



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY – GOVERNOR Edmund G. Brown JR.
BOARD OF BARBERING AND COSMETOLOGY
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**CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY**

MINUTES OF JULY 17, 2016

Handlery Hotel
950 Hotel Circle North
San Diego, CA 92108

BOARD MEMBERS PRESENT

Joseph Federico, President
Dr. Kari Williams, Vice President
Mary Lou Amaro
Polly Codorniz
Andrew Drabkin
Richard Hedges
Coco LaChine
Lisa Thong

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Laura Freedman, Legal Counsel
Tami Guess, Board Project Manager
Marcene Melliza, Board Analyst

BOARD MEMBERS ABSENT

Bobbie Jean Anderson

1. CALL TO ORDER / ROLL CALL / ESTABLISHMENT OF A QUORUM

Joseph Federico, the Board President, called the meeting to order at approximately 10:00 a.m. and confirmed the presence of a quorum. He noted that Laura Freedman is representing Rebecca Bon, the Board's legal counsel, who was unable to be in attendance. He reviewed the meeting protocols.

2. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Rochelle Freeman, from the American Electrology Association (AEA) and the Electrologists' Association of California (EAC), requested increased clarification on Business and Professions Code (BPC) sections such as section 7351, which mandates that restrooms not be used for storage. She stated concern that several electrologists have been cited for keeping toilet tissue or paper towels in their restrooms.

Joyce Maxwell, from the AEA and the EAC, brought a question from Yvette Becerra, the president of the EAC, about the new tweezer sterilization rules. Ms. Becerra asked if each bag or heat-sensitive label that changes color when it reaches the proper temperature must have "sterilized" written on it, or if all sterilized tweezers can be in a box that is labeled "sterilized tweezers." Richard Hedges, a Board Member, stated staff will speak with Ms. Maxwell offline.

3. BOARD PRESIDENT'S OPENING REMARKS

Mr. Federico stated his excitement for having a full Board again. He asked Board Members to consider which Committees they would like to be assigned to later today.

4. EXECUTIVE OFFICER REPORT

- **Licensing Statistics**
- **Disciplinary Review Committee Statistics**
- **Enforcement Statistics**
- **Budget Updates**
- **Outreach Updates**

Kristy Underwood, the Executive Officer, presented her report. She asked Board Members to review the statistics provided in the meeting packet and asked if there were any questions.

Mr. Hedges referred to the high number of pre-apps and stated he was pleased to see the process is moving quickly. Ms. Underwood stated it takes four to six weeks to receive a license.

Mr. Hedges stated the statistics show the number of applicants coming into the state. He asked how many California stylists are leaving the state and getting licenses in other states. Ms. Underwood stated stylists leaving the state ask the Board for a certification letter so they can be tracked by the state, but the Board will not know how many stylists were actually licensed in other states.

Mr. Federico asked about year-to-year trends on initial applications and if more or fewer individuals are currently applying. Ms. Underwood stated the Marinello closures have impacted numbers. Staff will send the trends for the past five years to the Board.

Coco LaChine, a Board Member, asked if other schools have picked up the Marinello students. Ms. Underwood stated staff would only see those students as they apply for exams. There has been a decline in individuals taking the exam due to the large number of Marinello schools, but the number is expected to increase as those students apply to other schools to continue their education.

Mr. Federico stated his college welcomed Marinello transfer students by accepting all their hours, but it was only just this week that the first student transferred. He stated Marinello students were given the option to transfer to another school and keep their student loan debt or to drop out and have their debt forgiven.

5. APPROVAL OF BOARD MEETING MINUTES

- **April 11, 2016**
- **April 26, 2016**

Ms. Underwood asked for the April 11th meeting minutes to be tabled to the next meeting.

MOTION: Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board approves the April 26, 2016, Meeting Minutes as presented. Motion carried 8 yes and 0 no per roll call vote.

6. APPOINTMENT OF COMMITTEE MEMBERS TO STANDING COMMITTEES FOR 2016-2017

Mr. Federico stated a description of the Committees is in the meeting packet. He asked that all Board Members participate in the Disciplinary Review Committee (DRC) as a Committee Member or an alternate.

Mr. Hedges stated Board Members are welcome to attend the DRC as a member of the audience to gain experience by listening to cases and watching the Board rule on them. Ms. Freedman agreed but cautioned against Board Members participating when they are not representing the Board.

Ms. Freedman stated Board Member policy mandates that one person cannot chair more than one Committee. She requested that that adjustment be made when the Committees reform.

The 2016-2017 Committees as are follows:

Licensing and Examination Committee

- Joseph Federico (Chairperson)
- Mary Lou Amaro
- Richard Hedges
- Dr. Kari Williams

Enforcement and Inspections Committee

- Richard Hedges (Chairperson)
- Joseph Federico
- Coco LaChine
- Lisa Thong

Legislative and Budget Committee

- Richard Hedges (Chairperson)
- Mary Lou Amaro
- Bobbie Anderson
- Andrew Drabkin

Education and Outreach Committee

- Mary Lou Amaro (Chairperson)
- Coco LaChine
- Dr. Kari Williams
- Polly Codorniz

MOTION: Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board approves the Standing Committee makeup for 2016-2017 as assigned. Motion carried 8 yes and 0 no per roll call vote.

7. PROPOSED BOARD MEETING DATES/LOCATIONS FOR 2017

Mr. LaChine asked how the locations for the Board meetings are selected.

Ms. Underwood said it is random and open for suggestions.

Ms. Freedman added there are general provisions in the BPC that mandate that Boards meet in all areas of California for increased opportunity for diverse public participation.

MOTION: Mr. Hedges made a motion, seconded by Dr. Williams, that the Board approves the proposed Board Meeting dates for 2017 as listed in the meeting packet. Motion carried 8 yes and 0 no per roll call vote.

8. STATUS UPDATE ON THE HEALTH AND SAFETY ADVISORY COMMITTEE (BPC SECTION 7314.3)

Ms. Underwood stated legislation that came out of the Sunset Review Hearing required the establishment of a Health and Safety Advisory Committee. The Advisory Committee held their first meeting in June. The topics that came out of the meeting are listed in the meeting packet. The next Advisory Committee meeting will be August 8th and will be publicly noticed.

9. REPORT ON THE PERSONAL SERVICE PERMIT (PSP) STAKEHOLDERS' MEETINGS AND POSSIBLE ACTIONS ON THE IMPLEMENTATION OF THE PSP (BPC SECTION 7402.5)

Ms. Underwood stated the Legislature mandated that the Board research the implementation of a PSP, where an individual can perform services outside of a licensed establishment. The Board held four stakeholder meetings, as required, and did an online survey. There was not a general consensus among stakeholders. She directed Board Members to the report in the meeting packet summarizing the information gathered.

Ms. Underwood stated legislative staff asked the Board to decide if and how the Board would implement a PSP based on stakeholder input. Staff has conferred with legal counsel about how the statute was written. Ms. Freedman stated BPC Section 7402.5(c) mandates the Board to issue regulations regarding a PSP.

Mr. Hedges stated the PSP must be tied to a brick-and-mortar establishment license because the Board cannot control it any other way. He encouraged the Board to do all it can to preserve brick-and-mortar establishments for public health and safety and for the community in general.

Mr. Federico stated there are benefits to the PSP - innovation should not be stifled. And yet, this Board's mission is client safety and protection, and that must be paramount. The question is how to reconcile the innovation with client safety and protection in locations that cannot be inspected and with licenses that cannot be ensured. He agreed with Mr. Hedges that tying the PSP to a brick-and-mortar establishment license is one of the few ways where there can be some modicum of control going by faith that, if an establishment follows the rules, then, by extension, the PSP holders tied to that establishment will continue to follow the rules and regulations while out in the field.

Dr. Kari Williams, the Board Vice President, stated the need to be diligent in how the PSP is regulated. She stated the importance of educating consumers to ask individuals providing service for their license and to be aware that there is recourse if they are injured. Independent contractors for establishments are not employees and are difficult to regulate once they leave the establishment. She stated the need to flesh out the

detail between establishments with employees where appointments are booked through the establishment, and independent contractors whose clients often contact them directly while the establishment owner is unaware unless a complaint is filed against the establishment.

Mr. LaChine agreed with Mr. Hedges that the survey results may not be an accurate reflection of the industry because they are not large enough for a scientific random sampling. He also agreed with Mr. Federico about not wanting to stifle individual entrepreneurship. He suggested making the membership in a professional industry organization a qualification of issuing the PSP rather than tying the PSP to an establishment.

Mr. Hedges stated many individuals in the industry are very astute. More progressive salons will have their own website and application program (app) for this, so a lot of it will be done through brick-and-mortar establishments anyway. The Board needs to look in that direction in order to have some control.

Ms. Underwood listed some suggestions given in the stakeholder meetings:

- A fingerprinting requirement because the PSP holder will be providing services in homes
- Limited services
- Length of experience to preclude new licensees from providing services in homes

Mr. Hedges suggested that the draft PSP licensing regulations be done through the Committee process.

Mr. Federico reiterated his position that the PSP should be issued through brick-and-mortar establishments, but, if the consensus of the Board is to issue PSPs to individuals, he suggested the following requirements:

- Furnish proof of liability insurance
- Complete an additional course, as suggested by a stakeholder
- An annual renewal of the PSP
- A charge for the PSP in addition to the baseline license

Lisa Thong, a Board Member, suggested including a citation history requirement. An individual with a history of health and safety violations should not be allowed a PSP. She agreed that there should be some type of limitation of services that can be provided in a home. She suggested a collection of data from consumers and PSP holders as a check to see how it is going and whether changes need to be made.

Dr. Williams agreed and suggested that the PSP holder keep a log to document where the service was performed and the client's name, address, and email address. She suggested being proactive, sending quarterly or annual surveys to clients who have received services outside of a traditional brick-and-mortar establishment to get feedback of their experience. She suggested requiring PSP holders to have business cards that

include their license number, similar to building contractors, so that the consumer can report the license number if they were unhappy with the service.

Mr. LaChine stated the concern about fingerprinting because, unlike a brick-and-mortar establishment where liabilities are the responsibility of the establishment, if the Board checks a PSP holder's background and then the PSP holder commits a crime, the liability may fall to the Board.

Ms. Freedman stated the Department has other agencies that regulate individuals who go into the home, such as electronic and appliance repair dealers. The Board's liability is to review the information and make a determination whether any criminal history is related. Criminal history does not necessarily disqualify an individual from being a PSP holder; the Board will evaluate to determine whether criminal history should prohibit the PSP applicant from having that license. There is no liability. It does not prevent someone from filing a lawsuit, but there is no reason that the Board should carry any liability for that.

Ms. Freedman stated there is nothing to prohibit the Board from requiring a similar Notice to Consumers for PSP holders who go into the home. She suggested that the Board determine what the contents of the notice would be.

Ms. Freedman stated the statute mandates that the PSP shall be valid for two years and renewed prior to expiration with an additional fee of no greater than \$50.00.

Mr. Hedges agreed with connecting the PSP to professional organizations because they can help the Board with education to ensure this is done properly. He stated Board Members should be aware of the opportunity for class action lawsuits that may come as a result of the PSP. He stated the Board may be doing PSP holders a favor by requiring liability insurance.

Ms. Thong suggested partnering with app creators to include Board regulations so, when clients sign up to use the app, they receive information about consumer protection. She also suggested asking the app creators to post the information required to be posted in establishments on their websites prior to consumers signing up for services.

Ms. Freedman stated the Board does not have jurisdiction over the app creators but does have control over the licensees. She suggested possibly requiring, as part of the regulations controlling the licensee, that if a licensee uses an app, it shall be an app that contains certain provisions.

Mr. Hedges asked, if the app creators are sending individuals out to do cosmetology services, why the Board could not require them to have an establishment license.

Andrew Drabkin, a Board Member, stated he understood the desire to tie it to brick-and-mortar establishments for public safety, but there are always entities that will look for ways to exploit the rules to gain an advantage over others.

Mr. Hedges stated, if the Board requires a license of apps, not just brick-and-mortar establishments, and it gets reports of a lot of consumer harm, the Board can shut the license down. Ms. Freedman stated the uncertainty that this Board has that authority.

Ms. Thong asked about how data is collected and how licenses can be made searchable. Mr. Federico stated consumers can check if the license is in good standing, but not citation history.

Mr. Federico called for a motion to move this agenda item to the Licensing and Examination Committee for further discussion.

Mr. Drabkin asked how long it will be before the PSPs are made available.
Ms. Underwood stated it will be two years.

Mr. Drabkin asked if the statute will allow limiting the PSP to a single service for a trial period of time so the Board can monitor its developments and make necessary corrections before broadening the scope. Several Board Members vocalized their agreement with Mr. Drabkin.

Ms. Freedman stated the Legislature granted the Board the authority to determine which licensing categories could apply for this permit.

Public Comment

Fred Jones, Legal Counsel for the Professional Beauty Federation of California (PBFC), spoke against the PSP. He stated he attended the two Northern California stakeholder meetings; summaries of his comments are in the meeting packet. He personally witnessed two salon owners who were in support of a PSP change their opinion after listening to the dialogue. Individuals who take a survey that asks if they would like to do something will almost always answer yes, but when they hear the facts and concerns, then they make a more enlightened decision. He stated the belief that that will largely be the case with the PSP.

Mr. Jones reminded the Board about the pressures of owners of brick-and-mortar establishments. He compared the pressures brought to bear on establishment owners who are employer-, commission-, and booth-rental-based, such as the requirement to nearly double the minimum wage for employees in the next three years. This is a serious issue; it is wise for this Board to walk cautiously in allowing individuals to perform beauty services on consumers for monetary amounts in places that cannot ever be inspected by Board inspectors.

Mr. Jones suggested taking an “all the above” approach, to look at the other states’ requirements and include them, such as liability insurance being specific as to what the minimum should be, background checks, the services to be permitted, and tying it to a brick-and-mortar location with a limit on the number of PSP holders tied to each establishment.

Mr. Jones stated the business model that promoted all-disposable tools and equipment that came to the Legislature and got AB 181 amended to include the PSP is no longer in this state. He suggested looking at the darker impulses of human nature and planning for the worst when writing regulations.

Mr. Jones stated the statute is strange in that it begins with “may” and ends with “shall.” His interpretation is that the “may” gives the Board the flexibility to determine if it is in the best interests of consumers to move forward with a PSP; the “shall” means, if the Board decides to move forward with a PSP, then this is

what is required to be included in the regulations. He maintained the position that, after the Board considers all stakeholder input and considers its primary mission of consumer protection, the Board has the authority to say it will not have the capability of protecting consumers if the PSP is authorized.

Ms. Maxwell stated some electrologists think it is legal to provide home services if there is a medical need and charge a high rate. She asked if that is legal. She also stated there are electrologists who rent a room in a doctor's office not associated with dermatology and believe they do not need an establishment or business license, or rent a room from an office suite by the day, week, or month.

Ms. Underwood stated they are required to have an establishment license.

Mr. Federico stated there is a carve-out for individuals who are home- or bed-bound with medical issues to get services.

Ms. Freedman suggested that Ms. Maxwell file a complaint if she is aware of a particular situation, which will go through the enforcement process.

Mr. Federico asked Ms. Maxwell if electrology services could be done with a PSP.

Ms. Maxwell stated she felt it could be part of PSP categories that could work successfully, if the tools are in properly-marked bags and products are properly labeled.

Ron Chamberlain, the owner of eleven Sport Clips establishments in the state of California, spoke against the PSP. He stated the mission the Board started out with is public health and safety; it is important to remember that. He suggested writing to the Legislature stating a PSP is impossible to regulate and inspect. He stated, if the Board chooses to move forward, the PSP holders need to have adequate insurance.

Mr. Chamberlain agreed with Mr. Drabkin about starting with a narrow scope to see any problems that need to be addressed in the future. They are mobile licenses - he suggested that PSP holders come to the Board once per year to do the inspections, which will deter many individuals from moving forward. When they do not show up for the appointment, the Board can revoke the license.

Wendy Jacobs, a licensed esthetician and makeup artist in California and founder of the Esthetician Facebook group, spoke in favor of the PSP. She suggested not tying estheticians to brick-and-mortar establishments because it is not practical. Due to AB 1513, many estheticians are being pushed out of salons because owners now must pay for sit time. She stated the PSP is an opportunity for estheticians to become an elite service member to prove that they care about consumer safety. Continuing education certifications would add to the credibility of estheticians as legitimate service providers. She offered her group's participation if the Board would like to put out a survey.

MOTION: Mr. Hedges made a motion, seconded by Mr. Federico, that this issue be sent to the Licensing and Examination Committee for vetting and establishing regulations to be brought back to the Board for discussion. Motion carried 8 yes and 0 no per roll call vote.

10. UPDATE AND DISCUSSIONS OF PROPOSED BILLS THAT COULD IMPACT BBC:

Mr. Federico stated the Board has already taken a position on many of these bills. He deferred to the Executive Officer to provide an update for Board reevaluation.

- **AB 1322 (Daly, Wilk) – Allowing Alcohol in Establishments**

Ms. Underwood stated the Board previously took a position to oppose this bill, which is in the Alcohol Beverage Control (ABC) section.

Mr. Hedges asked if the intent remains that Board inspectors will play a role in controlling this. Ms. Underwood stated they do not because the Board cannot enforce an ABC law. The bill states that the license of the establishment that provides beauty services is in good standing. She suggested asking the author to define “good standing.”

Mr. Federico asked the Board if they wished to update their position on this bill.

Mr. Drabkin reiterated his position to support the bill because it already happens and the Board now has no part in the enforcement component of this bill, which was the main issue during the original discussion.

Mr. Hedges stated the enforcement change is key because he did not want Board inspectors involved in this. He no longer opposes this bill but also does not support it. He asked the Board to take a neutral position.

Public Comment

Mr. Jones stated the PBFC has taken a vigorously neutral position and continues to follow this bill closely. He stated the concern that this bill exempts the consumption of alcohol from the ABC’s license requirements and therefore from the ABC’s regulatory oversight, and that this Board will be left responsible to enforce this bill because the Board inspectors will be the only enforcement mechanism on-site. The conversation was clear in the Senate GO Committee last spring, where Senator Hernandez asked the author if the Board will be the only state agency in charge of monitoring alcohol in their 45,000 licensed establishments, and the answer was “yes” because the purpose of this bill is to exempt ABC oversight of alcohol consumption so long as it is complimentary as part of the beauty service in a state board licensed establishment.

Polly Codorniz, a Board Member, stated children will be present because the alcohol is allowed to be served during business hours. This bill is not good for consumer safety.

Mr. Hedges stated that is a good point that the ABC will not be there to monitor age limits.

Mr. Drabkin asked if salons can get a license from the ABC. Mr. Federico stated salons/bars get their license from the ABC.

Mr. Hedges asked Mr. Jones if the part of the industry that includes complimentary alcohol as a prominent part of their business is pushing this legislation. Mr. Jones stated Dry Bar is the official sponsor of the bill. Mr. Hedges withdrew his motion.

MOTION: Mr. Federico made a motion, seconded by Mr. LaChine, that the Board maintains its position to oppose this bill. Motion carried 7 yes and 1 no per roll call vote as follows:

The following Board Members voted “Yes”: Amaro, Codorniz, Federico, Hedges, LaChine, Thong, and Williams

The following Board Members voted “No”: Drabkin

- **AB 2025 (Gonzalez) – Labor Law Education Requirements**

Ms. Underwood stated the Board previously took a position to support if amended on this bill. This bill addresses labor concerns with the establishment application. The prior bill asked the Board to develop a list of questions to add to the application. The Board asked that that requirement be changed to an acknowledgement. The author made that change but included additional amendments that bring up other issues. Ms. Underwood reviewed those changes as provided in the meeting packet, such as that the applicant shall include a signed acknowledgement that they understand their rights as a licensee. She stated the Committee brought up the need to define the term “understand.” She asked how to ensure that someone understands what they are reading.

Ms. Freedman stated the concern about an application that asks the applicant if they understand. She asked what would happen if they said “no.” The Board would be put in the position of licensing someone who does not understand or, if the Board did not license applicants who checked the “no” box, would be forcing everyone to check the “yes” box. She suggested an acknowledgement that the applicant has received certain information. She stated the bill charges the Health and Safety Committee with creating an informational packet related to the five subsections in the bill. In order to complete the application, the applicant must state if they understand the material.

Ms. Thong asked if it is incumbent on other state agencies to provide this information and if the Health and Safety Committee is permanent. Ms. Underwood stated the Committee is permanent. Why this is happening goes back to the violations with nail salons in New York. The Legislature determined that the Board is the agency that more commonly reaches out to licensees on a daily basis.

Public Comment

Mr. Jones stated the prior version proposed giving a mini exam to applicants in consultation of the Department of Industrial Relations, which was untenable. The author would like this bill to be much stronger on the labor concerns but has compromised on this bill by complying to the Board’s request to remove the exam questions and came to an acknowledgment signature only.

Mr. Hedges stated this bill will create a lot of work for the Board and, based on public comment, he suggested changing to a neutral stance. He asked if a license would be denied for someone who does not check the box. Ms. Underwood stated it would be considered an incomplete application and staff would send them a letter asking them to check the box.

Mr. Hedges stated the concern that individuals are fined because they continue to work when they mail their application, assuming they filled everything out satisfactorily, but then are fined because they forgot to check a box. This bill is one more step to find another reason to fine individuals, which is troubling.

Mr. Drabkin suggested sending additional material to individuals who check the box that they did not understand.

Dr. Williams stated to solve the issue with the term “understand,” to just ask applicants to acknowledge receipt of the information.

Ms. Underwood stated she suggested to the author’s office that the application be an agreement that the applicant will follow certain labor laws and those laws would be referenced but not explained.

Ms. Thong stated establishments would still be susceptible to labor commission fines or litigation. The Board needs to make it clear to applicants that they need to understand what they should be complying with.

Mr. Federico asked if it must be a “yes” or “no” question and not a checkbox and an initial. Ms. Freedman stated it could be a checkbox. The challenge is that the Board is requiring a complete application. It is essentially forcing individuals to check a box under penalty of perjury that they understand, even if they do not, in order to get a license. If honesty is an important quality, then lying on an application is significant. She stated she is uncomfortable advising the Board to make “understand” not mean something here.

Mr. Drabkin stated he tends to lean toward a support position because the author complied with the Board’s request, although the additional amendments have flaws. He suggested maintaining the support with amendments position and sharing the Board’s concerns with the new amendments with the author’s office.

Mr. Hedges asked the executive officer for her opinion on this bill. Ms. Underwood stated the Board should ask the author’s office to remove the word “understands” and have an acknowledgement only. The intent of this bill is to help them get the information out.

Mr. Hedges asked for the language to propose to the author’s office. Ms. Friedman stated the Board will ask to amend Sections 3 and 4 of 7337 and 7347 to modify the language that requires that the applicant “understands” the rights as outlined and the information materials to say that they “have acknowledged receipt” of the information materials.

Mr. Hedges made a motion that the Board maintains its current position of support if amended with direct advisement to the author asking them to change “understand” to “have acknowledged receipt” and provide licensees with resources if need be.

Public Comment

Mr. Jones stated the Board’s request may be met with resistance from the author because this bill could have been more onerous on the Board, establishment owners, and individuals. He stated his preference that the Board support the bill and authorize the executive officer to negotiate the last-minute wordsmithing.

Mr. Hedges asked Ms. Underwood if she was comfortable with the motion. Ms. Underwood stated she would rather support it and speak with the author about the changes. Mr. Hedges removed his motion.

Mr. Drabkin agreed and made a motion to support the bill. Mr. Federico made a friendly amendment to authorize the Executive Officer to take the Board's concerns to the author. Mr. Drabkin accepted the friendly amendment.

MOTION: Mr. Drabkin made a motion, seconded by Dr. Williams, that the Board changes its position to support the bill and authorizes the Executive Officer to take the Board's concerns to the author. Motion carried 8 yes and 0 no per roll call vote.

- **AB 2125 (Chiu) – Healthy Nail Salon Recognition Program**

Ms. Underwood stated the Board previously took a position to oppose this bill. An amendment was made, but the name will not change because it is already branded in several counties. They added that the Board may notify the local jurisdiction if a recognized salon is found in violation of regulations and that a violation shall result in the removal of the Healthy Nail Salon Recognition Program.

Mr. Hedges made a motion, seconded by Ms. Thong, that the Board changes its position to support the bill.

Public Comment

Mr. Jones stated the PBFC is neutral on this bill, but has concerns that it lists the so-called toxic trio. All three substances in the toxic trio have been approved by the FDA under appropriate usage. The PBFC is not comfortable putting in statute something that is factually incorrect. The author maintains vigorous defense of that language.

Mr. Jones stated the PBFC has taken a neutral position because this is a voluntary program; however, it will largely be run by the Department of Public Health, not by the Board. The Board would have more influence, involvement, and leadership over this program. The author admits not yet speaking with the Department of Public Health.

Dr. Williams agreed that it should remain voluntary. It coincides with the issue of continuing education. It is fine if a nail salon chooses to register for this program to demonstrate to the public that they are going above and beyond, but the Board has already set minimum standards for health and safety and this does not need to be put in a regulation.

Mr. Hedges stated the Healthy Nail Collaborative is more about environmental health and safety, not public health and safety. It is unfortunate that the term "environmental" could not have been inserted into the bill rather than "healthy," because it leads the consumer to believe there is a stamp of approval and may stop them from checking the Board's websites to see if the establishment disinfects properly. Mr. Hedges stated he changed his opinion from oppose to support because the author made changes.

Mr. Drabkin stated Mr. Hedges' concerns are why he feels he must oppose this bill.

MOTION: Mr. Hedges made a motion, seconded by Ms. Thong, that the Board changes its position to support the bill. Motion failed with 3 yes and 5 no per roll call vote.

The following Board Members voted "Yes": Amaro, Hedges and Thong

The following Board Members voted "No": Codorniz, Drabkin, Federico, LaChine and Williams

MOTION: Dr. Williams made a motion, seconded by Ms. Codorniz, that the Board maintains its current position of opposing the bill. Motion carried 6 yes and 2 no per roll call vote.

The following Board Members voted "Yes": Amaro, Codorniz, Drabkin, Federico, LaChine, and Williams

The following Board Members voted "No": Hedges and Thong

- **AB 2437 (Ting) – Nail Establishments: Training, Wage Violations**

Ms. Underwood stated the Board previously took a position to support this bill, which has undergone minor changes with minimal impact on the Board.

Mr. Federico asked staff to verify that the labor information in the bill is the same information as was in AB 2125.

Mr. Drabkin suggested that the Board develop a guideline for minimum threshold languages for consistency among the bills.

Public Comment

Guadalupe Fernandez, the owner of the Beyond 21st Century Beauty Academy, stated all materials should be in English, including the testing.

MOTION: Mr. Federico made a motion, seconded by Mr. Drabkin, that the Board maintains its current position to support the bill. Motion carried 8 yes and 0 no per roll call vote.

- **AB 2502 (Mullin, Chiu) – Land Use: Zoning Regulations**

Ms. Underwood stated the bill is not moving so no action is needed today.

- **SB 896 (Nguyen) – Credit/Debit Cards for Tips**

Ms. Underwood stated the Board previously took a position to oppose this bill. It has only received technical clean-up language.

Public Comment

Ms. Freeman asked if the Board opposes the fact that some salons are saying they will charge extra when tips are put on credit cards.

Mr. Federico stated the bill creates a separation between nail salons and any other salons.

Mr. Drabkin stated the Board is in opposition to the bill because of enforcement issues.

Ms. Codorniz stated the problem is the charge on the credit card to the salon owner. If the salon owner has 15 stylists, they are being charged a fee, which makes it difficult.

Mr. Jones stated the PBFC opposes this bill. He suggested not patronizing a salon that does not treat their stylists with respect, but not to put in statute how they have to micromanage how they operate their business.

MOTION: Mr. Federico made a motion, seconded by Dr. Williams, that the Board maintains its current position to oppose the bill. Motion carried 7 yes and 1 no per roll call vote.

The following Board Members voted "Yes": Amaro, Codorniz, Federico, Hedges LaChine, Thong, and Williams

The following Board Members voted "No": Drabkin

- **SB 1044 (Nguyen) – Assessment of Fines to Individuals and Establishment Owners and Citation Fine Payment Plans**

Ms. Underwood stated the Board is sponsoring this bill. The bill has been amended to allow the Board to renew licenses of individuals on a payment plan.

MOTION: Mr. Drabkin made a motion, seconded by Mr. Federico, that the Board maintains its sponsorship and its position to support this bill. Motion carried 8 yes and 0 no per roll call vote.

- **SB 1125 (Nguyen) – Nail Care Salon's Acknowledgement of Labor Law Compliance**

Ms. Underwood stated the Board has not looked at this bill before.

MOTION: Mr. Federico made a motion, seconded by Mr. Drabkin, that the Board takes a position to support this bill if amended to apply to all establishment licenses, not just nail salons, as well as asking the author to change "understand" to "have acknowledged receipt" and provide licensees with resources if need be. Motion carried 8 yes and 0 no per roll call vote.

11. **DISCUSSION AND STATUS ON THE REQUIRED REVIEWS OF COSMETOLOGY TRAINING AND EXAMINATION (BPC SECTION 7303.2)**

- **1600-Hour Training Requirement for Cosmetologists**
 - **Establishing the Cosmetology Curriculum Review Advisory Task Force (Possible Actions)**
- **Cosmetology Occupational Analysis**
- **National Exam Review**

Mr. Federico deferred to Ms. Underwood to provide updates on the status of the required reviews.

Ms. Underwood stated, upon Board approval, the executive officer will put together a task force to review the 1600-hour cosmetology curriculum, as required by AB 181. The Board has contracted with the Department of Consumer Affairs to conduct a cosmetology occupational analysis and the five-year review of the national exam.

Mr. Federico and Mr. Hedges volunteered to participate on the Advisory Task Force.

Public Comment

Mr. Jones stated there is a national move to establish national standards, which will likely be much less than the 1600-hour cosmetology program. The PBFC believes that the Board, industry, and national players need to have a vigorous, open conversation with stakeholders before sweeping changes are made to one sector of the industry.

MOTION: Mr. Drabkin made a motion, seconded by Mr. Hedges, that the Board will create a 1600-Hour Cosmetology Curriculum Review Advisory Task Force, appoint Mr. Federico and Mr. Hedges to serve on the task force, and delegate the authority for the appointment of Committee Members to the Executive Officer. Motion carried 8 yes and 0 no per roll call vote.

12. PROPOSED REGULATIONS UPDATES (POSSIBLE ACTIONS)

Mr. Federico deferred to Ms. Underwood to provide updates on the following items:

- **Military Training – Title 16, section 910 of the California Code of Regulations (CCR)**

Ms. Underwood stated the military training went into effect on July 1, 2016.

- **Consider and Adopt Proposed Regulatory Language to Define (“Demonstrating” for Purposes of BPC Section 7319(e) Exemptions. Title 16 CCR section 965.1**

Ms. Underwood stated no comments were received during the 15-day public notice on the language changes made at the last Board meeting.

- **Consumer Notice - Title 16 CCR sections 904 and 905**

Ms. Underwood stated the consumer notice has been filed. The first public hearing will be held on August 9, 2016.

Public Comment

Ms. Jacobs asked how the consumer notice affects the lash industry and when the notice will be official.

Ms. Underwood stated the notice will go into effect by October 2016 and will be posted on the website.

MOTION: Mr. Federico made a motion, seconded by Mr. Hedges, that the Board adopts the proposed regulatory changes as modified and authorizes the Executive Officer to make any technical or non-substantive

changes that may be required in completing the rulemaking file. Motion carried 8 yes and 0 no per roll call vote.

Ms. Freedman suggested making another motion to modify the effective date of the notice.

MOTION: Mr. Federico made a motion, seconded by Ms. Amaro, that the Board authorizes the Executive Officer to request an earlier effective date. Motion carried 8 yes and 0 no per roll call vote.

13. **REPORT AND DISCUSSION ON THE SPANISH-LANGUAGE EXAMINATION PASS/FAILURE RATES**

Ms. Underwood stated the report in the meeting packet has been expanded to include information from other states. She summarized the work done to date and highlighted that the National-Interstate Council of State Boards of Cosmetology (NIC), the organization that provides the examination, is putting together a vocabulary list to be made available on their website by October of 2016.

Ms. Underwood stated the Spanish pass rate continues in the mid-30 percent range. There are no patterns to any of the failures seen. She suggested that the Board look at the schools to see how students are enrolled and study the quality of education and the Ability to Benefit examination, both of which are outside the Board's scope.

Mr. Federico asked if there is a possibility of asking demographic questions about past education when students apply. Ms. Friedman stated demographic questions would be voluntary without statutory authority. She recommended a conservative approach and cautioned against possible allegations that answers on voluntary demographic questions somehow impacted the Board's decision with regards to licensure.

Mr. Federico stated the Legislature asked the Board to research this issue and to report the findings. The problem is, after conducting the research, the Board still does not know the cause for the low pass rates.

Mr. Hedges suggested giving notice to schools that, two years from the date of the notice, they will be required to provide proof that their students have a high school education.

Ms. Underwood stated the Board only requires a tenth grade education.

Mr. LaChine asked what a tenth grade equivalent would be in another country.

Public Comment

Ms. Fernandez stated she is originally from Mexico City. She enrolled in a cosmetology school that only spoke English when she came to the United States. She memorized the book and passed the examination, although she did not understand all of it. She stated, a year after graduation, in order to be an instructor, she had to learn more because she would be teaching in English. She said if she can do it, anyone can. She restated her earlier comment that all materials should be in English.

Ms. Fernandez stated students must have a high school diploma to receive financial aid for accredited schools. The schools are responsible to prove that the high school diploma is legal. The unaccredited schools do not require a diploma, so the quality of education is not there and the students are not passing the examination.

Ms. Fernandez stated she works very hard to ensure that her students pass, but not everyone cares or does their homework. She stated the problem is the quality of teaching. She requires her teachers to go through a 600-hour training course because she has seen the results and sees what other schools are producing. She stated the problem with the low pass rates is the quality of instruction and students' resistance to learn English.

Mr. Drabkin asked about the total number of examinations given by the Board for cosmetology compared to the low numbers of examinations given in other states.

Ms. Underwood stated there were approximately 20,000 exams given in California in 2015.

Mr. Hedges stated the definition of grammar is the explanation of language; individuals cannot pass a written test without a basic understanding of grammar. This is a problem that must be solved.

Ms. Underwood stated there is nowhere else that staff can look for answers. She suggested seeing if the vocabulary list helps.

Mr. Hedges asked what the Spanish pass rate is for the practical exam. Ms. Underwood stated it is 82 percent.

Mr. Hedges suggested as a practical solution that proctors read the questions on the examination to the students.

Mr. Drabkin stated concern for students who have paid for school and do not pass the examination but still have student loans to pay off. He suggested, even though the Board does not have oversight authority for schools, meeting with schools, sharing the results of the research, letting them know it may be a problem with the education level, and asking them for their suggestions. He also suggested reaching out to Spanish community organizations and asking for their suggestions.

Ms. Amaro agreed and stated there are many possible organizations to reach out to, such as the Mexican Chamber of Commerce. She suggested asking these organizations for volunteers to help students pass these exams.

Ms. Underwood directed Board Members to the last page of this section of the meeting packet, which lists a recommended regulation change in red to include the vocabulary list produced by the NIC in the materials mandated to be made available for students in schools.

Mr. Federico made a motion to advise the Executive Officer to meet with the Director of the Department of Consumer Affairs to discuss enforcement procedures/options available to the BPPE regarding students who have been enrolled in school without meeting the educational requirements, as set forth in law, and to include the vocabulary

list produced by the NIC in the materials mandated to be printed in all languages and made available for students in schools.

Mr. Drabkin offered a friendly amendment to authorize the Executive Officer to provide a status report to the Legislature. Mr. Federico accepted the friendly amendment.

Public Comment

Adrien Brewers (phonetic), instructor and trainer, stated she wrote a book several years ago about how to pass the state board. She agreed that a vocabulary list is a must. She found that, in translating written English into Spanish, the words are read out in English and equivalent Spanish words are dubbed in, but the words are not in the correct sequence for the Spanish language, which can cause confusion. She suggested looking into how the exam is translated.

Ms. Underwood stated the NIC reviewed their translation and the Board sent a representative from a California school with a high number of Spanish speakers to assist them. The translations are done in the most universal form of translation. It is grammatically correct but does not take slang into account.

Mr. Jones stressed the sole oversight issue. Policy makers are putting heat on this Board for a problem (a) that is not of the Board's making, (b) the Board cannot figure out the origins of, and (c) even if it could, it lacks the authority to do anything about, because the BCCP is largely the sole authority for the Board's beauty schools. He strongly encouraged the Board in the report to the Legislature to squarely put the onus back on them. The Board has requested and industry has supported that the Board have sole regulatory oversight of the schools. Sole oversight would allow this Board to get to the questions and answers needed to answer this concern. The Board lacks the tools to get to those answers and to enforce the solutions.

MOTION: Mr. Federico made a motion, seconded by Mr. Drabkin, that the Board authorizes the Executive Officer to meet with the Director of the Department of Consumer Affairs to discuss enforcement procedures/options available to the BPPE regarding students who have been enrolled in school without meeting the educational requirements, as set forth in law, and to include a reference to the vocabulary list produced by the NIC in the materials mandated to be printed in all languages and made available for students in schools. Motion carried 8 yes and 0 no per roll call vote.

14. DISCUSSION AND POSSIBLE ACTIONS ON THE PROPOSED DRAFT OF THE INSPECTOR PROTOCOL FOR LIMITED-ENGLISH-SPEAKING ESTABLISHMENTS (B&P CODE SECTION 7313(d))

Ms. Underwood stated AB 181 requires the Board to approve a protocol for how inspectors will address non-English speaking individuals when they arrive to inspect a salon. She referred to the 2016 Inspector Language Access Protocol in the meeting packet and asked for Board approval.

Mr. LaChine asked how many inspectors the Board has and how many are bilingual. Ms. Underwood stated there are twenty-one inspectors in the field to inspect 45,000 establishments.

Mr. LaChine stated the need for additional inspectors. He suggested including a line in the establishment license application for applicants to fill out the language spoken so the Board can try to send an inspector who can speak that language. He stated it is an easy, standard way to stall an inspection and is time wasted. He stated the need to begin by increasing the number of inspectors. The number of inspectors impacts public health and safety.

Mr. Hedges stated he has been working to increase the number of inspectors since 2003, when there was a total of eleven inspectors statewide. He stated the need for a minimum of forty inspectors.

Ms. Underwood stated staff will again be putting forward a Budget Change Proposal (BCP) in the next budget cycle.

Mr. Federico stated Mr. LaChine's frustration is duly noted.

MOTION: Mr. Hedges made a motion, seconded by Dr. Williams, that the Board accepts the protocol listed in the meeting packet and authorizes the Executive Officer to make minor, technical changes. Motion carried 8 yes and 0 no per roll call vote.

15. **AGENDA ITEMS FOR NEXT BOARD MEETING**

Mr. Hedges stated staff will ask for a BCP to hire translators for the DRC. The Board uses the DRC as training. Individuals with violations receive instruction from the Board on how to comply with the regulations. The training does not work if the Board cannot speak to them in a language they can understand. Citations means there is a public health issue. The DRC is an opportunity to educate individuals on how to successfully comply with the regulations to avoid future citations. By the end of 2016, the Board may have paid translators for the DRC. He encouraged Board Members to attend the DRC meetings. He asked to include a discussion about this process on the next agenda.

Public Comment

Ms. Jacobs asked how many inspectors are supervisors and if they are working inspectors.

Ms. Underwood stated there are three supervising inspectors who are not in the field.

Ms. Jacobs stated there is inconsistency statewide with how citations are issued. She questioned the training and updating the inspectors receive. She stated her group has equipment from overseas and the inspectors are not current. She asked if there is a training program or a requirement statewide to get those twenty-four supervisors and inspectors in the same room to talk about the state of the industry so inspections are consistent statewide.

Ms. Underwood stated there are all-staff meetings and estheticians have been brought in to give trainings. The inspectors do not issue citations, the office does. If inspectors see a machine they are unfamiliar with, the office researches it. All citations have been

researched by staff and determined to be violations. Staff is looking at the inspections program and how to increase uniformity throughout the state. The Assistant Executive Officer is currently doing ride-alongs with every inspector to monitor how each inspects to find best practices, which will be shared with all inspectors.

Mr. Hedges asked to include discussions on how inspectors are trained and how complaints are issued on the next agenda.

Mr. Federico asked to include a review of the inspection report on the next agenda.

16. PUBLIC COMMENT

Alexander Irving, co-owner of Esche and Alexander Public Relations, commended Board Members on how seriously they take their job. He thanked the Board for their efforts.

17. ADJOURNMENT

There being no further business, the meeting was adjourned at approximately 2:15 p.m.