



**CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY
BOARD MEETING
MINUTES OF AUGUST 27, 2018**
Department of Consumer Affairs
1747 North Market Blvd.
HQ2 Hearing Room 186, 1st Floor
Sacramento, California

BOARD MEMBERS PRESENT

Dr. Kari Williams, President
Lisa Thong, Vice President
Polly Cordoniz
Jacquelyn Crabtree
Andrew Drabkin
Joseph Federico
Steve Weeks

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Michael Santiago, Board Legal Representative
Tami Guess, Board Project Manager
Carrie Harris, Board Enforcement Manager
Marcene Melliza, Board Analyst

BOARD MEMBERS ABSENT

Bobbie Jean Anderson
Coco LaChine

1. Agenda Item #1, CALL TO ORDER/ ROLL CALL/ ESTABLISHMENT OF A QUORUM

Dr. Kari Williams, Board President, called the meeting to order at approximately 10:00 a.m. and confirmed the presence of a quorum.

2. Agenda Item #2, BOARD PRESIDENT'S OPENING REMARKS

Dr. Williams thanked staff for doing an amazing job on the draft of the Sunset Review Report and stated a lot of work had been accomplished this year.

3. Agenda Item #3, BOARD MEMBER REMARKS

Mr. Weeks echoed Dr. Williams's comments. He asked Executive Officer Kristy Underwood if she had staff members in particular who contributed to the draft report.

Ms. Underwood stated Tami Guess, Board Project Manager, was the lead on this project. Ms. Guess put the report together and worked with the design team at the Department of Consumer Affairs (DCA). Ms. Underwood stated Carrie Harris, Board Enforcement Manager, Theresa Rister, Board Inspection Manager, Marcene Melliza, Board Analyst, and other staff were also contributors. She commended her staff for their great work.

4. Agenda Item #4, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Dr. Michael Marion, Jr., Bureau Chief, California Bureau for Private Postsecondary Education (BPPE), stated the BPPE has made some emergency decisions over the past few weeks. He stated the BPPE and Board staff have been doing great work together in the short time that he has been in his position and he looked forward to continued collaborative work in the future. He wished the Board well in their Sunset Review and offered his support.

Wendy Cochran, Founder, California Aesthetic Alliance (CAA), thanked the Board on behalf of her 4,000-member organization, for considering a revision in the scope of practice for estheticians. She stated her members are excited about the opportunity to be compliant.

Fred Jones, Legal Counsel, Professional Beauty Federation of California (PBFC), thanked Dr. Marion personally and on behalf of the PBFC for his work. The PBFC has consistently held the position that, if the BPPE was not going to do their job, then the Board needed their job. The Board already approves schools and curriculum, gives the licensing exam, does inspections to ensure appropriate facilities and equipment, and ensures that schools have bona fide student enrollees, but the important role that provides the authority to crack down on fraudulent schools has been given to the BPPE – and they seemingly did nothing for the past 18 years on these fraudulent schools. The fraudulent schools bring the reputation of all schools down. This is one of the reasons the industry is facing a deregulation movement in California. He commended Dr. Marion for, during his short tenure, beginning to shut down fraudulent schools. He thanked Dr. Marion for his leadership at the BPPE and staff for working with him.

5. Agenda Item #5, EXECUTIVE OFFICER’S REPORT

- a. Licensing Statistics**
- b. Examination Statistics**
- c. Disciplinary Review Committee Statistics**
- d. Enforcement Statistics**
- e. Budget Updates**
- f. Outreach Updates**
- g. Practice Status Survey Results**

Kristy Underwood, Executive Officer, reviewed the statistics and update reports, which were included in the meeting packet.

Spanish Pass Rate

Ms. Underwood stated the cosmologist Spanish pass rate continues to be around 34 percent. Staff is currently putting together a task force to study this issue as recommended by the Board. The National-Interstate Council of State Boards of Cosmetology (NIC) has agreed to participate in that task force.

Ms. Underwood stated staff continues to run data in search of anomalies. Out of the top 10 fail rates for the current fiscal year, five were from the apprenticeship sponsorship program. This is a concern that must be studied because the apprenticeship program is

different from the school program. One of the top 10 was a previously-licensed individual, and the last four out of the top 10 were from four schools that have high numbers of Spanish test-takers who are failing. Three out of those four schools are approved to teach in Spanish and their students are still failing. These schools are on staff's list to visit.

Ms. Underwood stated staff took out the apprenticeship programs to see if that would improve the numbers, but, when separating out the apprenticeship programs, previously-licensed individuals, and schools, the pass rate remains in the 30 percent range.

Ms. Underwood stated there are many students who take the Spanish test who did not go to a school that teaches in Spanish. Many schools have at least one test-taker who chose to take the test in Spanish.

Ms. Underwood stated staff's research on this issue was not enlightening but it did point out that apprenticeship committees and schools that are approved to teach in Spanish should be contacted to get their thoughts and ideas on this issue and to invite them to join the task force as part of the continued investigation into the Spanish pass rate.

Personnel

Ms. Underwood stated Associate Governmental Program Analyst Rachel Gayton was hired in a re-directed position dedicated to school issues in Northern California. Staff is recruiting for the Southern California position.

6. Agenda Item #6, APPROVAL OF BOARD MEETING MINUTES

- **May 20, 2018**

MOTION: Mr. Drabkin moved to approve the May 20, 2018, California State Board of Barbering and Cosmetology Meeting Minutes as presented. Ms. Crabtree seconded. Motion carried 5 yes, 0 no, and 2 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Crabtree, Drabkin, Thong, and Weeks.

The following Board Members abstained: Federico and Williams.

- **July 23, 2018**

MOTION: Mr. Drabkin moved to approve the July 23, 2018, California State Board of Barbering and Cosmetology Meeting Minutes as presented. Ms. Crabtree seconded. Motion carried 7 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Thong, Weeks, and Williams.

7. Agenda Item #7, DISCUSSION AND POSSIBLE ACTION RELATING TO CERTIFICATION OF STUDENT HOURS

Ms. Underwood stated the recent issue is the alarming number of applicants coming in with proofs of training dated five years ago from schools that have been closed. The thought is that this is forged documentation backdated from when the schools were in existence. She gave the example of receiving five applications in one day from a school that had been closed for some time. Almost every school has data on students who attended but never took the test, or failed it and decided to do something else and are now coming back because their proof of training is good forever. Most schools have a small number of these applicants; however, there are others with large numbers.

Ms. Underwood reviewed the Report on Certification of Student Hours, which was included in the meeting packet. She stated Board staff continues to do joint inspections with BPPE staff, which verified that Board requirements need to be strengthened in regards to the lack of approved curriculum being taught in schools. Board staff has stopped processing applications and has sent letters to students.

Mr. Federico asked if the joint reviews were completed in one day. Ms. Underwood stated the Board's review is completed in one day, but the BPPE's review is over multiple days due to extensive review of paperwork.

Mr. Federico asked what CIB stands for in Item 4 under Significant Issues Found. Ms. Underwood stated CIB stands for Candidate Information Bulletins.

Public Comment

Mr. Jones stated the PBFC supports a student enrollment requirement with verifiable proof of training document submittals to the Board and possibly the BPPE. He stated most schools are accredited for purposes of Title IV federal loans with the National Accrediting Commission of Career Arts and Sciences (NACCAS).

Ms. Underwood stated staff has been in contact with Dr. Anthony Mirando, Executive Director, NACCAS. NACCAS is more than willing to collaborate with the Board.

Mr. Jones stated the Board receives no funding for this work. Staff has been proactive in unprecedented ways, such as approaching and partnering with the BPPE and NACCAS, and schools are hearing the message. He thanked staff for their work.

Mr. Federico stated one of the elements of accreditation that is required to maintain Title IV funding is state authorization. The state authorization is given by the BPPE. The BPPE authorization must be submitted annually as part of school accreditation. He stated, if the BPPE has the power to remove their authorization, NACCAS can immediately be made aware when a school is no longer in compliance with their accreditation.

Ms. Underwood stated most of the particularly bad schools are unaccredited. Also, emergency decisions do not immediately shut schools down but prevent enrollment and accepting tuition. The Board and the BPPE have also partnered with the attorney general's office to work on creating interim suspension orders for schools. The Board and the BPPE are following the processes that are necessary following an emergency decision.

Mr. Weeks stated the industry lives or dies by the quality of the schools. Although bad schools are being uncovered, he stated the need to recognize that there are other schools that are doing a good job and making the system work. Ms. Underwood stated there are several good schools that have invited staff in to help answer questions. She stated Board inspectors go into the clinic floors and do inspections for health and safety, but most of the schools that have problems right now do not provide services to consumers. The new Board positions will build better relationships with the schools so that the schools feel comfortable asking the Board questions and the Board can also ask them questions.

Mr. Federico asked about Mr. Jones's suggestion to require schools to send student registrations to the Board. He asked how that process can begin. Ms. Underwood suggested that the Board make a motion during the Sunset Review agenda item to add it to the Sunset Review Report. Most other states have either a student registration at time of enrollment or a monthly electronic filing of student hours.

Ms. Crabtree asked about the disciplines that are more prevalently noncompliant in the schools. Ms. Underwood stated the largest noncompliance is with the manicurist schools, followed by cosmetologists and estheticians. Barbering is the lowest in the buying of hours, but the Board has concerns about the barbering quality of education.

Ms. Crabtree stated, because the buying of hours happens so much in the nail industry, the labor commissioner recently went into a nail salon in Los Angeles and found that 35 of the nail technicians were misclassified employees; the nail salon was fined \$1.5 million. She stated many individuals get their licenses in manicuring and go to work in nail salons not knowing the laws and rules and are being mistreated. This goes hand-in-hand as the problem continues to grow.

Ms. Underwood stated students are being taught to pass the test but do not learn about labor laws or health and safety. She stated the new Health and Safety Curriculum was sent to schools and teachers in CD form with instructor guides and student handbooks, but only two schools even knew what it was. Students are not getting even basic labor information.

Ms. Underwood stated another problem the Board has seen is good teachers in accredited schools do the best they can with what is given to them but things such as broken equipment are not being replaced.

Ms. Crabtree agreed and stated the scary thing is the amount of infection and disease that continues within the nail industry.

8. Agenda Item #8, REVIEW OF THE NATIONAL INTERSTATE COUNCIL COSMETOLOGY EXAMINATION AUDIT

Dr. Williams introduced Irene Wong-Chi, from the Office of Professional Examination Services (OPES), who will present this agenda item.

Irene Wong-Chi, Research Program Specialist, OPES, provided a brief overview of the processes, procedures, and findings of the NIC Cosmetology Examination audit.

- The OPES found that the most critical areas of California cosmetology practice were measured on the NIC examinations, thereby making them suitable for use in California.
- OPES also found that, for the most part, the procedures used to establish and support the validity and defensibility of NIC's theory and practical examinations met professional guidelines and technical standards; however, the OPES found procedural areas that could be improved.

The OPES Executive Summary was included in the meeting packet.

9. Agenda Item #9, REVIEW AND CONDITIONAL APPROVAL OF THE 2019 SUNSET REVIEW REPORT DRAFT

Ms. Underwood stated changes and corrections suggested by the Board and stakeholders will be made to the 2019 Sunset Review Report Draft and the amended report will be presented at the next Board meeting along with an Executive Summary for final Board review.

Ms. Underwood stated the report was separated into two volumes. Volume I is the main body of the Sunset Review. Staff will use this volume as a reference on a regular basis. She asked for comments and suggestions from the Board.

Mr. Federico suggested adding a school student enrollment requirement with verifiable proof of training document submittals to the Board and possibly the BPPE.

Mr. Federico suggested removing the additional makeup artistry sublicense category since it is not nationally recognized by the NIC. Board members agreed.

Mr. Weeks suggested including a better definition of what a Personal Service Permit (PSP) holder is to keep PSP license holders from operating illegal establishments. He suggested "... someone who performs limited barbering or cosmetology services outside of a licensed establishment but only at a customer location. The PSP license holder may not act in any way as an establishment licensee with a fixed location serving multiple customers."

Mr. Weeks suggested drastically different health and safety protocols for the PSP license holders. PSP license holders cannot be held to what is required of an establishment individual. He gave the example that there are fourteen covered, labeled containers that would be necessary to comply with the current law. He asked if the PSP holders will travel with disinfectant solutions, with clean and dirty covered labels for everything, a trash container, or clean and dirty containers of towels and smocks. What will be required of the PSP license holders will require an amendment beyond what is required of establishments.

Mr. Weeks stated the Board issues ten different licenses and the PSP is the only one with no inspection ability. 80 percent of current inspections end in citations for noncompliance with the health and safety laws. He suggested a review of the PSP program by this Board in two years to see how things are progressing and the positive and negative lessons learned. Board members agreed.

Mr. Federico suggested statutory language that gives the Board some kind of oversight over the apps that are coming out.

Mr. Weeks agreed that there should be some formal method of communication with app providers to ensure everything is being done correctly.

Ms. Thong asked if PSP license holders or the apps must submit consumer complaints to the Board within a certain timeframe. Ms. Underwood stated there is some information in the proposed regulations that will address that but agreed that it could be expanded upon.

Mr. Weeks suggested leading the report with the statistic of the total size of the licensee population to give greater importance to the Board and what it does.

Ms. Thong suggested avoiding the use of acronyms in the report. The report states that meeting attendance has gone down. She suggested including the number of viewers who checked into the webcasts in the meeting attendance. She suggested including in the summary of what the Committees have done that the Committees have worked with the Healthy Nail Salon Collaborative. The Legislature is familiar with that organization. It would be good for them to see that the Board works with them. She also suggested including the number of individuals served with optional translation services for the DRC, inspections, and in the field.

Public Comment

Ms. Cochran suggested watermarking the document as being a draft. She stated schools have mistakenly sent information out to their students from this document not understanding that it is only a draft. She thanked the Board for considering the waxing and makeup sublicense categories.

Mr. Jones stated the 2019 Sunset Review Report Draft is a great report but the Legislature cannot read 100 pages. He suggested including an Executive Summary that lists specifically what the Board is asking for. He suggested including in the first sentence that the Board currently serves over 550,000 individuals who were licensed by this Board – over one and one-half percent of every man, woman, and child in California – as a response to the barriers-to-entry talking point. Mr. Jones suggested the following:

- Combine the written and practical exam scores into one passage score.
- Dramatically reduce the arbitrary restrictions on the existing externship program including the inability to pay student externs.
- If creating a new sublicense category, it should be limited to just hair styling, not waxing or makeup.
- School enrollment or registration for all students should be submitted to the Board within 30 days of enrolling in a school.
- The PSP should return to a brick-and-mortar establishment where inspections can be done of the protocols and equipment, where records can be kept and inspected, and where there is an employer who is

ultimately held responsible for all actions and activities of the PSP license holder and the services performed outside the establishment.

Richard Hedges, former Board member, stated the 2019 Sunset Review Report Draft was well done. He thanked Mr. Weeks for his due diligence on the report and stated all Board members made good comments. He seconded most of Mr. Jones's comments. He spoke in support of licensing the PSP apps because someone must be held responsible for ensuring the licensees are doing the work and should be held responsible if a member of the public is harmed by a person who is not licensed that the app sent to someone's home. He suggested that the Board set up their own app as a service to ensure that individuals are licensed.

Tracy Montez, Ph.D., Division Chief, Programs and Policy Review, California Department of Consumer Affairs, and the Office of Professional Examination Services (OPES), stated she has spent much time speaking with the Board about aggregate scoring over the past 20 years. It is an issue that comes up every four to six years. She stated the term "prevail" is not a psychometric term – it is not valid, defensible, or something in research to be worked toward. Instead, occupational analyses and research are done and licensees are worked with.

Ms. Montez stated what OPES has learned through their research is that Board applicants need to take a written test because they need to be assessed on a knowledge of health and safety issues. That is important. There should be a minimum cutoff where those individuals demonstrate a certain level of this knowledge.

Ms. Montez stated the practical exam is an important piece as well because that is a skill-based test, which measures different attributes. It still measures sanitation and safety, but in a skill-based format.

Ms. Montez stated, over time through all the occupational analyses, the OPES has demonstrated that these are two very important assessments that should be maintained with separate cutoff values or passing scores. The Board's exam programs are strong and robust. They have been vetted. The way the program is currently structured is fair, valid, and legally defensible.

Mr. Federico asked for a summary of changes suggested by the Board at this point in the meeting. Ms. Underwood provided the summary as follows:

- Student registration
- Increase the definition of the PSP
- Oversight over the apps for the PSP
- Review the PSP at two years
- Remove makeup artist sublicense category
- Meeting attendance numbers
- Remove acronyms in the report

- Include the Healthy Nail Collaborative by name as part of the association representation
- Include the number of individuals who were served at the DRC and during inspections with translation
- Lead the Executive Summary with the total size of the licensee population

Mr. Weeks stated the review of the Spanish language pass rate will continue to be reviewed.

Mr. Weeks stated the fact that aggregate exam scoring comes up every four to six years may be an indication that the outside thinking is that something should be looked at in how the exam is scored.

Mr. Federico asked to include reducing the restrictions on the existing externship program, including the inability to pay student externs. Ms. Underwood cautioned about the current conditions of the schools and the fact that the Board does not track externs.

Mr. Jones stated the length of time it takes for statute changes is less important than sending the message to the Legislature that the Board is looking for ways of reducing arbitrary barriers to entry. It is important for the Board to send as many messages as possible that the Board is being proactive in addressing barriers to entry.

Dr. Williams agreed to add this information into the report. If the Board chooses to work toward a statutory change in the future, it is at least documented.

10. **Agenda Item #10, LEGISLATIVE UPDATE: DISCUSSION AND POSSIBLE ACTION ON PROPOSED BILLS**

Ms. Underwood summarized the Bill Analysis, which was included in the meeting packet, for the following bills:

a. **AB 767 (Quirk-Silva) – Master Business License Act**

This bill has been amended and no longer impacts the Board.

b. **AB 2134 (Rubio) – Cosmetology Students -Externships**

This bill has passed through both Houses and was sent to the governor on August 20th.

c. **AB 2138 (Chiu and Low) Denial of Application, Revocation or Suspension of License: Criminal Conviction**

This bill was recently amended to allow asking on the application if someone has been convicted of a crime. Ms. Underwood suggested changing the Board's position from oppose to support.

MOTION: Mr. Federico made a motion, seconded by Ms. Thong, that the Board support AB 2138. Motion carried 7 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Thong, Weeks, and Williams.

d. AB 2775 (Kalra) – Professional Cosmetics: Labeling Requirements

This bill is currently in the Senate and is moving along through the process.

e. SB 715 (Newman) – Removal of Board Member from Office (applies to all state boards)

This bill no longer impacts the Board.

f. SB 984 (Skinner) -Board Representation: Women

This bill was held under submission in the Assembly Appropriations Committee.

g. SB 1492 – (Hill) (SBP) Examination Failure Notification

This bill has passed through both Houses and was sent to the governor.

11. Agenda Item #11, PROPOSED REGULATIONS: DISCUSSION AND POSSIBLE ACTION OF PROPOSED REGULATORY CHANGES

Ms. Underwood summarized the Regulation Update Memo, which was included in the meeting packet. The following regulation packages are under internal review at the DCA:

- a. Title 16, CCR Section 904 (Definition of Access)**
- b. Title 16, CCR Section 950.10 (Transfer of Credit or Training)**
- c. Title 16, CCR Section 961 (National Interstate Council (NIC) Translation Guides)**
- f. Title 16, CCR Section 974 and 974.3 (Fine Schedule and Payment Plan)**

Staff continues to develop the language for the following regulation packages and will present an update at a future Board meeting:

- g. Title 16, CCR Section 977, 978, 979, 980, 980.1, 980.2, 980.3, 980.4, 981, 982, 983, 984, 985, 986, 987, 988, and 989 (Health and Safety Regulations)**

Action Items:

- d. Title 16, CCR Section 965.2 (Personal Service Permit)**

Ms. Underwood reviewed the changes made to the language as requested by the Board at its last meeting.

Mr. Weeks asked to change the definition of Personal Service Permit. Ms. Underwood stated the definition is in statute.

Mr. Weeks asked where restrictive language can be placed. Michael Santiago, Board Legal Representative, stated it depends on the kind of restrictions or how it is proposed to further define what is generally listed in statute. Locations, number of places, whether services can be performed at a facility they own, or if they have some financial interest can be accomplished in regulations.

Mr. Weeks suggested further defining the definition of a PSP license holder by adding “only at a customer location. A PSP license holder may not act in any way as an establishment licensee, with a fixed location serving multiple customers” to Section 965.2 (a) Personal Service Permit in the Revised Draft after “The Board may

issue a personal service permit (PSP) authorizing the holder of the permit to perform limited barbering and cosmetology services outside of a licensed establishment.”

Ms. Underwood stated the second subsection (g) should be subsection (h). She suggested adding subsection (i). She suggested the language “A PSP license holder shall not operate out of a single location unless the location is licensed as an establishment according to the section.”

Mr. Weeks referred to the first subsection (g) about using disposable tools. He asked how to address that the Board will establish new protocols for health and safety for PSP license holders. Mr. Santiago stated, if the Board wants to create separate protocols focused only on the PSP license holder, it will have to develop that and put it through in conjunction with this revised regulation.

Mr. Weeks stated there is no time to do that here. He asked if reference can be made to it. Ms. Underwood stated not in regulation but it can be included in the PSP discussion in the Sunset Review Report.

Ms. Thong asked if the services listed that would be impacted and require separate regulations could be identified. Ms. Underwood stated staff will work on that.

Ms. Crabtree suggested tying the PSP to a brick-and-mortar establishment so it can be better regulated.

Ms. Codorniz questioned PSP holder’s non-disposable equipment.

Dr. Williams stated, according to the list of approved services, within regulation, shears can now be sprayed and no longer have to be immersed. When it comes to the disinfection portion, a number of the items already have to be disposed of, especially for manicuring services.

Ms. Codorniz suggested putting together a list of items that must be included in the PSP holder’s kit to be carried with them on appointments, such as the spray disinfectant.

Mr. Federico stated the state Board already sets the rules for disinfection and sanitation. He asked how the kits will be inspected. He stated he agreed with tying the PSP to a brick-and-mortar establishment, but the purpose of the PSP is to create a freelance license.

Ms. Crabtree stated the new ABC law is against independent contractors. The PSP license is an independent contractor license. App owners would need to hire PSP holders as employees.

Dr. Williams stated many licensees work independently and are establishment owners in the salon suite model. She stated the need to pin down the disinfection aspect. Because PSP services are limited and PSP holders are required to have at least two years in the industry, the items listed should be disinfected outside of electrical tools. Nonelectrical tools are shears and tweezers. She suggested discussing how tweezers should be disinfected since they are required to be immersed.

Ms. Underwood stated the PSP holders are required to follow the Health and Safety Regulations as applicable.

Mr. Weeks stated what is applicable needs to be defined. The Board has no control over this. He suggested laying out Board standards for the health and safety of the general public for PSP license holders to follow.

Mr. Drabkin asked Mr. Weeks if he meant more restrictive standards than non-establishment health and safety. Everyone should be held to the same standard.

Mr. Weeks agreed but stated, as an example, the difficulty of PSP license holders traveling around with the appropriate number of covered, labeled containers. Some regulations that apply to establishments need to be modified for mobility for PSP license holders.

Dr. Williams stated the same concerns continue to be raised. She noted that the Board adopted the revised draft by majority vote at the last Board meeting and staff was asked to make the changes discussed at that meeting and to bring back a newly-revised draft, which is before the Board today. She stated the Board understands that there will be no enforcement of rules and regulations for the PSP license holder. The best option, as discussed in the last meeting, was to educate the consumer and ensure that they are aware of what they should be looking for when someone comes into their home or place of work.

Ms. Crabtree asked why the Board is against requiring PSP license holders to be attached to a brick-and-mortar establishment when most freelance individuals follow the salon suite model.

Dr. Williams stated she was giving the example that not every PSP license holder may only use an app and was identifying another segment of the licensee population. The PSP may be an option for individuals who maintain their license but are not actively practicing.

Mr. Drabkin stated unfortunately the Legislature put the Board in the position where they are forced to allow things to go wrong and then point out the unintended consequences and do corrective action later instead of trying to fix it on the front end.

Mr. Weeks stated the Board does not want to set licensees up for disaster. He stated, if something went wrong and there was a lawsuit, the first thing the lawyer would look at is whether the PSP license holder was following the required rules and regulations put out by the Board. He stated, if current regulations were lined up with how the service was most likely performed in a client's home, the lawyer would prevail because the PSP license holder cannot possibly do all that is required in the regulations in a client's home. He suggested shortening the list or compromising in some respect so at least there would be coverage on the health and safety issue.

Dr. Williams agreed. She stated the Board has asked to include a review and evaluation of the PSP program in two years in the Sunset Review Report. It is constructive to consider the possibilities but she cautioned the Board not to get caught up and get so far away that it cannot move from this spot that the Board keeps coming back to. She agreed with Mr. Drabkin that, at some point, the Board will have to let it go, see how it impacts the licensees and the public, and do corrective action in the future.

Ms. Thong suggested including in the second sentence of the first subsection (g) that the PSP license holder must follow all health and safety laws and regulations that

equally apply to establishments. If that is clearly stated, the PSP holder would have to do the extra work of carrying a trash can and other containers in their car. They would have to follow all the laws but it would be incumbent on the PSP license holder to find the applicable solution for them.

Mr. Weeks agreed that that makes sense. He stated it would make someone think twice about being a PSP holder knowing that they would have to engage all health and safety protocols in order to be in business.

Mr. Federico stated the second sentence of the first subsection (g) states “A PSP holder shall follow all laws, rules, and regulations governing the practice for which the PSP holder is licensed by the Board.” He stated it is implied that the health and safety rules are included. It would be redundant to specifically mention the health and safety rules.

Ms. Thong suggested gathering information for the two-year review of the program on whether the PSP license holder is an employee of an establishment, an individual license holder, or works for an app. Ms. Underwood stated that question can be added to the PSP application.

Mr. Federico agreed with the importance of collecting information from the start to assist the Board with its review in two years. At this point, the only thing the Board can do is to consider what can be reported on or followed up on within the two years.

Mr. Weeks agreed with including that question on the application so the Board can see how many establishment employees are considering a PSP and how many individuals are considering working for an app company. The answer to this question will give the Board a rough up-front idea because currently nothing is known about this market.

Mr. Federico stated the PSP is a two-year license. It makes sense to review the information of the first generation of PSP holders. He noted that the Board will not be able to see if the demographics or values changed between the initial licensure and the renewal at the two-year review. The Board will only review the one dataset.

Ms. Thong stated a suggestion was made in previous meetings that the PSP license holder must be in good standing. She noted that is not currently in the revised draft language. Ms. Underwood stated the language in the revised draft included that as “has held a valid license for a minimum of two years.”

Ms. Thong stated the comments have come up that a PSP should not be issued if the licensee has had a history of health and safety violations. She questioned if it should be in statute, regulation, or just a consideration applied to the PSP when reviewing applications. It should be made clear.

Ms. Underwood stated Board decisions to issue a PSP based on an individual’s citation history must be in regulation. Parameters must be set for that.

Mr. Drabkin suggested including the language that “the PSP license holder must have no upheld DRC convictions over the past two years.”

Mr. Weeks suggested the language “no revocation of licenses.”

Ms. Underwood stated subsection (a)(1) contains the language “is not subject to denial.” She stated it would be difficult to make decisions based on violations because a non-

labeled drawer is a violation, even if the label just fell off, and one towel left on the counter is also a violation.

Mr. Weeks suggested the harsher violations such as if the license had been revoked or if the individual is on probation could be reason for denial of the PSP license.

Mr. Drabkin suggested the language “no outstanding fines” because, if an individual is fined, they pay the fine in acknowledgement that they did wrong, or the DRC dismissed the fine because they spoke with the individual and the individual now understands what they did wrong. He suggested holding the application, if an applicant has outstanding fines, until the matter is cleared up or the applicant has their DRC hearing.

Ms. Underwood stated “good standing” is defined in Article 8.5 Externship under Section 962(a) as “(1) the licensee maintains a valid, current barber, cosmetology, esthetician, or manicurist license issued by the Board, (2) there is no current or pending discipline against the license pursuant to Article 11, and (3) the licensee has no unpaid fine issued pursuant to Article 12 of the Barbering and Cosmetology Act.”

Mr. Drabkin stated he liked that but questioned if an individual applies who has not yet had their DRC hearing. He asked if their application will be put on hold until the matter is cleared up or if their application will be denied and they must reapply later.

Ms. Underwood stated the application would not be denied, but staff would send the applicant a deficiency letter.

Carrie Harris, Board Enforcement Manager, stated the current guidelines are as follows:

- Individuals would be approved if a fine is not past due.
- Individuals are not considered charged with the violation during the appeal process.
- Violations are not part of an individual’s record until after a decision is made from appeal.

Dr. Williams stated it sounds like licensees who need to renew their license can still practice during the appeal process but will owe a fine once the appeal decision has been made. It does not take away their license.

Ms. Underwood stated PSP applicants go through a background check so there is that additional level that is not done for licensees working in salons.

Mr. Drabkin made a motion to adopt the externship language for “good standing” in subsection (a)(1) and to include a subsection (i) to state “A PSP holder shall not operate out of a single location unless the location is licensed in accordance to Section 7346.”

Dr. Williams seconded.

Public Comment

Laura Embleton, Associated Skin Care Professionals and Associated Hair Professionals, stated hair cutting outside salons probably happens a lot. The question is should the Board understand it is illegal according to the laws and regulations but it is happening anyway, or should the Board make the laws and regulations broader to include those individuals so at least the Board will know

what is going on. Not that the Board can do anything about it but it will know what is happening.

Ms. Embleton stated subsection (e) of the Revised Draft allows estheticians to basically wash someone's face. She requested allowing waxing, lash extensions, sugaring, and threading because they are already happening in the field.

Jaime Schrabec, Precision Nails, stated Section 7318 is not being addressed. Section 7318 allows manicurists to serve individuals in their homes if there is some illness or physical or mental incapacitation, which has never been defined. She stated it could be argued that a migraine or hangover could be a physical or mental incapacitation. A provider of services could do whatever they are licensed to do in an establishment at a home and say the client was incapacitated.

Ms. Schrabec referred to subsection (f) in the Revised Draft and stated, if manicurists are allowed to apply nail polish, they must be allowed to remove it. She asked is the term "polish" means traditional polish or gel polish, which most individuals drill off, not file off. She stated trimming and shaping the nail is a basic thing that manicurists do that requires tools. She also requested that massaging be included in subsection (f). There is not much risk in allowing manicurists to do the massage – elbow to fingertips, knees to toes – in someone's home that they are allowed to do in an establishment. She suggested adding "exclusively," "predominantly," or "solely" to the language about single location in the proposed subsection (i).

Ms. Schrabec stated the PSP will cause cities to lose tax revenue. This needs to be considered in terms of the health of the communities being served. Apps are businesses, money is being exchanged, and the cities are going to lose out.

Ms. Cochran thanked the Board for bringing up the phrase "good standing." The length of the appeal process needs to be considered. She referred to subsection (e) in the Revised Draft and stated estheticians basically are allowed to do the equivalent of someone's night routine. Subsection (e) does not allow tools for exfoliation purposes but this does not restrict an individual from using tools such as infusion devices, oxygen facials, and LEDs. These are important tools that estheticians carry with them in their establishments and what they do as professionals that is above and beyond a client's general homecare routine. Two of the largest esthetician services are disallowed in the Revised Draft – lash extensions and hair removal. A good brow service cannot be done without waxing, trimming, or sugaring. She requested adding sugaring to the language.

Mr. Jones spoke in favor of tying the PSP to a brick-and-mortar establishment to resolve many of the concerns that will not be resolved any other way. The benefits of a brick-and-mortar establishment is the establishment owner is a partner who can be held responsible for the behavior and actions of the employees or those within their establishment.

Mr. Jones stated the other half of the equation is missing – why this has come to the Board in the first place. He stated the answer is apps. He stated apps are potential partners that the Board could put some onus upon similar to

establishments. Establishments are partners in ensuring consumer protection. The only protection consumers will have with the PSP is with a trial attorney after they have been hurt. Everything the Board does with establishments is to prevent harm in advance.

Mr. Jones suggested requiring commercial enterprises that facilitate PSP services to at least maintain a registry of who their PSPs are. This will require the apps to verify that each of their contractors have a PSP issued by the Board. This is a way to partner with the apps.

Mr. Jones referred to Ms. Thong's question on the two-year review and whether it will be an automatic sunset or whether the Board will review it again in another two years. He stated there is a big difference between those two ideas. One is on autopilot and other is it will force the Board to look at what is happening in the PSP program and, if they do not approve the continuation, it goes away. He suggested requiring the PSP program to sunset in two years and not just review it in two years.

Ms. Crabtree suggested putting responsibility on app companies.

Dr. Williams stated this came up during the Sunset Review discussion. Ms. Underwood stated it will be included in the Sunset Review Report as something to consider. Adding that oversight would require statutory authority.

Ms. Thong stated, based on the app representatives in attendance at the last Board meeting, apps want to be in good standing, already have registries, and are willing to partner with the Board. The concern is that there are many individuals interested in a PSP who are not associated with apps but will be providing services on their own.

Mr. Drabkin suggested a larger app discussion at a future Board meeting, including other state's experiences with apps.

Ms. Thong suggested a committee to engage with apps to formalize a partnership or working group with them to answer questions. There are currently many assumptions. There needs to be real conversations with app companies.

Dr. Williams asked for a review of Mr. Drabkin's current motion on the table.

Ms. Underwood stated the motion is to adopt the externship language for "good standing" in subsection (a)(1) of the Revised Draft and to include a subsection (i) to state "A PSP holder shall not operate out of a single location unless the location is licensed in accordance to Section 7346."

Dr. Williams suggested adding that manicurists can also remove nail polish so subsection (f)(2) would read "removing and applying nail polish" and to add a subsection (f)(3) to allow massaging of hands and feet.

Ms. Underwood stated services were limited based on the risk assessment that was done. The concern is that the massaging may lead to a pedicure.

Dr. Williams withdrew her suggestion to add a subsection (f)(3) to allow massaging of hands and feet. Her suggestion to include that subsection (f)(2) would read "removing and applying nail polish" remained.

Mr. Drabkin accepted Dr. Williams's friendly amendment to his motion.

MOTION: Mr. Drabkin made a motion, seconded by Dr. Williams, that the Board adopt the externship language for "good standing" in subsection (a)(1) of the Revised Draft, to include a subsection (i) to state "a PSP holder shall not operate out of a single location unless the location is licensed in accordance to Section 7346," and to change subsection (f)(2) to read "removing and applying nail polish." Motion carried 6 yes, 1 no, and 0 abstain per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Drabkin, Federico, Thong, Weeks, and Williams.

The following Board Member voted "No": Crabtree.

e. Title 16, CCR Section 972 (Disciplinary Guidelines)

Ms. Underwood reviewed the changes made to the language of the Disciplinary Guidelines, which was included in the meeting packet.

MOTION: Mr. Federico made a motion, seconded by Ms. Crabtree, that the Board adopt the changes made to the Disciplinary Guidelines. Motion carried 7 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board Members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Thong, Weeks, and Williams.

12. Agenda Item #12, AGENDA ITEMS FOR THE NEXT MEETING

Mr. Drabkin suggested a larger app discussion at a future Board meeting, including other state's experiences with apps.

Ms. Underwood suggested giving Mr. Drabkin's suggestion to the Licensing Committee. Dr. Williams agreed. The Licensing Committee can thoroughly discuss the item and bring a report back to the Board at a future meeting.

Mr. Drabkin asked for a short, verbal, in-progress update from the Licensing Committee at the October Board meeting. Ms. Underwood stated she plans to attend the NIC meeting and will have an opportunity to talk to representatives from many states on this issue.

Ms. Thong suggested inquiring if there is a national working group between states on this issue.

Public Comment

Jaime Schrabek suggested in the future, as the Board works out the consequences for students who have completed their course and are applying but are not entitled to take the exam because they might have bought their hours, that the Board prepare a joint statement from the Board and the BPPE titled "Before you Enroll" that outlines the rules and reinforces that students cannot be attending a school in California while living out of state. Denial of applications has not happened up to this point to this extent. Now that the Board and the BPPE

are cooperating, it is important to be more outward facing to keep students from getting themselves into these situations in the first place.

Ms. Underwood stated language was added to the approved school list that students need to attend school and not just learn to pass the test. A press release on the emergency decisions was translated into multiple languages and sent out to various organizations.

Ms. Cochran stated apps support businesses. If the Board gets to the place of endorsing apps, manufacturers in the business will ask for those endorsements as well.

Matt Glockenstein (phonetic), GlamSquad, stated his appreciation on the attention given to apps today and for the PSP program. GlamSquad looks forward to following up with staff on providing the Licensing Committee with whatever they need, being available to answer questions, and working with the Board moving forward.

13. Agenda Item #13, CLOSED SESSION

There was no closed session.

14. Agenda Item #14, ADJOURNMENT

There being no further business, the meeting was adjourned.