

**CALIFORNIA STATE BOARD OF
BARBERING AND COSMETOLOGY
ENFORCEMENT COMMITTEE MEETING
MINUTES OF APRIL 20, 2015**

Department of Consumer Affairs
1747 North Market Blvd
HQ2 Hearing Room 186, 1st Floor
Sacramento, CA 95834

COMMITTEE MEMBERS PRESENT

Richard Hedges
Andrew Drabkin
Joseph Federico
Dr. Kari Williams

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Tandra Guess, Board Analyst
Marcene Melliza, Board Analyst

1. Agenda Item #1, WELCOME AND INTRODUCTIONS

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

2. Agenda Item #2, PUBLIC COMMENT

Don Chaudoin asked if Cosmetologist were now able to shave. Mr. Hedges explained that if a Cosmetologist has completed the Barber crossover course, they would be issued a Barber license and that would then allow them to shave.

Mirela Marinescu, International School of Beauty, addressed the committee about shaving, lash and brow tinting, and dermaplaning. She said her Barber students would like to be able to shave client's backs and they don't understand why they cannot. They are licensed to shave superfluous hair from the face and they should be allowed to shave the hair on client's backs.

The second subject Ms. Marinescu discussed was why Cosmetologist are allowed to tint the lash and brows, but Estheticians and Barbers cannot perform this service. Mr. Hedges did inform Ms. Marinescu that currently there is not an Food and Drug Administration (FDA) approved tint that can be used safely around the eye area and this service should not be performed at all.

Lastly, Ms. Marinescu wanted to discuss dermaplaning. She feels it should be called micro-dermaplaning and Estheticians should be able to perform this, as it's nothing more than a glorified shave. She shared with the Board that she has started a petition on Facebook and already has over 1000 signatures from Estheticians. She feels that this is the most gentle and most needed procedure in esthetics. In her opinion it is less dangerous than waxing, and less dangerous than any other method hair removal.

Mr. Federico, Industry board member, responded to Ms. Marinescu by stating that the majority of her issues breakdown into what is in the legislation of the scope of practice itself. The scope of practice of an esthetician does not include hair coloring, nor does it include shaving. This is why an esthetician cannot perform the tinting of the lash and brows, nor is allowed to perform dermaplaning. By performing these services the esthetician would be falling out of their scope of practice. In regards to lash and brow tinting, Mr. Federico explained that the Board decided to be in concurrence with the FDA, which stated that there is currently no product that is safe to use near the eyes.

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

Upon motion by Mr. Drabkin, seconded by Dr. Williams, the minutes from the December 11, 2014 Enforcement Committee meeting were approved by a 4-0 vote.

4. Agenda Item # 4 UPDATE ON THE PROGRESS OF THE IMPLEMENTATION SB 1159.

Mr. Hedges began with an overview of SB 1159. The bill was carried by Senator Lara, to allow the use of a Individual Tax Identification Numbers (ITIN) be used in lieu of a Social Security Number when applying for licensure. It has now been fully implemented by the Board. Informational flyers have been created to advise people about the new option. Ms. Underwood shared that the Board is promoting the information on their social media outlets Facebook and Twitter, as well as posting the information on the Board's website in multiple languages. The Board's inspectors will be promoting the information in the field and all Board approved schools have been advised.

5. Agenda Item # 5 UPDATE ON THE PROGRESS OF COMPILING THE MEDICAL SERVICES TASK FORCE TO ADDRESS SERVICES THAT CAN BE PERFORMED BY BOARD LICENSEES.

The Medical Services Task Force Committee has been assembled and the first meeting is Scheduled for May 4, 2015.

6. Agenda Item # 6 DISCUSSION OF PROPOSED REGULATORY LANGUAGE TO DEFINE "DEMONSTRATING" FOR PURPOSES OF BPC §7319(E) EXEMPTIONS

Dr. Williams said that during Disciplinary Review Committee (DRC) Hearings they often hear from persons that have been cited for unlicensed activity that "they are merely demonstrating a product, therefore they do not need a license". When the DRC committee continues to ask questions, it is often discovered that these services are being performed on repeat customers and demonstrating the same product. Dr. Williams continues by saying the Board needs to make it clear in regulations what we define as "demonstrate" and to make sure this practice of unlicensed activity can stop.

Staff is proposing to the committee some recommended language to define the word "demonstrate" as the following; "a one-time service, without compensation, to show or prove the value or efficiency of a product to a consumer with the intent that the person could perform the service or administer the product, on their own/at home without a licensee/product instructor present."

If the committee decides they like this language or would like to add to it or modify it, Ms. Underwood then asked the committee if they chose, to make a motion to move this to the full Board later that afternoon. If the Board approves it, then the regulatory process would begin.

Dr. Williams made a motion to adopt the recommended language to define “demonstrate”. Mr. Federico seconded the motion.

Public Comment

Fred Jones, Professional Beauty Federation of California, recommended some grammar/verbiage changes to the proposed definition of “demonstrate”

Jaime Schragebeck, Precision Nails, questioned where these demonstrations are happening; such as at home parties, within a salon, or promotional events at stores or a county fair. These last two locations bother her the most, because these people are demonstrating for free on the public, with or without a license and are being compensated by the organizers of the events for being there for the day.

John Moreno, Bakersfield Barber College, said there are unlicensed individuals going out on their own outside of schools or salons performing services and seeking compensation at these types of events and elsewhere. This has to be regulated and organized by the persons/company that is promoting the event or the person selling the product or a licensed establishment.

Ms. Underwood said there have been valid points made today, and the Board is in the beginning stages of the process, so the language may change multiple times. She did want to clarify that there are a couple issues being talked about during the discussion; unlicensed activity and demonstrating, and today the goal is to get the definition of “demonstrate” into regulation.

Mr. Hedges asked for a vote on the motion, and the motion passed with a vote of 4-0.

Ms. Underwood wanted to share with the public that if they have an interest in this regulatory change, they should join the Board’s interested parties list. They will then be notified of any actions taking place during the process, and it will allow the public to make comments during the appropriate time.

Mr. Duke pointed out that this is only a recommendation to the Board from this committee and in the very early stages of the regulatory change process.

7. Agenda Item # 7 DISCUSSION AND RECOMMENDATIONS ON HOW TO PREVENT FALSE AND MISLEADING ADVERTISING WITH REGARD TO BEAUTY SERVICES

Ms. Underwood said the Board is seeing licensees or unlicensed persons advertising services that they should not be advertising. An example of this would be mole removal. This service is not included in any of the Board’s licensees scope of practice, but licensees are advertising that they can perform this service. There is a statute in the Business and Professions Code section 7404 (a) (4) that states that unprofessional conduct which includes “Advertising by means of knowingly false or deceptive statements” is grounds for disciplinary action. Staff recommended the committee begin discussions on how the Board can strengthen in regulation false and misleading advertising.

Mr. Hedges said that he has seen situations where consumers had been physically scarred by services that were performed by individuals that were not licensed to perform those services. He thinks this is a good start to defining regulations to help with this problem.

Mr. Drabkin asked if someone is merely advertising a service that they are not licensed to perform, nor do they perform, would this then allow us to cite them. How would the Board be able to enforce this? Would the Board have staff to review advertising online, or would this be something we find during an inspection and it would be added to the list of violations found.

Mr. Hedges said that in DRC they see a lot of establishment owners stating that they had purchased the salon, and had not changed the advertising from the previous owner, but that the new business does not perform those unlicensed services. So, if we create regulations to prohibit false and misleading advertising, then these owners would be cited.

Mr. Federico added another example often found in establishments is third party advertising for a service or equipment without the specific salon's name on it. When a customer inquires about the service, the establishment will likely say they do perform the services.

Mr. Hedges said the Board had a case where there was a doctor's license hanging in a salon, but the doctor was never there. He said this is one of the reasons to meet with the medical board and Medical Services Task Force to make sure we are all on the same page.

Ms. Underwood said the Board has a lot of licensees that do hold multiple licenses. The Board has nurses that are also licensed estheticians, and doctors that own establishments. So there are people who do this perfectly legitimately, but almost everyday board inspectors go into establishments and find items and/or services being performed such as injectable Botox without a doctor present. The inspector will make a note of this, take a copy of the menu or a picture of the advertisement on the wall and include it with the inspection report. We will also check to make sure there is not a doctor affiliated with the establishment. What we want to address is the people that are doing these services, which are not licensed to do so. We do have a section that we can cite for Practice of Medicine, but unfortunately, we have to see the person performing the service for it to be upheld and an inspector will not enter a skincare room while a service is being performed on a client. There is a lot of advertising done by our licensees that is beyond their scope of practice, but there is more to it than just a blanket citation for somebody that is doing misleading advertising. There are many salons doing it legitimately so we do not want to hinder them in anyway, we just want to make sure they are not misleading the consumer.

PUBLIC COMMENT

Fred Jones, PBFC, believes this trips over First Amendment Rights and understands this is a work in progress, but believes what the committee is discussing here can be dangerous. He would like to know if this is limited only to advertising and he provided verbiage changes to the initial draft regulatory language provided to the committee.

8. Agenda Item # 8 AGENDA ITEMS FOR NEXT COMMITTEE MEETING.

Mr. Federico would like to discuss Pedi throne disinfecting regulations possibly needing updating.

9. Agenda Item # 9 PUBLIC COMMENT

Jaime Schrabek, Precision Nails, recommended that businesses and individuals be required to use their legal name and license numbers on all of their advertisements.

10. ADJOURNMENT

With no further business, the meeting was adjourned.