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MINUTES FOR TSBBE BOARD MEETING
December 1, 2003 (1:30pm)
(Minutes in Italics)

The Board may deliberate and take action regarding any item on the agenda.

1. Pursuant to Chapter 551 of the Government Code (Open Meetings), call to order and roll call by William H. Kuykendall, J.D., Chairman, Texas State Board of Barber Examiners (TSBBE).

The board meeting was called to order by Chairman William Kuykendall at approximately 1:30 pm. Board members present were Mr. Kuykendall, Mr. Brown, Ms. Garza, and Mr. Moore. Board members not present were Ms. Wiggins and Mr. Hollister. A quorum was present. Staff members present were Dr. Douglas Beran (Executive Director), Glenn Parker (Chief Financial Officer), and Margie Weaver (Staff Services Officer).

Mr. Kuykendall announced that he would skip around on the agenda, as is the board's prerogative. Mr. Kuykendall asked members of the audience to identify themselves. The following people responded:

*W. D. Wagner – Acres Home Barber College
Lucy Young – Columbus Barber College
Scott Boston – State Auditor's Office
Amy Trost – Sunset Advisory Commission Staff
Christian Ninaud – Sunset Advisory Commission Staff*

Mr. Kuykendall added that Chloe Lieberknecht from the Sunset Advisory Commission Staff was also present but not currently in the room. Mr. Kuykendall then went to Agenda Item #4 and asked for Public Comment.

2. Approve Board Minutes of September 8, 2003.

Moving from Item 4 (Public Comment), Mr. Kuykendall asked for any board or staff comments on the minutes. Mr. Kuykendall referred to page 4 of the minutes, Agenda Item #11(last paragraph) concerning the outsourcing of the collection of fines and asked Dr. Beran if there was a staff recommendation on this issue. Dr. Beran said that the agency has not been collecting fines long enough to establish guidelines as to how old fines should be before they are considered for outsourcing for collection. The agency is blocking renewals for licenses on which fines are owed. In addition, approval has to requested form the Attorney General's Office before the collection of any fines can be outsourced.

Mr. Moore commented that the fines used to be assessed and collected by local justices of the peace and the money did not come to the state. Now that the Board is assessing the fines, the agency is

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collecting fines and the money is going into the State Treasury (but is not available for use by the agency).

Mr. Kuykendall then referred to the minutes on page 5, Agenda Item #12, last sentence and asked if that item (regarding fines against a particular school owner) was on the current agenda. Dr. Beran confirmed that it was.

Mr. Kuykendall asked if there were any other comments or clarifications on the minutes. Mr. Parker then clarified that for Agenda Item #14 in the minutes, the estimated amount of money that could be collected each year by requiring shop owners to buy law and rule books when they renew their permits was approximately \$25,000 per year.

Mr. Kuykendall then referred to Agenda Item #15 in the minutes that requires barber applicants from out of state to purchase the law and rule books. Mr. Moore clarified that Rule 51.85 will be amended to require those being licensed through reciprocity to purchase the books.

Mr. Kuykendall then referred to Agenda Item #16 in the minutes, in which Mr. Moore requested a handout to give to students at exams giving them directions about how to apply for their initial license online. Dr. Beran clarified that Texas Online has not yet given us direction as to how much to charge for that online fee and the implementation date for putting the initial license process online.

Mr. Kuykendall asked if a letter has yet been sent to the Attorney General's Office asking for an opinion on the apparent conflict between the Board's statues that require an applicant for license renewal to present to the board a health certificate before the license can be renewed and the Texas Online Authority's requirement that licensees be allowed to renew online. Dr. Beran responded that he has not yet prepared the letter but will do so soon.

Mr. Moore made a motion that the minutes be approved. Mr. Brown seconded the motion and the minutes were approved by unanimous vote. Mr. Kuykendall then moved to Agenda Item #3 (below).

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

- Verlie Sherrill (65+ years)
- George C. Walker (60+ years)
- Billy F. Watkins (49 years; deceased)
- John C. White (56+ years)
- Charles E. Williams, Sr. (46+ years)

The board recognized the individuals listed above. Certificates will be signed by the board and mailed to the individuals or their families. Mr. Kuykendall then moved again to Agenda Item #4, Public Comment.

4. Public Comment.

W.D.Wagner's e-mail regarding the following agenda items from the September 8, 2003, Board meeting:

11. Consider outsourcing the collection of fines and penalties.

15. Consider for possible approval for publication and public comment proposed amendments to rule §51.77 Barber Shop Permit and rule §51.85 Reciprocal/Endorsement Licensing of Barbers to require the purchase of law and rule books.

Mr. Kuykendall asked the Sunset Advisory Commission Staff to give the board an overview of the Sunset Process. Ms. Lieberknecht then introduced her team members and gave a brief overview of the Sunset process for the board. Ms. Lieberknecht said that her team had begun their review of the Barber Board in September and had a goal of issuing their report by late January, 2004. Ms. Lieberknecht explained that not all the Senate and Public members of the Sunset Commission had been appointed yet and therefore there was some uncertainty as to the exact schedules and timelines the Commission would establish once all its members had been appointed.

She explained that the Sunset Staff would issue its formal report sometime in late January or February. Public hearings open to all will be held by the Sunset Commission probably in mid-March, and then the Commission's final recommendations for the Barber Board will be adopted one-to-two months after that. The Commission's recommendations will be forwarded to the Legislature when it meets in January, 2005. It then will be up to the Legislature to decide what actions to take, if any, on the Sunset Commission's recommendations. Sunset staff members have been conducting their reviews of the agency, interviewed staff and board members, and have gone on some inspections with Mr. Sanchez. Ms. Lieberknecht then named the current members of the Sunset Commission.

Mr. Kuykendall then moved to Agenda Item #2, the minutes from the September 8, 2003 board meeting.

Mr. Kuykendall returned to this agenda item (Public Comment) after Agenda Item #3, above. Mr. Kuykendall then recognized Mr. W. D. Wagner of the Acres Home Barber School.

Mr. Wagner referred to the collection of fines. He expressed support for the agency and its inspectors. He asked if some of the fines collected could be used by the agency for its operations. Mr. Wagner also stated that he believed it was not unreasonable to charge each barber \$10 once every two years to have a current copy of the law and rule books. He said that barbers would not necessarily see the books if only the shop owners were required to purchase the books.

Mr. Kuykendall then moved to Agenda Item #5.

5. Proposals for Decision from the State Office of Administrative Hearings (July 9, August 5, September 22, 2003).

Mr. Kuykendall asked Dr. Beran to take the board through this agenda item. Dr. Beran explained that the PFD for Mr. Curtis Hubbard was being presented separately from the rest of the group on the mass docket because the Administrative Law Judge had issued a PFD in Mr. Hubbard's favor and Dr. Beran wanted the board to be aware of that. A brief discussion of the particulars of the case ensued. An anonymous complaint had been received, the complainant could not be identified, and the evidence presented was not sufficient for the judge to rule in our favor.

Dr. Beran then reviewed the findings against Virginia Darden. Dr. Beran stated that he had met with Ms. Darden in January of 2003 and have reached an Agreed Order with her in which she agreed to findings of the charges and agreed to pay a fine. She did not pay, so the agency took her to SOAH. The Administrative Law Judge found in our favor and Dr. Beran asked the board to approve the judge's PFD in this case

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Dr. Beran then referred the board to the remainder of the cases on the mass dockets for July 9, August 5, and September 22, 2003. He stated that the Administrative Law Judge had found in our favor on all the cases.

Mr. Kuykendall asked for a motion on Curtis Hubbard, Virginia Darden, and the mass dockets. Mr. Moore made a motion to accept the Proposals for Decisions in all the cases. Mr. Brown seconded the motion. The board voted unanimously to approve the orders.

The board then moved to Agenda Item #6.

6. Ratification of the Agreed Order in the Matter of Assessment of an Administrative Penalty Against a Certain Licensee in a Case Brought for an Informal Hearing before the Executive Director (September 22, 2003).

Dr. Beran explained that he had met in an informal hearing with Christopher Dials, who had been charged with employing an unlicensed barber. Mr. Dials presented a letter from the individual in question stating that he had forged a license to present to Mr. Dials. Dr. Beran's recommendation to the board is to dismiss the fine. Mr. Kuykendall commented that dismissing the fine does not expunge the record. Mr. Moore commended the staff for coming to a fair and just recommendation.

Mr. Moore made a motion to accept Dr. Beran's recommendation to dismiss regarding Mr. Dials. Mr. Brown seconded the motion and the board approved the Agreed Order as presented by Dr. Beran.

The board then moved to Agenda Item #7.

7. Adoption of proposed amendments to rule §51.85 Reciprocal/Endorsement Licensing of Barbers. The proposed amendments provide that an applicant for a license by reciprocity shall submit a licensing fee of \$80 rather than \$70 and a fee for his or her own copy of the current hand book published by the Board containing the law and regulations governing the practice of barbering. The proposed amendments delete the archaic amount (\$70) for a renewal fee such that an individual will pay the current renewal fee.

Mr. Kuykendall asked Dr. Beran to present this item to the board. Dr. Beran reviewed previous action by the board to amend this rule to bring the fees into line with those paid by Texas barbers to obtain their original licenses. It also requires barbers coming in from out of state to purchase the law and rule books to become familiar with the laws under which they will work. Dr. Beran stated that, should the board approve, the changes will become law 20 days after the rule change is published in the Texas Register.

Mr. Brown asked if Texas Online charges would apply. Margie Weaver responded that Texas Online has decided to put off the inclusion of those licensed by reciprocity because they are so few in number.

Mr. Moore made a motion to adopt the changes to Rule 51.85. Ms. Garza seconded the motion. The board voted unanimously to adopt the changes to the rule.

Mr. Kuykendall moved to Agenda Item #8.

8. Actions taken by the Executive Director as directed by the Board during the discussion of the following agenda item at the September 8, 2003, Board meeting.

Pursuant to rule 51.5 Good Standing Required for License Renewal, consider the denial of a barber school permit renewal to Larry's Barber and Hair Styling (Dallas) for failure to pay in full administrative penalties assessed against the licensee.

Dr. Beran reviewed the facts concerning the fines levied against the owner of the school for various fines and for the renewal fees for the school. Dr. Beran reported that the owner has now paid the total amount due to the Board and was in good standing. Mr. Moore commended Dr. Beran for his efforts in collecting the monies owed and for working to protect the best interests of the students at the school.

Mr. Brown made a motion to accept the payments from Larry's Barber and Hair Styling School in Dallas and reflect that the school is in good standing. Mr. Moore seconded the motion. Mr. Kuykendall offered an amendment to the motion to include a statement that the payments were accepted in lieu of an agreed order. Mr. Brown accepted the amendment to the motion and Mr. Moore re-seconded. The board voted unanimously to approve the motion as amended.

9. Administrative fine report for 09/01/03 - 11/30/03.

Ms. Weaver reported that the TSBBE inspectors since September 1, 2003 have written a total of 102 fines on behalf of the Barber Board and 32 on behalf of the Cosmetology Commission. The agency has deposited \$8,777 for fines collected during the current fiscal year. (The fines paid were written in various fiscal years.) Dr. Beran commented that the agency collected about \$50,000 in fines during fiscal year 2003. Licensees are finding out that they cannot renew until they pay their fines. Mr. Moore noted that the agency has been recently criticized in the press and other areas for not collecting fines, but he wanted it noted that the agency is collecting fines levied in the current and prior years. The report was for information purposes only, and no board action was required. Mr. Kuykendall then moved to Agenda Item #10.

10. Financial report (09/01/03 - 10/31/03).

Mr. Parker led the board through a discussion of the Financial Reports for activities through November 30, 2003. He presented his revenue estimates for the fiscal year (approximately \$1.1 million dollars for the year) and reminded the board that the agency has to collect enough money to cover its appropriations plus an amount assigned by the legislature sufficient to cover other overhead charges. Mr. Parker expressed some concern about the lagging revenues from the sales of books. Mr. Moore asked if the board's actions in requiring those licensed by reciprocity to buy the books would be helpful. Mr. Parker replied that the additional revenue from that source will be only about \$800 per year. Mr. Parker then reviewed the various appropriations to the agency for the 2004 fiscal year, emphasizing that the agency's effective budget had been cut by approximately \$30,000 from the previous year. The budget will be extremely tight, as usual.

Dr. Beran reminded the board that the agency had asked the legislature to appropriate back to the board a portion of the money we collect in fines and court costs. However, the legislature chose not to do that. Mr. Moore clarified that the Board now raises money for the state by collecting fines but is not allowed to use any of the fines and court costs the agency collects even though it costs money for the agency to collect the fines and court costs. Dr. Beran confirmed that Mr. Moore's comment was correct. Mr. Kuykendall asked if the agency had the funds needed to pay to have the teachers' exam translated into Spanish. Mr. Parker replied that it does. Mr. Kuykendall then moved to Agenda Item #11.

11. Chairman's briefing on Peter Townsend vs. State Board of Barber Examiners, Cause No. 20615-C, 278th District Court of Walker County, Texas.

Mr. Kuykendall briefed the board concerning the recently concluded trial in Huntsville in which the board prevailed. He commended the Attorney General's office, board members, staff, and former board members and staff members who participated in the trial.

Mr. Kuykendall informed the board that he had attended (at his own expense) the meeting of the National Association of Barber Boards in Las Vegas and gave a brief report on that group's activities. He also gave a brief account of his attendance at a meeting of the Texas Association of Tonsorial Artists. The board then moved to Agenda Item #12.

12 Anticipated TexasOnline subscription fees for additional licenses and permits that will be subject to TexasOnline as required by SB1152 - Shapleigh (78th Texas Legislature) and anticipated timelines for the imposition of such fees and other administrative changes to comply with TexasOnline.

Dr. Beran asked Margie Weaver to lead the presentation of this issue to the board. Ms. Weaver reviewed the material with the board and informed the board that the Texas Online Authority intends to move forward during fiscal year 2004 with putting online the renewal of permits for barber shops and manicurist shops. Implementing Texas Online for other licenses and permits for which the number of licensees is very small, such as teachers, barber schools, etc. will be put off indefinitely. Texas Online is also moving to facilitate the issuance of initial licenses and permits online but we do not have firm schedules or fees for those yet.

Mr. Moore asked if the legislature had recognized that this is a past through account and that the agency does not have access to the income for any other purpose. Mr. Parker confirmed that the legislature did initially consider requiring agencies to pay for Texas Online fees out of their regular appropriations but that the Legislative Budget Board and others had worked with the legislature to enable agencies to collect and pay for the Texas Online fees without impacting their operating budgets.

Dr. Beran commented that he had received a letter from Mr. Joe Shirley, which he distributed to the board members. Mr. Moore commented that it was his understanding that Mr. Shirley is very opposed to Texas Online and was asking the board to oppose the fees. Mr. Moore asked if the board was compelled to participate in Texas Online. Mr. Kuykendall and Dr. Beran confirmed that it was a legislative mandate.

Dr. Beran said that he would bring the new fees proposed by Texas Online to the board for adoption after they are set by Texas Online at the December 12 meeting. The board rule changes can then published in the Texas Register so that the agency can implement the new fees according to whatever schedule is adopted by the Texas Online Authority. Mr. Kuykendall asked the staff to keep the board informed as to the meeting dates for the Texas Online Authority.

The board then moved to Agenda Item #13.

13. Board's risk-based inspection policy and other enforcement efforts to accommodate the finding and recommendation by the State Auditor's Office (SAO) and management's response.

Mr. Kuykendall asked Dr. Beran to explain this item. Dr. Beran stated that the State Auditor's Office had recommended that the board come up with a way to better quantify the shops and licensees that are most at risk for violations. Dr. Beran also said that the board's current policy says that we will inspect shops at least every six month. Unfortunately, the agency is not able to always keep to that schedule.

Dr. Beran presented to the board a proposal to change the frequency of inspections. Dr. Beran expressed his concern that the agency could lose some effectiveness by focusing on more frequent violators at the risk of not inspecting regular shops as often as we do now.

Mr. Kuykendall asked if the intent is to have the board focus more on the higher risk shops. Mr. Kuykendall asked if the agency can do that now. Dr. Beran replied that the agency's data base does not currently easily identify which licensees have received tickets in a particular time frame. Ms. Weaver confirmed that all tickets issued to a licensee show up in the data base, but a person would have to read each one to see when each ticket was issued.

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Mr. Kuykendall asked if we could identify how many violations have been written in a particular shop. Ms. Weaver said that the violations are written against individuals and are logged against an individual's file number (shops do not have unique number identifiers in the data base).

Mr. Kuykendall asked Dr. Beran to inquire of Northrop Grumman how much it would cost to run a list of violations by file number. Mr. Kuykendall said that he thought that would be the first step in attempting to identify frequent violators. Mr. Brown and Ms. Weaver clarified that all violations are assigned to a file number for individual barbers, not to shops or schools. Ms. Weaver stated that the inspectors have to be relied on to know and identify problems shops and individuals. Mr. Kuykendall replied that the auditors had indicated that it was not sufficient for the agency to rely only on the inspectors' knowledge and paper records. The agency needs to be able to better identify repeat offenders and record that in its files.

Dr. Beran offered that the agency does have a good paper trail of fines, inspections, and other work records. He believes that the problem is that the agency cannot produce printouts from the data base to show those things. Mr. Kuykendall asked Dr. Beran to identify how the agency can accomplish that. Mr. Moore asked what the term "a history of violations" means. Dr. Beran replied that there are no numbers associated with that term. Mr. Moore said that he had accompanied an inspector who told him that they were going to visit some "problem shops" and that the inspector was correct. They went to those shops and the inspector wrote three-to-four violations per shop. Mr. Moore emphasized that the inspectors were knowledgeable of their own territories.

Mr. Kuykendall suggested that the agency ask the inspectors to write out a list of problem shops (or individuals or schools) in their regions, and to state why they are a problem. Then we should ask the inspectors to update that list on a periodic basis. Mr. Kuykendall said that it was a way to get started until we can come up with enhancements to the Northrop Grumman database.

Ms. Garza stated that she believes that the inspectors do know the problem barbers in their areas even though the problem barbers may move around a lot. Mr. Brown stated that it would be a good idea to give the inspectors some guidelines to indicate what kind of problems we are looking for and want them to identify, e.g. unlicensed barbers, sanitary conditions, etc. Mr. Moore agreed and said that problems may differ from region to region.

Mr. Kuykendall noted that we know which offenses are cited most often and asked if we should tie the identification of problems shops and individual to those criteria. Mr. Moore asked if it is not true that the board was recently criticized for writing the preponderance of tickets for unlicensed individuals or working on an expired license. Mr. Kuykendall confirmed that he was correct. Ms. Weaver pointed out that the auditors combined tickets to unlicensed individuals with those issued to barbers working on an expired license. Mr. Moore said that we need to be diligent to separate those two issues. Mr. Kuykendall asked that Dr. Beran follow up on that issue with Sunset.

Mr. Kuykendall suggested that the Board's Risk Based Inspection Policy be revised to replace the word "will" with the word "may" in Category Three of the Policy. Mr. Moore suggested that the policy statement be expanded to say that those shops may be inspected every three to six months, but at least once a year. Mr. Moore made a motion to modify Category Three of the Board's Risk Based Inspections Policy to read, "Barber shops and individual SBBE licensees or permit holders without previous violations or complaints MAY be inspected by the state barber inspector on a three-to-six months basis, BUT AT LEAST ONCE A YEAR. Mr. Brown seconded the motion. The board approved the motion on a unanimous vote. The board directed staff to modify and reissue the policy as adopted.

Mr. Kuykendall then moved to Agenda Item #15.

14. Board's enforcement efforts, including proposing changes to rule §51.3 Administrative Fines, to accommodate (1) the Sunset Commission's Across-the-Board Recommendation #6 (Full Range of Penalties) for Licensing Agencies and (2) the findings and recommendation by the SAO and management's response.

The board did not consider this item.

15. Composing a Board written policy to accommodate the Sunset Commission's Across-the-Board Recommendation #8 (Separation of Agency Board and Staff Functions) for All State Agencies:

Mr. Kuykendall asked Dr. Beran to explain this item. Dr. Beran stated that the Sunset Commission has a set of across the board recommendations for all agencies. He just wanted to make the board aware of the fact that some of the recommendations may be added to our statute. Mr. Kuykendall asked if Dr. Beran thought that there were any existing conflicts between the board and Dr. Beran. Dr. Beran said that he did not. Mr. Kuykendall then stated that the only issue therefore may be a need for the board to formally adopt policies to establish that fact.

Mr. Moore asked if it would be a good idea for the board to put in writing that the board does not attempt to micromanage the agency and that the board yields to the executive director on all agency personnel and policies that do not require board action. Mr. Kuykendall stated that that is part of the executive director's job description but that the board did need to put into writing the separation of duties between the board and the executive director.

Mr. Kuykendall then moved to Agenda Item #16.

16. Composing a Board written policy to accommodate the Sunset Commission's Across-the-Board Recommendation #11 (Alternative rulemaking and dispute resolution) for All State Agencies.

Mr. Kuykendall noted that the board has another process whereby an individual can request a meeting with the Executive Director to avoid going to SOAH hearings and thought that might be adequate. Mr. Moore thought that the existing alternatives may be adequate to fulfill this recommendation.

17. If needed and pursuant to §551.071 and §551.074 of the Texas Government Code, the Board may enter into Executive Session.

The board did not go into Executive Session.

18. Adjourn

Mr. Kuykendall again opened the meeting to Public Comment. Mr. Wagner stated that he would like to see more emphasis put on making the shop owner be responsible for what happens in his shop.

Ms. Young asked if the board could make it easier for a shop owner to report violations to the board, or for a shop owner to verify that an owner verify licenses before hiring someone. Mr. Kuykendall and Ms. Weaver said that shop owners can call the board offices to verify that a barber has a current license. Mr. Kuykendall also suggested the possibility that the board could take action to require a shop owner to verify a license before hiring an individual.

There were no further public comments.

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Mr. Kuykendall adjourned the board meeting at 5:10 pm.