

**CALIFORNIA STATE BOARD  
OF  
BARBERING AND COSMETOLOGY**

**BOARD MEETING**

**MINUTES OF MARCH 9, 2020**

Department of Consumer Affairs  
1747 North Market Blvd.  
HQ2 Hearing Room 186, 1<sup>st</sup> Floor  
Sacramento, California

**BOARD MEMBERS PRESENT**

Lisa Thong, President  
Andrew Drabkin, Vice President  
Jacquelyn Crabtree  
Derick Matos  
Calimay Pham  
Christie Tran  
Steve Weeks  
Dr. Kari Williams

**STAFF MEMBERS PRESENT**

Kristy Underwood, Executive Officer  
Sabina Knight, Board Legal Representative  
Marcene Melliza, Board Analyst

**[Note: Agenda Item 14 was taken out of order. These minutes reflect this Agenda Item as listed on the agenda and not as taken in chronological order.]**

**1. Agenda Item #1, CALL TO ORDER/ ROLL CALL/ ESTABLISHMENT OF A QUORUM**

Lisa Thong, Board President, called the meeting to order at approximately 10:00 a.m. and confirmed the presence of a quorum.

**2. Agenda Item #2, BOARD PRESIDENT'S OPENING REMARKS**

Ms. Thong welcomed new Board members Derick Matos and Christie Tran, both appointed by Governor Newsom, and Sabina Knight, the new Board Legal Counsel.

**3. Agenda Item #3, ANNUAL ELECTION OF OFFICERS**

Ms. Thong asked for nominations for Board President for 2020.

**MOTION:** Ms. Crabtree made a motion, seconded by Mr. Drabkin, to elect Lisa Thong for a second term as Board President. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Crabtree, Drabkin, Matos, Pham, Thong, Tran, Weeks, and Williams.

Ms. Thong asked for nominations for Board Vice President for 2020.

**MOTION:** Ms. Crabtree made a motion, seconded by Mr. Drabkin, to elect Dr. Kari Williams as Board Vice President. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Matos, Pham, Thong, Tran, Weeks, and Williams.

**4. Agenda Item #4, BOARD MEMBER REMARKS**

No Board member comments were offered.

**5. Agenda Item #5, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

Five members of the public provided the following comments:

1. Tiarra Logan, Founder, TC Hair Suite/TC Braid Camp, located in San Leandro, stated there are discrepancies in national hair care and the way that it is and is not taught in the books. The books should be updated. It is important to address how to properly teach to inform students how to maintain and manage natural hair. Ms. Logan requested a designation for natural hair care stylists.

Ms. Thong stated natural hair care is not under the Board’s purview but, as a licensee, Ms. Logan’s comments are welcome.

2. Fred Jones, Legal Counsel, Professional Beauty Federation of California (PBFC), stated this year is PBFC’s 20<sup>th</sup> anniversary and the 20<sup>th</sup> annual Welcome to Our World (WOW) event is scheduled for Monday, April 27<sup>th</sup>, from 3:00 p.m. to 6:30 p.m. at the State Capitol.
3. Wendy Cochran, Founder, California Estheticians - Esthetician Advocacy; Founder, California Aesthetic Alliance, reiterated her public comment provided at the December 2<sup>nd</sup> meeting. She stated there is confusion among licensees who are dual licensed or dual certified. She stated she had the opportunity to sit in on a Disciplinary Review Committee (DRC) action last October, specifically a case involving a licensee who also holds multiple certifications. She stated the Board assessed the penalty of practice of medicine without a license for a microcurrent device that has an FDA clearance and is affirmed as a non-medical device.  
  
Ms. Cochran asked for a clear directive from the Board for licensees who incorporate services outside of the Board’s purview. This is an unnecessary cost, barrier, and burden on small business. Ms. Cochran asked that the Board develop guidelines for licensees to responsibly follow.
4. Susan Colard, Marketing Director, National-Interstate Council of State Boards of Cosmetology (NIC), introduced herself and Vicky McNally, President, NIC, was also in attendance. She stated the focus of the national exam has always been around the exam itself. In the past year, many states are facing discussions of deregulation.

Ms. Colard stated her role is to listen to Board Executive Officers nationwide about issues and concerns. She stated she recently met with Ms. Underwood, who identified several areas of concern. She stated one of the issues brought up

by Ms. Underwood is the Spanish pass rates. Ms. Colard stated her research confirms that this is a national issue. She brought it to Ms. McNally's attention, who will follow through with that and will get back to Ms. Underwood and other Executive Officers nationwide with a plan of action.

Ms. Colard stated another issue shared by Ms. Underwood is the issue of tripods. She stated there is data that there could be an inconsistency in the evaluation process.

Ms. Colard stated she will meet with Ms. Underwood to go over the NIC research findings. She stated Ms. McNally's new vision is that the NIC is here to partner with states and to be available to assist where possible to better understand the issues on a national level.

5. Man Lam, retired education specialist, stated he is in attendance to raise awareness that there is no Chinese written examination for barbering and cosmetology. On May 29, 2019, the California Department of Consumer Affairs (DCA) released in article titled "Board of Barbering and Cosmetology Breaks Language Barriers." The article did not include anything related to the Chinese written examination. He asked why. He asked the Board to update the examination to include the Chinese language or at least provide the reason why there is an absence of Chinese.

**6. Agenda Item #6, DISCUSSION AND POSSIBLE APPROVAL OF DECEMBER 2, 2019, BOARD MEETING MINUTES**

**MOTION:** Mr. Drabkin moved to approve the December 2, 2019, California State Board of Barbering and Cosmetology Meeting Minutes as presented. Ms. Crabtree seconded. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board members voted "Yes": Crabtree, Drabkin, Matos, Pham, Thong, Tran, Weeks, and Williams.

**7. Agenda Item #7, APPOINTMENT OF COMMITTEE MEMBERS TO STANDING COMMITTEES FOR 2020-21**

The 2020-2021 Committees are as follows:

- **Disciplinary Review Committee**

All Board members are part of this Committee.

- **Education and Outreach Committee**

Jacquelyn Crabtree, alternate

Derick Matos

Dr. Kari Williams

- **Enforcement and Inspection Committee**

Jacquelyn Crabtree

Lisa Thong

Steve Weeks

- **Health and Safety Advisory Committee**

Jacquelyn Crabtree

Andrew Drabkin

Lisa Thong

- **Legislative and Budget Committee**

Jacquelyn Crabtree

Andrew Drabkin

Lisa Thong, alternate

- **Licensing and Examination Committee**

Calimay Pham

Steve Weeks

Dr. Kari Williams

## 8. **Agenda Item #8, EXECUTIVE OFFICER'S REPORT**

- Licensing Statistics**
- Examination Statistics**
- Disciplinary Review Committee Statistics**
- Enforcement Statistics**
- Budget Updates**
- Outreach Updates**
- Practice Status Survey Results**

Ms. Underwood presented her report:

- Heather Berg, Deputy Executive Officer, retired last month. She will be greatly missed.
- Carrie Harris, Enforcement Manager, has been promoted to fill the Deputy Executive Officer position, Breanne Munar has been hired as the new Enforcement Manager, and Alex Torkelson has been hired as the new Licensing Manager.
- The DCA Office of Professional Examination Services has agreed to conduct a review of the grading of the practical examination and to help with the review of the national examination.

Ms. Underwood reviewed the statistics and update reports, which were included in the meeting packet.

### Questions and Discussion

Mr. Weeks asked about the issues affecting the grading of the practical examination. Ms. Underwood stated changes in the grading have caused concerns about the results of the practical examination. The grading processes will soon be under review by the DCA. A status report will be presented at the next Board meeting.

Mr. Drabkin referred to the Written Exam Results statistics and asked how many of the individuals came from schools versus the apprenticeship program. Ms. Underwood stated she will include that information at the next Board meeting.

Mr. Weeks referred to the Licenses Issued Last 5 Years statistics and asked for an estimated total for fiscal year (FY) 2019-20. Ms. Underwood stated it is anticipated that the total number would be similar to the FY 2018-19 total.

Mr. Weeks noted that the licenses issued have been in a downward trend. Ms. Underwood stated the number of licenses issued has been impacted by the 2016 Marinello Schools of Beauty closures. Marinello students continue to slowly trickle back in.

Mr. Weeks stated his concern about the downward trend of licenses issued and the upward trend of individuals declaring nonuse of their licenses. He asked if individuals declare nonuse of their licenses at the time of license renewal. Ms. Underwood stated licensees declare their intent in a Practice Status Survey. The question is asked at renewal but it is not put in the database so it is difficult to track.

Ms. Crabtree stated not everyone in the industry is truthful about being an employee versus booth renter or license use versus nonuse.

**9. Agenda Item #9, DISCUSSION AND POSSIBLE ACTION REGARDING THE 2020 BOARD MEMBER GUIDELINES AND PROCEDURE MANUAL**

Ms. Underwood stated no changes are recommended to be made to the Board Member Guidelines and Procedure Manual. She noted that the manual is smaller because the travel information was removed, since the DCA provides that separately.

**MOTION:** Ms. Crabtree made a motion, seconded by Mr. Weeks, that the Board approves the 2020 Guidelines and Procedure Manual as recommended. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board members voted "Yes": Crabtree, Drabkin, Matos, Pham, Thong, Tran, Weeks, and Williams.

**10. Agenda Item #10, DISCUSSION AND POSSIBLE ACTION REGARDING THE 2020 SUNSET REVIEW**

Ms. Underwood stated the Board's Sunset Hearing has been scheduled for March 24, 2020. The hearing will be livestreamed on the Senate's website. Staff has not yet received the background paper from the Committee of the issues to be addressed. It is expected shortly. The Board will have 30 days to provide a written response to the issues raised. The next Board meeting is tentatively set for April 13<sup>th</sup> to formally approve the responses to the Sunset background paper.

Ms. Underwood stated there is an informational hearing on March 16<sup>th</sup> for the joint committees on education. She stated she will be presenting the educational background and current requirements. This hearing will also be livestreamed.

**11. Agenda Item #11, HEALTH AND SAFETY ADVISORY COMMITTEE UPDATE**

Ms. Underwood stated the Health and Safety Advisory Committee last met in December and is updating the Health and Safety Regulations. Staff has been working with Leslie Roste, R.N., B.S.N., National Director of Education and Market Development at King Research, on the Advisory Committee's recommendations. The next Advisory Committee meeting will soon be scheduled to present the revised regulations. Upon the Committee's approval, the revised regulations will then be presented to the Board for approval.

**12. Agenda Item #12, LEGISLATIVE UPDATE**

Ms. Underwood summarized the Bill Analysis, which was included in the meeting packet, for the following bills:

- **AB 1928 (Kiley and Melendez) – Employment Standards**

Board members agreed with the staff recommendation to continue to watch this bill.

- **AB 2465 (Gonzalez) – Booth Renter Permit**

Ms. Underwood stated this bill requires a booth rental permit for licensees who are independent contractors/booth renters.

Ms. Crabtree stated this seems redundant since booth renters are already required to obtain a business license. She asked about the reasoning behind this. Ms. Underwood stated she has not contacted the author's office prior to the bill being in print.

Ms. Knight added that a bill analysis has yet to be posted on the Legislature's website. Staff will continue to watch this bill.

Ms. Pham asked if the issue of redundancy has been communicated to the author. Ms. Underwood stated it is a sunset review year and it is normal for boards and bureaus to do things through the sunset review process. She stated her concern to the author's office that the Sunset Review Committees are looking at barriers and less regulation and that AB 2465 may be more successful in a different year, since it adds regulation.

Board members agreed with the staff recommendation to continue to watch this bill.

**Public Comment**

Mr. Jones stated the PBFC engaged the author of AB 5. He stated the original thinking was that they were not going to provide any exemption for this industry but, given the fact that well over three quarters of salons are booth-rental based, licenses contacted the author to express their concerns. AB 5 was an attempt to codify the Dynamex Decision by the California Supreme Court, which removes the legal standing of booth rental businesses. After the overwhelming stakeholder response, the author engaged the PBFC in a discussion on how to move forward with some limited exemption to that Dynamex ruling. During the

discussions, Mr. Jones suggested a booth rental licensure and the author agreed. As AB 5 passed out of the Assembly, it included the language for the Board to establish a booth rental license.

Mr. Jones stated the Senate Labor Committee focused on the Labor Code and the idea of requiring municipal permits as a means of doing business as an independent contractor in the industry. While the Senate Labor Committee did not want to touch the Business and Professions Code, they at least acknowledged the need for a business permit to be acquired and posted.

Mr. Jones stated the reason this Board took a position of support in booth rental licensure and the reason the PBFC supports it is because everyone looks to the Board for outreach, communication, and education to the industry. The PBFC thought it appropriate to cut through the confusion that exists in the booth rental sector of the industry by having the Board require licensees who are sole proprietors working in a licensed establishment to also get a booth rental permit from the Board and to post that booth rental permit in workstations as a way to inform clientele of the separate business status. That level of clarity is appropriate.

Mr. Jones stated the author has committed to carry cleanup legislation this year to reinsert the booth rental language and to address it in the Business and Professions Code and, specifically, this Board. He agreed with Ms. Underwood that timing could be a concern because it is part of the sunset review process. He stated the appreciation for the Board's direction to continue to watch AB 2465.

Ms. Cochran agreed that, if the Board takes a watch position and does not actively participate, Assembly Member Gonzalez will get AB 2465 approved as she is determined to get these bills passed.

Ms. Cochran stated the clarity of definitions that are being used in the bills being proposed, the way industry members speak, and the way things are put down in writing are confusing. Freelancers are individuals who should have a personal service permit (PSP) in place and who work in someone's office or home. That is their definition of freelancer, but AB 5's definition of freelancer is someone who works independently as an independent contractor. Terminology is getting confused during meetings and when these things are discussed.

Ms. Cochran stated there is also confusion about Form 1099. The industry has always thought of a 1099 as being synonymous with booth renter or independent contractor. There does not seem to be a list of definitions for everyone to follow. She stated individuals who renew their establishment licenses are sent a survey asking if they are a booth renter or an independent contractor. She agreed with Ms. Crabtree that sometimes incenses are not honest when filing out surveys, but she questioned the times when neither choice is correct. Better definitions are needed that are consistent.

Ms. Crabtree asked if the booth rental permit is meant to take the responsibility off the establishment owner and put it on the permit holder. Ms. Underwood it is unknown although the new fine schedule has been established that looks at who caused the

violation so establishment owners are not held accountable for all violations that a licensee made. She stated the assumption that this bill would require common areas to be defined.

**13. Agenda Item #13, DISCUSSION AND POSSIBLE ACTION REGARDING RULEMAKING PROPOSALS**

- **Amend Title 16, California Code of Regulations (CCR), section 950.10 (Transfer of Credit or Training)**
- **Amend Title 16, CCR section 961 (Instructional Materials-NIC Guides)**
- **Amend Title 16, CCR sections 962, 962.1, and 962.2 (Externs)**
- **Add Title 16, CCR section 965.2 (Personal Service Permit)**
- **Amend Title 16, CCR sections 970 and 971 (Substantial Relationship Criteria, Criteria for Rehabilitation)**
- **Amend Title 16, CCR section 972 (Disciplinary Guidelines)**
- **Amend Title 16, CCR section 974.1 (Disciplinary Review Committee)**

Ms. Underwood announced that the PSP Regulations have been formally filed with the Office of Administrative Law. A public hearing on those regulations will be held on April 29, 2020.

Ms. Underwood noted that recommended changes to the regulations have been made to Title 16, CCR sections 970 and 971 (Substantial Relationship Criteria, Criteria for Rehabilitation). If these changes are approved today, the Board will also need to approve a 15-day public comment period on those changes.

Staff recommendations:

- The Board approves the proposed text for a 15-day public comment period.
- The Board delegates to the Executive Officer the authority to adopt the proposed regulatory changes, if there are no adverse comments received during the public comment period, and all established procedures and processes in doing so.
- The Board delegates to the Executive Officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.

**MOTION:** Ms. Crabtree moved approval of the staff recommendations as presented. Ms. Thong seconded. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board members voted "Yes": Crabtree, Drabkin, Matos, Pham, Thong, Tran, Weeks, and Williams.

Ms. Underwood reviewed the recommended changes to the regulations that have been made to Title 16, CCR section 974.1 (Disciplinary Review Committee).

Questions and Discussion

Mr. Weeks stated Board members have historically sat on the Disciplinary Review Committee. It is an excellent idea to keep that concept going rather than have just one Board member on a three-person Committee. It helps keep the Board members informed with what is happening in the industry, the effectiveness of the regulations, and how the regulations can be improved. He suggested keeping it the same as it is now.

Mr. Drabkin disagreed. He stated he likes the Committee being made up of a Board member, a public member, and an industry member to get both points of view and expertise.

Ms. Crabtree asked about options. Ms. Knight stated the language could be changed to include the option of two Board members.

Ms. Crabtree stated the need to ensure that the public and industry members understand the Board's process. Ms. Knight stated the new Committee Members will be eligible to go through the Board member orientation training.

Mr. Weeks asked about the logic of the Committee Member "who is not associated professionally or financially with that industry." Ms. Knight stated it is similar to the idea behind having public members on all DCA boards.

Mr. Drabkin stated a person with experience or expertise can be chosen, such as a former Board member. Ms. Knight agreed that there will be application and vetting process involved.

Mr. Weeks suggested deferring this item to the next meeting to give staff time to work with legal counsel and to look at alternative language and models.

Ms. Thong suggested also looking at other states' appeal processes and whether the Board's process meets the objective.

**[Note: Agenda Item 14 was taken out of order and was heard after Agenda Item 2.]**

**14. Agenda Item #14, DEPARTMENT OF CONSUMER AFFAIRS (DCA) UPDATE WHICH MAY INCLUDE UPDATES ON DCA'S ADMINISTRATIVE SERVICES, HUMAN RESOURCES, ENFORCEMENT, INFORMATION TECHNOLOGY, COMMUNICATIONS AND OUTREACH, AND LEGISLATIVE, REGULATORY, OR POLICY MATTERS**

Ms. Thong invited Kimberly Kirchmeyer, Director, DCA, to come to the podium.

Ms. Kirchmeyer presented a 25-year award to Kristy Underwood, Executive Officer, in appreciation for her years of service.

Ms. Kirchmeyer summarized her background and experience at DCA. She shared her priorities, as the newly-appointed director of the DCA:

- Improving client services and satisfaction
- Working smarter together to increase creativity and collaboration between boards and bureaus

- Using data and technology to better inform decision-making so action plans are developed to reduce licensing and enforcement timelines and provide measurable achievements
- Reducing the timeframe for processing regulations
- Obtaining Financial Information System for California (FI\$Cal) reports
- Decreasing timeframe to perform investigations
- Improving Americans with Disabilities Act (ADA) compliance
- Ensuring all legislation is implemented by boards and bureaus within the DCA

Ms. Kirchmeyer stated the DCA has created a Regulations Unit to directly assist in the processing of departmental rulemaking proposals. It has been fully staffed since November and all DCA programs have been assigned a Regulations Attorney, who will act as an assigned reviewer of proposed rulemaking packages.

Ms. Kirchmeyer stated a step the DCA will take to improve transparency and efficiency is moving to the Cherwell database, which will track submissions and progress so boards and bureaus will see and monitor the status of regulations. It will be a tracking tool along with an electronic submission.

Ms. Kirchmeyer stated the Budget Office and the Office of Information Services are in the testing phase of a project that will allow program access to budget expenditure reports.

Ms. Kirchmeyer thanked Ms. Underwood and her staff for the great work that they do.

#### **15. Agenda Item #15, SUGGESTIONS FOR FUTURE AGENDA ITEMS**

Mr. Weeks suggested a discussion on presenting certificates of longevity or other recognition to long-standing licensees.

Ms. Thong suggested a discussion on better processes for licensees who admit to the citation they receive but who are looking for financial remediation to help simplify the DRC process.

#### **16. Agenda Item #16, ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:54 a.m.