to Mr. Williams.

6. Agenda Item #6, REGULATORY ACTION TO REQUIRE ESTABLISHMENTS TO PROVIDE NOTICE TO CONSUMERS OF SERVICES PROVIDED OR OFFERED THAT ARE NOT REGULATED UNDER THE BARBERING AND COSMETOLOGY ACT. Possible Action: Addition to Article 9, Title 16, Division 9 of the California Code of Regulations.

Staff researched what could be done for the unregulated practices being done in salons. Inspectors are unsure if tools are being used appropriately. Staff submitted information for possible regulatory action. Staff recommends that establishments have signs posted listing the services that are performed in that salon that are not regulated by the State Board so the consumers know their license did not cover certain services. They would also prefer that when these unregulated services are being performed that the cosmetologist license is removed. Mr. Hedges believed it may be confusing to the consumer and should be posted next to the establishment license. Ms. Crossett and Mr. Lloyd believed the license should remain but something should be posted in the treatment rooms. Ms. Lemelle asked how other states listed this information? Ms. Underwood stated the information was taken from other states regulations.

Mr. Williams made the motion to adopt the language Section 966 unregulated practices, with the changes that the disclosure is posted in an area near where the work is being done. Mr. Hedges seconded the motion. Section C is eliminated.

Public Comment

Fred Jones noted the activities not regulated by the Board may be regulated by the County health department. He believed the term unregulated was too broad. He believed section C was needed.

The motion was approved by a 4-3 vote with Mr. Lloyd, Ms. Tran and Mr. Nelson voting no.

The meeting was adjourned for one-half hour for lunch. It was called to order after one-half hour.

7. Agenda Item #7, Curriculum Regulations (Barber, Manicure, Electrology) Possible Action: Amendment to Section 950.1, 950.4 and 950.5, Title 16, Division 9 of the California Code of Regulations.

Mr. Williams provided a brief background and Mr. Hedges further stated the previous regulation request was stopped at Secretary Leonard's desk due to the economy at that time, but Secretary Leonard is no longer in office. Staff has proposed that the total number of required hours at 400. Ms. Crossett noted there was no way of knowing what the extra hours would be spent on. Ms. Tran believes that 400 hours are sufficient for now.

Mr. Hedges made the motion to adopt the DCA's curriculum as outlined by staff. Ms. Lemelle seconded the motion. The motion was approved by a 7-0 vote.

8. Agenda Item #8, LEGISLATION PRIORITIES:

The goal, action and staff comments were presented by staff of the following issues. Most items were previously voted on by the board. Staff is recommending workgroups/committees be formed to develop language.

- **Continuing Education:**
- **Remedial Education**
- **Default Decisions**
- **School Oversight (Fee and Disciplinary Authority):** Currently there are no fees and we would need the authority to charge.
- **Booth Rental Licensure**

Ms. Crossett made the motion to allow the executive director to sign off on defaults. Mr. Williams seconded the motion. The Board thoroughly discussed the priorities. Mr. Hedges hoped booth rental licensure could be a high priority. He noted it should be voluntary. Ms. Crossett believed continuing education and remedial education were very important. Mr. Duke will research whether a regulatory change can be done and bring back to the next board meeting

Mr. Lloyd made the motion to approve the following priorities: The priorities were: 1) default decisions, 2) continuing education, 3) remedial education, 4) school oversight, 5) booth rental licensure. Mr. Hedges seconded the motion and it was approved by a 7-0 vote.

Ms. Underwood noted the lower priorities would also be focused on.

Kim Kirchmeyer with DCA encouraged the board to find a legislator. In addition add stipulation language for the surrender of the license.

Public Comment

None

It was noted that Ms. Lemelle left the board meeting.

9. Agenda Item #9, REGULATIONS UPDATES

- **Administrative Fine Schedule:** Has been submitted to the DCA.
- **Disciplinary Guidelines:** Process has been started and is in the 45 day comment period.

10. Agenda Item #10, ESTABLISHMENT OF TECHNICAL ADVISORY COMMITTEES

Mr. Hedges moved to authorize the executive director to establish the committees. It was seconded by Mr. Lloyd and approved by a 6-0 vote.

11. Agenda Item #11, ANNUAL ELECTION OF OFFICERS

This item was tabled.

12. Agenda Item #12, EXECUTIVE OFFICER REPORT

- **Review of Board Statistics:** Nothing unusual to discuss. Average wait time for a license is 6-8 weeks.
- **Classification Study of Inspector Positions**

13. Agenda Item #13, APPROVAL OF BOARD MEETING MINUTES

- **October 25, 2010:**
- **October 26, 2010**

Mr. Williams made the motion to approve the minutes. Mr. Hedges seconded the motion and it was approved by a 6-0 vote.

14. Agenda Item #14, PUBLIC COMMENT

Patti Gardner stated she can provide information on continuing education from the state of Illinois.

15. Agenda Item #15, AGENDA ITEMS FOR NEXT MEETING

All standard items

16. Agenda Item #16, CLOSED SESSION TO DISCUSS ENFORCEMENT CASE

- **Discussion on Reconsideration and Disciplinary Cases (Closed Pursuant to Government Code Section 11126(c)(3)).**

No Enforcement Cases to Discuss

17. Agenda Item #17, ADJOURNMENT

With no further business, the meeting was adjourned.