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KINGSLAND



DOUGLAS A. BERAN, Ph.D  
EXECUTIVE DIRECTOR  
[Douglas.beran@tsbbe.state.tx.us](mailto:Douglas.beran@tsbbe.state.tx.us)  
STATE BOARD OF BARBER EXAMINERS  
<http://www.tsbbe.state.tx.us>

STATE BOARD OF BARBER EXAMINERS  
5717 Balcones Dr., Suite 217  
Austin, Texas 78731  
(512) 458-0111 Fax (512) 458-4901

## MINUTES BOARD MEETING FEBRUARY 5, 2002

Chairman Williams called the meeting to order at 9:30 a.m. The following Board members were in attendance: Chairman Charles Williams, Vice-Chairman Wayne Moore, Janie Garza, Janis Wiggins, Taren Hollister. Board Member Kirk Kuykendall arrived during discussion of agenda item #2. The following staff members also were in attendance: Dr. Douglas A. Beran, Margie Weaver, and Mary Houston. Also in attendance were Joe Pitner, Office of the Attorney General, and Richard Bundy, Chairman, Texas Barber Colleges and Hairstyling Schools.

### **1. Read and possibly approve Board Minutes for December 3, 2001.**

Chairman Williams asked the Board members if there were any necessary changes or objections to the minutes as presented. There were none. Mr. Williams then stated the minutes are approved as printed.

### **2. Discuss the following questions from Richard Bundy, Chairman, Texas Barber Colleges and Hairstyling Schools. Why must a school have instructors for those students who are at home, work, or some location other than school? Since a school instructs students only on campus, why must a school have instructors present for those students who are off-campus?**

Chairman Williams introduced Mr. Bundy. But, prior to the discussion of the agenda item, Mr. Williams gave a few introductory remarks.

Chairman Williams stated the Board welcomes individuals in the industry to participate in the Board's discussions and to offer suggestions. That's what the Board is about. The Board's mission is to always accommodate individuals affected by the Board's decisions. Chairman Williams pointed out that one of the first things the current Board did when it was appointed was to visit different towns to get input from people in the barbering industry because the Board felt it could best make decisions with the input of those people who would be affected by the laws the Board would be making. The Board has been making decisions based on that information and information that has been received.

Chairman Williams congratulated the Board for being open minded and not having any hidden agendas.

Chairman Williams then asked Dr. Beran to introduce the agenda item. Dr. Beran briefed the Board on the documents submitted by Mr. Bundy and recited the two questions posed in Mr. Bundy's materials. Mr. Bundy's question essentially is does a school need an instructor for 20 students in attendance or in enrollment?

Mr. Bundy distributed a handout (**The Interpretation and Resolution of Texas Occupational Code: §1601.560. Qualified Instructor**) and presented his arguments that there should be one qualified instructor for 20 students on premises. He concluded his comments by asking the Board to modify the law as quickly as possible to add the two words to the law that states "for every 20 students on premises" rather than "enrolled" for each qualified instructor.

Mr. Kuykendall discussed 1601.560 and pointed out the critical language is "... shall have at least one qualified instructor, holding a Class A certificate, for every 20 students for instruction in practical work." The interpretation that is creating the problem requires an instructor for every 20 students on roll. The statute does not say on roll nor does it say on premises. He pointed out the words, "for instruction," that mean the student cannot receive instruction if he is not there. Mr. Kuykendall's position is that the Board can apply and instruct the inspectors on its view of the statute; that the interpretation of the statute has to come from a source and that source has to be the Board.

Mr. Moore asked if the true intention of the Board is to interpret the statute to mean 20 students in attendance, then can it not instruct the Executive Director to instruct staff and the inspectors of the Board's interpretation?

Mr. Kuykendall expressed his concern about a misinterpretation of the law but noted the statute gives the Board some latitude.

Dr. Beran's recommendation was that the Board put its interpretation into policy that says this is what the inspectors should look for. Dr. Beran suggested a policy that states if 20 students are there, then one instructor is needed. If there are 21 students, then two instructors are needed.

Mr. Pitner stated the Board has the authority to have an enforcement policy based on the interpretation that this is a ratio that controls class size.

Chairman Williams recommended that the Board still go to the Legislature but asked what can the Board do in the meantime to get relief. Mr. Pitner recommended a later agenda item "to discuss and take possible action on implementing an enforcement policy based upon an interpretation of 1601.560, that it means a qualified instructor for every 20 students for instruction in class or in attendance."

Mr. Williams stated that will be placed on the agenda for the next Board meeting but still wants to push for Legislative change.

Mr. Kuykendall pointed out that Subchapter L Sections 1601.551 - 566 have a theme with regard to attendance. Attendance seems to be the most important factor as opposed to enrollment; to tie attendance on premises to the need for instructor presence seems to be consistent with this Chapter.

**3. Review and discuss rule 51.83 Licensing of Felons vis-à-vis the proposed and published amendments to rule 51.5 Good Standing Required for License Renewal.**

Chairman Williams introduced the agenda item. Dr. Beran noted that this rule was brought forward as an outcome of the discussions about the amendments to rule 51.5 Good Standing Required for License Renewal that were approved for publication at the December Board meeting. Mr. Moore gave additional background of the discussions of rule 51.83.

Mr. Pitner noted Chapter 55 of the Texas Occupations Code is directed generally to all licensing boards and sets up the criteria for either revoking a license or denying a license to individuals convicted of a felony or misdemeanor. The criteria in rule 51.83 are taken almost literally -- with paraphrasing for Barbering -- from Chapter 55 of the Texas Occupations Code.

Mr. Kuykendall noted that the incorporation of the Occupations Code into 51.83 provides adequate assurance that the Board will first determine the nature of the crime and fitness of the person to be licensed to practice. He stated there are adequate safeguards in place to protect the Board's constituents and consumers.

Mr. Williams called for a five-minute recess after the conclusion of discussion of item #3.

**4. Pursuant to SB187 and SB645 (77<sup>th</sup> Texas Legislature, Regular Session), discuss for possible approval for publication and public comment proposed rule 51.98 State-Mandated Fee for Occupational Licensing Transactions Using the Internet (\$6.00).**

Mr. Williams reconvened the Board at 11:10 a.m. and introduced the agenda item. Dr. Beran then gave an orientation to the proposed rule and the history of SB645 and SB187. Dr. Beran asked the Board for the authority to work with Mr. Pitner to develop language for publication in the Texas Register.

Mr. Kuykendall made the motion and seconded by Mr. Moore to allow Dr. Beran and Mr. Pitner to construct the wording for this particular agenda item that addresses the \$6 use of the internet that will be attached to the barber's license.

## **5. Discuss for possible action Proposals for Decisions from the State Office of Administrative Hearings (SOAH).**

Chairman Williams introduced the item and introduced Mr. Pitner. Mr. Pitner gave a history of the 20 cases and why they were on the agenda. Since SOAH had not received a final board order adopting the proposals for decisions and adopting the recommended fines in all of these cases, the cases would be dismissed. Because of changes in Board personnel, the final board order of the default cases was never signed by board members. Mr. Pitner suggested the best way to handle the cases was to put them back on agenda. SOAH was notified of the proposed action and agreed not to dismiss the cases. These cases were heard by SOAH in March 2001.

Mr. Kuykendall made the motion to adopt the recommendations of the administrative law judge as reflected in agenda item #5 pertaining to the individual licensees listed 1 - 20. The motion was seconded by Ms. Wiggins. The motion passed unanimously.

## **6. Briefing on the agency's appearance before the Regulatory Subcommittee of the House Appropriations Committee (January 29, 2002).**

Chairman Williams introduced the agenda item. Dr. Beran notified the Board that he had expressed the Board's concerns about the online license fee to the staff person of the Subcommittee. He also told the Board the online authority wants to begin receiving the money sometime this summer. Mr. Kuykendall questioned if the fee will go into the Board's budget. Dr. Beran noted the fee is an additional fee that will go directly into the General Revenue. Mr. Kuykendall asked how the fee will be collected. Dr. Beran said it will be added to the renewal fee and will be deposited into the General Revenue fund. Dr. Beran clarified that the fee is a subscription fee and the Board is required to subscribe to the online authority and the Board's fee is \$6.00 per licensee whether licensees renew over the internet or not. Dr. Beran estimated approximately \$104,000 over the biennium will be contributed to the General Revenue. Dr. Beran noted the online licensing is required by SB165 and SB645. Mr. Moore asked if this fee is an additional \$6.00 regardless of whether or not licensees renew over the internet. Chairman Williams, Mr. Kuykendall, and Dr. Beran responded that was correct.

Dr. Beran noted the members of the Committee walked through the facility. The Committee members were notified the modifications to the examination rooms would cost \$24,000. Dr. Beran suggested to the Committee a source of money (the bond debt relief through indirect costs) to pay for these modifications but the representative from the Legislative Budget Board said the money was unavailable. Dr. Beran said he would mention these funds once again in the letter to Representative Pitts stating the colocation is complete.

Chairman Williams said he told the Committee that the Board had inadequate space. He also pointed out the Board was practically nonexistent when people drove to the building. Chairman Williams wants the letter to reflect these points: equal space and equal time as

it relates to the Board's identification. Display the Board members' pictures. The exam site is crucial and critical to the Board being able to continue its job with regard to educating students; that is not complete and doesn't look like it will be complete with regard to the Board's wishes (10 bowls, 10 additional mirrors and electrical outlets).

Dr. Beran then discussed the various documents that were delivered to members of the Subcommittee prior to the hearing and the information he gave verbally to the Subcommittee. He noted Rep. Pitts asked about the bond-debt relief and that was when Dr. Beran explained how that could be a source of funds to remodel the exam room. Rep. Pitts asked for a letter that the colocation is complete and that the Cosmetology Commission and the Barber Board shall visit the Structural Pest Control Board to see how that agency reduced its travel costs.

#### **7. Review and discuss agency's financial budget for 09/01/2001 - 12/31/01.**

Chairman Williams introduced the item and deferred to Dr. Beran. Mr. Moore asked about travel expenditures and wondered if the Board is on track for travel expenditures because that seems to be a concern of the accounting office toward the end of the fiscal year. Dr. Beran referred Board members to the package sent to the Regulatory Subcommittee that shows the current and prior years' travel expenditures for the first quarter. Given the first quarter of the current and prior year, travel expenditures may be a concern at the end of the current fiscal year. However, Dr. Beran said he is comfortable with the travel expenditures as they are now.

The travel reductions shown in the past five years was attributed to the new restraints put on travel by the inspectors and by the Board and by having the exams only in Austin. Dr. Beran suggested the restraints should stay in place and Chairman Williams agreed. Chairman Williams noted the Board opted not to go to out-of-town meetings such as the National Barber Board. However, perhaps one representative selected by the Board should go to a national meeting as a source of information. Chairman Williams noted the Board had done a magnificent job in curtailing expenses and that the previous Executive Director, Mr. Will Brown, really pulled in the reins on travel and Chairman Williams hopes and trusts Dr. Beran will continue the same thing.

#### **8. Review and discuss agency's administrative fine report for 09/01/2001 - 11/30/01.**

Mr. Kuykendall pointed to one licensee who had previous violations for the same violations. Mr. Pitner and Mr. Kuykendall discussed filing misdemeanor criminal cases against these habitual violators. Mr. Pitner suggested an inspector should file a criminal complaint against an individual who has a second or third violation. Mr. Kuykendall also discussed revoking a license for barbering or for a school at the time of renewal. Mr. Pitner responded that these individuals will continue what they're doing without a license. Mr. Kuykendall asked what are the Board's abilities for enjoining that activity. Mr. Pitner responded the Attorney General would consider the cost-benefit of Mr. Pitner filing a lawsuit in district court in a county against a barber for violation of the law. It

probably would cost the Attorney General approximately \$5,000 - \$6,000 for travel and time.

Mr. Kuykendall suggested a more aggressive action might bring about a recovery of \$20,000 per year, would be cost effective, and would be what is right. Mr. Kuykendall encouraged the board to continue an aggressive enforcement effort. Chairman Williams agreed that the Board should continue to be aggressive and bring in the individuals who defy the law.

Mr. Pitner suggested that Mr. Kuykendall's course of action would be to write a letter to the Attorney General requesting representation for a lawsuit to enjoin an individual who continues to violate the law and will not pay his administrative fines.

Dr. Beran suggested that perhaps the Department of Public Safety would be amendable to denying a driver's license if an individual is, for example, in default in his fines to the Barber Board. Joe Pitner explained the requesting agency must pay a \$35 fee for every name put into the Department of Public Safety's data base. Dr. Beran's concept was that a person may be denied his driver's license if he is in arrears in paying his fines to the Barber Board. Mr. Kuykendall suggested that should be put into the Board's legislative package. Mr. Pitner suggested an omnibus bill would be required for all licensing agencies to raise the social consciousness to an appropriate level for the legislature.

**9. Review and discuss the updated Texas Occupations Code, Chapter 1601. Barbers [77th Texas Legislature, Regular Session, (SB309, SB660, HB2812)]; consider possible changes for the 78th Texas Legislature.**

Dr. Beran introduced the agenda item by noting that he had pulled down the Occupations Code from the State Government website. The Occupations Code that he had downloaded was current through the 76th Texas Legislature. He then updated that Code to reflect changes made by the 77th Texas Legislature through SB309, SB660, HB2812. Joe Pitner then did a legal review. Strike throughs show deletions and underlines show additions. The Occupations Code shown is up to this moment in time.

Proposed changes for the 78th legislature are shown in handwriting in the margins and have been accumulated from Board members and staff. The fees have been elevated to a maximum in anticipation of increased operating costs in the next biennium (stamps, contract with NorthrupGrumman, travel, hotels, motels, gas). A maximum fee in law would allow the Board to raise fees by rule. These maximums would not go into effect until the Legislature changes the law effective a year from September.

The Board then discussed the statutory requirement of the physician certificate and online renewal. After discussion, Mr. Hollister stated the Board's position that the Board needs a process to get the statement if someone renews over the internet, either a fax with original to follow or by mail.

Discussion turned to 1601.303. The Board agreed to make no change to 1601.303. Mr. Moore suggested the applicant's age for a manicurist should be 18 rather than 16 in 1601.257. The Board agreed to the change. The Board agreed that 1601.353 did not need to be changed to 25 chairs because the language presently states "at least 20 classroom chairs" which allows a school to have 25 - 30 - 40 chairs. The Board then discussed 1601.560 and the Board agreed to the change (25) with the addition of "on premises" as recommended by Mr. Bundy. The Board discussed 1601.506 and agreed with Dr. Beran's recommendation to delete the details under 1601.506 but add language that the Board shall write sanitation rules pursuant to 1601.152.

**10. Discuss for possible action Students' Exam Kits for March Examinations at Frank Joseph State Office Building.**

Before introducing the item, Chairman Williams commended Dr. Beran on a job well done since he took over the reins from Mr. Brown.

Chairman Williams stated that eventually the exams will be moved to the new building either in March or in April. Mr. Moore asked if there is electricity for the existing shampoo bowls? If the examinations are split into the two exam rooms, board members will be split with two inspectors in each exam room.

Board members stated the final move letter to Rep. Pitts should show two options: stay where the exams are now with proper facilities or update these facilities to make them suitable for a barber exam. Chairman Williams said that if the Board tries to make do with what it has now, students will have to bring kits and assume the materials are sterilized.

Mr. Williams agreed with Mr. Moore that students should not have to purchase a specialized, enclosed, sterile kit of any kind that the Board would have to OK and approve. Mr. Williams suggested a zip lock bag with combs and brushes that are clean and bring towels. The Board may have to do away with a wet sanitizer.

Chairman Williams adjourned the meeting at 1:13p.m.