

BOARD MEMBERS

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JAMES H. DICKERSON, J.D.
LAKE JACKSON

SAN JUANA C. GARZA
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MINUTES FOR TSBBE BOARD MEETING

January 5, 2004 (1:30pm)

(Minutes are in Italics)

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).

Mr. Wayne Moore, Vice Chairman, called the meeting to order at 1:40 pm. Board members in attendance at roll call were Wayne Moore, Ron Brown, Janie Garza, and Janis Wiggins. A quorum was present. (Mr. William Kuykendall (Chairman) joined the meeting in progress approximately ten minutes later. Also in attendance were Joseph Pitner (Assistant Attorney General), and the following staff: Glenn Parker (Chief Fiscal Officer), Margie Weaver (Staff Services Officer), and Luis Sanchez (Inspector). Also in attendance were Chloe Lieberknecht (Sunset Commission), Joe Shirley (barber and shop owner), and Mr. Mbachu (a barber and shop owner).

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

Don F. Barton (73 years; deceased)

Gordon E. Miller (50+ years)

George W. Pointer (46 years; deceased)

Rene J. Trevino (55 years)

Vice Chairman Moore recognized these individuals for their service to the barber profession and the community. Board members signed the certificates of appreciation that will be forwarded to Mr. Miller and Mr. Trevino, and to the families of Mr. Barton and Mr. Pointer. The Board then recessed for a short break to await the arrival of Chairman Kuykendall. Ms. Garza left the meeting at that point because of the imminent birth of a grandchild. Mr. Kuykendall arrived and joined the meeting during the recess. A quorum still being present, Chairman Kuykendall reconvened the meeting at 1:55 pm.

3. Public Comment.

W.D.Wagner's e-mail to Board members (December 3, 2003) suggesting that each barber when renewing his/her license shall purchase a new law and barber book.

Mr. Kuykendall solicited comments from board members concerning Mr. Wagner's email. Mr. Moore stated that he was opposed to such a requirement if it was done solely for financial reasons. Ms. Wiggins supported the idea that each barber have a law book and rule book but did not support requiring them to buy new ones every two years because the statutes and rules might not change in that period. Mr. Moore expressed the opinion that the Board might consider at some future time the idea that each barber shop be required to purchase the books and that each new barber licensed in Texas by endorsement from another state be required to purchase the books. Mr. Kuykendall stated that this

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subject had been discussed in the prior board meeting, but that because the minutes from that meeting were not yet available that the board wait until the members can review those minutes before continuing with discussion of this subject. The board agreed.

Mr. Kuykendall then recognized Mr. Mbachu, who asked how often the statutes and rules are updated. Mr. Kuykendall replied that the statutes are changed by the legislature, usually once each two years, and that the rules are updated periodically by the board. Mr. Joe Shirley was then recognized for public comments. Mr. Shirley stated that if the board decided to require shops owners and barbers to have copies of the rules, it should make allowances for the books to be downloaded off the internet because they are readily available at no costs. He also stated that if the issue is the Barber Board needing more funds to operate, then the Legislature should increase appropriations to the agency out of the funds collected by the agency. Mr. Moore suggested that the topic of who should be required to purchase books deserved to be discussed in a broader context, and asked that the topic be put on a future board agenda, preferable for the next regularly scheduled board meeting.

4. Letter from the Chairman and Executive Director to the TexasOnline Authority requesting exemption from participation in TexasOnline for renewal and original licenses and permits.

Mr. Kuykendall informed the board that he and Glenn Parker (CFO) had attended a board meeting of the Texas Online Authority on December 12, 2003, at which Mr. Parker had made a presentation requesting that the Barber Board be exempted from participation in Texas Online. Mr. Parker reviewed the presentation he had made, highlighting the reasons the Barber Board was requesting an exemption. The basic reasons were that the percentages of the board’s licensees who renew online are quite small (around two percent) and therefore the fees collected by the agency from the licensees and paid to Texas Online are not economically feasible for either the agency or its licensees. Mr. Parker also stated that the Texas Online Authority put off any decisions until February 6, 2004. Mr. Parker also affirmed that the Board will resubmit its request to be exempted from using Texas Online either for renewals of licenses or for the issuance of new, original licensees. Mr. Kuykendall noted that Mr. Joe Shirley had also made a presentation at the Texas Online Authority meeting supporting the Barber Board’s request for the exemptions.

5. First reading of the Board's legislative package for the 79th Texas Legislature.

Proposed Changes to the Texas Occupations Code, Chapter 1601, Barbers.

1601.051: provide that one member of the Board must be a resident of a county with a population of **75,000 or less** rather **than 25,000 or less**

1601.257: provide that an applicant for a manicurist license must be at least **seventeen (rather than sixteen)** years of age (parallels TxCC's requirement)

1601.264; 1601.402: **delete the health certificate** stating that an individual does not have an infectious or contagious disease to obtain a new license or renew a license (**considered antiquated by TDH; facilitate license renewal through TexasOnline**)

1601.301: consolidate the following sections into one section [1601.301. Permit Required]:

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| 1601.301 Permit Required Permit | 1601.302 Temporary Barbershop |
| 1601.310 Relocation of Specialty Shop Location | 1601.503 Notification of Change of |

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1601.303: provide that a *barbershop owner's name* must also appear on a barbershop permit if a barber is not the owner of the barbershop; *delete* the requirement that a barber must have practiced barbering for at least **12 months** before his/her name can appear on a barbershop permit

1601.406: *delete archaic requirement* that barbershop and specialty shop permits expire July 1 of each odd-numbered year; they now expire two years from date of issue

1601.409: provide for *voluntary continuing education*

1601.501: *consolidate* the following sections into one section [1601.501. Display of Barbershop or Specialty Shop Permit]:

1601.311 Display of Specialty Shop Permit 1601.501 Display of Barbershop Permit

1601.506: provide that the Board shall *adopt reasonable rules on cleanliness* for all licensees and permit holders rather than maintain detailed cleanliness requirements in the TOC

1601.560: 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 25 (rather than 20)* students on premises

1601.651(a)(2): provide that the OAG may file an action for an injunction or other proceeding to *enjoin a barber shop owner*, in addition to a barber or barber school, from operating in violation of the Barber Law

1601.651(b): provide that *a barber shop owner*, in addition to a barber 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

1601.652: provide that *a person commits an offense (misdemeanor)* if the person violates the Barber Law punishable by a fine of *not less than \$100 or more than \$300* (re-instate 1601.652 Offense; Penalty repealed by the 77th Texas Legislature)

1601.705: provide that the Board may take a *default judgment against respondents who fail to appear at scheduled hearings before the Executive Director*

Fee changes in various sections: delete the maximums for various fees and other fee changes *pursuant to the Board's authority* to set fees (**1601.155**) enacted by **76th Texas Legislature**

Mr. Kuykendall stated that the items contained in the proposed legislative package are essentially the same as the package the board attempted to get passed during the 78th session. Because the board meets only four (to six) times each year, it is important to begin now to consider the items that the board will want to request in the legislative package for the 79th session. Mr. Kuykendall stated that he is hopeful that the board will have its package ready by the end of the current fiscal year. Mr. Kuykendall then asked for comments from the other board members.

Mr. Moore asked that the items be put back on the agenda for the next board meeting when there should be more board members present. Mr. Kuykendall then recognized Mr. Joe Shirley for a public comment. Mr. Shirley stated that he opposed the recommendation to change 1601.560 to allow the ratio of teachers to students to be increased from 20:1 to 25:1. Mr. Shirley stated that he believed that allowing more students per teacher would do a disservice to the barber students, to the barber profession, and to the public.

Mr. Shirley stated that he supported changing 1601.303 to delete the 12-month barber requirement for a shop permit. He also stated that he supports having the Barber Board review and clarify the requirements in statute and rule for owning a barber shop and obtaining a barber shop permit.

Mr. Kuykendall then recognized Mr. Mbachu for public comment. Mr. Mbachu stated that he supports the proposal to increase the student-teacher ratio to 25:1. He also said that he believes the current requirement that a barber be licensed for 12 months before he can obtain a barber shop permit is not overly restrictive. He said that he is a barber and that he learned a great deal about barbering during the first year after he obtained his license.

6. Pursuant to the General Appropriations Act (78th Texas Legislature), consider the crossover enforcement contract between the Texas Cosmetology Commission and the TSBBE for FY 2004 and FY2005.

Mr. Kuykendall asked Mr. Parker to walk the board through the agenda item. Mr. Parker informed the board that the TSBBE and the Cosmetology Commission are required by the General Appropriations Bill (HB 1) to have a signed contract in place before either agency is legally allowed to spend any money during the current biennium. The requirement has been in place for about 20 years. This is the contract under which the inspectors for the Barber Board inspect dual shops (shops in which both barbers and cosmetologists work). The contract for the current biennium has not been signed and needs to be signed soon to avoid possible problems.

Mr. Parker explained that the State Auditor's Office, during its recent audit of the Barber Board, questioned why the agency is providing the inspection services to the Cosmetology Commission at no cost to the Commission. The TSBBE's response was that it did not believe that it was the intent of the legislature for the TSBBE to charge the TXCC for those services, but that we ask the legislature to clarify that point during the next session. We also said that we would explore the possibility of having the Cosmetology Commission provide services to the Barber Board of an approximately equal dollar value. Because of the State Auditor's question on this point, the Barber Board is proposing to amend the old contract to charge a committee made up of Barber Board and Cosmetology Commission board members and employees with the task of exploring ways in which the Cosmetology Commission might provide services to the Barber Board.

Mr. Kuykendall asked for board member comments and reviewed the configuration of the joint committee. Mr. Kuykendall asked Mr. Brown to serve on the committee as the designee of the Barber Board Chair. Mr. Brown accepted. Mr. Kuykendall noted that the contract is otherwise identical to the previous contract. Ms. Wiggins moved to accept the proposed contract. Mr. Moore seconded the motion and the contract was approved by unanimous vote.

7. Letter to the Office of the Attorney General requesting direction on how to comply with seemingly mutually exclusive mandates of TexasOnline and physical presentation of a health certificate for original license and renewal.

Mr. Kuykendall asked Mr. Pitner if he had reviewed the draft of the letter, and, if so, was the draft adequate in its request. Mr. Pitner said he had reviewed the draft, that it was adequate, and that we would simply have to wait for the Attorney General's opinion. The board had no further comments and approved sending the letter.

8. If needed and pursuant to §551.071 and §551.074 of the Texas Government Code, the Board may enter into Executive Session to address personnel and/or legal matters.

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Mr. Kuykendall stated that Dr. Douglas Beran had submitted his resignation as Executive Director of the Barber Board to accept an opportunity to return to teaching at the college level. He commented that Dr. Beran had done a splendid job for the agency. Mr. Kuykendall stated that there were matters related to Dr. Beran's resignation and the need for establishing new management at the agency that he and the board would like to discuss in executive session. He also said, however, that it was his understanding that the board could not go into executive session at this meeting because the agenda item was not stated in a manner specific enough to meet the state's legal requirements.

Mr. Pitner confirmed that the agenda item was not styled properly and that the board could not go into executive session, or discuss in open session any actions it might want to consider related to the Executive Director's resignation and the need to replace him. Mr. Pitner confirmed that Mr. Parker could continue to fulfill the role of "acting director" because he was already designated by Dr. Beran to fulfill that role in Dr. Beran's absence before his resignation. However, the board could not appoint anyone as "interim director" or take any other personnel actions.

Mr. Kuykendall thanked Mr. Parker for continuing to serve in the role of acting director until the board could hire an executive director. Mr. Moore asked if Mr. Parker could be paid at the rate for the executive director during the time he serves in that role as "acting director". Mr. Pitner advised the board that it could take no actions related to the executive director's position at this meeting. Mr. Kuykendall then moved to agenda item #9.

9. If needed, Board may reconvene in open session to consider and vote on personnel and/or legal matters addressed in Executive Session.

Mr. Kuykendall noted that there was no need to discuss this agenda item. Mr. Kuykendall asked Mr. Pitner if the board could discuss future agendas. Mr. Pitner said that it could. Mr. Kuykendall then asked that an agenda item be posted on the regularly scheduled board meeting to discuss the Sunset Review of the Barber Board.

Mr. Parker informed the board that the official Sunset Staff Report would be released in late January or early February. He also reminded the board that activities will start to speed up in the next few months as the state moves into its processes for submitting strategic plans, legislative appropriations requests, and other preparations for the upcoming legislative session.

Mr. Kuykendall asked Mr. Pitner to provide some guidance for properly posting the agenda items needed to discuss the executive director's job opening on future agendas. Mr. Pitner agreed to do so.

10. Adjourn

Mr. Kuykendall adjourned the board meeting at 2:45 pm.