



## **CALIFORNIA STATE BOARD OF BARBERING AND COSMETOLOGY BOARD MEETING**

### **MINUTES OF OCTOBER 19, 2015**

Department of Consumer Affairs  
1747 North Market Blvd.  
HQ2 Hearing Room 186, 1<sup>st</sup> Floor  
Sacramento, CA 95834

Additional meeting location for teleconference:  
1038 West 80<sup>th</sup> Street  
Los Angeles, CA 90044

#### **BOARD MEMBERS PRESENT**

Dr. Kari Williams, President  
Richard Hedges, Vice President  
Mary Lou Amaro  
Bobbie Anderson (via teleconference)  
Polly Codorniz  
Andrew Drabkin  
Joseph Federico

#### **STAFF MEMBERS PRESENT**

Kristy Underwood, Executive Officer  
Rebecca Bon, Legal Counsel  
Carrie Harris, Enforcement Manager  
Tami Guess, Board Policy Analyst

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

Dr. Kari Williams, the Board President, called the meeting to order at 10:00 a.m.

#### **2. Agenda Item #2, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

Jeff Ta, the CEO of CONTÉGO Spa Designs, Inc., demonstrated the Novo™ Spa Chair with innovative AirJet Liner™ technology. He stated it is the first spa chair with a disposable foot massage system. New sets of disposable liners are replaced after every service, leaving nothing to be reused.

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

Dr. Williams stated she attended an event yesterday in Los Angeles called Beauty and the Business. It was the second year it had been hosted. It was a great opportunity for a number of industry professions to encourage students who are entering into the industry.

#### **4. Agenda Item #4, EXECUTIVE OFFICER REPORT**

Kristy Underwood, the Executive Officer, reviewed the statistic reports included in the meeting packet. She stated she will report on the Spanish pass rates in the next Board meeting. There may be a need to look at the quality of education. Many individuals who

take the test say they understand it, but continue to fail. It is a bigger issue that the Board may want to work on with the Bureau for Private Postsecondary Education.

Staff conducted research to determine a pattern to target. Staff considered if the problem is the textbook, translation, or specific schools, but no patterns were found with the statistical data. Staff reviewed past years of statistics and found that the exams were tracked differently in the past and not separated by language, but historically the pass rates were the same.

Mr. Hedges stated the Vietnamese speakers are equal to or above the English speakers in the pass rate on the written exam. The low pass rate is something specific to the Spanish-speaking applicants. If individuals are not grammatically literate in their native language, it is hard to transfer that to another language. He stated there is pressure for this Board to deal with this issue, but the only way is to go to a normal bell curve, which then dilutes the public safety, because in a normal bell curve, there is about 2.5 percent failing.

Andrew Drabkin, a Board Member, asked Ms. Underwood to research and report on whether other states experience this issue and, if so, what solutions they have found for substandard scoring on the national test.

#### **Public Comment**

Fred Jones, with the Professional Beauty Federation of California (PBFC), stated the PBFC has looked into this issue. He stated the National-Interstate Council of State Boards of Cosmetology (NIC) asked a bi-lingual individual from California to look at their Castilian Spanish version of the test. They did not find any problems in the translation of the test. He suggested that the Board compare the Spanish written candidates with their practical test scores. Perhaps they do not come from a culture that communicates much in written form.

Mr. Hedges stated he asked at the last Board meeting if there could be a Beta test using conversational Spanish with a proctor dealing with the person taking the test, but it would have to be an exact duplicate of the test to get a good view of whether that would work or not.

Mr. Jones stated the Board has the advantage of contracting with NIC. The NIC has a valid, good national exam because they have psychometricians on staff. He suggested asking the NIC these questions. What the PBFC has been able to look at and has communicated to the NIC and others is that there is a cultural barrier. There may be a difference between written performance and practical performance because of that cultural distinction.

Joseph Federico, a Board Member, asked what the relative lag time is between the initial application and taking the test. Ms. Underwood stated the process takes approximately two months. She recommended applying online to expedite the process.

Mr. Federico asked about the mobile unit applications. Ms. Underwood stated R.V. Salons are becoming a trend.

## **5. Agenda Item #5, APPROVAL OF BOARD MEETING MINUTES**

### **Public Comment**

Mr. Jones stated he wanted to publicly acknowledge and thank the Board and staff who have made a concerted effort despite budgetary constraints to reach out to the industry.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board approves the July 26, 2015, Meeting Minutes as presented. Motion carried 7 yes and 0 no per roll call vote.

## **6. Agenda Item #6, ENFORCEMENT COMMITTEE REPORT, CONSIDERATION OF COMMITTEE RECOMMENDATIONS AND POSSIBLE ACTION**

- **Update on the Medical Services Task Force**
  - **Discussion and Approval of Recommended Regulatory Language Regarding False/Misleading Advertising**

The Board was provided a memorandum about the Medical Services Task Force meetings held on May 4 and August 3, 2015, and Mr. Hedges provided a summary of the Enforcement Committee meeting that convened earlier today to consider issues regarding medical services and spas. The Task Force recommended proposed regulatory language that the Enforcement Committee approved. The Enforcement Committee is now asking the Board to approve the proposed language.

Ms. Underwood stated the proposed language is in the meeting packets. The proposed regulatory language would strengthen the Board's ability to hold individuals accountable for false/misleading advertising. Ms. Underwood summarized the regulatory process and stated the process could take over a year to complete.

### **Public Comment**

Mr. Jones spoke in support of the presented language, which provides an additional tool to go after salons that are intending to go beyond their scope of license practice. He thanked the Board and staff for creating and updating industry bulletins that are incredibly valuable resources.

Patrick Romani, from Face Reality Acne Clinic, stated his concern about the kind of terms the Board will limit estheticians from using. There are terms that are primarily used by the medical community which have a broader definition, such as blemish and treatment.

**MOTION:** Mr. Hedges made a motion, seconded by Dr. Williams, that the Board approves the recommended regulatory language regarding false/misleading advertising. Motion carried 7 yes and 0 no per roll call vote.

- **Discussion and Recommendations of Remedial Training for Immediate Suspensions**
  - **Recommendation to Amend Sections 973.3(d), 973.4, and 973.5 of the California Code of Regulations**

Ms. Underwood reported on the Enforcement Committee's actions in this morning's meeting regarding manicuring and pedicuring violations. She stated violators are immediately suspended and are required to do eight hours of remedial training. Training is difficult to obtain because schools do not have the resources to offer only an eight-hour course. Staff presented to the Enforcement Committee the concept of developing remedial training internally along with the Board-approved training. She stated the staff will continue to explore the possibility of developing a course and will present a report to the Enforcement Committee.

**7. Agenda Item #7, UPDATE AND DISCUSSIONS OF PROPOSED BILLS THAT COULD IMPACT BBC:**

- **AB 181 – Sunset Review Bill**

Ms. Underwood stated Assembly Bill (AB) 181 that extends the Board for four more years was signed by the governor. Staff will present a plan on how to meet the additional requirements in the bill at the next Board meeting in January.

- **AB 1322 – Allowing Alcohol in Establishments**

Ms. Underwood stated this bill is in the Senate Committee on Governmental Organization. Staff will continue to watch this subject through the Legislature.

- **AB 750 – Retiree Licenses**

Ms. Underwood stated this bill is held under submission in Assembly Appropriations.

- **AB 888 – Microbeads in Cosmetics**

Ms. Underwood stated AB 888 was signed by the governor.

- **AB 85 – Open Meetings**

Ms. Underwood stated AB 85 was vetoed by the governor.

**8. Agenda Item #8, PROPOSED REGULATIONS UPDATES (POSSIBLE ACTIONS)**

Dr. Williams deferred to Ms. Underwood to provide updates on the follow items:

- **Military Training – Title 16, Section 910 of the California Code of Regulations**

Ms. Underwood stated the proposed rulemaking language has been revised by Rebecca Bon, Legal Counsel. Upon Board approval, the revision will require a 15-day public comment period.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board approves the proposed rulemaking language for military training under Title 16, Section 910, of the California Code of Regulations. Motion carried 7 yes and 0 no per roll call vote.

- **Administrative Fine Schedule -Title 16, Section 974 of the California Code of Regulations**

Ms. Underwood stated this package is with the Department of Consumer Affairs. No action is required.

- **Proposed Regulatory Language to Define “Demonstrating” for Purposes of BPC 7319(e) Exemptions**

Ms. Underwood stated a public hearing was held on October 14, 2015, on this proposed rulemaking. Staff will present the Final Statement of Reasons for approval at the next Board meeting. No action is required.

- **Consumer Notice – Title 16, Sections 904 and 905 of the California Code of Regulations**

Ms. Underwood stated staff has made several revisions to the proposed language of the consumer notice based on Board Member comments in the last meeting.

Dr. Williams asked about photocopying the notice. Ms. Underwood stated salons may make photocopies of the consumer notice as long as the font size remains the same as specified in regulations.

Mr. Drabkin questioned the stability of Quick Response (QR) Codes and whether a QR Code should be a feature on the consumer notice, because technology may move beyond that trend in future years. He recommended crafting the language in such a way that it can be modified.

Ms. Underwood stated the regulations do not specify the requirement of a QR Code on the consumer notice should they no longer be valid in the future.

#### **Public Comment**

Jaime Schrabek, of Precision Nails, stated the concern that the consumer notice does not include what the Board cannot address, such as quality of service and refunding, to clarify where to draw the line. There are issues that clients feel they can take to the state Board that they cannot.

Mr. Hedges stated the problem with listing everything is the poster must be changed every time a regulation is changed.

Ms. Underwood suggested not specifying what the Board can and cannot do on the notice but letting consumers know where they can file complaints. Doctors' offices and pharmacies post a notice that states they are licensed by the medical board and to call the medical board if there is a problem.

Ms. Schrabek suggested that the Board's mission be listed on the notice emphasizing health and safety and a statement that it does not address financial complaints. The Board is only concerned with clients' safety, not promoting the industry or ensuring that clients are receiving value for their dollar. This is an opportunity to give the consumer more information and draw the line where the salon's responsibility ends and the Board's responsibility begins.

Mr. Jones agreed and suggested it may be helpful to have one line at the top of the notice that explains the role of the Board is limited to consumer protection issues, not quality of services. He suggested the removal of the third bullet about misrepresentation or false advertising of services because it is too vague.

John Moreno, from Bakersfield Barber College, agreed with making a simplified notice. He suggested adding that consumers should first try to resolve issues with management before taking issues to the Board.

Ms. Underwood suggested removing all bullets and only including the mission. The purpose of the consumer notice is to let consumers know where to send their complaints.

Dr. Williams asked the percentage of calls received that are outside of the Board's jurisdiction.

Carrie Harris, the Board's Enforcement Manager, stated the Board gets complaints, such as bad haircut complaints or refund requests for dissatisfaction of service, almost daily. She stated the consumer notice refers individuals to the website where they can file a complaint. She suggested improving the website complaint page by adding information about what the Board can and cannot help consumers with.

Mr. Hedges stated the purpose of updating the consumer notice is to simplify it. He agreed with Ms. Harris to add greater detail to the website, not to the notice. Adding more language to the notice will require decreasing the font size.

Mr. Hedges stated he also agreed with Ms. Schrabek that only listing what the Board can do may be a problem, but the simple poster design is preferable as long as it directs consumers to detailed information available on the website.

Mr. Drabkin suggested removing the QR Code and increasing the size of the web address if individuals will be directed to the website for details on what the Board can and cannot do. If the QR Code will remain, Mr. Drabkin suggested putting it in a bottom corner to take up less space.

Mr. Federico suggested that the webpage consumers are directed to be its own unique landing page, where it delves into that information and can be continually updated with pertinent information, so that the regulation about the consumer notice can stay the same but the website can be more fluid and can adjust for what the Board or the public feel they want to see or do not want to see or what is more important to the consumer. That way, this can be kept active and useful for a longer period of time.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Drabkin, to send the consumer notice back to staff to make the revisions suggested from public comment and Members of the Board to be presented at the next Board meeting. Motion carried 7 yes and 0 no per roll call vote.

**9. Agenda Item #9, DISCUSSION CONCERNING INTERPRETERS BEING PROVIDED AT THE DISCIPLINARY REVIEW COMMITTEE (DRC)**

Ms. Underwood stated the Board has received various inquiries regarding providing interpreters at the DRC hearings. The Board has never provided this service in the past because the hearings are considered informal, although it does provide interpreters at formal hearings when requested. She asked Board Members to review the memo included in the meeting packet summarizing the items to consider and the potential costs.

Mr. Hedges stated this cannot be done without a budget change. There is nothing in the budget about the \$21 million the Board loaned to the Administration that has not yet been paid back. There is nothing mentioned about any compensation to the Board from the fines it collects. The Board could tap into that money to hire interpreters. Mr. Hedges spoke in favor of hiring interpreters because it will make the DRC run smoother, it will ensure the appellants receive a fair hearing, and it will ensure a clear record. He stated he agrees with the Sunset Hearing, the request for the Board to have interpreters, and the suggestions the Board has gotten from the Legislature, but they also have to help the Board pay for it. He suggested informing the Legislature that the Board wants to hire interpreters but will require help to do it.

Mr. Federico cautioned that utilizing bi-lingual staff may cause a question of impartiality as opposed to using interpreters. Ms. Underwood agreed that the HR Department would need to be consulted regarding the separation of duties.

### **Public Comment**

Mr. Jones suggested making any motion conditional on a successful Budget Change Proposal (BCP), which would put the burden back on the policymakers. He suggested comparing contract versus civil service. The legislative trend by policymakers is translation and interpretation. However, a DRC hearing is an optional hearing given to licensees to appeal a finding; therefore, it is the responsibility of the licensee to provide for their own interpretation. He suggested building protection into the process, such as having both contracted interpreters and staff that provide these services sign a consent contract that waives any legal liability on the Board's behalf, and that the Board does not assume responsibility for proper interpretation, but that it is a service being offered for their benefit. He offered to help craft the language.

Mr. Jones stated, if they decide to use one of the Board's contracted or civil service interpreters, there should be some sort of consent. If the translation is deemed inaccurate, the Board is relieved of any associated liability.

Mr. Drabkin asked how much of a benefit hiring an interpreter would be for the Board. He also asked how having interpreters affects the decisions on the DRC hearings.

Polly Codorniz, a Board Member, asked if the appellants are responsible for understanding the language or bringing their own interpreters.

Mr. Drabkin stated the issue is whether it helps them or the Board.

Mr. Federico stated those are good points. As a member of the DRC, the benefit of utilizing an interpreter would be that the Board does not feel like it is there to assess a penalty and move on. The DRC is used as a process for education. Interpreters affecting the outcome of a decision would be small. The benefit is having the extra layer to convey the education to the appellant.

Mr. Hedges stated the belief that everyone in the industry should know English because it increases safety for them and for the consumers. All material safety data from the EPA and other agencies and instructions for product use are in English. The Board must afford this both for political reasons, because the Legislature allowed the Board another four years, and for education. If the Board hires interpreters, Mr. Hedges

suggested having them there each day rather than for one or two hearings, because appellants will come in who did not ask for an interpreter and will not understand. Appellants are always asked to speak with staff. The Board's mission is to protect the public, not to fine people, but one of the ways to get their attention in order to protect the public is to fine them.

Mr. Drabkin asked staff to conduct a cost-benefit analysis of hiring interpreters versus hiring staff so the Board can inform the Legislature on the amount of funding it will take to provide this service.

### **Public Comment**

A member of the public stated a previous Board Member was Vietnamese. The Vietnamese Board Member encouraged a member of the public to learn English. An important education part of the appeals process is to encourage individuals to learn English for the reasons Mr. Hedges mentioned.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Federico, that staff take direction from what was suggested from public comment and Members of the Board and bring back a policy to be presented at the next Board meeting, including how the Legislature, the governor's office, and the Department of Consumer Affairs will assist the Board to provide interpreters at Disciplinary Review Committee hearings. Motion carried 7 yes and 0 no per roll call vote.

### **10. Agenda Item #10, AGENDA ITEMS FOR NEXT BOARD MEETING**

Mr. Drabkin asked for the date of the next Board meeting. Ms. Underwood stated it will be a two-day meeting, on January 24<sup>th</sup> and 25<sup>th</sup>.

### **11. Agenda Item #11, PUBLIC COMMENT**

Mr. Jones stated the Sunset Bill not only extended the existence of the Board for four more years but also had a list of studies and reports with due dates. He suggested making a list of what the Board is mandated to do, including the idea of permitting licensees to practice outside of a licensed establishment, as a future agenda item. He also suggested discussion on legislative ideas to address the concerns of the Senator from Orange County regarding the Vietnamese nail salon community as a future agenda item.

### **12. Agenda Item #12, CLOSED SESSION**

The Board adjourned into closed executive session. No action was taken.

### **13. Agenda Item #13, ADJOURNMENT**

With no further business, the meeting was adjourned.