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MINUTES BOARD MEETING June 4, 2002 (Minutes are in italics.)

Chairman Williams called the meeting to order at 9:00 a.m. Board members in attendance were Vice-Chairman Wayne Moore, Janie Garza, and Taren Hollister. Mr. Kuykendall and Janis Wiggins were absent. Also in attendance were Dr. Douglas A. Beran, Executive Director, Mary Feys, Administrative Technician, and Cue Boykin, Office of the Attorney General. The following individuals represented the Texas Association of Tonsorial Artists: Cornell Hill (Austin); Brandy Jones (Austin); Booker Spencer (Houston); Linda Connor, Executive Board (Austin); Nelda Galloway (Austin); Ray Dell Galloway (Austin). Also in attendance representing himself was Joe Shirley (Coppell).

Mr. Williams recognized Mr. Galloway for his 54 years of service to the barber profession and noted a certificate of appreciation would be forthcoming from the Board to Mr. Galloway. Mr. Williams expressed his appreciation to those in the audience for attending. He restated his position and the position of the Board to listen to the individuals the Board represents and he and the Board welcome their input.

1. Read and possibly approve Board Minutes of April 8, 2002.

Chairman Williams asked the Board members if there were any necessary corrections or objections to the minutes as printed. There were none. The minutes were accepted unanimously.

2. Recognize the following four individuals for their service to the barber profession and community:

Eugene Leonhardt for more than 63 years
Geraldine Cross-Gilbert for more than 60 years (San Antonio)
Clarence Beck for more than 52 years (Round Rock)
Sam Johnson for more than 50 years (Corpus Christi)

Mr. Williams recognized the four individuals and Board members signed the certificates of appreciation that will be mailed to them.

Mr. Williams then took up agenda item 10. d. so that members of the audience could present their testimony.

3. Discuss for possible action Proposals for Decision from the State Office of Administrative Hearings (May 10, 2001).

Mr. Williams introduced the item and deferred to Dr. Beran. Mr. Hollister made the motion that the Board adopt the proposals for decision. Mr. Moore seconded the motion and the motion carried unanimously.

4. Discuss for possible ratification the Agreed Orders in the Matter of Assessment of an Administrative Penalty Against Certain Licensees in Cases Brought for Informal Hearings before the Executive Director on May 20, 2002.

Mr. Williams introduced the item and Dr. Beran explained the item. Mr. Moore made the motion that the Board adopt the agreed orders. Mrs. Garza seconded the motion and the motion carried unanimously.

5. Discuss for possible action regarding the adoption of proposed rule 51.93 Sanitation Rules for Barbershops and Barber Schools and Colleges under the Texas Occupations Code 1601.152 Sanitation Rules.

Consider public comment received from Nancy King, Director, Association of Electric File Manufacturers (AEFM) [included in Board members' materials].

Mr. Williams introduced the item. Mr. Hollister pointed out the grammatical error on item "n" in the proposed rules. Mr. Moore made the motion to accept the sanitation rules and authorize the Executive Director and staff to make the rules available in appropriate form for each barbershop and include the appropriate current rules. Mr. Hollister seconded the motion. The motion carried unanimously.

Dr. Beran introduced the comments from Mrs. King regarding the Board's sanitation rules. Mrs. King suggested that all tools and implements that come in direct contact with a patron must be disinfected by total immersion in an EPA disinfectant and that an ultraviolet cabinet is not an accepted method of disinfection. The Board noted that a germicidal ultraviolet light is mentioned in the rule but that an ultraviolet cabinet is not mentioned in the rule; further, the germicidal ultraviolet light that is mentioned in the rule is in addition to an EPA-approved disinfectant, germicide, or bactericide. Further, Mr. Shirley and the Board noted that total immersion would be inappropriate for some barbering tools, e.g., clippers. After discussion, the Board adopted the proposed rule without the suggestions from Nancy King.

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

Mr. Williams introduced the item and deferred to Mr. Moore. Mr. Moore pointed out proper hot and cold water requirements are covered in the sanitation rules. He stated there should not be any requirement for any equipment that is not covered in the sanitation rules. Mr. Moore made the motion that the Board does not need a necessary equipment rule at this time. Seconded by Mr. Hollister. The motion passed unanimously.

7. Discuss for possible action regarding the adoption of a proposed amendment to 51.121 Barber Inspector such that all applicants for the position of barber inspector must be licensed barbers and must have practiced barbering for at least three (rather than five) years immediately prior to applying for the position of barber inspector.

Mr. Williams introduced the item. Mr. Moore explained the history of the rule. Mr. Williams and Mrs. Garza discussed the rationale for the rule. Mr. Moore made the motion that the Board accept and adopt the proposed amendment. Mrs. Garza seconded the motion. The motion carried unanimously.

8. Discuss for possible action regarding the adoption of a proposed amendment to 51.131 such that the Executive Director may sign a Board Order once a Proposal for Decision has been ratified by the Board.

Mr. Williams introduced the item. Mr. Moore noted this amendment was a housekeeping item and made the motion that the Board accept the proposed amendment. Mr. Hollister seconded the motion. The motion carried unanimously.

9. Discuss for possible action regarding the adoption of an amendment to rule 51.141. Definitions to provide that (1) the use of any blade, drill, or cutting tool for the purpose of removing corns or calluses is considered a medical practice and is prohibited and that (2) the use of any drill or similar tool designed for use by a manicurist or pedicurist is prohibited without proof of certification of training of that manicurist or pedicurist through a program approved by the Texas State Board of Barber Examiners.

Consider public comment received from Nancy King, Director, Association of Electric File Manufacturers (AEFM) [included in Board members' materials].

Mr. Williams introduced the item. Dr. Beran and Margie Weaver explained the rule. Mr. Moore made the motion to adopt the proposed amendment. Mr. Hollister seconded and the motion carried unanimously.

Dr. Beran explained that Mrs. King's comments were not suggested changes but were comments on how she could help the Board if the amendment were adopted.

10. Review and discuss proposed changes to the Texas Occupations Code, Chapter 1601. Barbers for the 78th Texas Legislature; consider public comment received regarding possible statutory changes.

Dr. Beran distributed copies of the law to the Board members and walked the Board members through the proposed changes to refresh the Board members' memories on what has been approved and what has been brought back for reconsideration.

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

The Board considered Mr. Shirley's proposed language for 1601.506. Mr. Hollister made the motion, seconded by Mr. Moore, and passed unanimously the following language for 1601.506:

The Board shall adopt reasonable rules on cleanliness for all licensees and permit holders.

b. 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)

The Board agreed at the April 8 meeting to bring this item back at the June meeting to consider additional language:

"... or payment arrangements have been made with the school. 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."

Consider public comment received from Kenneth C. Condit, Administrator, Mid-Cities Barber College (included in Board members' materials).

Mr. Hollister made the motion, seconded by Mr. Moore, and passed unanimously that the Board delete the proposed change to 1601.261.

The Board agreed not to insert the proposed additions to 1601.565 (that a student may not obtain an official transcript upon withdrawal and may not transfer hours to another school until the student has paid the school for tuition, fees, books, and/or tools subject to the school owner's written waiver)

The Board also agreed to retain 1601.558(d) without changes.

c. provide that a student manicurist, student barber, 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 manicurist, student barber, or student teacher has successfully completed the course [1601.254 (student teacher exam); 1601.257 (student manicurist exam); 1601.263 (student barber exam)].

Mr. Moore made the motion, seconded by Mr. Hollister, and passed unanimously that the Board not pursue the law change that a student teacher who fails the state examination three time must take a 300-hour remediation course.

Mr. Moore made the motion, seconded by Mr. Hollister, and passed unanimously that the Board not pursue the law change that a student manicurist who fails the state examination three times must take a 300-hour remediation course.

Mr. Moore made the motion, seconded by Mrs. Garza, and passed unanimously that the Board not insert into the law that that a student barber who fails the state examination three times must take a 300-hour remediation course.

d. as recommended by James Smith, President, Texas Association of Tonsorial Artists, provide the following (included in Board members' materials):

I. That the Board shall issue a barbershop permit to an applicant if:

- (1) the applicant has inherited existing barbershop(s)
- (2) the applicant is expanding locations of inherited shops
- (3) all operating barbers in the inherited and expanded barbershop locations hold a Class A barber certificate
- (4) all operating barbers in said shop(s) have practiced barbering for at least 12 months
- (5) the shop meets the minimum health standards for barbershops set by the Board and all other rules of the Board.

II. That the Board shall establish a barbershop owner's handbook and permit exam for owners of inherited shops and expanded locations to ensure sanitation rules and other areas of concern are studied and understood by said owners to the satisfaction of the Board; once the exam is passed, the permit would be renewed upon application at regulated intervals.

Linda Connor spoke for the Tonsorial Artists. She noted that 1601.303 of the Texas Occupations Code prevents an heir from having full authority to operate a barbershop unless the heir has a barber's license. She suggested supplementing the Occupations Code with the language cited in 10. d. I. and 10. d. II. in the agenda. After discussion, Linda Connor suggested eliminating item 10. d. II.

Mr. Williams concluded the discussion by stating the Board will give this item some more thought and talk about what is feasible and what is not and then make a decision. Mr. Williams asked Cue Boykin if he had any comments. Mr. Boykin offered to take a look at the laws of other professions to see how this issue (inherited ownership by unlicensed individuals) is addressed in their legislation.

Mr. Moore suggested the Board wait until there is a full Board before any action is taken on this item. Mr. Moore made the motion to table this agenda item until the next Board meeting. Mr. Hollister seconded. The motion passed unanimously.

Mr. Williams returned to agenda item 3.

e. consider the following as recommended by Juan A. Garcia, President, Texas Association of Barber Schools (included in the Board members' materials):

I. The current statutory requirement that a barber shall have one year of experience before attaining a shop permit

Board members agreed that the Board remains comfortable with this requirement.

II. The proposed reduction from 5 years to 3 years' experience as a practicing barber to be eligible for a teacher's certificate and other requirements:

(1) that all prospective teachers should have to attend school for 1,000 hours;

(2) that teachers should be tested as they currently are on the practical;

(3) that the written exam should consist of material they actually teach.

Board members agreed the Board remains comfortable with this proposed reduction from 5 years to 3 years.

III. Provide that a barber technician should be able to obtain a barber shop permit

Board members agreed to not accept this recommendation.

IV. Provide for an advisory council that represents the various organizations of the barber industry to assist the Board in matters that affect the Board and the laws that affect the barber.

Board members agreed the Board does not need to establish an advisory council because any individual can come before the Board and any individual can establish a professional group to advise the Board.

f. consider the following as recommended by Joe Shirley (included in the Board members' materials):

I.. The proposed reduction from 5 years to 3 years' experience as a practicing barber to be eligible for a teacher's certificate (similar to Mr. Garcia's recommendation 10. e. II).

Dr. Beran noted the Board already has agreed to this proposed reduction.

II. The proposal that a qualified instructor shall be present for 30 (rather than 20) students on premises.

Mr. Williams asked Mr. Shirley for his objections to this proposed change and he and Mr. Shirley discussed those objections. After discussion, Mr. Moore recommended that "for instruction in practical work" be deleted from the statute so that the proposed change reads as follows:

(a) In addition to the teacher required by Section 1601.355(b), a barber school that provides training leading to issuance of a Class A barber certificate shall have at least one qualified instructor, holding a Class A certificate for every 30 students on premises.

Mr. Moore made the motion that the Board pursue the changes in 1601.560. Mrs. Garza seconded and the motion passed unanimously.

III. The proposal to retain the health certificate requirement.

Dr. Beran noted the Board had agreed to retain the health certificate. Mr. Williams asked Mr. Shirley for his comments. Based upon Mr. Shirley's comments, Chairman Williams directed Dr. Beran to write a letter to the Health Department and ask if the health certificate is absolutely needed.

g. provide that a person commits an offense if the person violates Chapter 1601; an offense is a misdemeanor punishable by a fine of not less than \$100 or more than \$300 (a re-instatement of **1601.652 Offense; Penalty** repealed by the 77th Texas Legislature).

Mr. Hollister made the motion, seconded by Mrs. Garza, and passed unanimously to accept this proposed change.

h. Consider other possible changes that were proposed after posting the June agenda in the Texas Register

Mr. Shirley asked the Board to reconsider raising the cost of a duplicate certificate from a maximum of \$10 to a fee equivalent to the current license fee. Mr. Moore made the motion that the Board pursue the adoption of 1601.266 to read payment of a fee not to exceed one-half of a full license fee. Mr. Hollister seconded and the motion carried unanimously.

With regard to the proposed addition to 1601.303, Mr. Hollister made the motion, seconded by Mr. Moore, and passed unanimously that the following addition (underline) and deletion (strike through) be made:

(b) If a barber is not the owner of the barbershop, the shop owner's name must also appear on the barbershop permit. ~~and the shop owner shall be subject to fines and penalties for violations of the Barber Board's laws and rules.~~

Mr. Moore made the motion, seconded by Mrs. Garza, and passed unanimously staff's proposed housekeeping change to 1601.405.

The Board agreed to add the following language (underlined) to 1601.651 Injunction; Civil Penalty:

(a)(2) enjoin a barber, barbershop owner, or barber school from operating in violation of this chapter

(b) A barber , barbershop owner , or barber school that operates in violation of this chapter

The Board agreed to delete the following language from 1601.705 Hearing: "...or fails to respond in a timely manner to the notice...."

11. Discuss for possible approval the Agency Strategic Plan for the Fiscal Years 2003 -2007 Period.

Mr. Hollister made the motion that the Board accept the strategic plan, seconded by Mr. Moore, and passed unanimously.

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

Dr. Beran introduced Deborah Almasov to present the financial report. Mrs. Almasov pointed out the estimated balance for the fiscal year is \$4,842, which would not be enough to remodel the examination rooms. Dr. Beran then asked Board members to consider the financial report simultaneous with agenda item 13. Board members considered alternatives to the layout of the examination rooms so that the examinations could be moved to the Frank Joseph Building. Mr. Hollister identified the three fundamental options that would cost approximately \$4,800 for the examination to occur in one room and the additional costs (\$6,600) could be paid out of the next fiscal year. The Board agreed this option should be presented to the Texas Building and Procurement Commission.

13. Consider costs to remodel examination rooms at Frank Joseph Cosmetology Building to accommodate barber examinations.

14. Consider the Board's position on trade shows, trade symposia, and charity events.

Mr. Moore and Mr. Williams agreed the Board should leave them alone. Mr. Williams stated the school and barber associations should do these types of things and invite the Board.

15. Review and discuss agency's administrative fine report for 09/01/2001 - 02/28/200.

Mr. Williams introduced Margie Weaver to present this report.

16. Executive Session to Consider Executive Director's Six-Month Probationary Status.

The Board members expressed their appreciation to Dr. Beran for his work.

17. Announcement by Chairman Williams of his pending resignation from the Texas State Board of Barber Examiners effective July 8, 2002.

Dr. Beran introduced the item. Dr. Beran presented to Mr. Williams a copy of the letter written by Gov. Bush appointing Mr. Williams as Chair of the Barber Board and noted that Mr. Williams was sworn in individually by Gov. Bush who addressed Mr. Williams as "one of the good ol' boys from San Antonio." This individual swearing in spoke highly of Mr. Williams because there are approximately 3, 000 board members. Dr. Beran also presented a "check" to Mr. Williams for \$1,000, 000 "for dedicated service to the people of Texas."

Board members signed a Certificate of Appreciation awarded to Mr. Williams for seven years of service as Chairman of the Board.

A certificate from the Senate of Texas certifying that the Texas flag presented to Mr. Williams flew above the Capitol.

Members of the Board expressed their thoughts about Mr. Williams as did Joe Shirley and staff.

Mr. Williams concluded with some personal remarks.

18. Public Comment.

There were no public comments.

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