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# **Health and Safety Advisory Committee Meeting Agenda**

***July 29, 2019***

Department of Consumer Affairs  
1747 North Market Blvd  
HQ2 Hearing Room 186, 1st Floor  
Sacramento, CA 95834  
10:00 A.M.- Until Completion of Business

- 1. Call to Order/Roll Call**
- 2. Executive Officer's Opening Remarks (Kristy Underwood)**
- 3. Public Comment on Items Not on the Agenda**  
*Note: The Board may not discuss or take any action on any item 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, 1125.7(a))*
- 4. Approval of August 28, 2018 Committee Meeting Minutes**
- 5. Discussion and Recommendations to the Board Regarding Workers' Rights Concerns within the Industry**
- 6. Discussion and Recommendations to the Board Regarding Updating Health & Safety Regulations**
- 7. Agenda Items for the Next Meeting**
- 8. Adjournment**

*Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Committee and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public.*

*\*Government code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Committee prior to the Committee taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Committee, but the Committee Chair may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Committee to discuss items not on the agenda; however, the Committee can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).*

*The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting may make a request by contacting: Marcene Melliza at (916) 575-7121, email: [Marcene.Melliza@dca.ca.gov](mailto:Marcene.Melliza@dca.ca.gov), or send a written request to the Board of Barbering and Cosmetology, PO Box 944226, Sacramento, CA 94244. Providing your request is at least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.*



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**DRAFT**  
**CALIFORNIA STATE BOARD OF  
BARBERING AND COSMETOLOGY**

**HEALTH AND SAFETY ADVISORY COMMITTEE MEETING**

**MINUTES OF AUGUST 28, 2018**

Board of Barbering and Cosmetology  
2420 Del Paso Road  
Sequoia Room 1<sup>st</sup> Floor  
Sacramento, CA 95834

**BOARD MEMBERS PRESENT**

Dr. Kari Williams, President  
Lisa Thong

**BOARD MEMBERS ABSENT**

Jacquie Crabtree

**COMMITTEE MEMBERS PRESENT**

Janet Blaschke  
Amanda Burkhart  
Joanie Gonella  
Brandon Hart  
Fred Jones  
Leslie Roste  
Lori Schaumleffel  
Susanne Schmaling-Smethurst  
Delane Sims  
Holly Tinloy  
Dr. Charles Washington

**COMMITTEE MEMBERS ABSENT**

Amy Coombe  
Idamae Kennedy  
Sudabeh Phillips  
Marissa Presley

**STAFF MEMBERS PRESENT**

Kristy Underwood, Executive Officer  
Michael Santiago, Board Legal  
Representative  
Tami Guess, Board Project Manager  
Marcene Melliza, Board Analyst

**1. Agenda Item #1, CALL TO ORDER / ROLL CALL**

Dr. Kari Williams, Board President, called the meeting of the California State Board of Barbering and Cosmetology (Board) Health and Safety Advisory Committee to order at approximately 10:00 a.m. and confirmed the presence of a quorum.

**2. Agenda Item #2, EXECUTIVE OFFICER'S OPENING REMARKS**

Kristy Underwood, Executive Officer, thanked everyone for their continued service. She turned the microphone over to Tami Guess, Board Project Manager.

Ms. Guess stated this was her last Health and Safety Advisory Committee meeting as she will be retiring in December.

Ms. Guess cautioned that some of the subject matter of this meeting is emotionally charged for the industry. She went over ground rules and reiterated the purpose of this Committee. She read Business and Professions Code Section 7314.3(a) where this Committee was set out in statute.

Ms. Guess stated several state agencies and an association have been invited to speak with the Committee today with the goal of providing information so the Committee can make recommendations to staff on these issues.

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

No members of the public addressed the Committee.

**4. Agenda Item #4, APPROVAL OF May 21, 2018, COMMITTEE MEETING MINUTES**

**MOTION:** A motion to approve the meeting minutes of May 21, 2018, was made and seconded. The motion carried 11 yes, 0 no, and 2 abstain per roll call vote.

**5. Agenda Item #5, DISCUSSION ON THE IMPACT OF THE DYNAMEX OPERATIONS WEST, INC., V. SUPERIOR COURT OF LOS ANGELES COUNTY DECISION ON VARIOUS STATE AND INDUSTRY ENTITIES AND RECOMMENDATIONS FROM THESE ENTITIES TO BOARD LICENSEES ON STAYING COMPLIANT WITH THE DECISION**

**Employment Development Department**

Patrick Henning, Director, Employment Development Department (EDD), provided an overview of the role of the EDD. He stated the Dynamex case primarily affects the Department of Industrial Relations (DIR) because it addresses wage and hour rules and regulations and the way that the state needs to view the working relationship that the worker has with their employer. Broadly, this issue will not apply to the way that the EDD looks at the employment relationship between employees and their employers with the exception of the common law definition of employee.

Mr. Henning stated the number one issue that employers come to him with when it comes to regulation is to ask for an easy definition of who an employee is, but it is difficult to define that in the law. Dynamex was an attempt to codify the definition of employee. It is a three-part test, which has become known as the ABC standard: (a) the

worker is not controlled by an entity; (b) the work provided is done outside the usual course of business; and (c) the worker is customarily involved in independent work. This still is not an easy definition.

Alex Acupido, Chief, Field Audit Compliance Division, EDD, provided an overview of the outreach activities of the EDD.

Velma Bardin, Tax Administrator, Sacramento Area Audit Office, EDD, stated the EDD auditors try to work with employers by offering a questionnaire, DE-1870, for employers requesting a determination regarding one of their workers to be filled out and sent in to the EDD. Auditors send the employers a ruling letter on whether that person should be an employee or an independent contractor. There are also Information Sheets on barbering and cosmetology.

Ms. Guess stated the Information Sheets are posted on the Board website.

### Questions and Answers

Q: There are salon suites in the industry and then there are suites that are not designated as a salon suite where there are individual salon operators in one suite. Who would the principal be in that scenario where everyone had an establishment license, or could they all have establishment licenses?

A: Everyone could have an establishment license but the issue is what the relationship is between the operators and the landlord.

Q: There are also blended salons with employees working alongside booth renters where the B portion of the ABC standard is creating havoc.

A: How each individual is treated would have to be looked at as to how they would fall under the law.

Q: How do you become aware that there is a problem? Through a tax audit?

A: There are two customary ways. One way is that someone files a plaintiff insurance claim asserting that they are an employee because independent contractors do not qualify for unemployment insurance. The other way is if there were several obstructed claims, several disagreements on that employee/employer relationship.

Q: If a worker feels they were misclassified and their supervisor does not provide any help, what is the best way for the worker to begin a claim? Is it with the EDD, the DIR, or their employer?

A: In law, the employer has a responsibility to ensure that that is clear, but it is not always the case. An individual who is struggling with how they fall into the definition of employee should file with the Labor Commissioner's Office or the EDD, depending on where they feel they are being violated. Also, they can submit a DE-230 form to the EDD to learn their status.

Q: Does the EDD see a quantum shift with the Dynamex decision or is it just a series of decisions from Borello, Martinez, and Ayala?

A: The Dynamex decision is part of a continuum. Employment lawyers would say that the Borello decision was a shift, the wage order was another shift, and defining the IWC might be another shift. Lawyers will not be done until they come up with a definition for employee that stands the test of time. Upcoming court cases will further help define what this is.

Q: The experts in the field think it is a shift, not just a continuum. The Dynamex decision was a unanimous decision, written by a Chief Justice, adopting an out-of-state criteria. The decision was a message-sender. The first few pages mention nothing about wage orders but are about common law, agency law, and the long, muddled history of it. Also, wrongly classifying someone as an independent contractor directly impacts the worker and state treasuries. The Chief Justice and her colleagues looked out-of-state to find something clear, simple, and concise to provide workers and employers with some clarity. That is the backdrop to Dynamex. The beauty industry in the late '80s and early '90s was 90-plus percent employee-based salons. It is almost flipped today. A huge percentage of booth-rental salons were propped up to avoid exactly what the Chief Justice described in the first two pages of the Dynamex decision.

When laws are skirted, often health and safety protocols are skirted, which ends up hurting the clientele, which ends up hurting the reputation of the beauty industry at large. It is important to raise and maintain high professional standards in the beauty industry. Booth rental has become a problem in that regard. Those who are trying to do it legitimately, like suite operators, spend more and charge more for those suites; those who are not trying to do it legitimately put all the legitimate businesses at a competitive disadvantage. Employees who are converted to "independent contractors" lose their worker's compensation coverage and Social Security and are now responsible for covering disability, employment tax, et cetera.

With these industry and legal backdrops, have or do you anticipate Dynamex changing this type of information that the EDD is providing to the public?

A: The EDD will be as reflective of the current state of the business economy as possible. The EDD's current test does not include Dynamex but only includes things that fall under the Unemployment Insurance Code. Employers are expected to follow the law as it applies to the Labor Code and the cases and case law that are affected under it.

Q: If everyone in California is looking for clarity in the definition of employee, why do all executive agencies not embrace the ABC standard, which offers a high degree of clarity, especially the B test?

A: The EDD does not have the authority. The Legislature in California is constantly updating laws and there are rules, regulations, and processes and could be brought in front of the EDD. To this point, that has not been the case. There may be a move one way or another in that regard.

Q: The EDD will keep on the current trajectory and criteria it has used for a number of years?

A: It is beyond the EDD's regulatory structure.

Q: The unanimous California Supreme Court decision lays out a clear standard. Why would executive agencies not, absent legislative action, use that new standard moving forward?

A: Because it is not the standard under the rules and regulations that have been set out for them to follow.

Q: The Dynamex case is to distinguish between an employee/employer relationship versus an independent contractor situation. The EDD governs and oversees unemployment insurance and disability as it pertains to employee relationships only. Regardless of what the Dynamex case states about employees, if the DIR and labor relations side determined an individual to be an independent booth renter or in an independent contractor situation, the EDD would have no jurisdiction over the disability and unemployment compensation or insurance portion of that. Is that correct?

A: No. The EDD has authority over those programs whether or not an individual receives benefits under an employment insurance or state disability insurance.

Q: What if they are determined to be an independent contractor by the DIR or the Dynamex case definition?

A: The DIR is guided under a separate code of regulations and laws under the Labor Code. The EDD, unemployment insurance, and disability insurance are governed under the Unemployment Insurance Code and, in this situation, the EDD and the DIR have different views on that relationship and how that determination is made.

Q: Regardless of who makes the determination, does an independent contractor receive unemployment or disability insurance?

A: Who made the determination does matter. Unemployment insurance and disability insurance eligibility is under the sole jurisdiction of the EDD.

Q: Can there be a situation where the same worker is determined by the DIR to be an employee and therefore has to have worker's compensation, but is perceived by the EDD not to be an employee and therefore does not have unemployment insurance?

A: That happens.

Q: That is an intolerable situation. The beauty industry is 85 to 90 percent booth rental. This decision will have a great impact on this single sector of the economy. It is intolerable to tell the professionals in the beauty industry that they must talk to the Labor Commissioner, the DIR, and the EDD, and they may end up with three conflicting decisions. The executive branch needs to speak clearly with one voice. This was the purpose of Dynamex.

A: I agree. Difficult decisions are worth the effort.

Q: How many employees in the state of California find themselves in this situation?

A: The EDD will provide that number to staff.

Q: Do EDD staff maintain statistics broken down by industry on the complaints received?

A: Claims and phone calls are broken down by industry.

Q: Where does the hair care industry fall within that breakdown?

A: It is high.

### **Franchise Tax Board**

Ms. Guess stated the Franchise Tax Board (FTB) representative was unable to be in attendance. She read written responses to staff questions submitted by Alvaro Hernandez, Manager, Taxpayers' Rights Advocate's Office, FTB, into the record, as follows:

Q: How is FTB notified that a licensee has been misclassified? Does FTB find it on the tax return or does another entity advise FTB of the error?

A: Our Audit program conducts audits of income tax returns filed by corporate, partnership, and personal income taxpayers. Tax returns are subject to our audit selection process, which compares tax return data to a variety of data or information sources.

Q: Would there ever be a time when the FTB would ignore the Dynamex decision and fall back on prior Borello Standard?

A: FTB would not likely "ignore" a Supreme Court Decision. However, the Dynamex decision will not likely impact an entity's income tax liability.

Q: If a licensee has misclassified an employee (as an independent contractor), how far back will FTB audit their tax returns?

A: Additional tax resulting from an Audit may be proposed within an open statute of limitations, which generally is 4 years from the date the original tax return is filed. If an audit results in additional tax, applicable penalties (e.g., accuracy related penalty, failure to file or furnish information) and interest may apply. For more information regarding our audit process, please see FTB 985.

Q: Are there any tax forgiveness provisions?

A: Not that we are aware of.

Q: What are the tax penalties for filing inappropriately?

A: There could be Accuracy Related Penalties, Delinquent Penalty, or Failure to File or Furnish Information, depending on the additional tax liability resulting from the error.

Q: Speaking generally, after a company realizes they have misclassified an employee as an independent contractor, what is the process?

A: Taxpayers must file an amended tax return if there is any change in their tax liability resulting from errors or omissions of income, deductions, or credits on the original tax return. If an employee (W-2) is reclassified as an independent contractor (1099-misc) after they have filed their income tax return, they would need to file another Form 540, check the box indicating Amended Return, and attach California Schedule X, California Explanation of Amended Return Changes. They would need to include a copy of their federal income tax return, including a copy of form Schedule C. If an independent contractor (1099-misc) is reclassified as an employee



(W-2) after they have filed their income tax return, they would need to file another Form 540, check the box indicating Amended Return, report the income as wages, and attach California Schedule X, California Explanation of Amended Return Changes.

The General Tax Bureau (GTB) doesn't think the Dynamex Decision has much, if any, impact on entity income tax return of businesses who misclassify an employee as an independent contractor. Businesses deduct expenses they pay whether in the form of wages or 1099 type services. While businesses would be responsible for employee social security taxes, FICA, or other non-income taxes for employees that they would not have had for independent contractors, these taxes would not be paid to FTB and tax returns for the years in error would not likely change because deductions are only allowed for expenses paid.

We see a larger impact on individuals and their tax returns, if classified as independent contractor and then reclassified to an employee. This could result in the disallowance of many deductions taken on the individual return.

### **California Department of Tax and Fee Administration**

Brad Miller, Business Tax Specialist, California Department of Tax and Fee Administration (CDTFA), provided an overview of the role of the CDTFA. He stated the main program that the CDTFA administers is the Sales and Use Tax Program, the CDTFA program that will be impacted the most, if at all, by the Dynamex decision. He summarized how the sales and use tax works and how the Dynamex decision will impact it. When dealing with taxpayers, the main question is who owes the tax and who has to register and pay. In California, any person who is making sales is required to register or any person who is a consumer of property should also be registering and paying taxes. The Dynamex decision may impact who is required to register for the program but it will not impact the sales tax side for the most part.

In an employer/employee situation, the employer is the person who registers with the CDTFA and collects sales tax on any sales that take place. In a salon, services are provided but also products are sold to customers.

In an independent contractor situation, it gets murky – questions must be answered to determine who is responsible for collecting the sales tax and therefore must register with the CDTFA – such as who owns the inventory being sold, how the independent contractor is compensated for sales made, and who the payment is made to. It is not a simple process. Mr. Miller stated taxpayers can call an 800 number to ask questions about their specific situation, but recommended that taxpayers send their questions in writing, including email, to avoid misunderstandings. He stated the more information and details given in writing, the better.

### **Questions and Answers**

Q: Whoever makes a purchase in a salon is responsible but an employer could pay for the purchase on behalf of the employee?

A: Correct. The person that makes the purchase and consumes the property is the responsible person for the use tax.

Q: What if a person decided to use a product for their business that they had earlier purchased for sale? Would they pay both a sales and use tax?

A: There are different ways that this could happen. An individual typically buys products for resale. A resale certificate will be issued to the supplier and the individual does not pay sales tax when the product is acquired. The individual collects tax on the items sold and reports that on their return. The individual will pay a use tax on products taken out of inventory for personal use. Tax is only paid once.

On the other hand, products that were purchased tax-paid can be taken out of inventory tax-free because the individual already paid tax on that product. If the individual sells any of that product, they can claim a credit for the tax already paid on those items. This is called a tax-paid purchases resale reduction. That line is not available on the Sales and Use Tax Return form. Individuals can request a different return form for filing a claim for that credit.

### **Professional Beauty Association**

Mike Belote, PBA CA Lobbyist, Professional Beauty Association (PBA), spoke about the legislative context of the Dynamex case to help the Advisory Committee understand what is likely to happen or not happen. He stated the court rejected a motion to amend the opinion to say the three-pronged test is only prospective. This means the Dynamex decision has a potential legal risk going back four years.

#### Questions and Answers

Q: Does the PBA have a position on booth rental?

A: No. The PBA was concerned about the way that commissions were paid or the piece-rate issue. They sponsored a bill to try to bring clarity to how piece-rate should be paid.

Q: What are the differences in the interpretations of the Dynamex decision between the DIR and the EDD?

A: They have always had different jurisdictions. The problem of being considered an employee by one and an independent contractor by the other has always been possible.

Daniel Muller, PBA CA Labor Law Attorney, stated it has always been theoretically possible because the DIR was given its marching orders by a different set of laws and the EDD exists on its own island with its own set of laws and the Unemployment Insurance Code. The balance between the different sets of laws is not the big issue. It is more about companies that understand the basics and make choices as to how they will slot themselves and how much risk they are willing to take. The safest course would be to make an individual an employee and follow all employment laws.

Q: If the DIR makes a finding that the PBA misclassified, does the EDD jump on or does the PBA usually just deal with one agency?

A: One agency because the clients represented are dealing with a specific issue such as an employee or a former worker.

Q: The Board is not a labor-related Board but the Legislature has extended the role of this Advisory Committee to discuss labor law issues. The Board is in the position where salon owners and workers are looking for clarity in the post-Dynamex world. If the Board cannot get a consistent message from the departments that do labor law, what is their message going to be to individuals seeking clarity?

A: They fall into different scenarios. The first scenario would be the salon owner where everyone in their business is classified as an employee. The counsel would be not to change anything and to ensure the salon is following the rules. They do not have to wade into Dynamex at all.

The second scenario would be the salon owner who has some employees and some independent contractors. The independent contractors get a 1099 at the end of the year. In this scenario, Dynamex could not be clearer – this is against the law. The counsel would be no individual working in the salon owner’s establishment where the salon owner collects the money should be getting a 1099 – that person is an employee.

The third scenario would be either the salon is completely booth rental or partially booth rental and partially employee. The message coming from Dynamex and the EDD is that individuals who are in an arrangement where they are renting space from the salon owner need to be independent businesses. The counsel would be not to use the vocabulary “independent contractor” because the definition varies.

The issue is if there would be space for an independent business within another business or renting space from another business. Within Dynamex and the EDD, this is possible. If the “landlord” (the preferred language) is willing to give the “tenant” full control over their space and run their own business, then there is a strong argument that that person is not an employee but is instead running an independent business, and therefore would not be subject to the rulings in Dynamex.

The counsel for salon owners who would rather have a landlord/tenant relationship would be to do everything possible to comply with everything in the EDD guidance sheet because it is a comprehensive roadmap for establishing that renters are independent businesses and that the landlord is renting space to those independent businesses.

Q: If I am a landlord and the only business I own is that business – maybe I have a few locations but all I do is hair – how does that pass the B standard?

A: The B standard assumes that you have workers in your business that you are paying. The counsel is not to pay those individuals anything. They do not work for you, they do not work with your clients, and they do not work in your business. They have their own clients and their own equipment, they pay their own expenses and taxes, and they are no different from any other independent business. The argument is that these are independent businesses. They would never get into the Dynamex analysis because they are not your workers. They run their own business and they rent space from you.

If you run a business where you have employees and you provide hair services but then you also rent space, there is tension there because you clearly are in the

business of providing hair services. It is different clientele but they all intermix and move in the same space. There is more risk there for a business that does both. A salon owner should be able to have employees on the one hand and have tenants on the other hand and keep a distinction. There is a good argument that that should not matter but there is no guidance on that yet.

Q: A situation where the owner is also an esthetics operator who is renting out additional rooms is highly at risk with Dynamex because the primary business is esthetics, even though they are acting as a landlord for the additional rooms that are being rented.

A: Yes, but as long as the individuals to whom the owner is renting rooms in that business are not under the owner's control, they have their own clientele, collect their own money, make their own reservations, run their own business in every way, and all they do is send the owner a rent check every month and a 1099 at the end of the year for the amount they pay the owner for rent, the argument can be made that those individuals are independent businesses from start to finish, even though the owner may have employees in a different part of the business that are treated as employees.

A simplified application of Dynamex would say anyone who works in the owner's building is either a contractor or an employee. And, if they work doing esthetician services the same as the owner, then they have to be an employee because Dynamex says it is so, then, yes, there is risk. The Supreme Court's decision does not require a simple application like that but that is a matter of argument.

Q: The pre-Dynamex world looks at all criteria but does not require them all. The post-Dynamex world requires all criteria to be followed. Is that an appropriate way to phrase it?

A: That is a fair way to say it. There is more clarity now that, if there are individuals working in your business, they are more likely than not going to be classified as employees. You have to do everything you can to show that they are not working in your business. The EDD guideline is a great resource for that, especially number nine that the relationship between the principal and the licensed professional is that of a landlord and a tenant. That is how it should be laid out.

## **6. Agenda Item #6, DISCUSSION ON THE IMPACT OF THE DYNAMEX OPERATIONS WEST, INC., V. SUPERIOR COURT OF LOS ANGELES COUNTY DECISION AND RECOMMENDATIONS ON HOW TO BRING AWARENESS OF THIS DECISION TO BOARD LICENSEES**

Dr. Williams asked Advisory Committee Members for recommendations to give to staff on how to notify licensees and ensure that licensees are compliant with the new laws.

### Questions and Answers

Q: Since the Board is not labor-law related, how much can the Board do, even if it had clarity to offer?

A: It is not within the Board's authority to answer questions. The Board will only provide guidance on where individuals can go to find answers to their questions.

Q: What is the possibility of the Board's bringing awareness to the industry about the post-Dynamex world other than what the Board has already done? What else can be done?

A: Further promoting what is learned as it travels through all the different steps.

Q: How? What is the mechanism of offering this evolving clarity?

A: It sounds like the mechanism is already in place. It is maybe a matter of updating the information.

Q: There does not seem to be links to this kind of information on the website. Is this of serious magnitude that it deserves extra awareness? How can the Board provide that extra accessible awareness?

Q: The Board should look at how establishment owners and licensees are fined because it is no longer in alignment with the labor laws.

A: The Board is already addressing that with the new statute, SB 1099, and it will be made clear with the new regulations based on who committed those violations.

A: It still might create confusion, even when separating who is responsible. This is one area the Board can help licensees stay compliant or at least inform them. Information can be prepared to help inform and educate Board members, appellants, and others at Disciplinary Review Committee (DRC) hearings.

Q: Is this important enough to make an asserted awareness? A problem may be that individuals will not view this as a problem until they are cited for it. Rather than citations, maybe take this as a learning opportunity the first time around. The Board putting it out as general information might cause more questions, problems, and issues at the Board level.

A: The purpose of the Dynamex case is to protect the individuals who are being misclassified and this Committee is getting bogged down in the details. Instead of seeing it as a hindrance, see it as a way to bring business owners into compliance. Licensees need to be aware of their rights.

A: There are many salon owners that want this information. The nail industry will be hit hard because they all believe they are independent contractors.

A: Mr. Muller provided possible solutions, especially for salons that have separate businesses operating in the same space. He suggested making them as distinct as possible. He spoke at the break about issuing the establishment license to one address so that, if there are multiple businesses, each would have its own establishment license. Separate establishment licenses would help to distinguish these businesses from each other.

Q: It is easier to delineate who is responsible for each section of an esthetician facility. Nail salons have foot spas that everyone uses. How can those salons be delineated?

A: Based on reading the material, commission payment should not have existed in California. In Oregon, they have a separate independent contractor license or independence license that goes under the facility license.

A: The Board can clarify what it considers is a booth renter for purposes of citations and inspections, but clarify that this in no way is a legal finding of separation in terms of labor law but, for purposes of inspections, this is what the Board is looking for. Until the labor-specific agencies get their act together, the Board should not have any business in it insofar as the labor side of it. Where the Board does have business is for purposes of inspection and who the Board will hold responsible for violations of Board laws and regulations. On that point, at least, the Board should be able to offer some clarity, but it would have to come with some sort of disclosure that this in no way determines whether in labor law there are true independent contractors or employees.

Q: The Board does not have jurisdiction over the information on the website. Currently, when the Board sends out establishment licenses, is there a notice that this information is provided or a statement provided to establishment owners about the mechanism of conveying information?

A: They have to acknowledge that they understand basic worker's rights labor laws. Establishment owners and licensees are given the link to worker's rights information on the Board website.

Q: Has Dynamex risen to the level where the Board needs to send a message or some information out? If the Board decides it needs to do something special, it needs to clarify the limited function and role of the Board vis-à-vis booth renters and establishment owners.

Q: You want the Board to promote what high-level agencies cannot explain?

A: In the absence of clarity, the Board should let enforcement do their job. The DRC can educate licensees and do the best they can with what they have. That is all the Board can do because they cannot overfill into other agencies' responsibilities.

A: This information is already on the Board website. The Board can promote it and direct licensees to the information provided on the website without deciphering it for them. That is the best that the Board can do.

A: It may not be necessary to reference the Dynamex case, but nothing prevents the Board from pointing individuals to the correct entities for them to ask their questions of. Referencing the Dynamex case may create anxiety and unnecessary questioning. Directing individuals to the EDD's self-evaluation form is helpful.

A: Reorganize the website to make it clearer where to click to find further information about these things.

Q: Regarding the establishment license question, would it be helpful to look at establishment licenses where there are separate rooms? One way to make it clear that these businesses are separate entities is through the establishment license.

A: It would take a change in statute because common areas are not defined at this point. It has not been successful to bring this up at prior Sunset Review Hearings.

Q: Since the EDD has the two employer/employee forms, does the DIR do the same thing?

A: It does not.

Q: Would it be helpful for the Board to get an official opinion from the EDD and the DIR on some form of independent contractor license subcategory?

A: The concern is that the EDD and DIR opinions are not concrete but are based on whatever handwritten information is mailed in.

A: That's why the Advisory Committee is having some trouble here – it is trying to provide absolutes in a non-absolute world. The impact is really upon enforcement. That might be worth bearing in mind for doing some reorganization of the website.

Q: The Board addresses it in the DRC. Many individuals come to the DRC who are establishment owners. Has the Board ever had that issue with formal discipline as far as anyone deciding if someone was not responsible as an owner?

A: No. It has never happened where a judge determined that an owner was not responsible for something that happened in their shop. It does not matter how individuals are classified - services performed in the building are the responsibility of the establishment owner.

### **Public Comment**

Wendy Cochran, Founder, California Aesthetic Alliance (CAA), stated she regularly gets questions from her participants about the commission that they should be paid for their new position. Assembly Bill (AB) 1315 is considered a new law and Senate Bill (SB) 490 is being weaponized by uninformed employees who threaten employers who are trying to do the right thing by bringing individuals into W-2 status by quoting the law that states employers are to pay double minimum wage and commission and threatening to turn the employer in to the DIR. She stated that is happening within her group. The state of the industry is misunderstandings and repeated cycles of abuse.

Jaime Schrabek, Precision Nails, stated she survived a random audit by the EDD two years ago. She stated she contacted Director Henning and encouraged him to attend the major trade shows and leverage relationships. Trade shows and magazines want to have the correct information but they get their information from experts or salon owners. The correct information must come from the agencies. Director Henning was at the Long Beach show last year teaching a class but his class was sparsely attended. She stated Ms. Cochran had the opportunity to guide him around the show, pointing out procedures and products being sold to individuals as legal. There is a lot that could be done to raise awareness using the existing mechanisms that are in place, not just the website, such as magazine and trade shows. Anything that supports and makes money from the industry can do more to support the professionalism of the industry by including representatives from different agencies to attend and offer classes at these events.

A Committee Member stated, going back to where the biggest problem lies, her area of expertise is infection control, which represents the highest number of citations. She once taught a class at a show, but attendees generally do not choose to attend those types of classes except for members of the Board. She stated change must start with

reaching people who do not pay attention but instead only pay fines and keep doing the wrong thing.

Q: Can the DRC hearings be webcasted?

A: It is a public meeting but the facility does not have the capability. The Board could look at webcasting a meeting to be kept as an information tool.

Bridgett Sharp, Professional Beauty Association (PBA), stated the PBA runs the Las Vegas and Long Beach shows. She stated Mr. Muller put together a brief for the PBA specific to Dynamex. The PBA has not taken a position on the brief yet. She offered to share the brief as an educational tool.

Q: How can we get Ms. Underwood, Ms. Guess, and Ms. Roste to the trade shows to present material to licensees on how to avoid fines?

Larry Cromwell, Owner, Marabou Salons, Folsom, stated he has three locations with approximately 100 individuals – approximately 45 booth renters and 55 employees. He stated he is happy that the Advisory Committee is looking at these issues in the biggest context. It is complicated to run a salon based on all the reasons heard today. He explained how he runs his program. He stated he would rather that his workers remain as employees but they tend to choose to become booth renters. He stated his concern about booth renters who put in for unemployment or disability, booth renters who need to be dismissed and they put in for unemployment, and worker's compensation when they decide that he was misclassifying his 45 booth renters for the past four years. He asked the Advisory Committee and presenting agencies to do everything they can to bring clarity to this issue and get the information out.

**7. Agenda Item #7, DISCUSSION AND RECOMMENDATIONS TO STAFF REGARDING WORKER'S RIGHTS CONCERNS WITHIN THE INDUSTRY**

Dr. Williams asked for recommendations regarding worker's rights concerns.

No recommendations were given.

**8. Agenda Item #8, DISCUSSION AND RECOMMENDATIONS TO STAFF REGARDING POTENTIAL HEALTH AND SAFETY CONCERNS WITHIN THE INDUSTRY**

- Review, Discussion, and Recommendations to Staff Regarding the *CASafeSalon – Safely Using Chemicals* booklet draft.
- Review, Discussion, and Recommendations to Staff Regarding the *CASafeSalon – Safety Data Sheets* booklet draft.

Dr. Williams asked for recommendations on the *CASafeSalon – Safely Using Chemicals* and *Safety Data Sheets* (SDS) booklet drafts, which were provided in the meeting packet. She asked Committee Members to send changes to staff by November 1, 2018.

Both booklets would benefit from having the California Poison Control number on them.

Safely Using Chemicals Booklet



- Add esthetics and electrology products. The Committee Member will send a list to staff.

Page 9, Chemicals in the Establishment

- Rather than listing the products and what they might contain, put the chemicals in alphabetical order with a column of what they might be found in.
- Put the product list as a chart. Have a product category and check the boxes of the chemicals they may contain.

Q: Individuals should not be making their own products. It should be stated plainly that customization of products is not something licensees should be doing in the industry.

A: The Board does not have authority over that. This may be better addressed in another booklet in the five-booklet series, *Protection from Hazardous Chemicals*, and is also addressed in liability insurance.

Q: It is important to educate that just because a substance is natural does not make it safe.

A: The esthetics field has been customizing products for years.

**Public Comment**

Laura Embleton, Associated Skin Care Professionals and Associated Hair Professionals, stated there is no mention of estheticians in the booklet.

SDS Booklet

- Outline that “readily accessible” means that every employee or contractor has to be able to access the SDS Booklet at all times. An Internet version will no longer be accessible during power outages or during a fire where a fire fighter would need the SDS to be readily accessible. The best practice is to have the booklet printed in a binder that is readily accessible in a location that everyone has access to.
- Add the shelf life date to the SDS.

Page 1, How to Obtain an SDS

- The first sentence should read, “Cal/OSHA requires employers to maintain SDS and ensure they are readily accessible to employees for all hazardous chemicals used in the establishment.”

Page 12, Resource Groups, Agencies, Databases, and Publications

- The description of Cal/OSHA should read, “Cal/OSHA is a division within the Department of Industrial Relations that protects and improves the health and safety of working men and women in California by setting and enforcing standards, and providing outreach, education, and assistance. There are many Cal/OSHA offices throughout the state.”

Page 12, Regional Offices

- (Contact to File a Complaint) should read, “District Offices (Contact to File a Complaint).”
- The description under Regional Offices should read, “Contact the District Office closest to the establishment to file a confidential complaint regarding a potential safety and health hazard or a Cal/OSHA regulatory violation.”
- Do not list the District Managers’ names due to turnaround.
- The San Francisco District Office email address should be for the District Office. The Committee Member will send the correct address to staff.

Page 14, Cal/OSHA Consultation Offices (Establishment Owners)

- The description should read, “Provides confidential consultative services to establishment owners on correcting health and safety hazards.”

Page 14, OSHA Occupational Chemical Database

- Add the word “Federal” so the title would read, “Federal OSHA Occupational Chemical Database.”

**9. Agenda Item #9, DISCUSSION AND RECOMMENDATIONS TO STAFF REGARDING PHYSICAL AND SEXUAL ABUSE WITHIN THE INDUSTRY**

Dr. Williams asked for recommendations regarding physical and sexual abuse within the industry.

A Committee Member reached out to one of the state agencies since the last meeting to provide information to his students on sexual abuse. He recommended state agencies as a good informational resource.

**Public Comment**

A member of the public stated licensees do not want to be mandatory reporters.

A Committee Member suggested including a list of mandatory reporters that licensees can refer clients to.

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

Dr. Williams asked for suggestions for future agenda items.

A Committee member stated tools are being stored and presented to clients in autoclave sterilization pouches as if they have undergone that process. She suggested that enforcement cite that as an improperly-labeled container – to use the law as it is currently written to apply to those situations where tools are being labeled as something they are not. She noted that these tools may be properly cleaned but are still being misrepresented as being sterilized.

Ms. Underwood asked Committee Members to email Ms. Guess if they are interested in serving on the Advisory Committee for 2019.

**11. Agenda Item #11, ADJOURNMENT**

There being no further business, the meeting was adjourned.