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KINGSLAND



DOUGLAS A. BERAN, Ph.D
EXECUTIVE DIRECTOR
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 April 8, 2002

Chairman Williams called the meeting to order at 9:00 a.m. The following Board members were in attendance: Chairman Charles Williams, Vice-Chairman Wayne Moore, Janie Garza, and Janis Wiggins. Board Member Kirk Kuykendall arrived during discussion of agenda item #12. Mr. Taren Hollister was absent. Also in attendance were Dr. Douglas A. Beran, Executive Director, Mary Feys, Administrative Technician, and Joe Pitner, Office of the Attorney General. Joe Shirley attended the meeting as a member of the audience and was acknowledged and welcomed to the meeting by Chairman Williams.

1. Read and possibly approve Board Minutes of February 5, 2002.

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

The minutes were accepted unanimously.

2. Discuss for possible action Proposals for Decisions from the State Office of Administrative Hearings

Mr. Williams asked Dr. Beran to brief the board on the item. Mrs. Wiggins made the motion to accept the proposals for decision. Mr. Moore seconded the motion. The motion carried unanimously.

3. Discuss for possible action regarding the adoption of proposed rule 51.7 Cost of Administrative Hearings to grant the State Board of Barber Examiners the authority to assess an additional penalty (not to exceed \$200) for administrative hearings.

Mr. Williams introduced the item. Mr. Moore made the motion to adopt the proposed rule. Mrs. Wiggins seconded the motion. The motion carried unanimously.

Mr. Moore asked for clarification of why 51.5 Good Standing doesn't cover this default rule. Mr. Kuykendall explained that the rule points out the results of not showing up at a SOAH Hearing. It provides due process of notice to a licensee who is in the administrative review process - that notice is given.

4. Discuss for possible action regarding adoption of an amendment to rule 51.30(3)(L) to delete “manicuring, 1 hour.”

Mr. Williams introduced the item and asked Mr. Moore to explain the rule and the history of the rule. Mr. Moore made the motion to adopt the proposed amendment. Mrs. Wiggins seconded the motion. The motion carried unanimously.

5. Discuss for possible action regarding adoption of an amendment to rule 51.31 Manicurist Course to implement a new manicurist license training course consisting of 600 rather than 300 hours of instruction for not less than 16 weeks rather than eight weeks; if adopted, this rule would comply with the requirements enacted by the 77th Texas Legislature.

Mr. Williams introduced the item and deferred to Mr. Moore. Mr. Moore noted the rule is law now and made the motion to adopt the amendment. Mrs. Wiggins seconded the motion. The motion carried unanimously.

6. Discuss for possible action the repeal of rule 51.32 Wig Specialist Course and rule 51.33 Wig Instructor Course.

Mr. Williams introduced the item and asked Mr. Moore to explain the rule. Mr. Moore stated this rule reflects the change in the law made by the 77th Texas Legislature. Mr. Moore made the motion to adopt the repeal and Mrs. Wiggins seconded. The motion passed unanimously.

7. Discuss for possible action regarding the adoption of a new rule 51.77 Barber Shop Permit which would require the following: (1) that an applicant for a barber shop permit has been licensed for 12 months; (2) that the applicant’s shop has met the Barber Board’s minimum health standards for barber shops; (3) that the applicant has complied with all other rules of the Board.

Mr. Williams introduced the item and asked Mr. Moore to explain the rule. Mr. Moore noted the rule already is in law passed by the 77th Texas Legislature and made the motion that the rule be adopted. Mrs. Wiggins seconded the motion and the motion passed unanimously.

8. Discuss for possible action regarding the adoption of an amendment to rule 51.5 Good Standing Required for License Renewal such that no license or permit may be issued or renewed unless the licensee is in good standing with the Barber Board.

Mr. Williams introduced the item. Mr. Moore explained the proposed amendment and made the motion to adopt the amendment. Mrs. Wiggins seconded. The motion carried unanimously.

9. Discuss for possible action regarding the adoption of an amendment to rule 51.141 (5) Out of Scope. (A) The use of any blade, drill or cutting tool (power or manual) designed for the purpose of removing corns and calluses or violating the nail bed in any manner is prohibited.

Mr. Williams introduced the proposed amendment. Mr. Moore made the motion to adopt the proposed amendment and Mrs. Wiggins seconded. Dr. Beran commented that in discussions with inspectors, there was some question about the precision with which inspectors could enforce the rule. Based upon these discussions, staff came up with alternative language for the Board to consider.

Margie Weaver explained the alternative language and the rationale for the alternative language: to separate the use of the credo blade from the use of the power drill nail files because the credo blade removes tissue from the body which is a medical practice which the Board does not want anyone doing ever; and if manicurists could present certified proof of training on the electric drill to the inspector and to the client, then they would be allowed to use the drill; without proof of certification, then the manicurists would not be able to use the drill.

Dr. Beran explained that staff, from time to time, would bring a list of trainers to the Board for approval.

Mr. Moore questioned if the Executive Director could notify inspectors, through an enforcement policy, to provide a date on which inspectors would enforce the rule. Joe Pitner stated the Executive Director could do so.

Dr. Beran explained the alternative language would have to be published in the Texas Register and adopted in June.

The Board chose not to adopt the rule as published in the Texas Register and, instead, proposed alternative language. Mr. Moore made the motion to use the language recommended by staff and publish for future adoption. Mrs. Wiggins seconded the motion. The motion carried unanimously.

10. Discuss for possible action regarding the adoption of proposed rule 51.98 State-Mandated Fee for Occupational Licensing Transactions Using the Internet.

Mr. Williams introduced the item.

Dr. Beran introduced an insert that will go with each renewal notifying licensees of the fee. Joe Pitner recommended language that the fee is mandated whether or not the licensee renews on the internet. The Board agreed the language should be added.

Mrs. Wiggins made the motion that the rule be adopted. Mrs. Garza seconded the motion. The motion carried unanimously.

11. Consider language for a proposed rule under the Texas Occupations Code 1601.504 Necessary Equipment.

Mr. Williams introduced the item and, along with Mr. Moore, explained the history that precipitated the proposed rule.

Mrs. Wiggins noted the current sanitation rules include language about equipment.

As suggested by Mr. Moore, the Board agreed to consider agenda item 12 prior to considering agenda item 11 because equipment would be covered in the sanitation rules.

Mr. Williams determined the Board would consider agenda items 11 and 12 simultaneously.

12. Consider language for a proposed rule under the Texas Occupations Code 1601.152 Sanitation Rules.

Mr. Williams asked Mr. Shirley for his comments. Mr. Shirley referred to his letter of April 7 that was distributed to the Board. He noted the Texas Department of Health has not updated the sanitation rules since 1978. He recommended a task force for the following tasks: to look into the possible diseases that can be conducted in a barbershop environment; the ways they can be conducted; the best methods to prevent those diseases from being spread from the barber to the customer and from the customer to customer; educate barbers so they know the problems and the ways to address the problems with the least amount of disruption to the shop environment; go out and make sure people are doing what they are supposed to do; begin working with the schools first. Mr. Shirley said he is willing to assist the Board

Mr. Moore asked what Mr. Shirley would recommend for properly training the barbers. Mr. Shirley suggested the Board should first find out what needs to be done. He recommended a newsletter to improve communication between the barbers and the Board. He said the web site is available; however, many barbers do not have access to the web site.

Mr. Moore agreed a newsletter would be helpful but the Board does not have the money. He suggested a trade association would be appropriate.

Mr. Williams suggested the Board should go ahead and take action on the proposed rules with the understanding that Mr. Shirley and anyone in the barber profession can write recommendations to the Board that the Board can consider and make amendments.

Joe Pitner observed the Department of Health's rules cover good, basic, common-sense sanitation rules and the Board should consider retaining with moderate updating. He agreed with Mr. Shirley that there are new diseases not addressed by the sanitation rules and perhaps look at other states on internet web sites. Mr. Williams suggested Mr. Shirley may want to do such research and bring recommendations back to the Board.

Mr. Williams noted Mr. Shirley was perfectly welcome to come up with any written recommendations to present to the Board at any time for the Board to consider.

Mr. Moore noted Mr. Shirley had mentioned HIV in his letter and asked Mr. Pitner to explain how HIV is a federally protected disease. Mr. Pitner noted discrimination against HIV is prohibited. State and federal government prohibit any action that discriminates, quarantines, shuns, isolates a person from the general community.

Still, the Board can take steps to make sure sanitation rules are in place to stop the spread of blood borne diseases such as HIV and Hepatitis C without breaching federal confidentiality rules.

Mr. Shirley suggested the Board look at sterilizing razors and equipment that has blood on it and training to help barbers determine how to handle a nick on the finger or how to handle blood on something. He noted some outdated requirements such as state law still require boiling equipment for a minute. He suggested an official policy of the board that could be included in renewal notices and given to schools and inspectors, the web site. Mr. Moore noted sanitation already is part of schools' curricula.

Mr. Williams noted a task force is not needed but that Mr. Shirley and any individuals could submit proposed changes in writing that the Board can consider regarding sanitation rules.

Mr. Williams asked Mr. Shirley what his thoughts are regarding equipment in a barbershop.

Mr. Williams suggested the Board needed language regarding equipment.

Dr. Beran asked if the Board would be comfortable to ask Mr. Shirley to submit sanitation language with equipment language. Dr. Beran asked Mr. Shirley if he would submit such language to the Board.

Mr. Moore recommended the Board adopt sanitation rules today and amend later. He suggested the Board consider sanitation rules now and see if an equipment rule is needed or it can be fitted in.

Mr. Moore then read through every current sanitation rule and the Board updated and amended to propose as the new sanitation rules.

With regard to the additional rules on the card that is to be posted in barber shops and schools and colleges, the Board agreed the Executive Director would post the current rules on the card in lieu of Rule No. 1 - Rule No. 7 that now appear on the card.

The Board agreed with Mr. Moore's suggestion that there should be a separate rule for equipment rather than combining equipment rule with the sanitation rules.

Dr. Beran asked the Board if there would be any additional costs to barber shops and schools that would have to comply with these sanitation rules. The board agreed the costs would be negligible

Mr. Moore made the motion the Board publish the rules as proposed and seconded by Mr. Kuykendall. The motion carried unanimously.

The Board returned to agenda item 11 equipment.

Mr. Kuykendall recommended agenda item 11 be deferred to the next Board meeting. The board agreed unanimously. Mr. Williams requested Mr. Moore to come up with a list of items for an equipment rule to be presented at the next board meeting.

13. Consider language for an amendment to rule 51.92 to require that the Barber Board's laws and rules shall be displayed in a barbershop.

Dr. Beran noted the Cosmetology Commission has such a rule and it generates significant cash flow for the Commission. After discussion, Mr. Williams stated that this rule should not be proposed and the Board agreed.

14. Consider language for an amendment to rule 51.97 to require that the Barber Board's laws and rules shall be displayed at the Booth Renter's workstation.

Dr. Beran noted the Cosmetology Commission has such a rule and it generates significant cash flow for the Commission. After discussion, the Board agreed the rule should not be proposed.

15. Consider language for an amendment to rule 51.121 Barber Inspector such that an applicant for the position of barber inspector must be a licensed barber and must have practiced barbering for at least three (rather than five) years immediately prior to applying for the position.

Mr. Williams noted that this proposed rule is his suggestion. Mr. Kuykendall made the motion that the amendment be approved and Mrs. Wiggins seconded. The Board approved the motion unanimously.

16. Consider language for a proposed rule that would permit the Executive Director to sign a Board Order once a Proposal for Decision has been ratified by the Board.

Mr. Williams asked Mr. Pitner to comment on the proposed rule. Mr. Pitner noted this is a common provision with other state agencies. With the understanding that the Executive Director will note the date the Board ratified the Proposal for Decision, Mr. Kuykendall made the motion that the proposal be approved. Mr. Moore seconded the motion and the Board approved the motion unanimously.

17. Discuss for possible approval an enforcement policy based upon an interpretation of Texas Occupations Code 1601.560 such that 1601.560 is interpreted to mean a qualified instructor for every 20 students for instruction in class or in attendance.

Mr. Williams and Joe Pitner gave a history of the prior discussions by the Board of this policy. Mr. Moore made the motion that the policy be adopted with the second by Mr. Kuykendall. The motion carried unanimously.

Dr. Beran asked for instructions from the Board to send a letter to the schools informing them of this policy.

18. Discuss for possible approval a policy that the Board will consider an anonymous complaint as valid. As part of this policy, if a complaint is signed, any request for the identity of the person who signed the complaint shall be forwarded to the Board's representative from the Office of Attorney General who will determine what information shall be released.

Mr. Williams deferred to Joe Pitner who explained the history of the policy. Mr. Kuykendall made the motion that the policy be approved with a second from Mr. Moore. The motion carried unanimously.

19. Discuss for possible approval a new employee performance evaluation form and directions proposed by the Executive Director. The Texas Commission on Human Rights has stated the proposed form and its instructions comply with the Texas Commission on Human Rights Act.

Mr. Williams introduced the item and deferred to Dr. Beran. Mr. Kuykendall suggested the new evaluation form should have some notation that it has been approved by the Texas Commission on Human Rights with the date of approval and that each modification should be shown to the Commission for legitimacy. Mr. Kuykendall suggested this formal document could be used for the Executive Director's annual review.

20. Discuss a change to the barber examination such that an examinee will be permitted to leave a moustache and goatee in the shave procedure.

Mr. Williams gave a history of this change to the shave procedure. Dr. Beran asked if the change of the written exam from two hours to one hour could also be included in the letter to the schools notifying them of this change in the shave procedure. Mr. Williams and Mr. Moore gave a history of the time change in the written exam. The Board agreed to the changes that will be effective with the May examinations.

21. Review and discuss the following proposed changes to the Texas Occupations Code, Chapter 1601. Barbers for the 78th Texas Legislature:

a. raise the age from 16 to 18 to be eligible for a manicurist license (1601.253)

The Board proposed that the minimum age to be eligible for a manicurist license should be 17.

b. raise the maximums for various fees and other fee changes

The Board approved the proposed fee increases and other fee changes.

c. provide that the board may adopt reasonable rules on cleanliness rather than maintain detailed cleanliness requirements in the Code (1601.506)

Mr. Kuykendall proposed a change to 1601.506 Cleanliness to read, "The board shall adopt reasonable rules on cleanliness for the operation of barber shops and specialty shops including but not limited to --" so that the items in 1601.506 would be retained and, according to Mr. Moore, would be in addition to requirements such as in the health and sanitation rules.

Mr. Shirley commented that some of the items still should be taken out, such as "immersing in carbolic acid" and "immersing in boiling water."

The Board agreed this item should be brought back at the next meeting. Mr. Kuykendall asked Mr. Shirley to identify those items he feels should be deleted. Mr. Shirley agreed and said he would return his list to Dr. Beran for the Board's review at the June meeting.

The Board agreed this item and the item on equipment (agenda item #11) should be brought back at the June meeting

d. provide that a qualified instructor shall be present for 25 (rather than 20) students on premises (1601.560).

After discussion and after considering the concerns expressed by Mr. Shirley, the Board accepted Mrs. Wiggins' recommendation that the number should be 30.

e. provide that, upon withdrawal from a school, a student may not obtain an official transcript of hours taken and practical applications performed at the school until the student has paid the school for tuition, fees, books, and/or tools (1601.565)

Mr. Kuykendall proposed an amendment to the language in "21e" to add "subject to the school owner's written waiver" to give the school owner the discretion to waive the requirement.

f. provide that a student's hours at one school may not be transferred to another school until the student has paid the prior school for tuition, fees, books, and/or tools (1601.565)

Mr. Kuykendall proposed an amendment to the language in "21f" to add "subject to the school owner's written waiver" to give the school owner the discretion to waive the requirement.

g. provide that a student may not be allowed to take the state examination until the student has paid the school for tuition, fees, books, and/or tools (1601.261)

Mr. Kuykendall proposed an amendment to include "or payment arrangements have been made with the school."

Given Dr. Beran's recollection of his conversation with Mr. Pitner that this language may be unconstitutional because it violates due process, the Board agreed to bring this item back at the June board meeting.

However, Mr. Kuykendall recommended there's no constitutional problem if language is added that says, "if a written payment arrangement has been made with the school, a student may sit for the examination. In the absence of a written arrangement, he may not sit for the exam."

h. provide that a student or student teacher that fails the state exam three times must take a 300-hour remediation course from a licensed Texas school and that the school shall send certification to the Board that the student or student teacher has successfully completed the course (1601.257; 1601.263)

Mr. Moore recommended this item should be deleted because the Board hardly sees anyone who fails the exam three times.

Mr. Kuykendall recommended there should be a time frame for the three failures. (fail the exam three times within so many years or so many cycles). He pointed out the assumption behind the proposed language is a student takes the exam three times back to back.

Mrs. Wiggins recommended 5 failures.

Mr. Moore questioned who will pay for the 300-hour course.

Mr. Kuykendall questioned what the hours should be in. What is the specificity? He also asked if the remediation would be tailored for each student.

The Board agreed to bring this item back at the June meeting.

i. provide that a person who fails to attend the hearing before the Executive Director shall pay the administrative fine by default and the Board, upon approving the default fine, may bar the license renewal (1601.705).

The Board accepted the language as proposed.

j. provide that the shop owner's name must appear on a barber shop permit if a barber is not the shop owner (1601.303)

Margie Weaver explained that by having the barber's name and the shop owner's name on the permit then both are responsible for compliance with the barber laws and regulations. The intent is to make a standard policy such that if the barber is not the actual owner, then the shop owner's name will be on the permit.

After discussion with Mr. Shirley, the Board accepted the proposed language.

k. delete the provision that an individual may apply for a barber technician's license (1601.256; 1601.261; 1601.354)

The Board agreed to drop this item.

l. delete the provision that a student may apply for an early written examination (1601.262).

The Board agreed to not accept this proposal.

m. amend eligibility requirements for a teacher's certificate from five years' experience as a practicing barber to three years (1601.254)

The Board accepted this proposal.

n. delete health certificate requirement (1601.264) as requested by Willis Robert Lowmiller, licensed Texas barber (Mr. Lowmiller's letter is included in the Board's materials).

Mr. Shirley stated his doctor really cannot tell whether a person has an infectious or contagious disease. He pointed out Mr. Lowmiller stated (although Mr. Shirley cannot certify Mr. Lowemiller's statement) that neither doctors nor nurses have to have a health certificate. Margie Weaver noted only barbers and cosmetologists must have a health certificate. Food handlers are not required to have a health certificate. Mr. Williams pointed out health cards are not required.

Mr. Kuykendall noted doctors and nurses take an oath and are regulated differently. They work in an environment that cannot be compared to barbers. He questioned why the Board needs the certificate and stated the certificate is related to the Board's primary mission to protect the public's health, safety, and welfare. The certificate is needed until another mechanism is in place that accomplishes the same objective. It can be deleted but something must be in its place to accomplish the same objective.

Mr. Williams pointed out the origin of the health certificate was the concern for tuberculosis. Margie Weaver suggested a tuberculosis test because tuberculosis is particularly dangerous since it is an airborne virus. It can be caught by breathing the same air as someone. Perhaps require barbers to go to the health department to show proof of tuberculosis test.

Mr. Williams and Mr. Moore suggested the Board retain the health certificate requirement. There was no opposition.

22. Review and discuss agency's financial budget for 09/01/2001 - 02/28/2002.

Mr. Williams introduced Deborah Almasov to present the item. Mr. Kuykendall excused himself from the meeting.

The Board discussed several budget items (materials and supplies, travel, moving costs, modular furniture, the State Office of Risk Management). With regard to travel, Mrs. Almasov explained travel costs had gone up from the prior fiscal year because, for one reason, of the difference in the location of the new Board member who flies to Board meetings from a previous Board member who drove a car to Board meetings. Also, increases in the state allowance for gas from \$0.28 to \$0.32 times the 142,000 inspectors travel accounts for \$6,000 of the increase. If the Board had gone to the \$0.35 cents, travel costs would have risen to \$10,000. Mrs. Almasov also explained the Board has to pay an annual cost to the State Office of Risk Management that is the average of the last 4 years (\$9,406).

Mr. Williams accepted the budget report and there were no objections from the Board.

23. Review and discuss agency's administrative fine report for 09/01/2001 - 02/28/2002.

The Executive Director introduced Margie Weaver to explain the administrative fine report.

There were no questions.

24. Concluding Comments.

Mr. Williams and the Board agreed to the Executive Director's request that the next Board meeting be held in June rather than May.

Mr. Williams concluded the meeting by thanking Joe Shirley for attending the meeting and sharing his thoughts and encouraged him to provide a list of recommendations to submit to the Executive Director. Mr. Williams welcomed Mary Feys to the Board and commended her on being "up to speed" in a short period of time. The Executive Director also thanked Joe Shirley for helping the TSBBE maintain its web page.

Chairman Williams adjourned the meeting at 2:10 p.m.