

**CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY**

BOARD MEETING

MINUTES OF AUGUST 12, 2019

Hilton Garden Inn Burbank
401 S. San Fernando Blvd.
Burbank, California

BOARD MEMBERS PRESENT

Lisa Thong, President
Andrew Drabkin, Vice President
Jacquelyn Crabtree
Steve Weeks
Dr. Kari Williams

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Michael Santiago, DCA Legal Counsel
Allison Lee, Board Project Manager
Marcene Melliza, Board Analyst

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

Lisa Thong, Board President, called the meeting to order at 10:02 a.m. and confirmed the presence of a quorum.

Board President's Opening Remarks

Ms. Thong reminded everyone that the Board is, above all, a consumer protection Board that looks at all items of discussion through the lens of health and safety to California consumers while promoting ethical standards and enforcing the laws of the barbering and beauty industry.

Ms. Thong stated licensees are also consumers and their health and safety should also be a priority. She reviewed economic outlook statistics of licensees. The average mean wage for a barber is \$35,850; hairdressers, hairstylists, and cosmetologists is \$31,400; manicurists/pedicurists is \$26,260; shampooers is \$25,510; skin care specialists is \$34,780. She stated there are many questions about these numbers. She stated these statistics are based on 65,000 licensees – the number of licensees who reported under these categories with the Bureau of Labor Statistics – which is a drastic difference from the total number of current licensees. There is a huge discrepancy; underreporting is a concern. She also stated her concern about the economic security of hundreds of thousands of individuals who may not have put finances away into an IRA, paid into Social Security, or made enough to put anything into savings.

Ms. Thong asked everyone to consider the increase in homelessness and the direction this industry is headed. She asked that the regulations and policy be looked at not just through the lens of what is happening in the industry but at the broader impact of where the state is economically. It is not enough to look at decisions in the immediacy of what the industry looks like now – instead, she stated the need to talk about what a thriving,

economically sound, sustainable, and well-regulated beauty industry should look like and how to get there.

2. Agenda Item #2, BOARD MEMBER REMARKS – INFORMATIONAL ONLY

Ms. Crabtree agreed with Ms. Thong's opening remarks. She thanked Ms. Thong for bringing this issue up and researching the statistics. Underreporting and economic stability have been her biggest concerns in this industry.

Dr. Williams stated she too is passionate about the economic stability of licensees. She stated she tries to educate as many individuals as possible about the importance of saving and planning for the future. She stated she, too, will change herself moving forward to ensure this is kept at the forefront during discussions around regulations for this industry.

3. Agenda Item #3, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Wendy Cochran, Founder, California Estheticians – Esthetician Advocacy; Founder, California Aesthetic Alliance (CAA), stated her appreciation that the Board has been listening to what she has been bringing to the Board's attention as far as labor violations. She stated her concern for licensee's futures. Labor violations in the industry that go without enforcement is shocking. She stated outside the industry there are human relations departments, taxes being taking out, etc. She thanked the Board for acknowledging that this is a massive problem within the industry.

Caroline Barboza, Barboza Barber Academy, agreed with the Board's remarks. She stated she shares the new program, CalSavers, within the barbering community to help with retirement savings.

John Trang, Attorney, Asian Americans Advancing Justice (AAAJ), Los Angeles, stated AAAJ has long been invested in nail salons and other license categories in part because of the demographic makeup of the workforce. Workers should be treated with dignity and respect and afforded all rights under the law. AAAJ supports businesses which comply with the law and believes unscrupulous employers that exploit workers and engage in ways that give them an unfair advantage over law-abiding businesses should be held accountable. The overwhelming majority of individuals who come to AAAJ have suffered workplace violations that are directly related to misclassification.

Ken Williams, President, Universal College of Beauty, former Board member, stated Ms. Thong's opening remarks were on point. He stated there are inequities within the industry but there are things this Board can do to change the landscape. He stated the industry and Board members need to work as a team. He stated it is not right that there are two oversights – the California Bureau for Private Postsecondary Education's (BPPE) and the Board. He stated the Board should be the sole authority over schools, licensing, and everything else cosmetology. He questioned that the BPPE has the expertise. He stated shampooing is an occupation but is unlicensed in the state of California. He suggested shampooing as a license category. He stated braiders are not licensed but hair braiding is an art and a science and it involves health and safety. Many individuals owe their livelihoods to the industry but some are not being treated fairly. Moving the needle on this will take more communication and understanding. He stated

he went on ride-alongs with inspectors during the years he was on the Board because he wanted to see what inspectors saw. He questioned that there is not a school owner on the Board to help make it a strong and effective Board. The schools should be supportive of this Board. He stated the need to streamline and make it easier for students to get licensed. He suggested a provisional license to allow students to work while trying to pass the examination. He suggested that the written portion of the examination be given at 1200 hours to help students pass by the time they reached the 1600-hour requirement.

Yvette Becerra, Electrologists' Association of California, stated the statistics provided in the Board President's remarks did not include electrologists. She asked what the statistics are on electrologists.

Lisa Fu, Executive Director, California Healthy Nail Salon Collaborative, provided an overview of the goals, objectives, and activities of her organization. She stated her organization has seen the challenges the nail industry members have faced as manicurists and as a result of being misclassified. She stated she will share more about how her organization supports the passage of AB 5 without an exception for manicurists.

4. Agenda Item #4, 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.

- The Board recently conducted an examination in a state correctional facility. Results are pending for the two candidates who were ready to take the exam.
- Kristy will be attending the National Interstate Council's Annual Conference that will held in early September in Milwaukee.
- The top-ten consumer harm cases reported to the Board have been added to the enforcement statistics on page 9.
 - There has been a decrease in pedicure infections.
 - Skin care is currently one of the largest concerns due to the enormous number of new products and machines that are becoming available.
 - The Board is getting information out on this issue via social media.
- Staff recently attended a rally at the state capitol for senior citizens.
- Staff recently attended a community fair with Assembly Member Chris Holden.

- Staff plans to increase their attendance at consumer awareness events along with the industry events.

Mr. Drabkin asked if the increase in consumer harm cases reported is due to more reporting or if something is happening that is causing more consumer harm. He asked if perhaps the new Board signage about consumers directing questions and concerns to the Board may have impacted the statistics.

Ms. Underwood stated the simplified sign could be helping more individuals reach out to the Board but it is difficult to say for certain what caused the increase in consumer harm cases reported.

Mr. Weeks asked staff to provide statistics on the time it takes the average student to pass the examination.

Public Comment

Ms. Cochran asked the Board to defined the term “app investigation.”

Ms. Underwood stated it is when an applicant marks that they have had a conviction in the past.

5. Agenda Item #5, APPROVAL OF April 29, 2019, BOARD MEETING MINUTES

MOTION: Dr. Williams moved to approve the April 29, 2019, California State Board of Barbering and Cosmetology Meeting Minutes as presented. Mr. Drabkin seconded. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

6. Agenda Item #6, UPDATE AND POSSIBLE ACTION REGARDING HEALTH AND SAFETY ADVISORY COMMITTEE

Ms. Underwood reviewed the summary of the July 29, 2019, Health and Safety Advisory Committee meeting, which was included in the meeting packet. She suggested appointing an alternate Board member to serve on the Committee.

Mr. Weeks volunteered for the alternate position.

MOTION: Ms. Thong made a motion, seconded by Ms. Crabtree, that the Board appoints Steve Weeks as an alternate to the Health and Safety Advisory Committee. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

Ms. Underwood reviewed the recommendations from the Health and Safety Advisory Committee on Assembly Bill (AB) 5, which were included in the meeting packet.

Ms. Thong stated she abstained from voting on this motion at the Committee meeting because of complex issues – booth renter permits and whether or not licensees should

be exempt from the AB 5 language, which codifies the Dynamex decision. The Dynamex decision simplifies the categorization of workers versus independent contractors. She stated the industry is primarily booth rental but that may not be the best thing for the industry. This is a difficult issue and there has not been enough time as a Board or an industry to have conversations about what needs to take place regarding the categorization.

Ms. Thong stated she has changed her mind significantly since the Committee met. She stated at that time she thought that, since the language was already in AB 5 as an exemption, the only thing the Board needed to consider was if the language should be changed to licensees and manicurists should be added to the exemption. Since then, she stated she has come to the conclusion that the Board should not support having exemptions in AB 5 for any license categories. Encouraging the industry to increase the number of independent contractors will not help the earning side of licensees.

Ms. Crabtree spoke in opposition to AB 5's exemptions specific to the Board of Barbering and Cosmetology license types. She stated her four salons are employee-based. She stated many licensees do not report their income because they can get away with it. A huge number of licensees are not paying their taxes. AB 5 gives carte blanche to continue doing that. It does not set students up for success when they are being taught they can do these things and the industry is not being protected by continuing to open it up, the number of violations, the individuals being taken advantage of, and the individuals who do not understand about paying taxes.

Dr. Williams stated many individuals come into the industry to work for themselves. She stated she has experienced both sides – she has been a salon owner with booth renters and also a salon owner with employees. The industry is predominantly booth renters. Having a booth rental permit attached to a licensee sets them up to function within a salon space and have more accountability. Many students are not under the right mentorship or leadership and are set up to fail. She stated she needed more time to process the information for this complex issue.

Mr. Weeks stated he was uncomfortable with rendering a decision on this issue without hearing more discussion and public input. He suggested putting off the possible motion until after the discussion on AB 5 in Agenda Item 8.

Mr. Drabkin asked why the booth rental permit was struck from AB 5. Ms. Underwood stated this question may be answered during the AB 5 public comment period.

Ms. Thong moved this discussion to Agenda Item 8, Legislative Updates.

7. Agenda Item #7, UPDATE AND DISCUSSION REGARDING SPANISH LANGUAGE EXAMINATION PASS RATES

Ms. Underwood updated the Board on Spanish language examination pass rates as follows:

- The computer-based testing vendor recently went live.
- Everyone who takes the examination in another language sees the test in both English and their language of choice.

- Staff met with the Division of Apprenticeship Standards (DAS) to discuss the low apprentice examination pass rates. No action has yet been seen as a result of that conversation. Staff recommended developing regulations on the apprentice program to strengthen that area. She gave the example that apprentices are not required to have textbooks.
- Staff is working with DCA about a potential combined score. This will also be a topic at the NIC Conference.

Mr. Drabkin asked if anything can be done for the apprenticeship program in the short-term. Ms. Underwood stated the DAS looks at completion of the program, not pass rates. The apprenticeship program for this Board is very different than apprenticeship programs for other industries such as apprentices must have a license from the Board. This will also be a topic at the NIC Conference.

Mr. Drabkin suggested putting out on social media for students who are considering entering an apprenticeship program to first look at the sponsor's pass/fair rates. Ms. Underwood stated staff has put together an Apprentice Sponsor Handbook and would like to work with every program sponsor directly about this.

Public Comment

Ken Williams stated he has experienced many students who were enrolled in apprenticeship programs who do not feel qualified to take the examination. He agreed that there are issues with the program. He suggested that there be a caveat to allow apprenticeships to complete their program when they experience unforeseen circumstances such as illness or a death in the family. He also suggested that apprentices attend traditional school for a portion of their 3200 required hours.

Fred Jones, Legal Counsel, Professional Beauty Federation of California (PBFC), stated apprenticeship and scoring are two big interrelated yet separate issues. The PBFC believes, given the concerns voiced in all 50 states about unreasonable barriers to entry, that as many options as possible should be kept open to enter the license profession legally. He stated the PBFC supports the continuation of apprenticeships, in theory, but, in practice, recognizes that there have been many concerns.

Mr. Jones stated, due to the BPPE's incompetence, many individuals who wanted to start a school instead started an apprenticeship program effectively quadrupling the number of apprenticeship programs in California in less than ten years. He asked why, who are they, and what standards they are being held to.

Mr. Jones stated the exam affects all Board licensing programs. He stated the PBFC believes there should be one licensing exam with two parts with one overall pass score. He provided a brief history of the licensing examination and how it became split into two parts. He stated the changes made to the exam were done for good reasons but has led to unintended consequences such as the perception among legislators that the Board gives two licensing exams, which feeds into the narrative about unreasonable barriers to entry. Mr. Jones stated

the Board must be clear that there is one licensing exam that has two parts – theory and practical – with one overall pass score.

Ms. Cochran asked that an esthetics apprenticeship program be made available or to combine it with the electrologist apprenticeship program.

Ms. Underwood stated an apprentice must have constant supervision and be licensed as an apprentice for two years before they can work on their own.

Ms. Cochran stated for many estheticians to make the money to own the \$20,000 of Electrology equipment would take approximately two years. Individuals must own the equipment in order to be licensed as an electrologist. There is opportunity for crossover and for support of the Electrology license.

Ms. Crabtree stated the difference between other apprenticeship programs and an esthetician program is the supervising licensee can continue to perform services while supervising an apprentice in the next station, but the supervising esthetician could not perform services while supervising an apprentice. Being unable to earn a living while supervising an apprentice at all times makes it difficult.

Tona Phillips, UCB Teacher Training, stated the missing link for the apprenticeship program is leadership. She suggested requiring a permit for the individuals hosting the apprenticeship program to add responsibility and accountability. She suggested requiring equivalent hours for a school or institution but stated it is necessary for the individual to receive the information and retain it. That might be the issue for the low apprenticeship pass rate.

8. Agenda Item #8, 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 5 (Gonzalez) – Worker Status: Independent Contractors**
- b. AB 496 (Low) – Business and Professions Changes**
- c. AB 613 (Low) – Regulatory Fees**
- d. AB 1271 (Diep) – Licensing Examination Reports**
- e. AB 1607 (Boerner Horvath) – Gender Discrimination Notification**
- f. SB 188 (Mitchell) – Discrimination: Hairstyles**
- g. SB 606 (Glazer) – Sunset Extension**
- h. SB 607 (Glazer) – Health and Safety Advisory Committee**

Dr. Williams stated the majority of licensees operate as booth renters or independent contractors. She stated she supports an exemption to AB 5 because of the large number of licensees and business owners who would be impacted. She also spoke in support of a booth rental license, especially in light of the Dynamex decision. A booth rental license would provide an opportunity for licensees to own their own salons within a larger co-working space. The AB 5 exemption would allow salon owners to function like a suite owner who buys a space with co-working spaces with individual establishment licenses. A booth rental license would also support the new fine regulations which separate who has the responsibility to pay fines.

Dr. Williams stated it is important for licensees to think about their financial futures. She suggested that the Board provide licensees with educational opportunities to learn more about finances and the importance of preparing for retirement.

Ms. Thong stated AB 5's ABC Test does not take away the ability for individuals to operate as booth renters. She stated the discussions on the AB 5 exemptions are about either allowing exemptions to allow the industry to continue working as it is or there will be no exemptions and the industry will no longer continue working as it is. She stated that is not the case. AB 5 codifies Dynamex, which does the ABC Test. As long as businesses follow that test and comply with it, they are still able to operate as booth renters or independent contractors. It is just stricter in terms of what that relationship looks like.

Dr. Williams referred to pages 6 and 7 of the bill and stated there currently is a test that booth renters set their own hours, book their own services, and purchase their own supplies. With this written in the bill, as long as individuals are doing those things, they are exempt from being classified as employees.

Ms. Thong stated this is what confused her with the language. It feels more restrictive about how licensees need to operate to not fall under the ABC Test. The ABC Test is simpler in terms of distinguishing if an individual is considered a worker versus an independent contractor. She stated she was unsure of the benefits that the exemption language gives to business owners.

Dr. Williams stated part B of the ABC Test creates a conflict for the salon owner who rents their booth because everyone in the salon performs hair services.

Ms. Thong stated a member of the Committee from the DIR helped her think through this clearly in terms of compliance. She stated part A of the ABC Test was created because, in the Dynamex case, the drivers could not select the clients to service or the time to work. She stated the Committee member from the DIR mentioned that it is about whether or not all three parts are in play. Booth renters or independent contractors keep their own schedule and can refuse clients, which fulfills part A.

Dr. Williams stated parts B and C create a conflict for salon owners in California who operate their businesses as booth renters because everyone in a barber shop, hair salon, and skin care establishment is performing the same services. She stated her understanding of AB 5 is that establishment owners will not be required to identify or classify the individuals in their establishment as employees as long as the ABC Test is followed. Although there are more criteria, the way the detail in the ABC Test is laid out provides clarity for the salon owner over the individual who currently owns an establishment and the changes they may have to make or the individual who is coming into the industry and plans to open a salon to understand how they would need to set up their business in this fashion.

Ms. Crabtree stated her attorney did symposiums around the ABC Test. One of the things a salon owner could do is to call their salon whatever they want but it comes back to the establishment license, the way they set up their business, and each individual and their booth rental.

Dr. Williams stated that is where a booth rental permit would be beneficial.

Ms. Crabtree agreed but asked what can be done to protect licensees who work in environments where they are labeled booth renters but are not being treated that way. AB 5 allows individuals to continue to not be protected.

Dr. Williams stated establishment owners will be held accountable for not following the criteria in the ABC Test.

Ms. Crabtree stated it is scary that only 65,000 out of 600,000 licensees report their income. She stated the need to suggest language for AB 5 to protect licensees.

Ms. Thong stated policy and the Board have always looked at things through the lens of worse-case scenario. She stated what Dr. Williams described is the best-case scenario where individuals are following whatever is being set out for booth renters. As seen from the labor statistics, individuals are not following any rules. Even if individuals actively choose to work in a booth rental situation as an independent contractor, it does not mean they will comply.

Ms. Thong agreed with Dr. Williams that it is a complex issue and stated dedicating one Board meeting to the conversation is not enough. There needs to be a conversation about how to allow for innovation and entrepreneurship in this industry. The Board has not heard much from industry to make a decision on behalf of everyone by supporting this language to move forward without input from stakeholders. She stated she is against the exemption for labor protection purposes and stated allowing this language to move forward will not be looked at positively by legislators during sunset review because this type of language signals to legislators that this Board does not take workers' rights issues into account that it has been charged to consider. The bill renewing the Board's Health and Safety Advisory Committee explicitly lists labor. Legislators will be looking at this.

Ms. Crabtree suggested that the Legislature be given the information about 65,000 out of 600,000 licensees reporting.

Ms. Thong suggested addressing the motion from the Health and Safety Advisory Committee on their recommendations to the Board and then determining what Board members think of AB 5. AB 5 has exemption language in it that is specific to barbers, electrologists, estheticians, or workers providing natural hair braiding. The motion from the Committee asks the Board to include manicurists in the exemption language, change the word "worker" to "licensees," add verbiage regarding professional license in Section E, and include all occupational licenses in the exemption.

Mr. Drabkin stated the need to learn why the booth rental permit was struck from the previous iteration.

Mr. Underwood suggested asking for public comment, discussing, and voting on the Health and Safety Advisory Committee's motion. Taking a position on AB 5 will go hand-in-hand with how the Board votes on the Committee's motion.

Public Comment

Mr. Jones agreed with Ms. Thong's comments entirely; but stated, however, politics is the art of compromise and the Legislature is a sausage mill and is never pretty. The motion before the Board is to make an ugly situation less ugly.

The other option is to fantasize about a world that could never be where there are no booth renters and everyone is protected by the Labor Code. Booth rental, on net, has diminished the professionalism of the industry and not just because of the tax evasion issues. Individuals who are willing to risk a felony to tax evade are clearly willing to risk a monetary sanction by the Board on health and safety violations. This has a direct implication to the Board's mission.

Mr. Jones stated the part B of the ABC Test makes what this industry does illegal. If Dynamex is embraced in its entirety, there will be no booth rental. He reiterated that he agreed with every comment made by Ms. Thong but stated the question is what is doable, what is possible. He stated if Dynamex became the rule with no exemption, most salons would continue to do what they are doing. And, to make it worse, they may stop asking for a license from the Board.

Mr. Jones stated he applauded Dynamex because of the need for clarity. It seeks to provide a limited exemption to certain industry sectors. He stated he then learned that this will put black barber shops out of business, which is the hub of communities. Then legislators told him the same thing and Assembly Member Gonzalez told him the beauty industry will be given an exemption because it is the loudest industry to come before the Legislature. Knowing that there will be an exemption given to the industry, the PBFC engaged the author and sponsors to make the ugly less ugly. He stated that is when Dr. Williams suggested a booth rental permit.

Mr. Jones stated clarity is the industry's best friend. He asked if the industry cannot attain perfection, a fantasy where everyone is an employee protected by Labor Code laws, then what can be done to at least root out the bad players? He stated with a booth rental permit would come an honorable list of individuals claiming they are booth renters and a list of salons that claim they have booth renters. That seemed to be the best approach. Those amendments were accepted in the Assembly but the Senate Labor Committee was against a booth rental permit. They suggested that each booth renter have their own separate business license so it stays in the Labor Code and still applies across all industry sectors.

Mr. Jones stated the Legislature came up with the term hair stylist to separate manicurists from under the umbrella of cosmetology because of the exploitation of mainly Vietnamese nail workers. Mr. Jones stated the PBFC believes all sectors of the industry should be treated equally. If one sector gets an exemption then all sectors should be given the same exemption.

Mr. Jones stated AB 5 potentially has sunset implications.

Ms. Crabtree asked if the Legislature knows that only 65,000 out of 600,000 licensees are reporting their income.

Mr. Jones stated the PBFC has been saying that forever but it unfortunately falls on deaf ears. He stated the Legislature has heard from the industry. The beauty industry was the loudest industry heard. The message was that an exemption was inevitable. He stated he made the motion at the Health and Safety Advisory

Committee to clean up the current exemption language. It is an appropriate, responsible response to AB 5. He stated he agreed that booth rental is a net negative, but if the Board determined to be completely out of AB 5, there would be no exemption for the industry from Dynamex.

Ms. Barboza stated it was easier to get a small business loan to obtain her own building because she has her own business. Being a sole proprietor gives her the freedom to go to classes and meetings and helped her to grow.

Natasha Alexander, Universal College of Beauty, stated the gap in reporting income is education. Students are not taught in schools what they must do to report. She stated she is a booth renter and does not believe booth rental is killing the industry. There will always be individuals in every industry who do not report taxes.

Jaime Schrabeck, Ph.D., Owner, Precision Nails, stated, as a licensed manicurist and an owner of an employee-based nail salon, she respectfully requested that AB 5 be amended further to eliminate the imprecise discriminatory and unenforceable language regarding beauty professionals. Because the Barbering and Cosmetology Act requires that any person compensated for providing services regulated by the Board have a “valid unexpired license,” this bill must reference the Board. Unless the Legislature intends to endorse unlicensed activity, any mention of “workers” should be replaced by the appropriate and statutory license titles: cosmetologist, barber, manicurist, esthetician, and electrologist.

Dr. Schrabeck noted that the phrase “natural hair braiding” is included in the current language. Those services are exempt from Board licensure but are listed among the exemptions. To protect the most exploited in the industry, all licensees must be treated equally. The exclusion of manicurists and cosmetologists who provide nail care services cannot be justified when misclassification, wage theft, and tax evasion happen across all license categories. Restricting employment options will create barriers to entry, limit business opportunities, and depress the wages of manicurists even further and result in more unlicensed activity and unfair competition.

Dr. Schrabeck stated requiring that an independent business owner charge rates equal to or greater than two times the minimum wage for hours work cannot be taken seriously. Beyond being unenforceable, such a requirement does not resolve the biggest problem with the industry – lack of compliance with existing tax and labor laws. The Legislature should prioritize education and enforcement of the laws already in place so that salon owners and licensees have more resources and reasons to bear the financial burden of compliance.

Dr. Schrabeck spoke in support of a booth rental permit for the purposes of transparency and accountability both legal and financial. A distinction needs to be made between licensees who operate as booth renters within a licensed establishment and those who are employed by the establishment owner. Consumers cannot be expected to make informed decisions about who they

support and choose qualified individuals and legitimate businesses if they cannot verify the individual operator's license and their booth rental employment status.

Dr. Schrabek stated, if not amended, AB 5 will adversely affect the beauty industry, the rights of its duly-licensed professionals, and the ability of the Board to protect the public and exercise its licensing, regulatory, and disciplinary functions. She stated she seconded Mr. Jones's motion at the Health and Safety Advisory Committee but she would be just as happy to have the industry completely taken out of AB 5. Whatever happens to any license category needs to happen to all license categories.

Ken Williams stated Mr. Jones and Dr. Schrabek have been giving good advice to the Board for many years. Whether or not to regulate booth rental is a big issue. He stated he did not understand why it is on the Board's plate. He agreed that the Board should take the time to hear all aspects of the law.

Ms. Cochran stated, when licensees cannot find a job in an employment-based situation in a salon, they rent or share rent of a room by a contract that is rarely enforceable. It is not only the school's responsibility to teach students how to run a business, it is licensees' responsibility to run a business and to seek out organizations that will help them. She suggested that licensees reach out to someone outside of the beauty business such as Score.org to learn how to run a business.

Ms. Cochran stated labor violations not only happen to manicurists but also to estheticians. Enforcement does not happen in this industry such as the enforcement of AB 1513 and SB 490. Independent contractors do not have support for labor violations from the DIR or DCA.

Ms. Cochran stated one-fourth of licensed estheticians are also licensed manicurists. AB 5 will put licensees into a situation of blatant violation or will force them into unlicensed activity. Also, a large percentage of other license categories are also massage therapists. Massage therapists and esthetics come hand in hand. Massage therapists are not employed but rent rooms in salons and AB 5 will make them all in violation. What is different about message therapists is they are allowed to perform their service in individual homes and will now perform their esthetics practices there as well. AB 5 will drive licensees into illegal spaces. AB 5 will prevent the Board from being able to help exploited licensees into better situations as independent business owners.

Ms. Cochran stated she personally feels that AB 5 should be removed, but speaking for her organization, she stated there are individuals who are fair booth renters who will be negatively impacted by AB 5. She suggested that the language say Board licensees in good standing. This language gives all licensee categories equality and looks into the future for the creation of lash only, wax only, hair stylist only, and shampoo only licenses.

Ms. Crabtree stated the establishment owners will still be responsible for booth rental permit holders. Ms. Underwood stated many states have booth renters in designated

common areas. The language that was taken out of AB 5 required the Board to do regulations to establish a booth rental license.

Preeti Sharma, Lead Author, UCLA Labor Center, Nail Files Report, highlighted portions from the nail salon section of the report and offered to send the Board a copy of the report in its entirety. She stated the UCLA Labor Center is concerned about misclassification of independent contractors in the industry and that misclassification leads to an invasion of labor laws and protections. She spoke in support of AB 5 without exemptions for licensees.

Ms. Fu summarized the findings of the California Healthy Nail Salon Collaborative's outreach efforts to thousands of manicurists and salon owners statewide about workers' rights and misclassification. There is a lack of understanding and information about how to classify workers. There are also misconceptions about being an employee. She spoke in support of AB 5 without exemptions for licensees.

Ms. Crabtree asked what salon owners generally consider their licensees and if they are usually paid in cash.

Ms. Fu stated salon owners tell their licensees that they are 1099 independent contractors. Independent contractors are paid a combination of checks, cash, and funds under the table.

Mr. Trang spoke in support of AB 5 and requested that the Board oppose the current motion before the Board. AB 5 begins to clamp down on rampant misclassification and, as a result, exploitation in the industry. It simplifies the law, creates a floor but does not inhibit the creation of an independent contractor or booth renter, serves as a guardrail for vulnerable workers and law-abiding employers, encourages greater communication and intentionality, and benefits the larger community. He noted that businesses continue to thrive in states where the Dynamex ABC Test is applied. Creating carve-outs for AB 5 would do more harm than good.

Mr. Jones stated the proposed motion asks the Legislature to put a booth rental permit back into AB 5 and to specifically reference all the scope of practice license code sections. It asks for an exemption for booth rental. The alternative, which may be a motion offered later, would be that booth rental is not good and the Board would not propose a booth rental permit. Without the proposed motion, there will be no role for the Board in this debate because municipal government will then issue business licenses for workers who claim to be hair stylists. Board approval of the proposed motion will support booth rental, but it will be a new form of booth rental. The request for a booth rental permit will be a game-changer that will force booth renters out of the shadows.

Ms. Crabtree asked Ms. Thong for her thoughts on AB 5 after hearing public comment. Ms. Thong stated her opinion remained the same. Hearings are needed on this issue. If this motion was not on the floor, her preference would be to remove all of the language in AB 5 concerning the Board. She suggested holding hearings to gather input from the industry so the correct language can be created to deal with industry needs.

MOTION: The Health and Safety Advisory Committee recommends that the Board:

- Approach policy makers for a booth rental permit.
- Engage the AB 5 author to:
 - Appropriately refer to Board licensees (not workers) in section 6
 - Add verbiage regarding their professional license in section E
 - Request all occupational licensees to be included with the exemption

Motion did not carry with a vote of 2 yes, 3 no, and 0 abstain per roll call vote as follows:

The following Board members voted “Yes”: Weeks and Williams.

The following Board members voted “No”: Crabtree, Drabkin, and Thong.

Ms. Thong asked the Board to discuss the booth rental permit and its position on AB 5.

Mr. Drabkin stated it would be difficult to reinsert the booth rental permit into AB 5 since it has already been denied. He suggested discussing it separately and working with the Legislature on developing a booth rental permit to help solve issues should AB 5 pass.

Dr. Williams agreed. She stated the booth rental permit discussion began prior to AB 5.

Mr. Drabkin suggested a discussion on the creation of a booth rental permit at the next Board meeting.

Mr. Drabkin stated he heard several times today that, if speakers were given a choice, they would vote one way on AB 5 but their organizations want them to vote another way. He stated either everyone is exempted or certain license categories will have to be selected to be exempted over others. He suggested a support if amended position to remove the selected exemptions and deal with the intended and unintended consequences later. Perhaps the creation of a booth rental permit will add clarity and be one way to deal with those consequences.

Ms. Thong moved to support AB 5 if amended to remove all language referring to Board licensees and to address AB 5 and Dynamex impact on industry through the sunset hearing process. Ms. Crabtree seconded.

Public Comment

Mr. Jones stated AB 5 will probably make all forms of booth rental as currently practiced illegal.

Ms. Crabtree stated she disagreed; there are other ways to conduct business. Dynamex will not kill the booth rental industry.

Mr. Trang stated Dynamex creates a floor; it does not create a ceiling. Discussions about booth rental arrangements would be permissible under part B of the ABC Test.

Dr. Schrage suggested making a motion that “it would be the Board’s preference to remove all language referring to any Board occupation or service” instead of “Board licensees” and, if not, making the motion that was recommended by the Health and Safety Advisory Committee.

Ms. Crabtree suggested moving one way or the other; moving both ways lacks strength.

Ms. Cochran suggested standing up, taking the gamble, and asking the Legislature during the sunset review process for a separate bill for the industry because the industry literally touches everyone in the state of California.

MOTION: Ms. Thong made a motion, seconded by Ms. Crabtree, that the Board supports AB 5, Worker Status: Independent Contractors, if amended to remove all language referring to Board licensees and to address AB 5 and Dynamex impact on industry through the sunset hearing process. Motion carried 4 yes, 1 no, and 0 abstain per roll call vote as follows:

The following Board members voted “Yes”: Crabtree, Drabkin, Thong, and Williams.

The following Board member voted “No”: Weeks.

MOTION: Ms. Thong made a motion, seconded by Mr. Drabkin, that the Board supports AB 1607, Gender Discrimination Notification, with the amendment to change the language to reflect Board establishments. Motion carried 5 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

MOTION: Mr. Drabkin made a motion, seconded by Dr. Williams, that the Board supports SB 606, Sunset Extension. Motion carried 5 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

9. Agenda Item #9, PROPOSED REGULATIONS: DISCUSSION AND POSSIBLE ACTION OF PROPOSED REGULATORY CHANGES

- 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 (Instructional Materials – NIC Guides)
- d. Title 16, CCR Section 962, 962.1, and 962.2 (Externs)
- e. Title 16, CCR Section 965.2 (Personal Service Permit)
- f. Title 16, CCR Section 970, 971 (Substantial Relationship Criteria, Criteria for Rehabilitation)
- g. Title 16, CCR Section 972 (Disciplinary Guidelines)
- h. Title 16, CCR Section 974, 974.3 (Fine Schedule and Payment Plan)

Ms. Underwood summarized the Regulation Update Memo, which was included in the meeting packet.

Staff recommendations for Section 900, Establishment:

- Change “activities practiced” to “services performed”
- Remove the word “booth”
- Add the sentence “These authorized services do not include singeing, relaxing, or dyeing the hair.

MOTION: Dr. Williams moved the staff recommendations, seconded by Mr. Weeks. Motion carried 5 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

10. Agenda Item #10, AGENDA ITEMS FOR THE NEXT MEETING

Ms. Thong suggested a discussion on a booth rental permit at the next Board meeting and waxing at a future Board meeting.

11. Agenda Item #11, ADJOURNMENT

There being no further business, the meeting was adjourned at 1:31 p.m.