



**CALIFORNIA STATE BOARD OF  
BARBERING AND COSMETOLOGY  
ENFORCEMENT COMMITTEE MEETING  
MINUTES OF OCTOBER 16, 2014**

**Board of Barbering and Cosmetology  
2420 Del Paso Road  
Sequoia Room, 1st Floor  
Sacramento, CA 95834**

**COMMITTEE MEMBERS PRESENT**

Richard Hedges  
Dr. Kari Williams  
Joseph Federico

**COMMITTEE MEMBERS ABSENT**

Andrew Drabkin

**STAFF MEMBERS PRESENT**

Kristy Underwood, Executive Officer  
Heather Berg, Assistant Executive Officer  
Gary Duke, Legal Counsel  
Tandra Guess, Board Policy Analyst  
Marcene Melliza, Outreach Coordinator  
Carrie Harris, Enforcement Unit Manager  
Theresa Rister, Inspections/Cite & Fine Unit Manager

**1. Agenda Item #1, WELCOME AND INTRODUCTIONS**

Mr. Hedges, Board President, called the meeting to order at 10:00 a.m.

**2. Agenda Item #2, ELECTION OF A COMMITTEE CHAIRPERSON**

Upon motion by Mr. Federico, seconded by Dr. Williams, Mr. Hedges was elected as Chair of the Enforcement Committee by a 2-0 vote, Mr. Hedges abstained. Upon his nomination, Mr. Hedges commented he would like to see the Board increase their outreach with regard to Health and Safety for the prevention of infectious disease.

**3. Agenda Item #3, APPROVAL OF ENFORCEMENT COMMITTEE MEETING MINUTES**

Upon motion by Dr. Williams, seconded by Mr. Federico, the minutes from the June 3, 2013, Enforcement Committee meeting were approved by a 3-0 vote.

**4. Agenda Item #4, DISCUSSION ON THE PRACTICE OF TEETH WHITENING**

It has been the Board of Barbering and Cosmetology's (Board) practice to cite Section 7320 of the California Business and Profession Code, when Board inspectors find evidence of teeth whitening services being performed. It is recommended that the Board's inspectors continue to note on their inspection report when they find teeth whitening services. The Board will summarize the information obtained from the inspector's report into an interagency referral to the Dental Board. According to the Dental Board, teeth whitening is not considered the practice of medicine, however, it is out of the scope of practice for a Board licensee. Practice of dentistry includes the evaluation and diagnosis of a dental condition.

Legal counsel, Gary Duke stated that on Tuesday, October 14, 2014, the Supreme Court convened and heard arguments on the restriction of federal trade, regarding teeth whitening services. He stated that the southern State Boards involved in the suit were comprised of professional members (Dentists) only and that there were concerns with anti-trust issues and fair trade restriction.

California Boards are comprised of both public and industry members. As such, California boards are protected against anti-trust suits.

Mr. Duke will be closely watching the Supreme Court case and advising the Board of its status.

Mr. Hedges recommended that inspectors should determine under what conditions teeth whitening services are taking place in an establishment. They should include what they find in a detailed supplemental report.

Currently, inspectors submit to the Board any dental manufacturer's information they find during an inspection. This information along with the inspection report comes directly to the Board.

Ms. Underwood recommended all Dental Board interagency referrals be noted in the BreZe database.

**Public Comment**

Fred Jones, Professional Beauty Federation of California, suggested that the Board provide some sort of physical demarcation between what services fall under the Boards jurisdiction and what services do not. This physical demarcation could be a notice posted in the establishment listing each regulated service or non-regulated service. He believes this will help consumers understand what services fall under the scope of practice for a Board licensee.

Karen Fisher, Executive Officer of the Dental Board, received a legal opinion several years ago that essentially says teeth whitening is not necessarily the practice of dentistry depending on how the whitening was administered.

Mr. Hedges suggested the Board make it incumbent on the person performing the out-of-scope activities to list the out-of-scope activities on a consumer notice posted in the establishment. Mr. Hedges suggested staff do research and provide a proposed signage recommendation at the next Board meeting.

**5. Agenda Item #5, DISCUSSION OF SECTION 7351 OF ARTICLE 6, CHAPTER 10, DIVISION 3 OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE ON THE PROVISION AND MAINTENANCE OF ADEQUATE FACILITIES PERTAINING TO ESTABLISHMENT OWNERS STORING WASHERS AND DRYERS IN THE ESTABLISHMENT RESTROOM**

It has been the Boards practice to cite Section 7351, of the California Business and Professions Code when washers and dryers are stored in an establishment's public restroom. The statute provides specifically no restroom shall be used for storage. It was discussed if washers and dryers could be considered storage.

Mr. Hedges quoted the first sentence of Section 7351, which is, "Every establishment shall provide at least one public toilet room located on or near the premises of its patron." His argument is if you put the washer and dryer in the public restroom, it becomes an extension of the work area and, therefore, no longer a public restroom for the patron.

Mr. Duke believes the Board can continue to cite for this violation, without regulatory change.

**6. Agenda Item #6, PROPOSED REVISIONS TO SECTION 974 OF THE CALIFORNIA CODE OF REGULATIONS REGARDING REVISIONS TO THE FINE SCHEDULE**

Staff submitted the following fee schedule for the approval of the Committee. These proposed fine amounts will be presented at the Board meeting taking place in Rancho Cucamonga on October 20, 2014, for approval by the entire Board.

Regulation	Detail	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense
980 (c)	Incorrect storage of soiled electrical tools	50	100	150
980.1 (g)	Failure to list chair as "Not in Service" in log; no sign displayed on chair.	50	100	150
980.2 (f)				
980.3 (e)	Improper storage of basins or tubs	50	100	150
980.4	Incorrect disinfection of foot basin or tub after use of disposable liner	100	150	200
980.4 (a)(2)	Incorrect/Missing log	50	100	150
980.4 (a)(4)	Failure to maintain a supply of five (5) disposable liners per foot tub basin	250	300	500
981 (b)	Improper storage of new supplies and disposable tools	50	100	150

Dr. Williams moved to take the recommendations to the full Board. Mr. Federico seconded the motion. The motion passed with a 3-0 vote.

**7. Agenda Item #7, DISCUSSION OF SECTION 7319(e) OF ARTICLE 2, CHAPTER 10, DIVISION 3, OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE PERTAINING TO DEMONSTRATING PRODUCTS (I.E., EYELASH EXTENSIONS, MAKEUP) AND WHEN A LICENSE IS REQUIRED**

Ms. Underwood stated the Board has received reports of non-licensees providing lash extensions, hair coloring applications and makeup services in non-licensed establishments. Providers are taking a manufacturer's "how-to" course and then providing the entire service (make up, lash application, hair color) and when inspected, stating they are merely demonstrating the product being used. This is being stated with the intent of claiming exemption under Section 7319 (e) of the California Business and Professions Code. This statute provides product demonstrators exemption from licensure. The intent of this statute was for establishments like Macy's who utilize a makeup counter. Make up counters (Macy's, Nordstrom's) can demonstrate their product, without licensure, as they are trying to sell you the products, not provide the client with the service. Staff believes this is a growing trend in the industry and a problem. People are not licensed but are performing services that are within the scope of practice of Board licensees, and claiming that it is solely for the purpose of demonstrating the product.

Statute 7319 (e) currently reads, “Persons engaged in the administration of hair, skin, or nail products for the exclusive purpose of recommending, demonstrating, or selling those products”. People are using the statute as a loophole, to engage in unlicensed activity.

It was suggested that the definition of the word demonstrating be added to the Boards regulations.

This discussion will be carried over to the Board meeting on October 20<sup>th</sup>, which will be webcast.

**8. Agenda Item #8, 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)].*

The public present did not wish to address the Committee.