

**CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY**

**LEGISLATIVE AND BUDGET COMMITTEE
TELECONFERENCE MEETING**

MINUTES OF NOVEMBER 17, 2020

COMMITTEE MEMBERS PRESENT

Jacquelyn Crabtree
Andrew Drabkin
Lisa Thong

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Sabina Knight, Board Legal Representative
Allison Lee, Board Project Manager
Marcene Melliza, Board Analyst

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

Lisa Thong, Board President, called the meeting to order at 8:58 a.m. and confirmed the presence of a quorum.

2. Agenda Item #2, REVIEW AND DISCUSSION OF 2019-2020 LEGISLATION IMPACTING THE BOARD

Kristy Underwood, Executive Officer, reviewed the 2019-2020 Legislation chart, which was included in the meeting packet, for the following bills:

- a. **AB 5 (Gonzalez) – Worker Status: Independent Contractors**
- b. **AB 193 (Patterson) – Barbering and Cosmetology Scope of Practice Changes**
- c. **AB 496 (Low) – Business & Professions Changes**
- d. **AB 817 (Kiley) – Mobile Units**
- e. **AB 1271 (Diep) – Licensing Examination Reports**
- f. **AB 1607 (Boerner Horvath) – Gender Discrimination**
- g. **AB 1928 (Kiley and Melendez) – Employment Standards**
- h. **AB 2113 (Low) – Refugees, Asylees, and Special Immigrant Visa Holders**
- i. **AB 2465 (Gonzalez) – Booth Renter Permit**
- j. **SB 188 (Mitchell) – Discrimination: Hairstyles**
- k. **SB 238 (Grove) – Workers Status**
- l. **SB 806 (Grove) – Employees: Independent Contractors**
- m. **SB 878 (Jones) – License Application Processing Timeframes**

Discussion

Ms. Thong asked about bills that may come up again next year.

Ms. Underwood stated Assembly Bill (AB) 5 may potentially come up again next year. The Sunset bill will provide changes and recommendations. She stated the hope that AB 817 will come back or will be addressed at the Sunset Review Hearing.

Ms. Crabtree stated AB 817 needs to be updated to include new issues caused by the COVID-19 pandemic. She asked for an update on AB 2465.

Ms. Underwood stated she anticipated AB 2465 being discussed in the coming year.

Ms. Crabtree asked about AB 5.

Ms. Underwood stated AB 5 was chaptered. It had a two-year extension to apply to manicurists.

Ms. Thong asked how the Legislature and the Board will examine impacts.

Ms. Underwood stated the Board does not track it but staff will reach out to the author's office to see if they have measurements.

Public Comment

Fred Jones, Legal Counsel, Professional Beauty Federation of California (PBFC), stated AB 5 and AB 2465 will be in play next year. Assembly Member Gonzales placed a two-year sunset for manicurists due to her concern about the nail salon sector. The speaker encouraged the Board to engage the author next year to extend that sunset. It would be unfair to allow hair salons and barber shops to utilize independent contractors but not nail salons.

Sylvia, who teaches at a community college, asked if temporary online practical labs will continue next year.

3. Agenda Item #3, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING FUTURE LEGISLATIVE CHANGES TO:

a. Business and Professions Code (BPC) section 7316, Practice of Barbering and Cosmetology

Ms. Underwood stated, in the context of the Board's upcoming Sunset Review Hearing, there has been much discussion about this industry's scope of practice, mobile units, and curriculum requirements. She stated the hope that the Board will continue to support the recommendations made to the esthetician scope of practice in the Sunset Review Report. The Board is constantly being asked about the need for esthetician licensure in the industry. She stated the need to review the esthetician scope of practice. The esthetician scope is practice is outdated; daily services are more advanced than when the statute was written. She stated Committee recommendations will be taken to the Board for discussion.

Discussion

Ms. Thong spoke in favor of reviewing the scopes of practice for updates, especially for the esthetician license.

Ms. Crabtree agreed. She asked for an update on individuals attempting to circumvent the licensing process.

Ms. Underwood stated the COVID-19 pandemic has increased in-home services and unlicensed activity. The largest issue is lashes since the lash manufacturing companies are certifying individuals for their product, when these individuals require an esthetician or cosmetology license to do lashes. She asked if there is a need to license specialized services rather than only a 1,600-hour general cosmetology license. She noted that a hairstyling license was recommended in the Sunset Review Report.

Ms. Crabtree cautioned against choosing one service to certify for because it starts to take away from every scope of practice, although a hairstyling only license makes sense because many individuals do not choose to do skin and nails.

Ms. Thong suggested looking at what consumers are paying for that are not necessarily broken out by license but are clearly areas of risk for potential problems and how to mitigate that risk. The other piece of this conversation from a legislative point of view is the private manufacturers who sell products, services, and certificates that do not align with state licensing and regulation. She asked if there is something that can be done legislatively about entities that are creating certificates that are not recognized by the state and misleading consumers to believe they can practice without being licensed.

Ms. Underwood stated the Board has the authority to discipline but can only discipline licensees. Laws are already strict. Eyelash services are clearly spelled out in the scope of practice. She stated staff will look at what other states are doing and report back to the Committee at a future meeting.

Mr. Drabkin suggested legislative discussions about stronger discipline, especially for individuals who are unlicensed.

Ms. Crabtree suggested educating consumers so they understand that they need to ensure that the person doing their lashes is licensed.

Ms. Underwood stated that would be a good discussion for the Outreach Committee.

Ms. Thong summarized the discussion to this point:

- Review the esthetician scope of practice.
- Review what should be licensed that is currently not licensed.
- Recommend Board discussion on specific licenses, such as a lash license.

Ms. Underwood stated many states have a waxing certificate and there is a national examination for waxing technician. The question is if an individual can make a living being a lash technician or a waxing technician.

Ms. Crabtree asked about the amount of education that is going into lashing or waxing certificates. Individuals need to understand the amount of education that comes with being an esthetician who works on skin doing waxing, lashes, or makeup because of the allergies that can happen.

Ms. Underwood stated staff will look into this and bring samples from different states on the license types that they issue and regulate and the education and testing associated with each type of license to the Committee for further discussion.

Ms. Thong stated this industry is always changing and regulations and licenses are reactive. She asked staff to see if there is any research or study for the future of this industry and whether there is a way for the Board to better understand what this industry might look like down the road. It might also be helpful to assess whether or not licenses should be broken out for specific services.

Public Comment

Wendy Jacobs, Founder, California Estheticians – Esthetician Advocacy; Founder, California Aesthetic Alliance (CAA), offered to help with the conversation about updating the esthetician scope of practice. She noted that licensees want a wax- or lash-only specialty license.

Fred Jones stated there are many levels of issues with license subcategories. It is worthy of discussion and comparison with other states. The National-Interstate Council of State Boards of Cosmetology (NIC) offers a waxing technician examination. There are also the issues of the schools that should be able to teach those skills and the fundamental health and safety instruction that PBFC thinks every licensee should get.

Fred Jones stated one issue where they would like to see the Board take a proactive role next year is to extend the two-year sunset on AB 5 to manicurists just as AB 5 does for all hair and skin professionals. AB 5 has many requirements on independent contractors to maintain their legitimate independence from the hiring establishment. It would be unfair for nail salon workers to lose those protections and requirements that are laid out in AB 5.

Wendy Jacobs stated estheticians already have makeup academies that could easily adapt to provide a licensed pathway for makeup artists in the industry. Lash academies do not require students to do much more than sign a disclaimer when they agree to take the class that they understand that they need to be licensed. She stated the way around that and to hold manufacturers responsible is to require that the instructors be licensed. There are lash academies working in establishments. If a larger academy is necessary, a motel suite or conference room could be rented for education. A temporary permit could be issued that would be part of an establishment license. She stated manufacturing companies should not be required to be licensed but their instructors should be.

Jaime Schrabec, Ph.D., Owner, Precision Nails, asked if the scope of practice for skincare should include the whole body.

b. BPC sections 7354 through 7361, Mobile Units

Ms. Underwood stated this item was mentioned in the last agenda item. Mobile units are RVs in a sense that are traveling establishments. The current statute has stringent requirements for mobile units that need to be updated. She asked the Committee to move to recommend to the Board that it support AB 817, which suggests updating the statute as follows:

- Reduce the required length of 24 feet of the mobile units since the majority of mobile units have only one station. There are smaller vehicles that can efficiently be used.
- Remove the section requiring additional city and county documents that brick-and-mortar establishments are not required to have and to have applicants sign under penalty of perjury that they have met those requirements.
- Remove the requirement for a 100-gallon potable water tank as this is unrealistic and unnecessary. Many of these vehicles are directed at barbering so shampooing and chemical services are not often provided.
- Change the requirement for a in-unit restroom to an accessible restroom.
- Remove the requirement for a stainless-steel container for depositing hair clips.
- Remove the requirement for a split-lead generator with a remote starter.

Discussion

Ms. Crabtree agreed that the statute needs updating. She asked about the reasoning behind being licensed within counties.

Ms. Underwood stated she did not know what it takes to be licensed in counties but some counties are stricter than others, such as in allowable travel distance.

Ms. Thong agreed that the mobile unit statute needs to be updated. She suggested recommending to the Board to support the legislation or to support the updating of the language for mobile units.

Ms. Thong moved that this Committee recommends to the Board to support the changes mirrored in AB 817 to the Board's Sunset bill.

Ms. Crabtree seconded.

Public Comment

Wendy Jacobs suggested including a discussion on individuals living in the mobile units. Rather than changing the regulations, the speaker suggested looking into the length of the Ford and Mercedes Benz Sprinter Vans. She stated the bed length or working length should be measured rather than the overall length of the vehicle. The speaker noted that the split-lead generator is important especially with barbering and individuals who work with hot tools, such as dryers. She noted that the lead goes directly into the circuit breaker.

MOTION: Ms. Thong made a motion, seconded by Ms. Crabtree, that the Committee recommends to the Board to support the changes mirrored in Assembly Bill 817 to the Board's Sunset bill. Motion carried 3 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Committee Members voted "Yes": Crabtree, Drabkin, and Thong.

c. BPC sections 7362 through 7366, Curriculum Requirements

Ms. Underwood stated it is important for the Committee and the Board to review the curriculum requirements especially because it will come up during the Sunset Review Hearing and is one of the reasons the Board's Sunset Review was postponed. There are legislators that feel that the curriculum is a barrier to entry. The discussion nationally is on whether or not 1,600 hours is too much for a cosmetology license and 1,500 hours is too much for a barbering license. The Board reviewed this issue years ago but it warrants another discussion. The questions are if students need to go to school for this amount of time to perform services safely and if there a different position that the Board should be looking at heading into Sunset Review.

Discussion

Ms. Crabtree stated her understanding that the hours were reduced for an individual to get their hair license. She asked if that was also true for barbering.

Ms. Underwood stated a hair stylist license was recommended in the Sunset Review Report. The difference is that barbering includes shaving. She stated even the need for less hours for cosmetology and barbering may be questioned.

Mr. Drabkin stated the Board concluded in 2018 that 1,600 hours is reasonable. He asked if the argument against the 1,600 hours is the time involved or the cost. The Board needs to reframe it to emphasize what is needed to practice the skill and should not concern itself with the cost – that is the Legislature's concern. It is less expensive to go to community college than it is to go to a professional beauty school. He suggested that the Legislature focus on providing more opportunities through public education rather than incurring private school debt.

Mr. Drabkin stated the need to review the number of hours the Board feels is best to receive these licenses and then to make the argument that this is what the Board thinks is needed based on its expertise. If the barrier is the cost, the Legislature needs to resolve that issue. He suggested that the Committee consider if the 1,600 hours is still relevant in today's world and frame it by how to contain the cost versus what it takes to practice in the field.

Ms. Underwood stated the argument may be about the cost, the time it takes, or a combination of both.

Ms. Crabtree stated the question about hours has been discussed in this industry forever because California has one of the highest numbers of hours to obtain a license. There have been discussions about making the number of hours the same nationally.

Ms. Underwood stated deregulation has gone hand-in-hand with the ongoing discussions nationally. One of the reasons is because there are states that have 2,100 hours for cosmetologists, and the majority of states are at 1,500, while Texas and New York are at 1,000 hours. Individuals looking at deregulation question 2,100 hours versus 1,000 hours for licensure for the same services. National groups have not had discussions about what exactly is needed. The Board's recommendation in 2018 was to maintain the 1,600 hours. She suggested bringing back the original 1,600-hour report to the next Board meeting for discussion.

Mr. Drabkin stated, since the COVID-19 pandemic, he is not as interested in holding other states up as examples of what to do.

Ms. Crabtree asked if the Legislature wants the Board to reduce the number of hours.

Ms. Underwood stated the question about the number of hours has come up at informational hearings. It is part of a national discussion, which is why action has been taken in other states.

Ms. Thong stated, similar to the Personal Service Permit, the Legislature will force the Board to review the hours. It is a question of whether the Board wants to do it on their own terms or wait until the Legislature charges the Board with this through Sunset.

Ms. Underwood stated the 1,600-hour review in February of 2018 and also in 2005 was forced by the Legislature. Both times, the Board recommended no changes. She stated, this time, the Board may be forced to make changes.

Ms. Thong stated the Legislature does not have a lot of context about this industry. The way they look at it is by numbers and data. 1,600 hours is six months of schooling. Regardless of the cost, the Board is asking students to be essentially unemployed in order to put in the eight-hour days for six months of school. In addition to the costs of schooling, there are also costs involved to take the licensing examination. The Legislature sees that there are a number of challenges for individuals who want to get into this industry and are looking for ways to make it easier to get the required education and to get licensed.

Mr. Drabkin stated alternatives are provided, such as the Apprenticeship Program. He suggested that the Board can be proactive about it and do another evaluation of hours, compare them state by state, and note the differences such as the emphasis or deemphasis in training in states with less time requirements. Gathering detailed data will help the Legislature better understand the reasoning behind the Board's recommendations and puts the onus on the Legislature to determine what is not necessary and can be cut.

Ms. Underwood stated there have been discussions about going to a competency-based curriculum over the current clock-hour-based curriculum with a set number of operations to complete. This seems logical. The issue of the selling of hours in this industry is rampant and going to a competency-type of setting would have even less accountability for bad schools. She noted that, unlike California, most other states have oversight of their schools.

Mr. Drabkin stated the need to regularly review requirements. He suggested asking the Legislature what the issues are and how they can be addressed.

Ms. Underwood stated one of the issues that will come up is consumer harm. The Legislature is more concerned with a safe haircut as opposed to a good haircut. As an example, they question the need for 1,100 hours of hair dressing for the barbering curriculum.

Ms. Crabtree stated she was on the Committee that reviewed the curriculum hours in 2018. It was determined that 1,600 was required to cover everything. As a compromise to changing the 1,600 hours, the Committee recommended a hair-only license. She stated the Legislature will possibly ask to reduce the 1,500-hour barbering curriculum as well since it is only 100 hours less than the cosmetology curriculum. She agreed with

the need to focus more on health and safety versus technique. Requiring a certain number of technical haircuts is not necessary while in school.

Ms. Underwood suggested that this Committee review the original 2018 report at the beginning of next year.

Ms. Thong stated it does not seem that the recommendations made by the Committee in 2018 will change by reviewing the curriculum again. She stated the reality is that hours need to be cut. She asked what new information is relevant to a decision to cut curriculum hours. The issue is either someone else will do it or the Board will do it. She asked what the lens is that the Board will need to look at and what information is needed to determine that. It would be helpful to understand what cutting hours would look like and what steps must be taken to determine whether the Board should do another curriculum review and, if the answer is yes, what that process would look like.

Ms. Underwood asked how to defend the Board's requirement for 1,600 curriculum hours and if it results in better consumer protection. She asked what the response would be to the question of why 1,100 hours are required for hair styling instruction.

Mr. Drabkin suggested another Committee meeting to further discuss this issue, go through the curriculum, and work on the defense. The Board needs to be able to say they reviewed the curriculum, these are the required hours, and these are the reasons why. He suggested using the 2018 report as a template, saying the Board reviewed the curriculum in 2018 with another review at the end of 2020 and beginning of 2021, taking into account current circumstances, costs, etc., and this is what is essential.

Ms. Thong summarized the recommendations of the Committee:

- Schedule another meeting.
- Review the 2018 curriculum review report.
- Determine whether maintaining the 1,600 hours is what should be recommended.
- Include a review of the guidelines the Committee at the time used to review the hours and to justify the curriculum.
- Line up the hours of curriculum with risk assessment and harm to consumers.
- Establish guiding principles in terms of how to look at the curriculum including the Board's purview, which is health and safety.
- Put this issue on the next agenda. Staff is to develop materials to bring to the Committee for consideration.

Ms. Thong suggested a discussion about adding the requirement that instructors must be licensed or certified by the Board within Business and Professions Code (BPC) sections 7362 through 7366 at the next meeting.

Public Comment

Dr. Schrabek stated the 2018 report does not include justification for the number of hours required. The speaker suggested starting from the ground up not working backwards and trying to justify what is currently required since this does

not lead to anything that is effective and legally defensible. The speaker suggested starting with the end goal in mind, such as a significant reduction in the number of hours but at the same time require continuing education. Continuing education is an area where this industry falls short of staying current, particularly around issues of health and safety and new regulations that are promulgated by the Board.

Fred Jones stated the Committee did do some ground up review of the 1,600 hours such as suggesting modules that could be consistent across license types, which would allow for crossover opportunities between license types. The speaker stated the Board provided a new form of flexibility within the curriculum several years ago, which moved away from hour-by-hour micromanagement and provided general rubrics with an overall number of hours.

Fred Jones stated the need to focus on barriers to entry. Legislators are concerned about students going into debt going to school for several months before they can start earning. This is why the Board suggests a hair stylist license with less hours so they are in school less. Externship credit hours should be dramatically increased and allow externs to be paid. The speaker suggested possibly allowing students to take the written examination earlier and receive a provisional license allowing them to go to work for pay while they complete their practical skills. After 39 hours of instruction, students can start earning while learning through the apprenticeship program. Also, high school students can take courses in community colleges so their first two years are free. There are many pathways to licensure beyond just full-time in a private postsecondary beauty school. The Board needs to be proactive in informing and educating policymakers.

Wendy Jacobs stated, in the Assembly and Senate Committee hearings, legislators had no idea that continuing education was not a requirement. Legislators brought up the fact that police officers have less education than a hairdresser. This must be countered with the fact that police officers have supervisors and continuing qualifications that go on throughout their careers but this industry does not have that.

Wendy Jacobs agreed with the need for health and safety that is consistent among the license types. This would allow quick crossover for individuals to pick up an additional license without having to complete excessive amounts of hours that have already been covered in other programs. There is a standing health and safety program to build from. A robust continuing education program would be important if the 1,600-hour requirement is reduced. Community colleges need to be brought into this process.

Fred Jones stated a number of governors have vetoed or threatened to veto efforts to mandate continuing education. Given the concern in the Legislation and the other states about barriers to occupational licensing entry, it would be impossible to get a statutory mandate for mandatory continuing education in this current climate.

Wendy Jacobs stated estheticians and manicuring programs do not have the opportunity for apprenticeship, which is also a barrier to entry that should be resolved.

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

Fred Jones stated there has been a lot of concern with the recent growth in the rate of COVID-19 positivity rates, hospitalizations, and increase in death rates. There has been concerns about whether the Board will continue to receive the same level of respect recently earned by the governor and the California Department of Public Health, i.e., the purple tier. The speaker stated messages about the potential for reclosures of salons and spas need to go out to licensees so they can prepare.

5. Agenda Item #5, AGENDA ITEMS FOR THE NEXT MEETING

Mr. Drabkin suggested a discussion about working with the Legislature on a plan for current and future pandemics.

Ms. Thong asked staff for a report on areas that need to be addressed in the regulations related to emergency protocols or guidelines and if there are issues seen from licensees in terms of operations being able to comply with the Board's regulations during the COVID-19 pandemic so the Committee can determine if changes need to be made to operations or regulations.

Ms. Thong asked to add the election of a chair for this Committee to the next agenda.

Ms. Thong suggested discussions on the conversations today, such as teachers and schools.

6. Agenda Item #6, ADJOURNMENT

There being no further business, the meeting was adjourned at 11:29 a.m.