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MINUTES BOARD MEETING SEPTEMBER 9, 2002 (Minutes are in Italics)

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

Chairman Kuykendall called the meeting to order at 2:15 p.m. Board members in attendance were Janis Wiggins, Ronald Brown, Janie Garza, Wayne Moore. Mr. Hollister was absent. Also in attendance were Dr. Douglas A. Beran, Executive Director, Joe Pitner, Assistant Attorney General, Margie Weaver, Staff Services Officer, and Mary Feys, Administrative Technician II. Visitors were Joe Shirley, W. D. Wagner (Acres Home College), and Booker T. Spencer

2. Public comment.

Chairman Kuykendall returned to this item after item #10.

Mr. Wagner stated Acres Home offers a nail tech course but that his teacher is not certified. He asked if AEFM could certify his teacher to teach the nail tech course. Mr. Kuykendall responded that AEFM could certify Mr. Wagner's teacher to teach the electric file course as long as AEFM follows the Board's curriculum and the teacher posts the certificate.

Joe Shirley stated that, at the last Board meeting, he recommended the minutes should be posted on the Board's web site. To address Dr. Beran's concerns that individuals might misunderstand the minutes, he suggested there could be a notice on the posted minutes with the toll-free number that individuals should contact Dr. Beran or staff for clarification.

Mr. Kuykendall stated his feeling about the minutes is the Board is a public entity and anyone present at the meeting can hear the same thing that's published on the web site. But, he pointed out the minutes can be misconstrued and anyone can attend the meeting to hear the open and free discussion rather than read the open and free discussion on the web site.

Joe Shirley stated there is no way for individuals to know the history of agenda items because once an agenda is past, it is not available at the Texas Register nor at the TSBBE web site, so that people don't get an idea of what's happened in the long run.

Mr. Moore pointed out the agenda itself can be misleading and referred to the history of the rule about licensed felons. He expressed his concern that individuals will speculate and misconstrue things out of context.

Mr. Kuykendall stated the Board can receive public comment but can't engage in a full discussion of any issue raised because it is outside the parameters of the posted agenda and end up discussing issues the public was not aware of that may influence policy and would violate the open meetings rule.

Mr. Kuykendall then took up agenda item #11.

3. Read and possibly approve Board Minutes of August 6, 2002.

Mrs. Wiggins made the motion to approve the minutes, seconded by Mr. Brown. The motion carried unanimously.

4. Recognize Clyde W. Yeary, Jr., upon his retirement at age 86 after 39 years of service to the barber profession and community.

Chairman Kuykendall recognized Mr. Yeary for his service. Board members signed the certificate of appreciation that will be forwarded to Mr. Yeary.

5. Discuss for possible action Proposals for Decision from the State Office of Administrative Hearings (June 17, 2002).

Chairman Kuykendall asked Dr. Beran to give the Board an overview of agenda items #5, #6, and #7. Mr. Moore made the motion to approve the proposals for decision, seconded by Mrs. Wiggins. The motion carried unanimously.

6. Discuss for possible action Proposals for Decision from the State Office of Administrative Hearings (June 24, 2002).

7. Discuss for possible action Proposals for Decision from the State Office of Administrative Hearings (July 15, 2002).

8. 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 August 19, 2002.

Chairman Kuykendall asked Dr. Beran to give the Board an overview of agenda item. Mr. Moore made the motion to approve the proposals for decision, seconded by Mrs. Wiggins. The motion carried unanimously.

9. Discuss for possible approval for publication and public comment the following amendments to rule 51.141. Definitions.

Delete 51.141(1) Line of Demarcation between "the hair" and "the beard."

Delete 51.141(4) "The Beard."

Add the following language (shown by parentheses) to 51.141(5)(A):

The use of any blade or cutting tool for the purpose of removing (any or all) corns or calluses is considered a medical practice and is prohibited. (The possession or storage of any blade or cutting tool for the purpose as contemplated by this rule is *prima facie* evidence of use.)

Chairman Kuykendall introduced the item and asked Dr. Beran for a history of the item. Mr. Moore and Mr. Kuykendall gave additional history of rule 51.141(1) and (4). Mr. Kuykendall, Mr. Moore, and Mr. Brown agreed the Board needs the "Line of Demarcation." After discussion, the Board did not take action to delete 51.141(1) and 51.141(4).

Mr. Moore made the motion, seconded by Mr. Brown, to publish the proposed amendments to 51.141(5)(A) in the Texas Register. The motion carried unanimously.

10. Progress report on implementing rule 51.141(5)(B) that was adopted by the Board on June 4, 2002.

51.141(5)(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.

Chairman Kuykendall introduced the item. Dr. Beran noted that Mr. Brown and Mrs. Garza were appointed by Chairman Kuykendall to look at some proposals for implementing the rule. Since that time, Mr. Brown and Mrs. Garza have been reviewing documentation presented to them by Margie Weaver. Mrs. Weaver presented the draft general policy to the Board and explained the history of the particulars in the policy. Mr. Brown said he is comfortable with the wording, that it does not endorse AEFM as a specific carrier, that the wording is generic and non-product specific. Mr. Pitner agreed the Board does not want to endorse any particular private organization. Mr. Kuykendall stated the Board could delete any reference to AEFM and any other private organization and the rule still would be enforceable. The purpose of the rule and the policy is to give guidance and instruction to the Board's inspectors.

The Board reviewed the standardized, non-product related curriculum for electric file classes. Mrs. Wiggins made the motion to accept the standardized, non-product related curriculum, seconded by Mr. Moore. The motion carried unanimously. Mr. Brown and Mrs. Wiggins added not-less than 8 hours of training and Mr. Moore accepted the 8 hours as a friendly amendment. The amendment carried unanimously

The Board discussed how the Board would monitor the training. The Board agreed the licensee would be required only to post the certification of training next to the individual's license. Whoever teaches the licensee will be required to provide the certification to the licensee. The certification must include the curriculum.

Board members discussed changes to the draft policy regarding the use of electric nail files.

Mr. Kuykendall clarified the trainer's obligation is to know the Board's curriculum and to follow the curriculum and to give the student a certificate that the curriculum has been complied with. Dr. Beran stated that when an inspector goes into a shop and sees the certification from a vendor, then the assumption is the vendor has met the Board's curriculum. The same holds true for certification provided by a school. The Board stated the curriculum provided by the vendor and the school will not be checked by a TSBBE inspector unless that becomes a problem in the future. The Attorney General, county attorneys, and private lawyers would take action if money were paid by licensees for certification without the appropriate training.

Dr. Beran stated the policy would be posted on the web and will be delivered to manicurists by the inspectors and sent to the schools by letter.

Mrs. Wiggins suggested the name should be the Texas State Board of Barber Examiners Electric Nail File Policy. The Board agreed and that the curriculum should be posted with the policy.

Mrs. Wiggins made the motion that the policy be accepted, seconded by Mr. Brown. The motion carried unanimously.

Mr. Shirley suggested the policy could be distributed by product suppliers, the supply houses. Mrs. Weaver said she would e-mail Nancy King to put on the electric nail file web site.

The Board agreed unanimously the grace period for warning citations should be a minimum of 90 days but only one warning per practitioner.

Mr. Kuykendall returned to item #2, public comment.

11. Briefing to the Board regarding procedures utilized by staff to suspend a license upon an order issued by the Child Support Division of the Office of the Attorney General.

Chairman Kuykendall introduced the item. Mr. Moore had asked Mrs. Weaver to bring this to the Board as an information item. He pointed out that when the Attorney General's Office notifies the agency of violations, it demands the inspectors go out and get the violators' licenses. The paperwork in the agenda item shows those procedures.

12. Consider appointing Board Member Ronald L. Brown to review and revise the student teacher written examination for presentation to the Board at its November meeting.

Chairman Kuykendall introduced the item and asked Mr. Brown if November would give him enough time. Mr. Brown said he would report back to the Board at the November meeting. Mr. Moore asked Mr. Pitner if it would be legal for a one-person committee to give his recommendations to Dr. Beran who could fax them to the Board members for their comments. Mr. Pitner said it would be legal. Mr. Pitner also affirmed the legality of Mr. Moore's comments that individual Board members could telephone Mr. Brown with their thoughts. Such a process would allow Board members to look at the items ahead of time. Mr. Kuykendall added it would keep the process fluid.

13. Discuss for possible approval for publication and public comment a new rule 51.59 Student Violation Prior to the Examination:

A student who has been issued a citation for a violation of the Texas Occupations Code Chapter 1601 or rules of the Barber Board may not take the examination for licensure until final resolution of the citation.

Chairman Kuykendall introduced the item and deferred to Dr. Beran for the history of the proposed rule.

Mr. Moore made the motion to approve the proposed rule for publication in the Texas Register, seconded by Mrs. Wiggins. The motion carried unanimously.

14. Consider establishing and appointing an Advisory Committee to the Texas State Board of Barber Examiners.

Chairman Kuykendall stated an advisory board would provide the Board with input and support within the industry and constituencies. The committee gives the Board more resources to draw upon to take care of business and gives the stakeholders more reason to participate in the barbering industry although they can't be appointed as board members. These people want to participate and it would be in the Board's best interests in light of the upcoming legislative session.

He requested the Board to allow him to appoint the members and requested each Board member to submit two names with a term at the pleasure of the Board.

Mr. Moore made the motion that Chairman Kuykendall establish and appoint advisory committee members and give the charge and instructions to the committee, seconded by Mrs. Wiggins. In response to Mr. Brown's comments, Mr. Kuykendall noted he would be assisted by Board members in the selection of the committee members although Mr. Kuykendall will make the final call.

The motion carried unanimously.

15. Discuss possible effective date for rule 51.93 Sanitation Rules for Barber Shops and Barber Schools and Colleges (adopted 06/04/2002).

Chairman Kuykendall introduced the item and deferred to Dr. Beran who asked when should inspectors begin taking action on violations of the new sanitation rules. Margie Weaver introduced the Board to some of the questions and problems that staff has encountered and some of the hardships imposed on barber shops by rule 51.93(b)(5) ["... with not less than one sink per two chairs"]. Mr. Pitner pointed out that if the Board were unaware of the unintended problems the rule would cause when adopted, then the Board can re-visit the rule and delay enforcement of the specific rule and enforce the rest of the sanitation rules.

The Board agreed that staff should continue to tell licensees that the rule is still under discussion and staff could continue to issue permits as it has done.

Mr. Moore made the motion to delay implementation of rule 51.93(b)(5) until the Board has a chance to revisit the sink/chair ratio and to enforce the balance of the rules immediately. Mr. Brown seconded. The motion passed with Mrs. Wiggins opposed.

16. Review and discuss the procedures currently utilized at the Barber Board's practical examination for students.

Chairman Kuykendall introduced the item. Mrs. Wiggins, Mr. Moore, and Dr. Beran gave a history of the item.

Mr. Brown made the motion the Board strike from the procedure sheet the application of a mock-color retouch, rolling of three permanent wave rods, giving manicure, giving facial, or applying sculptured nails or tips for examination purposes at this time. Seconded by Mrs. Wiggins. After discussion, Mr. Brown withdrew his motion.

Mr. Brown offered the motion that the manicure and the application of the sculptured nail be removed from the procedure sheet. Seconded by Mr. Moore. The motion carried unanimously.

Chairman Kuykendall adjourned the meeting at 5:40pm.