



**CALIFORNIA STATE BOARD OF  
BARBERING AND COSMETOLOGY  
MINUTES OF JULY 28, 2014 BOARD MEETING**

**Department of Consumer Affairs  
1747 North Market Boulevard  
HQ 2 Hearing Room 186, 1st Floor  
Sacramento, CA 95834**

**Additional Meeting Location via Teleconference**  
1038 West 80th Street  
Los Angeles, CA 90044

**BOARD MEMBERS PRESENT**

Richard Hedges, President  
Dr. Kari Williams, Vice President  
Mary Lou Amaro  
Wen Ling Cheng  
Andrew Drabkin  
Joseph Federico  
Christie Truc Tran

**STAFF MEMBERS PRESENT**

Kristy Underwood, Executive Officer  
Gary Duke, Legal Counsel  
Tami Guess, Board Policy Analyst

**VIA TELECONFERENCE**

Bobbie Anderson

**1. Agenda Item #1, Call to Order/Roll Call**

Mr. Hedges called the meeting to order at 10:00 a.m. The Board members and staff introduced themselves.

**2. Agenda Item #2, Public Comment on Items Not on the Agenda**

*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)]*

**Public Comment**

Emme Diane spoke on behalf of California estheticians. Ms. Diane proposes working together with the Board of Barbering and Cosmetology (BBC) to improve the clarity of the State Board rules and regulations. She has concerns for the safety and privacy of clients and the lack of uniform inspections by Board inspectors. Ms. Diane proposed having the inclusion of using sterile and disposable lancets with the use of a Sharps container into the

verbiage of AB 1153, if an esthetician has taken continuing education and received a certification in blood-borne pathogens.

Ms. Diane stated that due to unclear rules and regulations, that are inconsistent with State Board inspections, there are discrepancies and gray areas as to inspection standards and guidelines. Ms. Diane is hearing from some of her colleagues that there are certain things that they will be fined on that other estheticians are not, small things, such as, the labeling of a trash can. Ms. Diane is proposing to have the State Board rules and regulations clearly outlined in a standardized inspection checklist that licensees can review. In addition, of concern is maintaining the public's right to privacy. Ms. Diane proposes that State Board inspections not be performed while a client is receiving services.

Ms. Underwood stated that there is a self-inspection sheet that is available on the BBC's website and that an inspector should never interrupt a service in progress. BBC has created a consumer notice card that inspectors can hand to clients to explain the purpose of their visit.

### **3. Agenda Item #3, Board President's Report (Mr. Hedges)**

Mr. Hedges asked Ms. Guess to explain how a consumer can gain access to the BBC's Facebook page. Ms. Guess stated the user should go to [www.barbercosmo.ca.gov](http://www.barbercosmo.ca.gov). If the consumer clicks on the Face Book icon, they will be automatically directed to the Face Book page. Twitter is available in the same manner.

The Disciplinary Review Committee (DRC) is now holding hearings four days a week. The DRC is hearing more cases each day. Mr. Hedges appreciates the Board members, especially the industry members, who are stepping up and participating in the hearings.

The BBC has made some changes in the apprenticeship rules and with the required school equipment. These changes were prompted by comments heard in the public comments sessions of Board meetings. The public was encouraged to attend and participate in the BBC's Board meetings.

Mr. Hedges presented Heather Berg and Carrie Harris with an award for their superior performance and dedication to the implementation of the BreEZe project. They were, and continue to be, an integral part of the development of the new BreEZe database system. Both received DCA's Superior Accomplishment award.

### **4. Agenda Item #4, Executive Officer Report**

- Update on the Board's Budget  
The latest version of the budget appears in the report. The Board is just starting its new fiscal year. Expenditures in the packets are as of May 31st. The fund condition showing the 2014-2015 budget is available in the report. BBC has submitted a Budget Change Proposal for the hiring of new inspectors.
- Update on Breeze  
Statistics from Breeze are not available. It is anticipated that statistics will be available for the October 2014 Board meeting.
- Board's Statistics  
Statistics for DRC are in the report.

The BBC has increased its outreach. There will be a town hall meeting in Westminster for Vietnamese speaking licensees. It will be held on September 8th.

In June, BBC conducted two examinations in State correctional facilities (Chowchilla, Corona). Of the 13 candidates that were examined, 12 passed the examination.

BBC, in conjunction with Federico's Institute of Beauty, has produced two public service videos, focusing on consumer safety within the nail salon.

#### **5. Agenda Item #5, Review of Open Meetings Act/Board Member Ethics**

Mr. Gary Duke, staff counsel, reviewed the Open Meetings Act (Bagley-Keene Act). The Open Meetings Act is considered "a sunshine law" whose purpose is to promote openness and transparency in state government decision-making. The law requires boards and committees to do business in public. Specifically, the Open Meetings Act declares, "The people do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Government Code Section 11120. The Open Meetings Act imposes three explicit duties: (1) give adequate notice of the meetings that will be held and any items that may be discussed; (2) a duty to conduct meetings in an open session; and (3) provide an opportunity for the public to comment. Mr. Duke invited Board members to contact him with any questions.

#### **6. Agenda Item #6, Approval of Board Meeting Minutes**

- April 21, 2014

A motion was made by Dr. Williams and seconded by Mr. Drabkin, to approve the minutes from the April 21, 2014, Board meeting. The minutes were approved by an 8-0 vote.

#### **7. Agenda Item #7, Proposed Regulations -- Discussion/Review and Approval of Proposed Changes**

Updates: Relating to Health and Safety Title 16, Division 9, Article 12 of the California Code of Regulations Sections: 977, 978, 979, 980.1, 980.2, 980.3, 981, 982, 983, 987, 991, and 992. Updating health and safety regulations to reflect terms more commonly used in the barbering and cosmetology industry and to make the terms clearer or more detailed.

The version presented includes changes made by the Department of Public Health, (technical changes to the wording) and comments received during the comment period for electrolysis needles. Current edits allow an electrologist to sterilize their needles, if they are using non-disposable needles, and it recognizes the use of disposable needles. The regulations are coming to the Board for approval. Upon approval by the Board, the regulations will have to go back out with a 15-day notice to the public. If no comments are received, the BBC can proceed with the final rule-making package. It is noted that with regards to changes in public health and safety regulations, the Board has to have approval from the Department of Public Health.

#### **Public Comment**

Jaime Schrabek, Precision Nails, stated one of the bigger changes she noticed was in Section 984. (disease and infestation) Section E has been changed significantly so that it applies to all services not just massage services. She questioned if a client comes in with a paper cut; does that mean you can't perform a manicure? If a client has acne with some broken skin, does that mean an esthetician cannot perform a facial? The other concern she has is that there is still no mention here about the condition of the nails themselves. She knows that there is a lot of controversy about exactly what condition a nail can be in and

still be worked on. Some people feel it is perfectly fine to work on fungal toenails and that topic is not addressed in any of the rules.

Ms. Underwood stated esthetician cannot treat acne, Dermatologists treat acne. Estheticians do not treat any disorders. As for conditions of the nail, Ms. Underwood does not believe the regulations address that directly.

Danielle Wachowski, educator for over 15 years, would like clarification about acne. There are four grades of acne. She believes the BBC needs to be very clear about the grades of acne that can or cannot be treated.

Ms. Underwood commented that an esthetician cannot work on skin where the skin has an infection or an eruption. Estheticians need to work within the scope of their esthetics license.

A motion was made by Dr. Williams and seconded by Ms. Amaro to approve the amendments to the BBC's health and safety regulations. The motion passed with a vote of 8-0.

- Relating to the Apprenticeship Program Title 16, Division 9, Article 3 of the California Code of Regulations Sections: 914, 918, 921, 921.1 and 921.2

This is language that has previously been approved by the Board. No changes are recommended. This is now the final language. There are no more notices that will be needed after this. If the Board approves it today, it then goes to the Department and then eventually to the Office of Administrative Law.

A motion was made by Mr. Federico and seconded by Mr. Drabkin, to approve the amendment package of the regulation changes. The motion passed with a vote of 8-0.

- Relating to the Removal of Lash/Brow Tinting form the Cosmetology Curriculum Title 16, Division 9, Article 7 of the California Code of Regulations Sections: 950.2, 950.9

The rule-making file has been submitted to the Department of Consumer Affairs and is in the process of review.

- Relating to the Cross Over and Transfer of Credit of Barbering and Cosmetology Title 16, Division 9, Article 7 of the California Code of Regulations Sections: 950.8, 950.9 and 950.1

This is coming to the Board as the final step. This removes the cross-over curriculum in regulation and allows schools to develop a cross-over curriculum which eliminates any duplication of courses.

A motion was made by Mr. Federico and seconded by Dr. Williams, to approve the regulation package. The motion passed with a vote of 8-0.

- Relating to Text book Approval Title 16, Division 9, Article 12 of the California Code of Regulations Section: 961

The changes to this section (text and reference books) are in process. It is proposed that the requirement that the Board approve textbooks be removed. This is due to the fact that the Board no longer creates its own examination.

## 8. Agenda Item #8, Update and Discussion of Proposed Bills That Could Impact BBC

- AB 1153 – Advanced Esthetician Bill

Ms. Underwood has had discussions with the sponsors of this bill. There are amendments coming to this bill that are not yet in print. The bill will not create a new scope of practice for master estheticians. The proposed bill will likely expand the existing esthetician scope of practice to include body work. This will be a certification issued by the Board if a person has completed an additional 600 hours plus their existing 600 hours of esthetic training. Mr. Hedges recommended withdrawal of support and taking a watch position until BBC sees the proposed amendments.

### **Public Comment**

Lynelle Lynch, Bellus Academy, stated her disappointment on where the bill is today. The goal from the California Coalition of Esthetician's standpoint is to have BBC approve the certification process. She does not believe the BBC should go into a watch position at this point until it sees current proposed amendments.

Fred Jones, Professional Beauty Federation, California, stated the association strongly supports the idea of industry certification. The industry wants to have continuing education and wants to encourage people to continue to perfect their trade. He urged the members to specify what principals they would need to see in the bill, so that BBC can take a support position. Mr. Federico mentioned that nothing should impede or diminish from the existing esthetician license. Since this Board has already voted to embrace the concept of industry certification across all private license categories, then any bill that creates an industry cert should be extended to all license categories.

Mr. Jones stated, that whatever industry certification program is out there, it really only has credibility if the State Board has some involvement with it. Everybody looks to the State Board, which is the licensing and enforcement agency of the Beauty and Barbering industry. Therefore, if the Board is going to recognize any particular industry certification program, the Board should review the standards of those programs and either approve them or reject them. He felt, BBC needs to have the review, approval, and rejection authority over any potential industry certification program offered, especially if it's supposed to officially recognize those certifications. Regarding the process of reviewing, approving, and rejecting, he felt the Board should have the commensurate resources to do that work. The Board should have the fee authority for that review process so it doesn't negatively impact the budget.

Jaime Schrabek, Precision Nails, has been opposed to this from the beginning because she thought it was too narrow and obviously addressed only the skin care category of the licensure. Her concern is that if this does expand the scope of practice to include the entire body, then the industry is in fact, whether it's intended or unintended, affecting people who do work in spas where they are giving saunas and exfoliation scrubs or herbal wraps, people who are currently exempt from BBC licensure. If the scope of practice is expanded, to include the full body, then what happens with those people who are working in those businesses now who are not currently under the Board's regulatory authority?

Diane Bucolla, licensed esthetician, was not supportive of the master bill as written. She supports the BBC's decision to take a watch position. Esthetics has become so clinical over the years. She wishes the bill had continuing education requirements mandated. She believes the Board needs to separate the cosmetology license from the esthetician license.

Mr. Hedges moved and it was seconded by Dr. Williams, for the Board to withdraw the support position and take a watch position. Mr. Hedges directed the Executive Officer to deliver the public comments to the Legislature. Ms. Underwood will relay the comments to the Legislature and will let the Legislature know that the Board has withdrawn their support position and are now taking a watch position on the bill.

Mr. Federico clarified the motion. The Board is moving to a watch position and authorizing the Executive Director to express the concerns that the Board heard from the public on this bill and any other concerns that the Board may have. The motion carried with a vote of 8-0.

- SB 1159 – Federal Tax Identification Number

This bill is not specific to the Board. This bill allows an individual who does not have a Social Security number, to use an Individual Tax Identification Number (ITIN), on their application for examination. It would allow undocumented individuals the ability to get a license in the industry.

A motion was made by Dr. Williams and seconded by Ms. Amaro, to take a support position on the bill. The motion passed with a vote of 8-0.

## **9. Agenda Item #9, Discussion and Review of Recommendations of the Natural Hair Care Task Force**

A very thorough report on the proposed regulation of hair braiding was included in the Board's packets. This subject was discussed by BBC and a natural haircare task force. The task force met on April 14, 2014, and the discussion was surrounding the concern of the public's health and safety being served since braiding is currently unregulated. The task force adopted a definition of natural hair care. The definition is listed in the packets.

"A Natural Hair Care Stylist provides a service for compensation that result in tension on hair strands or roots by braiding, locking, twisting, wrapping, weaving, finishing, and extending the hair with or without natural hair or synthetic fibers or applying cornrows to the hair. Such a practice may include: Shampooing, drying the hair, incidental trimming or singeing the ends of the hair to complete the service; applying antiseptics, powders, oil, clays, lotions or applying tonics to the hair, head, or scalp to condition the hair; the use of tools such as combs, hair rods, hair rollers, hair clips, brushes or shears. **Such practice shall not include:** the application of glues and/or adhesives; the use of preparations or the use of any device or tool designed to alter the color or chemically straighten/curl the hair; the application of extreme heat applications, such as, flat irons, straightening combs or curling irons."

BBC would like to help expand the scope of practice of braiders or natural hair care provides, that may be interested in performing services like shampooing or heat applications that are currently listed under the scope of practice for a cosmetologist, without having to complete a 1,600-hour course.

### **Public Comment**

Kim Abernathy has been in the industry over 15 years and an educator for about 8 years. She would like to put something in motion to certify braiders/natural hair care providers, like they do in Texas. In Texas, you do have to be certified in order to work on natural hair because even though they are not using the shears or adhesives, they still need to understand biology, sanitation and disinfection because they are using combs and they can spread diseases.

Fred Jones, Professional Beauty Federation of California, stated this subject is a very politically sensitive issue because it affects an ethnic group in particular and a minority group at that. This issue will take legislation to effect a change. He would like the Board to keep its expectations in check. What his organization fears the most is unlicensed activity.

Ms. Guess reported on the Institute of Justice's website. The Institute of Justice has stated that braiding is a matter of cultural practice and that governmental regulators are infringing on the rights of braiders by requiring a license for natural hair care. The Institute of Justice has recently won two court cases. They have won legislative decisions and currently, they are litigating in Washington, Missouri, and Arkansas to say that natural hair care providers/braiders should not be licensed. They have sued the BBC in the past and won. The legal theory that they're using is that braiding is a cultural equivalent of what people do in their culture and culture should not be regulated. An initiative called #braidingfreedom has been started and is gaining momentum.

The BBC does not have enough consumer harm to take forward to the Legislature to prove that a braiding license should be required. Ms. Underwood stated the report regarding braiding and natural hair care will be submitted to the Legislature within the Sunset Report. She does not recommend the Board pursue the licensing of natural hair care providers/braiders, at this time. Dr. Williams does not want to run into any problems if the Board is having difficulty demonstrating the consumer harm.

### **Public Comment**

Fred Jones, PBFC, thinks the report is well-worded. It's a soft recommendation to the Legislature to consider a license. He thinks it is an appropriate line in the sand for this Board to take, that it should be regulated. That doesn't mean that the Board should make it one of its top priorities. It will be very difficult to find a Legislative author for that vehicle. He thinks that it is appropriate to list this as one of the issues that the Board continues to grapple with.

Ms. Underwood stated that the recommendation in the report says that the BBC recommends that the Legislature consider enacting a bill for the development of a natural haircare license with a theory hour requirement of 400 hours and curriculum to be determined by the Board.

### **Public Comment**

Kim Abernathy stated she sees a lot of fantastic work done by the braiders. She feels that a lot of the times the consumer does not know if they are safe or not. If there is a problem, a lot of the times a consumer feels maybe *they* have done something wrong, not the service provider.

Dr. Williams suggested submitting the report and not putting pressure on the Legislature and see what the Legislature says and move forward from there. Ms. Underwood stated the report will become part of the BBC's sunset report, so it will be submitted to the Legislature.

Mr. Hedges moved that the Board submit the report as written with the addendum that it's difficult to prove consumer harm, but based on all of the testimony at our public meetings, the Board feels it's important to let the Legislature know that there is definitely industry-driven concern that this be regulated. Ms. Underwood restated the motion: the Board will submit the report as written with an addendum that it's difficult to show the consumer harm, but based on the input from the industry that the Board recognizes that the harm is out there. The motion was seconded by Ms. Cheng.

The motion was passed with a vote of 7 with one abstention (Mr. Andrew Drabkin).

## **10. Agenda Item #10, Presentation from Allies Innovation Initiative Representative**

The presentation was cancelled.

## **11. Agenda Item #11, Sunset Review**

- First Draft of Background Paper for Review

The BBC is up for sunset review. The report will be due to the Legislature in November of this year. The members need to decide what new issues they would like to see addressed in the Sunset Review report. In the last sunset review, the BBC brought up the issue of licensing hair braiders/natural hair care providers and the Board's request for sole oversight of schools. The following items were requested by members to be brought forward as new issues in the Sunset Review report:

- Title protection for all licensees
- Early written testing
- The monitoring of natural hair care (because of industry concern)
- Booth rental licensure
- Freelance licensure

### **Public Comment**

Fred Jones, Professional Beauty Federation of California, stated that there is legislation that's working its way through the Legislature right now that's going to propose to make the Bureau of Private Post-Secondary Education (BPPE), a state board. He thinks this piece of legislation is very problematic for a number of reasons. He thinks it is incumbent upon this Board, which has already historically had this position, to continue to maintain and advocate for sole regulatory oversight of Board approved schools.

Mr. Jones suggested that BBC ask in the sunset review report for industry certification and authority, which, includes the ability to review, approve, or deny any certifications and the authority to require a fee for the certification.

Mr. Jones proposed that the new issues include a request to allow for early written examination after the required theory hours have been completed.

In addition, Mr. Jones would like to see Board member term limits revoked so that Board members who have proven themselves, are able to maintain a Board position if the appointing official thinks that they have earned another term.

Lynelle Lynch, wanted to make the Board was aware of a federal rule. If the Board takes sole oversight of schools, there are certain terms that must be used and certain ways in which the school would need to be regulated. BBC would have to be a part of higher education and have "post-secondary" in its name or in its statute. If the Board obtains sole oversight of the schools and does not have this, the schools could lose their title 4 position.

The Board directed Ms. Underwood to include the above "New Issues" into the next draft of the Sunset report.

## **12. Agenda Item #12, Discussion to Allow Early Written Testing for Future Professionals**

The packets contain information brought to the Board to facilitate the discussion. Legislative change would be required and there would be probably substantial fiscal impact to the Board because it would require several programming changes, not only for the BBC, but there would also

be programming changes to our computer-based testing vendor. Ms. Underwood pointed out that it would completely change the internal processing of applications. Examination wait time would probably take longer because the BBC would have to schedule each examinee twice. The candidates would come to the BBC to be scheduled for their written exam at the time that they've completed a certain amount of schooling. Candidates would be able to take the written exam at a number of different locations throughout California. The candidates would have to come back to the BBC when they have finished school to take their practical exam. The BBC would have to change the contract with the computer-based testing company.

### **Public Comment**

Fred Jones, PBFC, suggested the issue of early written testing be added as a new item in the Sunset Review report. He suggested BBC request statutory changes to same day licensing, within the sunset review report, to allow for early written examination after the required theory hours have been satisfied.

Lynelle Lynch suggested, if adopted, the BBC implement the proposed early written testing program with the cosmetology program first, as other State Boards have had a measure of success with the Cosmetologist early testing program.

Mr. Hedges stated that the Board would let Ms. Underwood handle this as she sees fit in the Sunset report.

### **13. Agenda Item #13, Proposed Board Meeting Dates for 2015**

Meeting dates are in the packet.

### **14. Agenda Item #14, Agenda Items for Next Meeting**

- Sunset review

### **15. Agenda Item #15, Public Comment**

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### **Public Comment**

Jaime Schrabek, Precision Nails, mentioned the proposed January 2015 meeting date conflicts with the ISSE Long Beach show. (January 24–26, 2015) Ms. Underwood stated the BBC planned on having a booth at the show.

Danielle Wachowski, asked if LED was legal. Mr. Hedges stated that cited violations were being removed in the DRC. She asked whether the Board has ever considered polling California licensed estheticians on current issues or if the Board has ever reached out or have a way for estheticians in California to actually speak about how they're earning a living, what they think they need to be successful and how they can protect the consumer. She believes that estheticians feel that the legislators and authors of the bills are out of touch with their business.

Ms. Underwood encouraged licensees to attend all Board meetings to voice their concerns. She encouraged licensees to apply to be Subject Matter Experts or participate on Board technical advisory committees.

Kim Abernathy, stated concerns regarding the apprenticeship program and the fraudulent activity going on by sponsors currently enrolled in the program. A few sponsors in Sacramento area are taking the apprentices fees and telling them that all of their paperwork has been submitted to BBC and then not following through. This is causing hardship to the apprentices. She would like something done to correct this action or have these sponsors removed from the program.

**16. Agenda Item #13, Adjournment**