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CALIFORNIA STATE BOARD OF BARBERING AND COSMETOLOGY

HEALTH AND SAFETY ADVISORY COMMITTEE MEETING

MINUTES OF JULY 29, 2019

Department of Consumer Affairs
1747 North Market Blvd.
HQ2 Hearing Room 186, 1st Floor
Sacramento, CA 95834

BOARD MEMBERS PRESENT

Lisa Thong, President

BOARD MEMBERS ABSENT

Jacque Crabtree

COMMITTEE MEMBERS PRESENT

Paul Bryson, Ph.D.
Larry Cromwell
Jennifer Cruz-Jimenez
Joanie Gonella
Brandon Hart
Fred Jones
Zenith Khwaja
Kathy Te Nelson
Leslie Roste
Jaime Schragebeck, Ph.D.
Kellie Swallow

COMMITTEE MEMBERS ABSENT

Samia Tahir

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Michael Santiago, Board Legal Representative
Marcene Melliza, Board Analyst
Allison Lee, Board Project Manager

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

Kristy Underwood, Executive Officer, called the meeting to order at approximately 10:00 a.m., welcomed everyone to the California State Board of Barbering and Cosmetology (Board) Health and Safety Advisory Committee, and asked everyone to introduce themselves.

Ms. Underwood reviewed the meeting protocols and provided an overview of the purpose, goals, activities, and accomplishments of the Committee. She stated the focus of future Committee discussions will be on making recommendations to the Board on health and safety issues.

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

Ms. Underwood stated the Board's sunset review has been delayed one year due to the Senate's determination to have informational discussions on the future of the industry. Updates will be posted on the website.

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

Wendy Cochran, Founder, California Estheticians – Esthetician Advocacy; Founder, California Aesthetic Alliance (CAA), stated the esthetician scope of practice has not been revised since 1978. She stated it is important to her organizations that the Board's licensees in good standing should be something that is used and incorporated in language when approaching law makers. She suggested a tiered license structure for waxing only, hair stylist only, and lash only licenses. A revision in the law is required to advance the industry. The Legislature's current interest in discussing the future of the industry and how it impacts consumer health and safety should not be about the category of work done but to what the Board regulates – licensees in good standing.

4. Agenda Item #4, APPROVAL OF AUGUST 28, 2018, COMMITTEE MEETING MINUTES

Ms. Underwood tabled this agenda item to the next Committee meeting.

5. Agenda Item #5, DISCUSSION AND RECOMMENDATIONS TO THE BOARD REGARDING WORKERS' RIGHTS CONCERNS WITHIN THE INDUSTRY

Ms. Underwood stated Assembly Bill (AB) 5, worker status – employees and independent contractors, has changed dramatically in the past month. She asked Fred Jones, Industry Association Professional, Professional Beauty Federation of California (PBFC), Committee member, to provide a summary and current status of AB 5.

Mr. Jones stated the Dynamex ruling occurred in April of 2018. The intent of AB 5 is to codify the Dynamex ruling and outline its implementation. He provided an overview of the background, amendments, and exceptions to the current iteration of AB 5.

Mr. Jones stated, because of the request for exemption from AB 5 by the beauty industry, the author has included a limited exemption under certain circumstances in which booth rental would be allowed in license categories except nail salons where each booth renter will get their own separate business license through their local municipality. The bill notably will not exempt nail salons because of the belief that nail workers do not have the bargaining power to successfully create a fair independent contracting relationship and that the labor code should protect those workers by not offering a booth rental option for nail workers. Board staff is in communication with the author's office; discussions are ongoing. AB 5 is currently in the Senate Appropriations Committee.

Ms. Underwood asked Committee members for their feedback on AB 5. Committee members responded as follows.

- Jaime Schrageck, licensed manicurist and establishment owner, stated that referring to licensed professionals as “workers” is offensive and does not recognize the investment made to obtain and maintain licensure. All reference to the Board has been stripped out of the language. Where will members of the industry go for information? Not exempting licensed manicurists is a huge disservice because it limits the options of individuals who are considered the most exploited. The bill will impact owners of nail salons. Salon owners will incur substantial fines. Enforce the laws that are already in the books. Enforcement will deal with exploitation issues.
- Mr. Jones stated twice minimum wage is a concern; it is unenforceable. Individuals can still cheat the system.
- Kellie Swallow, licensed esthetician, stated every salon sells retail and usually a receptionist books appointments. Is it possible for independent contractors or booth renters to provide their schedule for the receptionist to book appointments?
 - Mr. Jones answered that the bill currently states that booth renters must own their own book of business and schedule their own appointments.
- Mr. Jones believes Business and Professions Code (BPC) sections should be referenced.
- Ms. Schrageck stated she is concerned about the inclusion of natural hair braiding as it is not regulated by the Board. It muddies the water about the services that the Board determines should be regulated. She also asked if the bill is trying to capture unlicensed activity and how individuals will be penalized for activity they should not be doing.
- Lisa Thong, Board President, asked if appointments were brought up because it was related to the fact that Dynamex had to do with an app-based service. Many app-based companies claim they are not part of the industry but are positioning themselves as appointment platforms for the industry.
 - Mr. Jones answered no, the Uber/Lyft industry is the single largest industry affected by AB 5. When the bill came out of the Assembly, it only referenced that independent contractors must have their own clients. The Senate added the requirement for appointment scheduling. It is a big issue that has yet to be resolved.
- Ms. Underwood believes the scheduling issue is open to interpretation. For example, if a stylist gives an appointment list to a receptionist, hasn't she “scheduled” her own appointments?
- Ms. Schrageck stated even separate from mobile services, many clients book their own appointments online.
- Larry Cromwell, licensed establishment owner, stated booking appointments for booth renters is something that booth renters want because they make more

money. It is not exploitation on the business owners' part to do it as a service for them.

- Mr. Jones stated part of the booth rental payment could be for the establishment owner to book appointments for them. This should be stipulated in the contract and part of the booth rental payment to the establishment owner.
- Jennifer Cruz-Jimenez, licensed barber and cosmetologist, stated that a stylist who works full-time is incapable of booking their own appointments. Booth renters will be more successful when someone else books their appointments while they continue to work.
- Brandon Hart, Department of Industrial Relations – Division of Occupational Safety and Health (Cal/OSHA) Representative, stated that the determining factor is whether the booth renter has the discretion on whether they want to accept that appointment or not. It is important that the establishment owner is not scheduling booth renters against their will. A receptionist can make tentative appointments with the booth renter having final say.
- Mr. Jones stated the other side is who is liable. The employer is liable for everything an employee does because they have the right to control. But the license that gives them the right to perform those services for remuneration is the Board license. That license trumps the right of an employer to tell them what clients they can and cannot service.

Ms. Underwood asked for a motion of recommendations to present to the Board.

Mr. Jones moved that the Board approach state policy makers for a request for a booth rental permit, engage AB 5 and any other subsequent cleanup legislation next year to appropriately call out Business and Professions Code license references, and recommend that all scope-of-practice license categories currently under the purview of the Board should be included in the limited exemption from AB 5 requirements.

Ms. Schrabec seconded the motion.

Mr. Hart asked for clarification on the motion.

Mr. Jones referred to page 6, subsection 6 of the proposed bill and stated his motion proposes to change the language from “a worker providing hairstyling or barbering services” to “a State Board of Barbering and Cosmetology licensee providing services according to the Business and Professions Code, Section __, Cosmetology, and Section __, Barbering.” This specifies that individuals must be licensed to qualify for the exemption.

Mr. Hart referred to page 7, subsection 6(E), and suggested adding “and professional certification” so it would read “maintains their own business license and professional certification in connection with the services offered to clients.”

Mr. Jones suggested changing subsection 6(E) to read “maintains their own business license in connection with the services offered to clients and appropriate State Board of Barbering and Cosmetology professional license.” Mr. Hart agreed.

Mr. Jones amended his motion to include the friendly amendment. Ms. Schrabec seconded the friendly amendment.

Public Comment

Ms. Cochran stated one fourth of licensed estheticians are also licensed as manicurists. The requirements put forth in AB 5 are impractical, which will cause individuals to ignore it. Also, booth rental contracts in salons for the most part are ludicrous due to the lack of enforcement. She encouraged the Committee to scrutinize the language being put into the motion.

MOTION: Mr. Jones made a motion, seconded by Ms. Schrabec, that the Health and Safety Advisory Committee recommends that the Board:

- Approach state policy makers for a request for a booth rental permit.
- Engage AB 5 and any other subsequent cleanup legislation next year to appropriately call out Business and Professions Code license references.
- Recommend that all scope-of-practice license categories currently under the purview of the Board should be included in the limited exemption from AB 5 requirements.
- Recommend that Labor Code Section 2750.3(b)(6) be changed to “a State Board of Barbering and Cosmetology licensee providing services according to the Business and Professions Code, Section __, Cosmetology, and Section __, Barbering.”
- Recommend that Labor Code Section 2750.3(b)(6)(E) be changed to “maintains their own business license in connection with the services offered to clients and appropriate State Board of Barbering and Cosmetology professional license.”

Motion carried 9 yes, 0 no, and 3 abstain per roll call vote as follows:

The following Board members voted “Yes”: Bryson, Cromwell, Gonella, Hart, Jones, Khwaja, Roste, Schrabec, and Swallow.

The following Board members abstained: Cruz-Jimenez, Nelson, and Thong.

6. Agenda Item #6, DISCUSSION AND RECOMMENDATIONS TO THE BOARD REGARDING UPDATING HEALTH AND SAFETY REGULATIONS

Ms. Underwood distributed the 2019 Health and Safety Regulations and other handouts for Committee review. She stated this extensive review of the regulations will take more than one meeting. She stated there are regulations that are unrealistic and do not necessarily protect the consumer, which have led to discussions of deregulation. She stated the need to be thoughtful of what can potentially harm the consumer while updating the regulations to be more effective. She stated individuals are providing services outside their scopes of practice because they think if something is not in

regulations it must not be regulated. Ms. Underwood asked for suggestions on how to begin updating the Health and Safety Regulations.

Leslie Roste, RN, BSN, King Research representative, suggested to strike regulations that are only there because that is the way they have always been done but do not make sense today, such as the regulation to wash linens at 160 degrees for 25 minutes. For that example, it is better to require that linens be washed on hot. Removing inapplicable language makes room for other areas that appear not to be addressed in the regulations. She suggested to simplify the wording, so licensees know exactly what they are required to do. Make the regulations specific, concise, and consistent. Also, be conscious of environmental impacts when crafting regulations to ensure that they lead into the future of what California should be considering. Ensure consumer safety, but also protect the environment. Ms. Roste has already gone through the regulations and made the above changes based on what has been successful in other states.

Mr. Jones suggested the committee tread lightly on the issue of foot spas because of its high profile. Ms. Underwood agreed, but stated current regulations on foot spas do not reflect what is happening in salons. One of the things that was not addressed for the use of foot spa liners is the removeable jets.

Paul Bryson, OPI Scientist, stated that regulations must be practical, or else licensees will not follow it unless the inspector is present.

Mr. Jones stated the key regulations are 979 and 980. The more applicable they can be made across the board and the more consistent they are, the better. This committee should create modules similar to the barber and cosmetologist curriculum to make it easier for inspectors and licensees.

Ms. Schrabec asked for a balance between protecting consumers and the environment.

Ms. Roste suggested to make generic definitions to use throughout the regulations and make regulations generic enough so they will encompass future techniques/technology. For example, a regulation that applies for chemicals used around the face. She suggested to provide the regulations to licensees in more digestible, concise language. She is currently helping Nevada do a risk assessment for every service to provide a simplified logic for the regulations.

Ms. Underwood stated the Board has come a long way. Inspectors no longer issue fines on the spot, their reports are now reviewed in the Sacramento office.

Ms. Roste identified Minnesota and Colorado as states that can be used as a model to bring back to the next Committee meeting for review. Minnesota went too strict and are now trying to scale back.

Mr. Cromwell called for more consistency in inspections. Less letter of the law and more about the intent. Licensees want to know why they shouldn't do something or what risk is attached.

Ms. Cochran stated fibroblast and hyaluron pen services need more regulation.

Ms. Schrabec stated there must be a priority given to what will have the most impact on protecting consumers.

Ms. Roste stated the Board should educate consumers on what to expect with services so they are more accountable.

Mr. Jones reiterated that the regulations must be enforceable.

Public Comment

Doug Schoon, President, Schoon Scientific and Regulatory Consulting Services, stated the need for more industry bulletins to educate consumers and licensees.

- Ms. Roste suggested to include pictures in industry bulletins – a picture is worth a million words in this industry.
- Mr. Hart suggested creating publications to distill the regulations down and develop two-page fact sheets to make licensees aware of current hazards or emerging trends with pictures.
- Ms. Schrabek suggested to use social media to disseminate information.
- Ms. Thong suggested the board attend not only industry conferences but consumer conferences such as BeautyCon.
- Ms. Cochran stated there are currently no regulations on lash extensions.
- Mr. Bryson stated regulations need to be revised in baby steps. There are four pages on the topic of pedicures and foot spas. These pages can be cut down and simplified by making the regulations more concise.

Ms. Underwood stated staff will get good samples from other states and work with Ms. Roste to get a markup of the regulations prior to the next Committee meeting.

Mr. Jones suggested the following guiding principles for the regulation update:

- A necessary regulation is defined as protecting the consumer or licensee.
- If a regulation is not enforceable, it will be discarded.
- If a regulation is unclear, it needs to be reworded or discarded.

7. Agenda Item #7, AGENDA ITEMS FOR THE NEXT MEETING

Ms. Underwood stated the next Committee meeting will be held in San Diego on Monday, December 2, 2019.

8. Agenda Item #8, ADJOURNMENT

There being no further business, the meeting was adjourned at approximately 1:00 p.m.