



State and Consumer Services Agency – Edmund G. Brown Jr., Governor
BOARD OF BARBERING AND COSMETOLOGY
P.O. Box 944226, Sacramento, CA 94244-2260
P (800) 952-5210 F (916) 575-7281 www.barbercosmo.ca.gov



Agenda Item 5

**CALIFORNIA STATE BOARD OF
BARBERING AND COSMETOLOGY
MINUTES OF FEBRUARY 6, 2012**

**Department of Consumer Affairs
1625 North Market Blvd.
Hearing Room S-102, First Floor
Sacramento, CA 95834**

**Additional Location:
2405 Kalaniana'ole Avenue PH-11
Hilo, HI 96720**

BOARD MEMBERS PRESENT

Deedee Crossett, President
Christie Truc Tran, Vice President
Wen Ling Cheng
Katie Dawson
Joseph Federico
Richard Hedges (via telephone)

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Director
Gary Duke, Legal Counsel
Theresa Rister, Board Analyst
Tami Guess, Board Analyst

BOARD MEMBERS ABSENT

Frank Lloyd

1. Agenda Item #1, Call to Order/Roll Call

Ms. Crossett called the meeting to order at 10:00 a.m. New board member Katie Dawson was introduced and provided a brief background. New board member Joseph Federico was introduced and provided a brief background. Ms. Crossett welcomed the attendees to the meeting that included students from Skyline College.

2. Agenda Item, #2, Public Comment

Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125 (a)]

Sherry Davis, of the National Coalition of Estheticians Association (NCEA), California Representative for Advanced Aesthetics, discussed the advanced license 1200 hour program for aestheticians. Aestheticians are one of the top ten fields that is growing. She provided the statistics and information on the proposed program and hoped it could be agendaized and discussed by the Board at the next meeting.

Nancy Reyes from Mojave Barber College in Victorville, CA, thanked the Board for including barbering in the curriculum changes. They wanted to update the image of barbers and keep the emphasis on haircutting. She expressed concern over the decrease in haircut requirements from 750 to 80. She believed it should be closer to 500 to gain ample experience for students. She also questioned how the method of counting service hours would impact the apprentice program. She asked that this item be included on future agendas for discussion. Ms. Crossett noted the requirements were minimum standards set by the Board and schools could set their own standards. Ms. Reyes stated some schools would only do the minimum because it was easier.

Fred Jones of the Professional Beauty Federation of California (PBFC), noted they strongly supported the curriculum changes that were made a few years ago to give flexibility to schools to meet their individual students' needs. The standards were a minimum. He encouraged students to research various schools. Mr. Jones commended licensees in Indiana who were recently faced with delicensing the industry. There are 19,000 licensees in Indiana. Multiple people rallied against the bill and it was pulled before the first vote. Mr. Jones did not believe that could ever be a threat in California. Mr. Jones announced the 12th Annual Welcome to Our World "WOW" event at the State Capitol to be held on Monday, April 30, 2012, 3:00 to 7:00 p.m. Ms. Crossett commended on last year's event. A video is available at beautyfederation.org.

Victor Chang from Southern California, discussed the legality of fish pedicures and asked the Board to review the process. He provided information regarding the process and safety to allow the Board to make an informed decision. It is an age-old process but new to California. He asked that the item be agendaized for future discussion. Mr. Duke asked if any other states allow fish pedicures. He noted it is allowed in over 30 states. Ohio originally banned the practice then reversed it based on review.

3. Agenda Item #3, Board President's Report

Ms. Crossett welcomed the new Board members and recapped the goals of the Board (consumer protection and safety). Ms. Crossett is available on Twitter for the Board. Four members are utilizing the Go Green initiative (using laptops instead of paper). She reported the beauty industry has remained strong and is growing despite the economy. The number of potential licensees taking the exam has remained steady.

4. Agenda Item #4, Annual Election of Officers

Mr. Hedges made the motion to nominate Christie Tran for president. Mr. Federico seconded the nomination. Ms. Tran accepted the nomination and it was approved by a 6-0 roll call vote. Ms. Crossett noted the government process is challenging and requires patience. Ms. Tran was congratulated for her new position. Mr. Hedges thanked Ms. Crossett for her hard work as president of the Board. Mr. Hedges nominated Joseph Federico for Vice President. Mr. Federico accepted the nomination and stated he is ready to work. Ms. Tran seconded the nomination and it was approved by a 5-1 (Cheng) roll call vote. Ms. Crossett passed the gavel to Ms. Tran.

5. Agenda Item #5, Appointment of Committee Members

Ms. Underwood provided an overview of the committees and their required participation. The Disciplinary committee could require three days per month. Mr. Hedges noted the written portions of the Disciplinary committee could be held anywhere. The Board members expressed their preferences as follows:

Licensing and Exam Committee: Cheng, Crossett, Tran

Enforcement and Inspections: Crossett, Hedges, Federico, Dawson, Tran, Lloyd

Education and Outreach: Cheng, Crossett

Disciplinary Review Committee: Hedges, Federico, Tran, Lloyd, Cheng, Dawson, Crossett (alt)

Legislative and Budget: Federico, Dawson, Hedges

6. Agenda Item #6, Overview of Disciplinary Process and Disciplinary Review Committee

Gary Duke, Legal Counsel, provided an overview of the disciplinary enforcement process and the various legal parameters. The Board serves in an executive function to enforce the laws, legislative to promulgate regulations, and adjudicative to take action against violators. Mr. Duke discussed the meaning of a license and the rights and regulations. There are over 600,000 licensees in California. The license is granted allowing someone to engage in an operation but can also be taken away if violated. It can only be taken away via due process of law in an equitable fashion which can be cumbersome. The Board enforces its laws through inspections, enforcement staff or complaints, all which could result in citations, fines and accusations. Per Business and Professions Code Section 7410, the disciplinary review committee (DRC) has been established to handle the citations at the first level of review. Mr. Duke read Section 7410 into the record. The DRC is the first level of the appeal process. After being heard by the DRC, an accused violator has the right to be heard before an Administrative Law Judge. Third party Administrative Law Judges are hired by the Board to hold formal proceedings. The Board can only make decisions based on the record and not hearsay. These formal proceedings can be expensive.

Mr. Duke provided a schematic chart about the disciplinary process in handling consumer complaints. The Board takes consumer complaints very seriously. When a complaint is received, jurisdiction is determined (within the regulatory scope of the Board). Analysts then determine if further investigation is needed; this may require an expert review. It is then determined if formal action is needed and if there is enough factual evidence to do this. It is a serious matter to take away someone's license. The process and procedures are designed to treat everyone equitably and fairly. If it is determined a case should be filed, the evidence is sent to the Office of Attorney General for prosecution. The Attorney General will decide if an accusation will be filed to justify the revocation or suspension of a license. Notice is provided to the licensee of a formal administrative hearing, similar to a trial. Prior to the hearing, there could be an opportunity for settlement. This could save the Board money and individualize the punishment for each licensee.

The Board is responsible for taking the action after the Administrative Law Judge's proposed decision is presented. It can be rejected or accepted by the Board. Or it may be remanded back to the Judge. If rejected, the Board will need to review the record and make their decision. The Board is prohibited by law from receiving information outside the formal administrative process from any parties involved. Mr. Duke warned Board members they may be contacted by licensees but need to remind them they need to go through the administrative process and not communicate directly (ex parte communication). Ms. Crossett asked how to clarify questions prior to voting but avoid ex parte communication. She noted she was sometimes concerned why the Attorney General's office would change the recommendation of the DRC. Mr. Duke told her she could not ask the licensee or Attorney General's office directly but possibly delay the vote until it could be discussed in closed session. Ms. Underwood note the staff is also working the cases and keeping the Board's interest in mind.

If a case is remanded back to the Judge, another hearing may need to be conducted to garner more facts. This will result in another decision for the Board's approval or rejection. If the Board adopts the decision by the Judge, it becomes the final decision of the Board. A licensee may appeal to the Superior Court. The Court will typically uphold the factual findings of the Judge and the Board and only accept a case due to legality. Only the Board has the authority to revoke or suspend a license.

7. Agenda Item #7, Executive Officer Report

- **Review of Board Statistics**

Ms. Underwood provided a brief summary of the board statistics. The wait times from application to exam has increased due to less staff at examination sites in the past. Additional staff has now been hired. Double days on Tuesdays (Fairfield) and Wednesday (Glendale) are also being conducted to decrease the wait time. The examiners are considered temporary help and not paid overtime for their 12 hour days. Ms. Crossett

asked if there could be more double days but this would affect the workers amount of allotted annual hours. NIC will be coming out in mid February to train the new hires. Mr. Hedges commended Ms. Underwood for her hard work under the economic constraints. Ms. Crossett explained the wait time will affect a student's ability to pay their student loan as they have six months from graduation to start paying. This could also affect a school's default rate. Mr. Hedges agreed with Ms. Crossett. Ms. Crossett stated a student may have a higher chance of not passing if they have been out of school waiting for an exam. Ms. Berg commented that this applied to regular students and not pre-applicants. Ms. Crossett asked if the Board could assist in speeding up the process. Ms. Underwood stated everything is being done that can be done.

Ms. Underwood noted models are being discontinued in the practical exam effective March 1, 2012. Letters have been sent to the schools and will be posted on the website. She believed it will greatly affect the no-show rate. In the last quarter, 98 people did not take the exam as scheduled. Ms. Underwood hoped the process will be streamlined with the Breeze project and allow stand-by testers. Breeze is scheduled to be implemented in August 2012. Mr. Federico asked if future test takers have been informed about the model change. An insert will be sent with all the scheduling letters currently being mailed. The test takers will be required to have a mannequin head and a hand but no foot.

Mr. Hedges commented the budget looked fine and Ms. Underwood agreed, for now. Executive orders are still in place for no travel.

Mr. Hedges noted 5,543 Cosmetology applications were received and 2,740 licenses were issued. Exams are scheduled out 30 days, no shows or disqualifications or failed exams were not counted.

Mr. Hedges asked if fingerprinting could be discussed. He believed this may decrease the time needed for the licensing of out of state applicants. Ms. Underwood was unsure if this would be favorable at this time. Identifying applicants with criminal convictions has improved. Applicants are being permitted to submit applications prior to going to school. Mr. Hedges wondered if the State would agree to fingerprinting being an option to out of state applicants. This would take legislation for it to be made an option.

Mr. Hedges asked if the DRC cases under "Heard" include the cases disposed of by default decision. Ms. Underwood confirmed it did. Mr. Hedges noted they have handled 30 to 50 writtens per month. Mr. Hedges invited new Board members to attend the DRC meetings as an audience member. The schedule is on the website.

8. Agenda Item #8, Approval of Board Meeting Minutes

- **October 17, 2011**
- **October 18, 2011**

Ms. Crossett noted she was referred to as Director Crossett under Agenda Item #2. Ms. Crossett made the motion to approve the minutes of October 17 and 18, 2011. Mr. Hedges seconded the motion and it was approved by a 6-0 vote.

9. Agenda Item #9, Legislation Update

There were no legislation updates to present. Ms. Underwood noted she has been approached about a make-up artist license but has heard nothing further. Her research showed no other states have this license and there is no national exam. There would be a significant fiscal and workload impact if it were to be approved.

10. Agenda Item #10, Regulations Update and Approval

The following regulations have been submitted previously to the Board. They have been brought back for final approval prior to submission to the Office of Administrative Law to ensure clarity and proper language.

- **Scoring Methods in Examinations: Consideration of Comment and Approval of Final Statement of Reasons and Specific Language for Section 932 of Division 9 of Title 16 of the California Code of Regulations.** These were disapproved by the Office of Administrative Law pending clarity to the criterion scoring section. The timeframe is unknown at this time. It will again be presented with a 15-day notice for public comment.
- **Unregulated Practices: Consideration of Comments and Approval of Final Statement of Reasons and Specific Language to Adopt Section 966 of Division 9 of Title 16 of the California Code of Regulations.** Changes have been made and the comment period has been completed without comment. It is now ready for the Board's approval. Upon a motion by Mr. Hedges, seconded by Mr. Federico, it was approved by a vote of 6-0.

11. Agenda Item #11, Discussion on Health and Safety Regulations and Determine if of Updates are Needed

- **Section 983(b) Personal Cleanliness; Washing of Hands**
Hand sanitizers are used at the exams. Section 983 requires a licensee to wash their hands between clients with a cleaning agent. Citations are currently not issued for using a hand sanitizer. Mr. Hedges stated he received chemical burns from hand sanitizers and preferred thorough hand washing. He felt it was more sanitary. Ms. Dawson clarified it was either/or and wondered why the choice would be eliminated. Mr. Hedges did not believe hand sanitizers offered the same cleanliness as hand washing. Ms. Dawson believed their determination should be based on factual evidence of a product and not personal experience. Mr. Hedges agreed the hand sanitizers were all different and did not have requirements under FDA. Ms. Crossett agreed there was no substitute for hand washing. Sanitizers can also cause drying and possible cracking. She stated it has been difficult to train students to wash their hands in lieu of sanitizer. She was concerned that sanitizers would not be effective. She was a member of the foot spa committee and they agreed. Mr. Hedges noted the law requires disinfecting and not sanitizing. Ms. Dawson asked if there were guidelines for hand washing. Mr. Hedges agreed this was a good point and should be addressed.

Public Comment:

Peter Westbrook from Riverside Community College, reviewed the Centers of Disease Control and other websites that agreed hand sanitizers should not take place of washing hands in removing debris or contaminants. He offered to provide the documentation he collected. The FDA requires weight:volume of hand sanitizers to be 60%:90% ethanol which not all sanitizers were at. He believed the lower income communities would be the most impacted by acceptance of less effective hand sanitizers versus hand washing.

Mr. Hedges asked Ms. Underwood to provide information on a way to resolve this issue for discussion at the next meeting. He agreed hand washing instructions should be developed. Peter Westbrook noted the CDC provided regulations including washing hands for 20 seconds while singing the Happy Birthday song. The FDA agreed and preferred anti-bacterial soap with running water. Ms. Crossett recommended promotion of hand washing with instructions, in lieu of regulation changes. Ms. Hedges again asked Ms. Underwood to provide information on regulations for hand washing. Ms. Crossett noted it could be taken from another health group. Ms. Underwood stated any health regulation changes must go through the Department of Health Services, which would be lengthy. She recommended a

committee be formed to discuss this and other issues in the Health and Safety Regulations. Ms. Dawson noted "hand hygiene" was the appropriate term in most industries.

Public Comment:

Fred Jones of the PBFC stated this was a complicated subject. He believed the currently regulations were appropriate and provided options. He stated his organization would oppose removing any of the options and would prefer providing helpful practical information.

Lydia Justice, an electrologist in Dublin, CA, stated the CDC preferred hand washing but were not against hand sanitizers. They also required intermittent hand washing even when using a sanitizer. She was also opposed to eliminating the options.

- **Section 989 Prohibited Substances**

Ms. Underwood stated this was not an accurate section and needed a regulation change. The section currently states that products should not be used that contain specific chemicals banned by the FDA or in a manner disapproved by the FDA. The chemicals listed in the regulation were not disapproved by the FDA. The regulation needs to be updated to reflect this. Ms. Crossett believed the chemicals were harmful for the tech and the consumer even if they weren't banned. Ms. Underwood noted new limits could be set and be more specific and accurate. It will be discussed at a future meeting of the manicuring advisory committee and a recommendation will be presented to the Board.

- **Section 992 Skin Peels**

The Board has determined estheticians cannot use a glycolic acid of 30% or higher. This is not written in any regulation and a specific limit should be set. Fines were given but overturned. Ms. Crossett believed the pH level of the skin should be used as the percentage is unclear. Mr. Hedges recommended the Board use the levels set by the FDA Cosmetic Ingredient Review Committee. It was agreed an esthetician advisory committee be formed to define this. Ms. Crossett believed the estheticians needed to be more educated on the chemicals. She recommended Rebecca James Gadbury, a product chemist, at UCLA and Mark Lees of Florida for the committee. Ms. Underwood noted the regulations need to be clear to hold people accountable in the field.

Public Comment

Sherry Davis from the NCEA did not believe the term peeling should be used as it is more of a medical term. It should be referred to as exfoliation. She agreed aestheticians should be more informed to be able to look at their products more closely. Better wording and products should be reviewed. This is an important issue in the schools. She also offered to be part of the committee.

Jamie Schrabeck from Precision Nails wanted to see the regulation broadened by deleting the word facial. This also applied to products used on calluses. Caustic products also needed to be addressed.

Staff will continue their research and prepare recommendations for changes in health and safety regulations for the Enforcement Committee. It was agreed it would be important to engage industry chemical experts.

12. **Agenda Item #12, Discussion on the Oversight of Schools**

Ms. Underwood met with the staff of the Senate Business and Professions Committee. It was determined the best way to start this discussion about school oversight would be through the Sunset review process which will be January 2014. Staff will prepare their extensive report in 2012 with hearings in early 2013. They will keep the Board apprised. Ms. Crossett disagreed with the interpretation of the laws regarding schools.

Public Comment

Fred Jones with the PBFC was involved in the discussions regarding the bureau and tried to clarify that the Board would be the sole DCA regulatory agency. He was not successful at that time and believed they were looking for fees to hire and create a new bureau. He agreed with Ms. Underwood's approach through the Sunset Review process. He argued at that time, and still agreed it did not make sense to have two Department of Consumer Affairs agencies regulating one business. The current Board controlled curriculum, textbooks, licensing exam, facilities. They only needed to augment the ability to look at the student contracts and refund policies. He believed the Board was more capable of doing this than a new Bureau. They would be able to track students from start to finish. The schools would then be held accountable to one regulatory legal interpretation.

Ms. Crossett explained the Tuition Recovery Fund was only available to in state students of schools that were approved by the Bureau. All students who were from California had to pay into this account but could not access it. The fund is monitored by the Bureau. Mr. Hedges noted the Board has been left with little power over the schools.

13. **Agenda Item #13, Enforcement Committee Report**

Mr. Hedges asked staff to research if states enforce the fish tank pedicure process.

- **Update on the Review and Recommendations on the Apprentice Program:**
Mr. Hedges stated the DRC noticed a large amount of fines being given to apprentices and trainers, oftentimes due to an absent trainer or minimal records of hours. Ms. Underwood agreed there were many problems. The Enforcement Committee met in October to discuss and prepare guidelines. Mr. Hedges provided a recap of that meeting. Staff has compiled information and sent a letter to apprentice program sponsors of the requirements of the programs and recommendations that will improve the program. Areas addressed include the pre-apprentice training being completed in an approved training facility. Pre-apprentice training fees cannot be over \$2,999. Trainers are responsible for maintaining records. It was found many of the fees were over the limit. A one to one ratio is recommended for training. Program sponsors must notify the Board if the apprentice discontinues or completes their program. The Board will begin posting pass/fail rates of apprentice program in Fall 2012. The Committee will meet in March to prepare recommendations to the Board.

Ms. Underwood clarified an apprentice can only complete the program one time. Staff is working with the Division of Apprenticeship Standards to get their existing rules enforced more. There is nothing in the Board's regulations to prevent an apprentice from getting a license ore than once. It has been found an apprentice may not complete a program but the Board is not notified. Forms are being developed for training facilities to file once a student completes or discontinues a program.

14. **Agenda Item #14, Approval of 2012 Board Meeting Calendar**

Proposed dates for Board meetings were presented. Mr. Hedges made the motion to approve the proposed calendar and it was seconded by Ms. Chen. Ms. Underwood stated the location of the meeting in July may be changed due to travel restrictions. Ms. Crossett requested the October

meeting be changed to October 22nd. Ms. Underwood agreed to change the meeting to October 22nd. The motion was approved by a 6-0 vote.

15. Agenda Item #15, Agenda Items for Next Meeting

Ms. Dawson asked that braiding be revisited. Apprenticeship program, regulations affecting the use of a hand sanitizer, information about the new fish pedicure process.

Sherry Davis of the NCEA asked to see the advanced skin care program discussed at a future meeting. Ms. Underwood believed it would take three years and include extensive research and legislation. It has not been well received in the past by the medical board. It would required significant fiscal impact. Ms. Davis offered to help in any way.

Nancy Reyes from Mojave Barber College requested more discussion on curriculum changes in barbering. She stated they embraced change. Many school owners will attend the next meeting. She also noted there was a big problem with students buying hours and this would be eliminated if a student was required to register when beginning school. She also noted a barber was not included on the Disciplinary Board and the inspectors had limited knowledge of their practices. They felt unrepresented and that regulations were being made without their input. Ms. Crossett encouraged barbers to apply for an appointment to the Board. Ms. Dawson recommended Ms. Reyes provide justification for their request to increase the curriculum standards. Ms. Reyes believed barbers needed real life experiences to make them better barbers. She was concerned about barbers being trained by other schools who were doing the minimum standards.

16. Agenda Item #16, Public Comment

*Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting.
[Government Code Sections 11125, 11125 (a)]*

Fred Jones of PBFC commended Ms. Tran for her election to Board president. He noted this was the first time a Vietnamese manicurist has been elected President.

The meeting was adjourned to the closed session.

17. Agenda Item #17, Closed Session to Discuss Enforcement Cases

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

18. Agenda Item #18, ADJOURNMENT

The board returned to open session. With no further business, the meeting was adjourned.