

**CALIFORNIA
BOARD OF BARBERING AND COSMETOLOGY**



JULY 16, 2012
Enforcement Committee Meeting
California Board of Barbering and Cosmetology
2420 Del Paso Road
Sequoia Room, 1st Floor
Sacramento, CA 95834



Christie Truc Tran, Industry
Member, President

Joseph Federico, Industry Member,
Vice President

Wen Ling Cheng, Public
Member

Deedee Crossett, Industry Member

Katie Dawson, Public Member

Richard Hedges, Public
Member

Frank Lloyd, Public
Member

Kristy Underwood
Executive Officer

Edmund G. Brown Jr., Governor
State of California

Department of Consumer Affairs
Board of Barbering and Cosmetology

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2420 Del Paso Road, Suite 100
Sacramento, CA 95834

California State Board of Barbering and Cosmetology

Enforcement Committee Meeting Agenda

Monday, July 16, 2012

9:00 A.M. – 2:00 P.M.

Or until completion of business

California Board of Barbering and Cosmetology
2420 Del Paso Road
1st floor Sequoia Room, Room 109
Sacramento, CA 95834

ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

1. Welcome and Introductions
2. Approval of Enforcement Committee Meeting Minutes
 - May 1, 2012
3. Apprentice Program Review Update
4. Discussion of Recommendations to Update the Health and Safety Regulations (Article 12 of Title 16, Division 9 of the California Code of Regulations) related to all licensees.
5. Discussion on Natural Hair Braiding and How to Enforce Section 7316 (d) (2).
6. Discussion on Licensee in Charge (Section 7348) pertaining to Establishment Owners who do not hold a personal license.
7. Public Comment

Note: the Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125.7(a)]

A quorum of the Board will be present. Meetings of the Board of Barbering and Cosmetology are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. The audience will be given appropriate opportunities to comment on any issue before the Board, but the Chair may apportion available time among those who wish to speak.

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting shall make a request no later than five (5) working days before the meeting to the Board by contacting Tami Guess at (916) 575-7144 or sending a written request to that person at the address noted above.

No Attachment



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**CALIFORNIA STATE BOARD OF
BARBERING AND COSMETOLOGY
ENFORCEMENT COMMITTEE MEETING
MINUTES OF MAY 1, 2012**

**2420 Del Paso Road
Sequoia Room, 1st Floor
Sacramento, CA 95834**

BOARD MEMBERS PRESENT

Richard Hedges, Chairperson
Katie Dawson
Deedee Crossett
Frank Lloyd

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Director
Heather Berg, Enforcement Manager
Tami Guess, Board Analyst

1. Agenda Item #1, WELCOME AND INTRODUCTIONS

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

2. Agenda Item, #2, APPRENTICE PROGRAM REVIEW AND UPDATE

Heather Berg, Board of Barbering and Cosmetology Enforcement Manager, provided an update on the apprenticeship program. In February 2012, a new "Program Sponsor" packet was prepared and mailed to sponsors and all Division of Apprenticeship Standards (DAS) offices. She estimated 16 packets were mailed; they have received 7 back and staff is following up on the other 9. The informational packet is available online for apprentices. The new forms were to be used beginning in April 2012. They also ran reports for each inspector that provided a list of all apprentices in their territory. Cases have been opened for anyone with issues. They are following up with DAS who then follows up with the sponsor who addresses the specific issue. Ms. Berg explained DAS maintains oversight of the sponsors of the apprentice program. The sponsors are approved by DAS which allows them to train apprentices. The inspectors are responsible to keep DAS informed of any problems.

If an apprentice is found in violation, the apprentice must attend a sponsor committee meeting to show why they should be allowed to stay in the program.

The new program packet asks what information the sponsors have given the apprentice, owner and trainer to ensure everyone receives the same information. Staff will be reviewing this material to identify the breakdown in communication. The response from DAS and the sponsors have been helpful. One analyst from the Board of Barbering and Cosmetology (BBC) has been assigned to all the cases for consistency.

BBC staff has also prepared a list for the sponsors to show them all of the apprentices that are currently registered under them. It was noted DAS has 500 more apprentices registered than the BBC. A new procedure has been instituted where no one can take the exam until they have been disassociated with DAS, and earned their completion. Ms. Crossett asked for clarification on the procedure. Ms. Berg explained when someone registers as an apprentice, they first register with the sponsor, then the sponsor registers with DAS. When an application is submitted with BBC, it is verified that they have registered with DAS prior to licensing. She clarified the sponsor is an organization registered with DAS. The apprentice then needs to find an establishment and a trainer. Ms. Crossett believed the apprentices are frustrated with the sponsors. Ms. Berg stated BBC can work with DAS to monitor the sponsors. She provided the hierarchy of DAS (at the top), the sponsor, the establishment and trainer.

Ms. Berg believed three or four new people are working with DAS to become approved as sponsors. This could encourage positive competition. The responsibility of the sponsor is to ensure students are attending school. Ms. Crossett was surprised that some of the larger schools are not becoming sponsors because it would seem that the larger schools would be more prepared for the rigors of being a sponsor. Ms. Underwood believed there was a lot involved in becoming a sponsor including holding quarterly meetings. The wait to be approved by DAS is over six months; it is a very small state agency with few staff.

Ms. Underwood stated BBC has focused on getting everyone on the same page so they can then look at better enforcement and holding everyone accountable.

Mr. Hedges did not believe the Disciplinary Review Committee (DRC) has had issues with the high end shops. He noted some of the lower end shops have as many as three apprentices working without supervision. They are typically the shops that provide low cost haircuts with quick turnover. Ms. Berg agreed this is a problem and additionally believed that there continue to be issues with communication. She did not believe that some owners or trainers know their responsibilities in taking on an apprentice. The enforcement staff is focusing on this issue. She noted a lot of the owners have said they did not know they had to keep daily records. Mr. Hedges was surprised they did not know this. Mr. Hedges stated they have told the apprentices to check on their trainers to make sure their hours were being noted. They have found apprentices keeping their own records which is not their responsibility. Ms. Crossett noted there are many ways to keep track of hours via computer and there is no excuse not to keep records.

Mr. Lloyd noted the hair profession requires more hands-on training than other professions which may be difficult for some trainers.

Ms. Crossett asked if items could be placed on the website for more information. Ms. Berg noted the apprentice packet is posted on the website and it includes a Q&A. Ms. Crossett recommended identifying the responsibilities of each party and placing them on the website. Contact information should also be provided if they have more questions. Ms. Berg noted that generally speaking most apprentices did not complain about their sponsors. Ms. Berg agreed the identified responsibilities list should be placed online and passed out by the inspectors in the field. Mr. Hedges agreed this was a good idea. Ms. Dawson recommended a list of five most frequently asked questions focusing on this area. Ms. Crossett noted establishments also liked the top ten violations list.

Ms. Berg stated the first part of the circular letter in the new program sponsor packet, was very comprehensive. It discussed the pre-apprentice training, the fees, application, training records, trainer and owner responsibilities, having multiple trainers in establishments, supervision, complaints, inspectors and discontinuance. She hoped the recent activities would "get everybody in

line” or at least minimally, identify some the issues. Mr. Lloyd stated that sponsors should know what to do with all the information that has been provided. Mr. Lloyd recommended the circular be posted to the website, as it was very thorough.

Ms. Crossett asked how many apprentices a stylist can oversee. Ms. Berg noted there is no limit by law. However, the circular letter noted the Board recommended a 1 to 1 ratio. They encourage establishments to have multiple approved trainers so the apprentice can be supervised appropriately. Ms. Crossett believed the 1 to 1 ratio may be difficult. Ms. Berg believed the most they have seen is 3 apprentices to one trainer but the majority are 1 to 1. Mr. Lloyd agreed there will always be establishments that can't function in the program and that is the reason for regulations.

Ms. Berg hoped the information provided in the Program Sponsor packet will assist the establishment owner and trainer in understanding their responsibilities when they agreed to take on an apprentice. They must be willing to invest the time and effort into training.

Ms. Berg clarified the sponsor typically does not teach theory. The apprentice will continue to go to school to earn 216 hours. She believed the Department of Education has some requirement on this but they are not required to follow the Board's curriculum. Ms. Berg stated most of the curriculum she has reviewed follows the Board's recommendations. Ms. Crossett believed this should be investigated as she has received complaints from apprentices that they are not learning anything. Ms. Underwood was unsure if the Board had authority to change this. Mr. Hedges wondered if students were buying hours then trying to get more information to pass the test. Ms. Berg believed the pass rate was 75-80 percent. Ms. Crossett agreed it was a good idea to post the pass rates, to begin in June.

Mr. Hedges noted he did not vote for the current regulations. When he voted, he believed he voted to allow multiple apprentices in a shop but no more than one apprentice for every licensed cosmetologist. He believed this would allow the apprentice to continue working if the trainer was not available. He also voted to allow apprentices to work between shops with a company with more than one shop. Ms. Berg noted the DAS agreement with the sponsors required a 1 to 1 ratio. She recommended she be contacted if more than this is found so she can report them to DAS. Mr. Lloyd wondered if there was a master list to show this. Ms. Berg noted reports are being prepared for the sponsors and inspectors to show the apprentices.

Ms. Dawson asked if there are guidelines for the questions the Board members can ask an establishment. Mr. Hedges believed they should be careful going to an establishments as Board Members and should they chose to go into an establishment, they should be accompanied by an inspector.

Mr. Hedges asked the Board if they had an interest to define the amount of apprentices in a shop. Ms. Crossett noted she allows 4 externs per one licensed person, within her school. Mr. Hedges believed a regulation is needed to define the ratio. Ms. Berg noted DAS has this definition but does not have any inspectors to enforce the standard. She reiterated the inspectors will tell her if a shop is not in compliance and she will report them to DAS. DAS will then work with the shop to correct this. Mr. Hedges stated he was frustrated with the state bureaucracy. Ms. Berg noted there was a form (#812) for the inspectors to fill out to refer to DAS. She confirmed a trainer needs to be registered with the BBC as a trainer with no outstanding fines and not just have a license. Ms. Crossett believed the 1 to 1 ratio was very strict.

Mr. Hedges believed the BBC was on the right path.

Mr. Lloyd asked for clarification on citing a trainer if an apprentice is found to be working alone without the presence of his/her trainer. Ms. Berg confirmed BBC cannot legally cite the trainer if the trainer is not present during the inspection of the salon. The apprentice and establishment owner would be cited for unlicensed activity. Mr. Lloyd wondered if the trainer was typically the owner. Ms. Berg believed this was true in less than 50 percent of the cases. She noted a lot of citations

have been given out recently. Mr. Lloyd noted they are finding a lot of owners who do not have a license.

Ms. Crossett believed a visual organizational chart would be helpful for apprentices to know the system. She noted her students respond well to visual materials.

3. Agenda Item #3, DISCUSSION AND ESTABLISHMENT OF WORK PLAN TO UPDATE THE HEALTH AND SAFETY REGULATIONS

Ms. Underwood noted Regulation 979(b) (immersion of scissors into disinfectant) has been brought up in public comment during recent Board meetings. The public is concerned that the regulations do not match what the manufacturers instructions say, which is causing confusion. She explained 979(b) requires changing the disinfectant at least once per week or whenever visibly cloudy or dirty. The manufacturer's instructions say to change it daily. She noted the regulations go through a lengthy process to be approved. She recommended the entire health and safety regulations be reviewed and possibly updated. All the changes should be made at once since it is such a lengthy process. She recommended forming a work group, possibly made of the committee or staff to review and make recommendations. Mr. Hedges believed recommendations by staff would be a good start. Ms. Crossett recommended a working group that would include someone from Public Health and an environmental representative. Mr. Lloyd agreed that changing disinfectant daily may harm the environment.

Ms. Underwood agreed a working group should be formed. A subgroup will also be formed that will include supervising inspectors and the enforcement and citation units, that will report to the working group. The working group will report to the Enforcement Committee. She noted the regulations and wording need to be more defined for the diverse profession in the state.

Mr. Hedges expressed his concern about complying with the manufacturer's instructions if they are not appropriate or safe. Ms. Crossett believed the experts should be brought in to verify this. She cited an example that the spray and go disinfectant instructions state to spray and wait ten minutes, but the Board's instructions do not include this. It should be clarified by the experts.

Ms. Crossett recommended changing the requirement of shears being sprayed and not submerged if only used for haircutting. Ms. Underwood noted this is common in other states. This will be reviewed, along with the other regulations.

Mr. Lloyd asked about inspectors doing a litmus test. Ms. Underwood explained this would be considered evidence and the inspectors were not at a classification to collect evidence or confiscate certain items. They are allowed to take licenses.

Mr. Hedges summarized the discussion that staff will move forward with a review of the regulations. A working group will be formed to work with the committee. Ms. Underwood noted this process will take time but it is very important to get it started.

4 Agenda Item #4, APPROVAL OF ENFORCEMENT COMMITTEE MEETING MINUTES

Mr. Lloyd noted an error on page 1, Agenda Item 2, in his statement of "Mr. Lloyd believed the DRC has seen the worst but things have changed positively." He clarified he has seen a lot of abuse in the apprentice program coming through the DRC. He requested it to be changed to "Mr. Lloyd has seen a lot of abuse in the apprenticeship program coming through DRC." It was clarified apprentices are paid. Ms. Crossett wished to clarify her statement on page 1, Item 2, that students did not have the ability to research apprenticeship programs. Upon a motion by Mr. Lloyd, seconded by Ms. Dawson, the minutes were approved by a 4-0 vote.

5. Agenda Item #5, PUBLIC COMMENT

The public present did not wish to address the Board.

6. Agenda Item #6, ADJOURNMENT

Mr. Hedges thanked Ms. Berg for addressing the Board's concerns in a timely manner.

With no further business, the meeting was adjourned.

No Attachment



Regulation Change Recommendations

- 979 (a) Before use upon a patron, all non-electrical instruments, **that can be disinfected**, shall be disinfected in the following manner:
- 979(b) (2) Be changed **in accordance to the manufacturers instructions** or whenever visibly ~~cloudy~~ or dirty.
- 979(c) All instruments that have been used on a patron or soiled in any manner shall be placed in a ~~properly labeled receptacle~~ **container labeled 'soiled' or 'dirty'**.
- 979(d) All disinfected instruments shall be stored in a clean, covered place which is labeled ~~as such~~ **'clean' or 'disinfected'**.
- 979(d) (1) **Disinfected shears may not be stored for use in any non-disinfectable pouch.**
- 980 (b) - All disinfected electrical instruments, excluding curling irons, **flat irons** and hot combs shall be stored in a clean, covered place **that is labeled 'clean' or 'disinfected'**.
- 980 (c) **All soiled electrical instruments that have been used on a patron or soiled in any manner shall be placed in a receptacle labeled 'soiled' or 'dirty'.**
- 980.1 Need regulation developed that states a sign should be posted on an 'Out of Order' footspa. The regulation needs to be clear that the chair must still be kept in a clean state. The log must reflect when the chair went out of service. **(same change recommended for 980.2)**
- 980(8) (e) (1) and (2) should read - undisturbed in the unit for at least 6 hours. **(same change recommended for 980.2)**
Change "6- to 10 hours" to **"at least 6 hours"**.
- 981 (a) All instruments and supplies which come into direct contact with a patron and cannot be disinfected (for example, cotton pads, sponges, emery boards, **buffers, pumice stones, wax sticks** and

neck strips) shall be disposed of in a waste receptacle immediately after use.

- 983 (b) - Every licensee performing services shall thoroughly wash his or her hands with soap and water or any equally effective **alcohol – based** cleansing agent before serving each patron.
- 987 (b) Towels shall be laundered either by regular commercial laundering or by a noncommercial laundering process which includes immersion in **hot** water at least 140 degrees F for not less than (15) minutes during the washing or rinsing operation.
- Milady Textbook states – To clean towels, linens or capes; launder according to the directions on the item's label.
- 987 (c) - All clean towels shall be stored in a **clean, closed cabinets or closed container.**
- 988(a) All liquids, creams, **waxes** and other cosmetics preparations shall be kept in clean and closed containers. Powders may be kept in clean shakers.
- 989 - No establishment or school shall have on the premises cosmetic products containing hazardous substances which have been banned **or restricted** by the U.S. Food and Drug...
- 990 (c) - Treatment tables must be covered with a **clean towel, or a** clean sheet of examination paper ~~for~~ **after** each patron.
- 990(d) ***After a towel and/or sheet has once been used, it shall immediately be removed from the treatment table and be deposited in a closed container and not used until properly laundered and sanitized.***
- 991(a) (1) - ***No licensee may perform a medical treatment as defined: the care and management of a patient to combat, ameliorate, or prevent a disease, disorder, or injury.***
- 991(b) (4) - Abrasion **and/or exfoliation** of the skin below the non-living, epidermal layers.
- 992(c) ***Only commercially-available products that are not considered medical grade or sold for physician's use only, which are not over 30% acid content or with a start up pH of 3.0 or higher may be used for the purpose of skin exfoliation.***

- 992(d) ***Use of creams, lotions, serums or tonics over a 30% acid content or a pH under 3.0 shall be considered the practice of medicine.***
- 992(e) ***Mixing or combining skin exfoliation products is prohibited except as required by manufacturers instructions.***
- 992(f) ***All skin peeling agents must be applied using manufacturer's guidelines for health and safety.***
- 992(g) ***Application protocols shall be made available upon request by a board representative.***
- 992(h) ***Client Health/History Cards shall be completed by every patron receiving a skin exfoliating service. Client cards shall be made available upon request by a board representative.***

Need to define:

Sanitary
Beautification
Treatment
Practice of Medicine
Living layers
Epidermis
Dermis
Commercially available products
Medical grade
Disinfectable
Non-disinfectable
Protocol
Medical use only
Autoclave
Non-electrical instruments
Cosmetics
Porous
Non porous
Cosmetic preparation
Exfoliating procedure



MEMORANDUM

DATE	April 12, 2012
TO	Board Members Board of Barbering and Cosmetology
FROM	Kristy Underwood Board of Barbering and Cosmetology
SUBJECT	Hair Braiding

The Board of Barbering and Cosmetology has been an integral part of the evolution of hair care and the changes produced. In 1930, the California Cosmetology law placed regulation of all hairstyling under the State Board of Cosmetology. On May 16, 1982, the Attorney General issued an opinion finding African hair braiding is covered by cosmetology licensing requirements. On January 28, 1997, the Institute of Justice filed a lawsuit in a federal district court in San Diego challenging California’s cosmetology licensing statute and regulations on behalf of practitioners of African hair braiding and other forms of natural hairstyling. The name of the case was Joanne Cornwell and the American Hairbraiders and Natural Hair Care Association v. Ron Joseph, Acting Director of DCA; Pamela Reed, Program Administrator, Barbering and Cosmetology Program, DCA; Susan Harrigan, Assistant Program Administrator, Barbering and Cosmetology Program, DCA; and Daniel E. Lungren, Attorney General of the State of California. The case number was 97CV0138 B. The plaintiff’s challenged the constitutionality of the Barbering and Cosmetology Act as it relates to hair braiding as an act of cosmetology. The suit was not for monetary damages. Deputy Attorney General Thomas Lazar and Richard Garske handled the case for the Board of Barbering and Cosmetology. On August 18, 1999 the court ruled in favor of the plaintiff. Noted below is an excerpt from this judgment:

“As set forth, the basis of this Order is the finding that the State’s mandated curriculum, on its face and upon review of its actual implementation and associated texts and exam, does not teach braiding while at the same time it requires hair braiders to learn too many irrelevant, and even potentially harmful, tasks. The vice is not the statute, but the implementing regulations. If an individual does more than braid – if he or she routinely shampoos or cuts or dyes hair, or uses chemicals at all – they are not a hair braider. If they do such activities, they are subject to the Act and regulations.”

In an effort to further fine tune the Board’s correlation to the profession of hair braiding a legal opinion was requested on November 9, 2011 from the Legal Council representing the Department of Consumer Affairs Board of Barbering and Cosmetology. The legal opinion clarified the Board’s inspectors are not to cite hair braiders who are not licensed with the Board for using a brush or comb.

No Attachment