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MINUTES
BOARD MEETING
AUGUST 6, 2002
(Minutes are in italics.)

1. Call to order and roll call by Mr. Wayne Moore, Vice Chairman, Texas State Board of Barber Examiners.

Mr. Kuykendall commenced the meeting at 9:30 a.m. and asked for roll call. Board members in attendance were Janis Wiggins, Taren Hollister, Ron Brown, Janie Garza, and Vice-Chairman Wayne Moore. Also in attendance were Dr. Douglas A. Beran, Executive Director, Joe Pitner, Office of the Attorney General, Mary Feys, Administrative Technician, and Margie Weaver, Staff Services Officer. Visitors were James Vivial, Phillip Vivial, Joe Shirley, Linda Connor, Nancy King, and Lucia Hale.

2. Introduction by Mr. Wayne Moore of Mr. William Kuykendall as the new Chairman of the Texas State Board of Barber Examiners to serve at the pleasure of the Governor.

Mr. Moore introduced Mr. Kuykendall as the new Chairman of the State Board of Barber Examiners and congratulated him on his appointment by the Governor's Office. In his opening remarks, Mr. Kuykendall noted he is not a barber and will yield to the barbers on the Board with regard to experiences in the profession. He will encourage lively debate and discussion and look for consensus to identify what is fair, reasonable, and just, and any decisions he makes as the Chairman will be fair, reasonable, and just in the absence of experience. However, he noted he does bring value to the agency from the administrative standpoint. He pointed out he is a litigator and tries lawsuits. He was the assistant general counsel for the University of Texas System for 11 years, 8 months, and defended the System's medical schools and doctors and interacted with the Texas Legislature. He also served for two years in the Texas Attorney General's Office. Prior to that, he was a prosecutor in Galveston County for two years and, prior to that, for one year, he had a private law practice. He brings this breadth of experience and years of service in state government to the Barber Board.

3. Introduction and administration of the oath of office by Chairman Kuykendall to the new member of the Texas State Board of Barber Examiners, Ronald L. Brown, for a term that begins on August 6, 2002, and ends on January 31, 2007.

Mr. Kuykendall welcomed Mr. Brown to the Barber Board and noted it is his privilege to administer the oath of office to Mr. Brown. Mr. Kuykendall then administered the oath of office to Mr. Brown.

Mr. Moore congratulated Mr. Brown and pointed out Mr. Brown has been an important arm of the Board. Mr. Moore stated it has been a privilege to work with Mr. Brown for the last five years, once a month, at the exam site. Mr. Moore stated he was looking forward to working with Mr. Brown.

4. Read and possibly approve Board Minutes of June 4, 2002.

Mr. Hollister made the motion, seconded by Mr. Moore, to approve the minutes. The motion carried unanimously.

5. Read and possibly approve Board Minutes of June 17, 2002.

Mr. Hollister made the motion, seconded by Mr. Moore, to approve the minutes. The motion carried unanimously.

6. Recognize the following three individuals for their service to the barber profession and community:

L. J. Cook for more than 63 years

Ray Dell Galloway for more than 55 years

Ronald L. Brown for 36 years as a Texas barber, for 18 years as a school owner, for providing an exceptional examination site for 15 years, and for dedicated service before the Texas Legislature

Mr. Kuykendall acknowledged these individuals and Board members signed the certificates of appreciation that will be forwarded to the individuals. Mr. Moore stated he appreciates staff doing the research on the individuals deserving the recognition and thinks it is something the Board should continue to do. Mr. Kuykendall agreed.

7. Consider James A. Crain's (file # 228999) motion for rehearing of the Board's final order (April 9) of an administrative penalty (\$800: two violations of no booth rental) proposed by the Administrative Law Judge from the State Office of Administrative Hearings - default case.

Joe Pitner introduced the item. He asked if Mr. Crain were present. He was not. Mr. Pitner gave a history of Mr. Crain's case and identified the options before the Board: (1) grant Mr. Crain's motion for rehearing and refer his case back to the State Office of Administrative Hearing; (2) do nothing and let it be overruled by operation of law; (3) act on Mr. Cain's request today. Mr. Pitner recommended the Board not refer it back to the State Office of Administrative Hearings. After discussion, Mr. Kuykendall delayed final action until just before item #13 to give Mr. Crain the opportunity to arrive at the Board meeting.

At 11:20 a.m., after completion of agenda item #12, Mr. Kuykendall returned to agenda item #7 and noted Mr. Crain has failed to appear and, technically, that is a default. He noted the three options before the Board as stated by Mr. Pitner: (1) enter a default by action; (2) allow a default to take effect by operation of law; (3) approve the recommendations of the administrative law judge. Mrs. Wiggins made the motion that the Board accept the administrative law judge's recommendation with a second by Mr. Hollister. The motion carried unanimously.

8. Discuss for possible action Proposals for Decision from the State Office of Administrative Hearings (April 2, 2002).

Joe Pitner introduced the item and discussed the procedures that occur at the State Office of Administrative Hearings and the history of the cases. Mr. Pitner recommended the Board accept the defaults and the recommended penalties of the administrative law judge.

The motion was made by Mrs. Wiggins and seconded by Mr. Moore to approve the proposals for decision. The motion carried unanimously.

9. 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 July 22, 2002.

Dr. Beran presented the history of the item to the Board. Mr. Moore made the motion that the Board ratify the recommended penalty; Mr. Kuykendall seconded. The motion carried unanimously.

10. Discuss possible procedures for implementing rule §51.141(5)(B) adopted by the Board on June 4, 2002.

(B) 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 comments from Nancy King, Karen Mayer, and Lucia Hale (Association of Electric File Manufacturers)

Mr. Kuykendall and Mr. Moore gave the history of the item and stated the task before the Board is to determine how to implement the rule. Mr. Kuykendall introduced Ms. King and Ms. Hale. Ms. King gave an overview of the training provided by the non-profit, education Association to individual licensees, instructors in schools, inspectors and the credentials of the trainers. She and Ms. Hale offered several options for an approved, non-product related, generic course with geographical availability.

Dr. Beran stated staff needs answers to the following questions to enforce the rule: (1) What kind of certification should inspectors look for? (2) How much time should be given to licensees before the rule is enforced? Three months? Six months? (3) How will the licensees be trained? Will they be trained by Mrs. King's folks going around the state? Will the Board approve the individuals to do the training or will the Board give the criteria to staff to approve the trainers? Will Mrs King's folks go to the schools and train the teachers in the schools and then the licensees will go to the schools to get the training?

In response to Mr. Kuykendall's inquiry about what states the Barber Board could contact regarding training, Mrs. King briefed the Board on how the training is approved and provided in various states: Mississippi, Alabama, Florida, Ohio, Kentucky, New Hampshire, Maine, Tennessee.

Mr. Kuykendall asked Mr. Pitner if the Board had to engage in a bidding process. Mr. Pitner responded "No" because state funds would not be spent to anyone to implement the program for the Board. Mr. Kuykdenall noted that when the Board approves the criteria, the Board also should establish by Board vote a cycle for review of the criteria to assure any changes in the field would not occur without review by the Board. And, because of the magnitude of the initiative (training individuals, curricula, people trained to instruct, people receiving services), the Board may want to seek guidance from other states who have such programs that the Board may want to adopt.

Mr. Kuykendall stated he felt staff should ask Ms. King to give a list of states she has worked with and staff would bring that back to the Board for a vote. He also felt implementation of the rule should be delayed for at least a month or two to allow the Board's stakeholders to prepare for the rule.

Mr. Moore asked if Mr. Kuykendall's recommendation that staff should research other states' statutes and with guidance from Ms. King and Ms. Hale and bring a proposal to the Board on a recommendation on what kind of program.. Mr. Kuykendall suggested the program should be based on those states with dynamics similar to Texas with appropriate modifications.

Mr. Moore suggested the program should not be detailed, not something that would be micromanaged by the Board. Instead, the Board needs an established standard that is flexible that will meet with new products and technology.

Mr. Kuykendall asked for two or three options based upon other states experiences that will meet the Board's needs with modifications so that the Board can accept one. He also asked that notice of the rule be put on the web page to notify stakeholders of the Board's upcoming action on the rule.

Mr. Moore questioned if the Board will require each instructor to take the course or will it be optional because some schools don't offer manicuring and many teachers do not want to teach manicuring? Mr. Kuykendall and Mr. Moore agreed that if a teacher wants to be certified to teach/certify students, then the teacher must take the course. And, once certified, would those certified teachers also be able to teach, be able to hold their own seminars to teach licensees?

Mr. Brown agreed but stated his understanding is that if an individual passes Mrs. King's organization criteria for certification that does not necessarily mean the individual would need the certification to teach in a barber school in Texas. The certification would be just a step up in the professional organization.

Mrs. King questioned if the Board wants to put the electric file curriculum in the manicurist course that would eliminate the need of new licensees from taking the certification course after licensure if the course were offered in school and on the examination. Such a change may not go into effect until four to six months even though the rule now prohibits the use of the nail file without certification.

Mr. Kuykendall asked if any of the guests would like to comment. James Vivial suggested the electric file should be put into law and curriculum and on the examination.

Mr. Kuykendall directed Dr. Beran to include Maryland as one of the states to be contacted.

Dr. Beran asked for clarification of the discussion. He said he heard two levels of discussion: (1) What kind of program would be approved to teach the teachers in the school? (2) What kind of program would be approved to teach the licensees? Mrs. King stated there were three levels: (1) A class for instructors in schools. (2) A class for educators for the AEFM who will teach teachers and teach licensees. (3) Three courses that are the basic eight hour electric safety file course and two advanced courses that are for the licensees.

Dr. Beran asked which of the three levels the Board is interested in. Margie Weaver responded the Board is interested in the course for the school teachers who will teach the course in the schools and the other is the one to teach licensees to be certified.

Mr. Moore asked if Mr. Kuykendall would want to appoint a small committee to review staff's recommendation to put on the Board's agenda after one of the upcoming examinations in the following couple of months for the Board to accept committee and staff recommendation so as not to take up time at the next quarterly meeting.

Mr Kuykendall appointed Mr. Brown and Mrs. Garza to work with staff on bringing a recommendation to the Board including whether the Board needs to address the issue prior to next regularly scheduled formal Board meeting or at a meeting after next month's examinations, if necessary. Mr. Moore asked if the Mr. Kuykendall would be agreeable to calling a special meeting after the examinations after the next couple of months. Mr. Kuykendall said the Board could entertain that but the information needs to be made to all Board members at least three days before any meeting on the subject.

11. Discuss possible procedures for implementing rule §51.141(5)(A) adopted by the Board on June 4, 2002.

(A) The use of any blade or cutting tool for the purpose of removing corns or calluses is considered a medical practice and is prohibited.

Dr. Beran noted the way the rule reads the action is prohibited only if removing a corn or callus. What about smoothing the corn or callus or intervening steps. Also, if the blade is on premises but not being used, is that a violation of the rule? Dr. Beran asked Mr. Pitner about a policy on what the rule means rather than amending the rule through the lengthy rule change process. Mr. Pitner responded the Board can set enforcement policy on its rule but if the policy departs too greatly from the language of the rule then the rule has to be amended.

After discussion, Mr. Kuykendall summarized the two issues before the Board: (1) removing is ill-defined and needs to include language to clarify what the act of the removal is; (2) whether the possession of the blade is prima facie evidence of an illegal act. The prima facie proposition is straightforward; the Board has other state's statutes that incorporate that. That makes good sense and makes it easy for an inspector to enforce as opposed to having to catch someone in the actual act of applying the blade.

The Board then discussed the definition of removal as defined in other states as well as other options for the definition.

Mr. Kuykendall suggested the rule be amended to interpose the words "any or all" after "removing" and add a sentence that reads, "the possession or storage of any blade or cutting tool as contemplated by this rule is prima facie evidence of use."

Dr. Beran noted the language will be brought back to the Board at its next meeting to adopt for publication in the Texas Register as a proposed rule change.

Mr. Kuykendall asked Dr. Beran to run the proposed language by the inspectors to see if it will enhance their ability to enhance the rule.

12. Consider proposed "housekeeping" amendments to rule §51.3 Administrative Fines to comply with the requirements enacted by the 77th Texas Legislature.

Dr. Beran noted the fines and penalties have been updated to strike the old law and refer to the new law for fines and penalties.

Mr. Hollister made the motion, seconded by Mrs. Wiggins, to publish the proposed amendments in the Texas Register. The motion carried unanimously.

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

a. provide that an applicant for a teacher's certificate must be a Class A barber and must have at least three (rather than five) years' experience as a practicing barber in a barbershop, two years of which occurred in the two years preceding the application date (1601.254)

Mr. James Vivial and Mr. Shirley spoke against 13.a. After discussion amongst Board members and Mr. Vivial, Mr. Brown made the motion to delete the proposal under item a, seconded by Mrs. Wiggins. The motion carried unanimously.

b. provide that an applicant for a manicurist license must be at least seventeen (rather than sixteen) years of age (1601.257)

Mr. Moore made the motion, seconded by Mr. Hollister. The motion carried unanimously.

c. reconsider the proposal to retain the health certificate vis-à-vis the Executive Director's letter to the Texas Department of Health's Associate Commissioner for Disease Control and Prevention (1601.264; 1601.402)

The Board reviewed the Executive Director's letter to the Associate Commissioner for Disease Control and Prevention and her response. Mr. Moore made the motion that the Board reconsider the proposal to retain the health certificate and, instead, instruct the Executive Director to put in the Board's request to eliminate that portion of the statute that pertains to the health certificate for barbers, seconded by Mrs. Wiggins. The motion carried unanimously.

d. reconsider the Texas Association of Tonsorial Artists' proposal set forth below vis-à-vis research conducted by the Board's Assistant Attorney General of the enabling legislation of 11 other professions (1601.303)

This proposal was presented to the Board at the June 4th meeting

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.

Dr. Beran noted that James Edward Smith, Executive President of the Texas Association of Tonsorial Artists, had requested a conference call when the Board got to this item and that Linda Connor, a member of the Executive Board of the Tonsorial Artists, was in attendance to discuss this item with the Board.

Mr. Pitner gave an overview of the research by Assistant Attorney General Cue Boykin of the enabling legislation of 11 other professions about allowing an individual to be licensed as a member of the profession because the individual has inherited a business. Mr. Pitner summarized the research by noting the statutes of the 11 professions do not allow for licensing of an individual as a member of the profession merely because the individual has inherited a business. Mr. Pitner also noted he is not aware of any the Boards he represents that will allow this type of licensing by someone who does not already have a license by the particular board or commission. Mr. Pitner stated the reason why these other boards and commissions feel a license should not pass by inheritance is the person receiving the license has no training by that board and has no requirement that the person have knowledge of the profession at all and to allow to hold a license would be contrary to the board or commission's mission. Generally, all boards and commissions have as one of their primary goals to protect the public in whatever field that profession operates. To allow a license to pass by inheritance would be contrary to that stated principle because the person would have no training in that area and would not know the goals and missions of that particular profession. Whether or not the Board wants to create an exception or modification is up to the Board to suggest to the Legislature.

Mr. Kuykendall asked for comments from Ms. Connor and Mr. Smith. The Board reviewed the proposed language presented by the Tonsorial Artists at the previous Board meeting.

Mr. Kuykendall stated his understanding is that if a barbershop owner who is a licensed barber expires, his heirs stand to inherit the real property (building, chair) -- the Board has no issue with that -- but the issue is whether the survivors should inherit the authority to practice barbering because their names as owners are required to be on the permit and therefore they should be able to inherit the authority to manage the business without a license to practice barbering. The question is whether a non-licensed survivor should be able to go beyond management of a business to influencing the practice of barbering.

Ms. Connor agreed that is the concern that occurred with the change of the law; a shop permit may be issued to someone only with a Class A license. Ms. Connor objects to the language in 1601.303 Issuance of Barbershop Permit that the board shall issue a barbershop permit to an applicant if the applicant holds a Class A barber certificate; the applicant has practiced barbering for at least 12 months; and the shop meets the minimum health standards for barbershops set by the board and all other rules of the board. This means she could not be responsible for her own shop anymore.

Mr. Moore noted it was unanimous by the Board when it asked for this change by the legislature. That, at that time, there was a lot of people getting into the barber shop business employing rookie barbers at a low standard of pay and being taken advantage of and a lot of young barbers with no business experience incurring indebtedness without the knowledge and proper experience and failing in business. The Board had been asked by barbers across the state to consider re-enacting the old apprenticeship license. Absentee ownership is also a concern because sometime barbers are being taken advantage of. If one is going to be an absentee, non-barber owner, one should employ a barber who has been a barber for at least a year to oversee the other barbers in the shop. If your name is on the barbershop permit, you more or less are in a management position to be held responsible for working unlicensed barbers and other infractions. It has been brought to the Board's attention that this is not completely fair and the Board is taking steps to assure that the barber's name is on the permit and the shop owner's in case there is absentee ownership so that person is also responsible in case of infractions.

Mrs. Garza stated it's not fair that a person who has gone to school and has a license but can't own a shop. People are upset at that.

Mr. Brown pointed out there are people who are working to get their 12 months in and they can't go to work anywhere because there's not a barbershop permit in many areas of the state and that's where they're wanting to go back. If there is a shop whether it's owned or inherited by an absentee owner, the absentee owner's name should be on the permit to comply with the law. If a barber must be present, then the Board should be able to do that. There are barbers liable for unscrupulous owners and the Board needs to be able to address that.

Mr. Hollister stated his understanding of the new law is that in order to own a barbershop, one must have a barbering permit, i.e., one must know how to barber. If one doesn't know how to barber, he can't own a shop. Mr. Moore pointed out one can own a shop, but he can't apply for a barbershop permit to operate the shop solely. Mr. Kuykendall added a Class A barber must be on the permit with the non-barber. Mr. Hollister and Mr. Moore added that if someone inherits a shop, then the owner must hire a manager, a 12-month barber, to be on the permit with the owner; then, the non-barber can still own the shop to operate the shop and pass it on to their children and grandchildren as long as it is operated with a 12-month barber on the premises that is willing to take on responsibility of having a permit in his name. Mr. Hollister stated the law would allow someone to inherit a shop and continue to have a shop permit if there were a 12-month barber on the permit. The law does not prohibit inheriting a barber shop if there is a 12-month barber.

Mr. Kuykendall stated that in the past one could inherit a barbershop and manage the barbershop and have a permit in the owner's name. Now, in order to have the permit in the owner's name, there must be a 12-month Class A barber.

Mr. Kuykendall questioned what the objective was with regard to inherited shops with the change in the law. Mr. Moore stated inherited shops were never addressed when debating the law. He said that would fall under the same category if Wal-Mart decided to open a barbershop and decided to hire all young barbers and tell them how to run the business. Wal-Mart would be required to have at least one barber with a year's experience to be the manager of the shop and be knowledgeable and pass the test on barbering and educated on barber law, rules, and regulations to oversee the young barbers and make sure the shop was in compliance.

Mr. Moore noted the proposal presented at the June 4th meeting refers to inherited shops and expanded locations of inherited shops. He was concerned that if an exception were made for one reason, then an exception would have to be made for another reason. Instead of making exceptions, if the Board chooses to eliminate the statute altogether, then that is what the Board needs to do. To make an exception for inherited shops would take an act by the legislature. If the Board decided to pursue a change just for inherited shops, then next year there may be an exception for west Texas; then, a year after that, there may be an exception for someone buying a shop from an inherited owner. The Board either is going to have the statute as it stands or go back to the way it used to be with absentee ownership and chain barbershops that weren't responsible.

Mr. Kuykendall stated his sense of the purpose that the barbershop owner should be on the permit for accountability, efficiency, compliance with rules and statutes. The purpose that inherited barbershops must have a barber with a Class A barber included on the shop permit was to accomplish the same objectives. He understands that is creating a market for the sale of barbering identity to nonbarbers who own shops. For example, a barber with a Class A license states, "give me \$5,000 and I'll sign off." That is not a concern of the Board. If an individual finds himself in that position, he needs to find another employee or partner or work out terms. The law does not say an individual should not compensate the barber for that that additional responsibility of managing the shop and being on the permit.

Mr. Kuykendall sees the custom and practice, the societal standards, are that licensed and regulated professions, when the licensed individual passes, the authority to practice the profession, craft, trade, passes with that individual. The inheritance of the property itself flows to the heirs but the authority to practice does not. Currently, non-barbers can own barbershops with barbers in the barbershops. The turf issue is whether the non-barber can manage the conduct of the profession.

Mr. Kuykendall then called on Ms. Connor. She stated the issue is the permit. When the permit was issued in her name, it was clear and she understood she was responsible for everything in the shop. The issue now is young barbers understand what their names on the permit mean; they are objecting to having their names on the permit and being fiscally and legally responsible when they don't have any authority -- they don't have ownership. Now, they have upped the bar (\$25,000) to be responsible and to have their names on the permit. Not because they have legal or fiscal responsibility, but because their name is needed for the owner to get a permit. She believes the permit should be issued only in the name of the owner because she is the only one responsible.

Mr. Kuykendall asked Ms. Connor if her position would still be the same for an absent owner. She said, yes because she is an absent owner because of her other profession.

Mr. Kuykendall thanked Ms. Connor and Mr. Smith for their input.

Mr. Kuykendall then asked Board members to comment on each of the five changes in the Tonsorial Artists' proposal. Dr. Beran directed Board members to current law and asked Board members if they wanted to include the Tonsorial Artists' recommendations regarding inherited shops with changes identified in handwriting already accepted by the Board.

After discussion, Mr. Kuykendall noted the only issue is whether the Board wants to require the shop owner and the Class A barber with 12 months experience to be on the permit to hold the owner and the barber accountable. He asked what is accomplished by having the 12-month barber named on the permit? Mrs. Wiggins stated the barber knows all the rules and regulations of the barber industry that the owner may not know and is responsible for applying the rules and not be in violation of the law.

Mr. Pitner noted one of the basic reasons why the state licenses professions. The state promises a person if he'll go through the training and education and pay the permitting fees the state, in return, will protect the individual's exclusive right to practice that profession against people who don't have a license. The state will go out and prosecute people who practice your profession without a license. That's the primary purpose of licensing laws along with protecting the public by regulation. When the door is opened to allow unlicensed individuals into that economic sphere, problems like this are created. That's one reason why the Board required a Class A barber on the permit to protect the profession and an individual's exclusive right to earn a living.

Mrs. Garza stated that is what she means with the 12-month barber; she is not against it but that they went to school but can't own or operate a barbershop.

Mrs. Wiggins pointed one consolation for Ms. Connor is she could go to school for nine months and get a 12-month barber to work under in her own shop and have both names on the permit for 12 months.

Mrs. Garza pointed out that's what some students are doing.

Mr. Kuykendall stated that, in his profession, a non-lawyer cannot own anything in a law office.

Mr. Kuykendall noted to Mr. Smith that it is justifiable to have a 12-month barber's name on the barbershop permit. He asked Mr. Smith if he's thought of a way to keep this requirement but accommodate Mr. Smith's interest. Mr. Smith said one way is to have a barbershop permit with the shop owner and the barber and the barber work in the shop as well with a contract with the shop owner and the barber who puts his name on the permit. The shop owner would be responsible for insurance, the shop, the citations, the violations, anything that happens in the shop.

Mr. Hollister's understanding of Mr. Smith's comments was that it would be up to the owner to have a contract with the 12-month barber to line out who's responsible for what and they can do that now without any change in the law.

Mr. Moore agreed and pointed his suggestion is to implement item e. under 13 "provide that a barbershop owner's name must also appear on a barbershop permit if a barber is not the owner of the barbershop." Mr. Hollister and Mr. Moore pointed out that is the intent and the goal of the Board. The Board has been restating these goals for six months now.

Mr. Brown asked Mr. Smith if he said the 12-month barber also could come in under a booth rental permit. Mr. Smith said there would be one permit for the overall shop and the barber would have his booth permit. The owner would be responsible for the overall permit. Margie Weaver pointed out that once a Class A barber is on a permit he is not required to carry a second permit. If the barber is on the

permit with the shop owner, the barber is not required to carry an additional booth rental even if the barber is renting a chair.

Ms. Connor suggested the permit should be issued in the name of the owner but must have a 12-month barber on premises operating as a barber.

Mr. Moore restated the purpose for the change in the law was to see that the young barbers weren't taken advantage of and they didn't make the mistake of owning up a shop fresh out of barber school without any experience. It was a compromise to bringing back the apprenticeship barber. It would be better for the industry if there were a barbershop permit in the barber's name to attract a barber for at least 12 months.

Mr. Kuykendall recognized Joe Shirley, a barber and a barbershop owner in Coppell, Texas, who stated the 12-month barber hurts a lot of people and there really isn't any justification for it. He stated the idea that someone that is inexperienced and open a shop is not a problem because one has to get money, a lease, and all this sort of stuff, and he didn't think someone who is inexperienced is going to be able to do that or would want to do that. He noted people make career changes and get their barber license when they are experienced and have money. Mr. Shirley said he practiced barbering for a couple of years because he was waiting for the right business opportunity and worked for somebody else before he opened his shop and did not learn anything in that time that would help him be a successful barbershop owner. He noted a barber in Ft. Worth who opened a big shop three months after he got his barber license and is very successful and now, three years later, is opening another big shop. He would not be able to do that. He pointed out there are barbers who can't return to their rural home town to open a shop. They have to work for another barber for a year before they can go back and open their own shop. If one has a spouse who owns a cosmetology shop and lives in a rural area and the other spouse wants to get a barber license and come work with the spouse in that shop, they cannot do that. There is a tremendous amount of injustice in the 12-month barber; there is no benefit. He also commented on Mr. Williams' idea that a barber can learn ethics from working with another barber for a year; he stated that if one hasn't learned ethics at home and school and nine months of barber school, how can it be learned in 12 months of working for somebody else. The argument for the 12-month barber is not valid. As for having a 12-month barber to learn the barber laws, the barber laws are learned in school. Any contact from the Board is an occasional visit from an inspector so if someone has worked in the field for a year, he's not going to know any more about the barber law than the day he walked out of school. The 12-month barber requirement should be gotten rid of. As a business owner, he had a barber who worked for him for 4 years who has now started his own shop. He has tried for 8 weeks for another barber. Experienced barbers are hard to find. He sympathizes with Ms. Connor that a 12-month barber just can't be picked up off the street. If one is shut down for two - six weeks waiting to find another barber, the business is going to die and one will not have a business. These are his concerns and the 12-month barber should be gotten rid of.

Mr. Kuykendall thanked Mr. Shirley for his comments.

Mr. Kuykendall then asked the Board for a motion.

Mr. Hollister stated his understanding is the motion should cover items 13. a. - 13. m. but the Board had not gone beyond 13 e. He questioned if the Board had to get to the bottom before the motion. Mr. Kuykendall stated his prerogative would be to take the items piecemeal and address just what's been discussed.

Mr. Hollister asked if Mr. Kuykendall wanted a motion just addressing item d.

Mr. Kuykendall the Board basically has addressed item d; the focus of the discussion was item d as relates to 1601.303.

Mr. Hollister made the motion to accept that the wording changes proposed previously that are in the proposed legislative package as proposed in item 1601.303 as printed. Mr. Hollister read the proposed language:

1601.303.

(a) The board shall issue a barbershop permit to an applicant if:

(1) the applicant holds a Class A barber certificate;

(2) the applicant has practiced barbering for at least 12 months; and

(3) the shop meets the minimum health standards for barbershops set by the board and all other rules of the board.

(b) If a barber is not the owner of the barbershop, the shop owner's name must also appear on the barbershop permit.

Mrs. Wiggins seconded.

Five Board members voted in favor of the motion. Mr. Kuykendall abstained because he needed more debate.

Mr. Kuykendall asked Mr. Smith if he had any closing remarks. Mr. Smith stated his appreciation for the Board allowing him to conference in. Mr. Kuykendall thanked Mr. Smith for continuing to work with the Board and he look forward to hearing from him down the road.

Mr. Kuykendall then asked for comments from Ms. Connor. She asked if the vote was to sustain what already was on the record. Mr. Kuykendall said it was. She asked what course of action does she have to seek further change. Mr. Kuykendall stated the legislative process will begin and she will have the opportunity to lobby the legislature but the Board doesn't know what the law will look like on the back end and often it doesn't resemble anything like the initial proposal.

Mr. Kuykendall asked Mr. Shirely if he had any closing remarks. Mr. Shirely had none.

Mr. Hollister noted the intent of the discussion of 1601.303 was the 12-month barber would be on site and that is not addressed in the adopted language.

Mr. Kuykendall stated Mr. Hollister could withdraw his motion if Mrs. Wiggins would withdraw her second. Mr. Hollister moved that the motion for the wording for 1601.303 be withdrawn and reconsidered. Mrs. Wiggins seconded. The Board accepted the motion unanimously.

The Board then discussed additional language for 1601.303. Mr. Kuykendall noted Mrs. Wiggins made the motion, seconded by Mrs. Garza, to accept the amendment to the proposed legislative change to 1601.303a(2) as follows:

The applicant has practiced barbering for at least 12 months and is an owner or practicing barbering at the shop; and

The motion carried unanimously.

Mr. Hollister removed his motion to accept 1601.303 as printed with the amendment, seconded by Mrs. Wiggins. The motion carried unanimously

Mr. Kuykendall informed Ms. Connor that the proposed language is an attempt to diminish the likelihood of a 12-month barber offering to sell his or her name to a shop owner for a fee but not participate in management or practicing barbering on site.

Mr. Kuykendall stated the Board had now disposed of d. and e. and no longer are available for action.

Mr. Kuykendall asked if any visitors wished to be heard on any items other than d. and e.

e. provide that a barbershop owner's name must also appear on a barbershop permit if a barber is not the owner of the barbershop (1601.303)

f. provide that the Board shall adopt reasonable rules on cleanliness for all licensees and permit holders rather than maintain detailed cleanliness requirements in the Code (1601.506)

Mr. Hollister made the motion to adopt the proposal, seconded by Mrs. Wiggins. The motion carried unanimously.

g. provide that, 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 (rather than 20) students on premises (1601.560)

Mr. James Vivial and Mr. Shirley spoke against item 13.g. After discussion amongst Board members, Mr. Vivial, and Mr. Shirley, Mr. Brown made the motion, seconded by Mr. Moore, that item g. be amended to include the number 25 deleting reference to 30. The motion carried unanimously.

h. provide that the attorney general may file an action for an injunction or other proceeding to enjoin a barber, barbershop owner, or barber school from operating in violation of the Barber Law (1601.651)

Mr. Moore made the motion to accept, seconded by Mrs. Wiggins. The motion carried unanimously.

i. provide that a barber, barbershop owner, or barber school that operates in violation of the Barber Law is liable to the state for a civil penalty in the amount of \$25 a day for each day a violation occurs (1601.651).

Mr. Kuykendall asked if there were any need to debate items i, j, k, as written and l. Dr. Beran spoke on l.

j. provide that a person commits an offense if the person violates the Barber Law; 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. Moore amended his motion on l. to include j. and k as written and to include the discretionary language. Mrs. Wiggins seconded, The motion carried unanimously.

k. provide that the Board may take a default judgment against respondents who fail to appear at scheduled hearings before the Executive Director (1601.705)

l. provide for raising the maximums for various fees and other fee changes

Dr. Beran commented on item l. and recommended to the Board that staff be allowed to substitute generic language that says "a fee as set by Board rule" rather than set each fee. Mr. Moore made the motion that staff and Executive Director be given discretion on language needed to provide the proper maximum for fee changes in the statute, seconded by Mrs. Wiggins. The motion carried unanimously.

m. Consider other possible changes that were proposed after posting the August agenda in the Texas Register.

Mr. Kuykendall asked if there were any additional proposed changes. There were none.

14. Review and discuss Agency's financial budget for 09/01/2001 - 07/31/2002.

Mrs. Almasov presented the financial budget to the Board. Mr. Kuykendall directed staff to spend any extra money that may be left over on discretionary items rather than mandatory items such as the head rests for the chairs in the examination rooms. Dr. Beran noted Texas Board of Barber Examiners would be put under Texas Cosmetology Commission on the building's wall. Mr. Kuykendall asked if Texas Board of Barber Examiners could be put on the left outside wall. Dr. Beran noted Texas Board of Barber Examiners also is going to be put on street signs. Mrs. Almasov explained prior Workers' Comp payments and SORM calculations and payments under Claims and Judgments and that SORM payments basically are insurance premiums. She noted the information resource technology money has been spent on upgrades to the VAX as is some money left over from furniture and new telephones.

15. Review and discuss Agency's administrative fine report for 09/01/2001 - 07/31/2002

Margie Weaver presented the report to the Board. She noted that 261 fines had been written to barbers with a total of \$63,500 with a to-date collection of \$19,235 (approximately 30% of the total). 112 people have been scheduled for SOAH; 14 of those 112 have paid either prior to or just after the SOAH hearings \$3,750 have been collected from those 14 individuals. The most frequent violation is for expired licensed, the next is expired shop license (either barbershop license or booth rental).

Mr. Kuykendall asked Dr. Beran to track the fines written for cosmetology dual shops. Mrs. Weaver stated we do track that information but it wasn't presented in this report. Mr. Kuykendall also asked if staff track the costs of writing citations on behalf of cosmetology. Dr. Beran stated we do not, but Mrs. Almasov noted she tracks the average cost of inspections to report at the end of the year, which includes the costs of inspecting dual shops.

Mr. Kuykendall asked staff to track of the costs of inspections for cosmetology.

16. Discuss for possible approval the Agency's Legislative Appropriations Request for Fiscal Years 2004 and 2005.

Dr. Beran presented the Legislative Appropriations Request. Mr. Kuykendall suggested merit salary be moved up the priority list above operating cost. The Board reviewed possible fee increases to finance the legislative appropriations request. Some of the proposed fee increases are contingent upon the legislature approving proposed fee language in the statute.

Mr. Kuykendall recommended that staff look at the reimbursement of \$12.50 for travel meals and give an increase of some justifiable number.

17. Discuss staff's presentation before the Texas Conservative Coalition Research Institute as requested by Rep. Ray Allen.

Dr. Beran briefed the Board on what he presented to staff of the Institute.

18. Discuss for possible approval the Agency's schedule of examinations for 2003.

Mr. Moore made the motion, seconded by Mr. Brown, to approve the examination schedule. The motion carried unanimously.

19. Discuss for possible approval the Agency's poster, "Sanitation Rules for Barber Shops and Barber Schools and Colleges" [22 Texas Administrative Code 51.93]

Dr. Beran stated the Board adopted the new sanitation rules because with the change in the law with the last session the Department of Health no longer was involved with sanitation rule writing and the Board wrote its own rules. When the rules were adopted, Mr. Moore made the motion that those rules be put on a new sanitation poster.

The Board reviewed the proposed poster and made some changes to the proposed poster. Mr. Hollister made the motion to approve the poster, seconded by Mrs. Wiggins. The motion carried unanimously.

20. Discuss updates to the Agency's licensing data base

Dr. Beran, Margie Weaver, and Mary Feys discussed updates to the licensing data base to automate enforcement capabilities. Mary Feys noted with the updates, the VAX will identify any violations a barber has which could not be accessed before. Margie Weaver noted reports can be run off the VAX rather than keeping information on Excel spreadsheets for some performance measures. She also noted a report can be run that shows individuals who still owe fines and should go to SOAH which should provide a quick turnaround on administrative penalties.

Mr. Kuykendall stated the web site should show only adverse actions taken against licensees but not all complaints against a licensee. The Board agreed.

Margie Weaver stated licensees' addresses should not be made available on the web site but submit a written request to go to the Board's legal counsel for review.

21. Discuss updates to the Agency's web site.

Mr. Shirley suggested minutes and any proposed rule changes should be posted to the web site. He added the web site is a great way to get information to individuals in view of the Board's request to get a newsletter.

Mr. Kuykendall thanked Mr. Shirley for being the web master.

Dr. Beran noted his concern that people who may read the minutes on the website may misunderstand or misinterpret what the Board has done. People who are interested in the minutes can contact the Board for copies because they are posted on the Board's agenda for approval at each of the meeting. With the agenda posted on the Texas Register, people get an idea of what will transpire at the meeting which they can attend and call the office to get a copy of the minutes. Dr. Beran said he is comfortable that the Board is providing enough public information. Mr. Moore commented it would be micromanaging for the Board to consider all of the contents on the web site and defers to the Executive Director to make those decisions. Mr. Kuykendall and other Board members agreed. Mr. Kuykendall stated it is reasonable to post agendas on the web site. Dr. Beran stated that is done.

Mr. Shirley pointed out the legislature requires the Board to have a web site. Also, the Texas Legislature Online has every piece of legislation that's up, legislation from a couple of sessions before, bill histories, bill analyses, financials, witness lists, and audio taps.

Mr. Kuykendall pointed out transcripts from the hearings are not which are tantamount to minutes.

Mr. Shirley added the audio tapes are available for the hearings themselves even if the transcripts are not available. One can go online and listen to the actual testimony that's being given. He thinks it is reasonable to put the minutes on the web site because it's the Board's duty to let people know what decisions were made and how those decisions were arrived at.

Ms. Connor said it is helpful to have the information so that when she comes to meetings she'd know what's being discussed. She didn't realize it was as easy as calling to get them. She's been wanting the minutes and asked to be informed when meetings are going to be held. She said she received her notice a few days before but there are people all over the state who want to make arrangements. She found out four or five days before she received the letter by going on the internet.

Mr. Kuykendall stated the agenda is posted and that provides the notice Ms. Connor is talking about. He stated the Board and he in particular embrace open government and making information available. If there's something the Board is doing it doesn't want people to see, then the Board shouldn't be doing it. There's nothing the Board is doing that it shouldn't be doing. He doesn't see a problem.

22. Public Comment.

Mr. Kuykendall adjourned the meeting at 3:35 p.m.