

**CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY**

ENFORCEMENT AND INSPECTIONS COMMITTEE MEETING

MINUTES OF SEPTEMBER 11, 2023

BOARD MEMBERS PRESENT

Danielle Munoz, Chair
Tonya Fairley
Kellie Funk
Steve Weeks

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Carrie Harris, Deputy Executive Officer
Sabina Knight, Board Legal Counsel
Allison Lee, Board Project Manager
Natalie Mitchell, Board Analyst

BOARD MEMBER ABSENT

Jacob Rostovsky

1. AGENDA ITEM #1, CALL TO ORDER/ROLL CALL/ESTABLISHMENT OF QUORUM

Danielle Munoz called the meeting to order at approximately 10:29 a.m. and confirmed the presence of a quorum.

2. AGENDA ITEM #2, DISCUSSION AND POSSIBLE APPROVAL OF THE MARCH 13, 2023, COMMITTEE MEETING MINUTES

Motion: Ms. Funk moved to approve the March 13, 2023, Committee Meeting Minutes. Ms. Fairley seconded.

No comments were received from the public.

Motion to approve March 13, 2023, Committee Meeting Minutes carried; 4 yes, 0 no, and 0 abstain, per roll call vote as follows:

The Committee Members voted "Yes": Danielle Munoz, Tonya Fairley, Kellie Funk, and Steve Weeks.

3. AGENDA ITEM #3, DISCUSSION AND POSSIBLE RECOMMENDATIONS REGARDING CRITERIA FOR CITING PRACTICE OF MEDICINE

Ms. Underwood pointed out the information provided to members in their packets. She explained that this started with the discussion on the increase of cryotherapy and body slimming that has been happening. Board members have started looking at what is being done to cite the practice of medicine. The Board has a statute that says, "This chapter confers no authority to practice or surgery" and has California Code of Regulations Section 991. This Code discusses invasive procedures and what those might include. The Code also states that a product, device, machine, or other technique or combination of such which results in removal, destruction, incision, or piercing of a client's skin. Invasive procedures include application of electricity which visibly contracts

the muscle. The Code also discusses application of topical lotions, creams, serums, or other substances which require a medical license to purchase. Penetration of the skin by any needles except for electrolysis needles, abrasion, exfoliation of the skin below the epidermal layers, and removal of the skin by any means of a razor edge tool. An update is being provided of what has been done and a meeting was held with other Boards within the Department of Consumer Affairs. The meeting consisted of officers from the Medical Board, the Osteopathic Medical Board, the California Board of Registered Nursing, the Dental Board of California, Physician's Assistant Board, the Department of Consumer Affairs Executive Office, as well as Department of Consumer Affairs Division of Investigation. During the meeting, all of the machines being found and cited were discussed. There will be a follow up meeting and the first meeting was a good opener to bridge gaps seen in salons and what should be under other entities. There will be another meeting where Boards will discuss specific machines and go into the modality performance and gather input.

No action is needed from the Committee at this time and more of an update will be provided at the next meeting. Kristy Underwood explained that the Disciplinary Review Committee (DRC) understands that body slimming is growing in the industry and is being targeted to licensees from manufacturers. DRC recognizes this and is trying to educate the agencies on a first offense and then will do a follow-up inspection. If the establishment is continuing to do that service, they will then be cited. As those cycle through, if a licensee does appeal, DRC will start to see those at a later time where the licensee has been educated by the inspector, cite and fine staff, and are still continuing this process. Notifications will be increased to licensees doing that to remind them the service is out of their scope.

Tonya Fairley asked if it was discussed how the Medical Boards will also get the information out that this is their responsibility and if you must have particular licensing. Ms. Underwood confirmed and shared that they have been working on joint statements. Kellie Funk asked if the Board is leading the charge with all of the other Boards and Ms. Underwood confirmed. Ms. Funk asked if the warning before the fine is new. Ms. Underwood confirmed. The fine is \$1000 and there have been people that have been very misled. Ms. Underwood shared that she was at the Face and Body Trade Show in Sacramento and it was being marketed to estheticians while she was there. People tend to believe that saying it is noninvasive means it is okay but there are lots of noninvasive things that are not allowed such as fibroblasts. Something being invasive is one piece of a violation and an item can still be noninvasive but not within the individual's scope of practice. Scope Cards were created to show what can be done by each of the license types

Steve Weeks stated that California Code of Regulations section 991(a) says "No licensees may use a product or device." It is seen in DRC a lot that some have attachments and Mr. Weeks asked if that means licensees should not use the machine at all. Ms. Underwood explained that the intent of the service needs to be discussed and if the intent goes above what is expected from a licensed esthetician. There are no enforcements restricting attachments on machines and the Board cannot make

licensees remove those items. Individuals often do not know that they are doing it illegally. Radio frequency is too high of a heat for licensees to use and a lot of the machines use “radiofrequency” as a marketing tool.

Ms. Fairley shared that she is glad to be looking at how licensees are being penalized for having this. There are often times when individuals genuinely did not know or understand. Ms. Fairley hopes that other Boards start sooner than later with getting information out to the general population. The Board does not have any authority over who is able to attend or sell in trade shows. Often times, trade shows are also open to medical spas and physicians. People come from out of state to attend. It is up to the licensee to do the due diligence of finding out.

No comments were received from the public.

4. AGENDA ITEM #4, REVIEW AND DISCUSSION OF NEW SCHOOL ENFORCEMENT WEBPAGE

Kristy Underwood explained that the first formal action of a school was taken in April, and it was realized that there was no location to notify people what was being done about schools. A link was created on the website to show what is being done in the event of future actions against schools. This action would only be formal discipline. For this action, members went all the way to the Attorney General’s Office and received a revocation of their approval. There are a few other cases being worked on regarding schools and it is great timing for other schools to witness the formal actions being taken. Ms. Underwood explained that the team hopes to have more formal actions made with the other issues being investigated.

New School Enforcement information can be found on a new tab on the website and will remain on the site forever. Ms. Munoz asked how it was known that the school had disciplinary action. Ms. Underwood explained that this was something known about the school for many years. A joint inspection was done with the Bureau of Private Postsecondary Education because of concerns about the school in the past. What was found was enough to revoke the license completely.

Ms. Munoz asked what the process includes to decide to look into the school. Ms. Underwood stated that a lot of complaints are received from students and other schools. The team must weed through the complaints that are truly a threat to the industry and proceed from there. Complaints will not be listed until formal action is taken.

Public Comment:

Fred Jones, Professional Beauty Federation, made two points. Mr. Jones’s first point was that it is unfortunate that the Bureau of Private Postsecondary Education doesn’t do their job even though the statutory scope of authority and the resources are available to investigate, prosecute, and go after these folks. Mr. Jones asked Ms. Underwood how many licensing fees she receives from the schools. Ms. Underwood stated zero. Mr. Jones stated that the Board staff is doing the work of BPPE without any funding attached to it. Mr. Jones stated that his second point is that it’s why they believe the

Board should have sole regulatory and licensing oversight of both types of schools. The schools that are considered bad are known but the resources are needed to do the necessary legwork to properly and legally put these people out of business.

5. AGENDA ITEM #5, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

No comments were received from the public.

6. AGENDA ITEM #6, SUGGESTIONS FOR FUTURE AGENDA ITEMS

No suggestions for future agenda items were made.

7. AGENDA ITEM #7, ADJOURNMENT

There being no further business to discuss, the meeting adjourned at approximately 10:48 a.m.