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MINUTES
BOARD MEETING
July 7, 2003
(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).

Chairman Kuykendall called the meeting to order at 1:45 p.m. Board members in attendance were Wayne Moore, Janie Garza, Ronald Brown, and Janis Wiggins. Mr. Hollister was absent. Also in attendance were Joseph Pitner (Assistant Attorney General) and the following staff: Douglas A. Beran (Executive Director), Mary Feys (Enforcement Specialist), Glenn Parker (Chief Financial Officer), and inspectors Jacqueline Briscoe, Shawn O'Neal, Jack Rogers, James Tyler, and Luis Sanchez. Members of the public in attendance were Booker T. Spencer, Jr., Pamela Henderson, and Joe Shirley.

2. Read and possibly approve Board Minutes of May 5, 2003.

Mrs. Wiggins made the motion, seconded by Mrs. Garza, that the minutes be approved. The motion carried unanimously.

3. Consider 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 (May 19, 2003; June 23, 2003).

Chairman Kuykendall introduced the item and deferred to Dr. Beran who gave the Board members an overview of the agreed orders. Mr. Moore made the motion, seconded by Mrs. Wiggins, to accept the informal hearings penalties. The motion carried unanimously.

4. Consider extending the suspension of rule §51.12 Inspection of New Barber School or College. The rule was suspended at the March 3rd and May 5th meetings and reads as follows:

§51.12. Two board members or one board member and the board's executive director shall inspect a proposed new barber school or college to determine that it fulfills all requirements of the board and of the Texas Barber Law, §9.

Chairman Kuykendall gave a history of the suspension. Mr. Moore made the motion to extend the suspension of the rule, seconded by Mr. Brown. The motion carried unanimously.

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

Delbert Cannon (54+ years; deceased)

Bennie Milburn (48 years; deceased)

Werner B. Rogers (54+ years)

Paul A. Smith (56+ years)

Willard A. Thompson (54+ years)

J.C. Woods (57+ years)

Chairman Kuykendall recognized each of these individuals for their years of service. Board members signed the certificates of appreciation that will be forwarded to the individuals and/or their families.

6. Public Comment.

Chairman Kuykendall asked the members of the audience if they had any public comments. There was none.

7. Consider changes to the Texas Occupations Code, Chapter 1601, Barbers which were proposed by the TSBBE for the 78th Texas Legislature (SB1193 Carona) but were not enacted.

- a. review, discuss, and possibly amend the proposed changes in preparation for a possible special session.
- b. consider public comment regarding other possible statutory changes.

Chairman Kuykendall introduced the item. He gave a brief history of SB1193 in the 78th Legislature and noted it was not enacted. He then deferred to Dr. Beran who stated SB1193 had been heard in the Senate's Business and Commerce Committee but not by the Senate nor the House. He pointed out the Governor had introduced 28 items for the Legislature to consider in the special session; bills, which cited specific agencies under government reorganization, had been introduced but there was not a bill regarding consolidation or merger. Consequently, no opportunity exists to submit Senator Carona's bill to benefit the barber industry as part of any consolidation or merger. To submit these changes would be outside the call of the 28 issues. And, even if the Speaker referred the bill to a committee and the committee referred it to the House, it could be challenged on a point of order as outside of the call. The best opportunity now is that any changes should be submitted to the Sunset Commission and that those changes would be incorporated into the Sunset legislation. Mr. Kuykendall clarified that the Legislature, at its next regular session, will consider recommendations incorporated in the Sunset proposals and that the enabling statute will not change for the next two years

Joe Shirley stated he hopes the Governor will be persuaded to add on another call to allow the Barber Board to change its legislation. If there any changes to be made in the proposals that were made before, it would be a good time now to make those changes in the event the Governor can be persuaded so the Board would be ready to go with updated legislation. Mr. Shirley noted there are important issues in the previous legislation that need to be passed as soon as possible: the health certificate itself and its lack of benefit for TexasOnline, 12-month barber, inherited barbershop, the change in the student/instructor ratio from 20 to 25, and breaking the Board's larger bill into smaller pieces

Dr. Beran noted Linda Connor's proposed language for the inherited barbershop was in the Board's members' package.

In response to questions from Mr. Kuykendall, Mr. Shirley explained his concerns about the change in the student/instructor ratio. He added that he had visited with some school owners about the change and that some school owners had visited with the Board at a previous meeting. Mr. Kuykendall stated the request for the change came from school owners. Mr. Shirley responded it's an economic benefit to the school owners but not any benefit to the students nor the barber industry.

Mr. Kuykendall's stated his understanding of the Governor's office making the call not including any legislation is reflected in the fact that other agencies and interested parties have not flooded the Capitol with housekeeping bills; that confirms the Governor sets the agenda. As much as the Board would like to have the items addressed and the Board pushed these items hard during the session to reach the floor and receive a vote, that didn't happen. The Board is in an uncomfortable situation but that's the hard reality. He doesn't see how to work around that. Mr. Pitner stated Mr. Kuukendall accurately described the process.

Mr. Kuykendall noted the Sunset process is the only process left to deal with. He noted he does have some concerns with the health certificate from a practical standpoint (e.g., benefits that would accrue from removal of the requirement, reduction in expense to the industry, increasing access to TexasOnline renewals).

Booker T. Spencer asked Mr. Kuykendall for clarification about the health certificate. Mr. Kuykendall gave the history of the Board's efforts to remove the health certificate.

Mr. Kuykendall concluded by saying the Board may consider submitting its legislation in smaller bills during the next session.

8. Consider the TSBBE's administrative fine report for 09/01/02 - 06/30/03.

Mary Feys briefed the Board on the administrative fine report in the Board's package. She distributed a newly available report that displayed the 113 individuals who had tried to renew their licenses through TexasOnline but were blocked because of failure to pay fines/penalties.

Mr. Kuykendall asked staff to be vigilant of increased costs for inspections and try to control those costs so funds could be spent for other efforts; he also asked staff to try to identify those individuals who had been blocked from renewing online but subsequently tried to renew through the normal paper procedures.

Jacqueline Briscoe asked about the amount of fines written by inspectors and the amount that had been collected. She asked if the difference is that people have not paid fines or if the fine amounts had been reduced; she asked what portion of the fines affect the budget. Dr. Beran gave several responses. First, the Agency does not have the authority to shut down a barbershop because of an unpaid fine; the Agency can only block a license and some individuals continue to practice without a barbershop permit or barber license. Second, the amount of money collected is from those individuals who have responded to the Agency's request to pay their fines and penalties; many have not. Since the Agency doesn't have the authority to force payment, those who pay are those who want to comply with the law, those who want to do what's right. Dr. Beran noted the Agency does not get to keep the fine money; it goes directly to the state.

Mrs. Briscoe also asked if the Board has attempted to get more enforcement power and authority for the inspectors.

Mr. Kuykendall responded the Executive Director has the discretion to reduce a fine to zero upon visiting with the licensee. If the Executive Director does not reduce a fine to zero and if it is not paid, then the ultimate penalty is a license cannot be renewed. That is a significant factor. Hopefully, a percentage will comply and a small minority will not comply and the inspectors will continue to cite those individuals. Eventually, graver things can happen. The Board asked the Legislature for greater authority, but that bill did not pass. The Board cannot exercise authority that has not been granted to the Agency by the Legislature.

Mr. Moore stated the inspection process and its inspectors are very important but the purpose of fines is not to raise revenue. The Board does not want to see the inspectors as revenue enhancement agents. The inspectors' purpose is to bring barbers into compliance with the law and rules. The Board gave the power to the Executive Director to intervene as the first avenue of appeal. The Board trusts the judgments of the Executive Director and staff but the Board still has to approve those decisions.

Mr. Moore assured the inspectors that if a second fine were written to individuals who had not paid their initial SOAH fines, the Executive Director would not reduce the fine to zero. And, if the Agency can find out who the individuals are

who have not paid their fines, then the inspectors shall write fines against them and they will not be reduced. But, those fines will not be written in the interests of the budget.

Mrs. Briscoe stated inspectors had not been told their mission is to write fines for revenue but to assure compliance.

Mr. Moore added that very few fines had been reduced to zero.

9. Consider the TSBBE's inspection report for the first three quarters of FY 2003.

Chairman Kuykendall deferred to Dr. Beran who introduced Margie Weaver to present agenda items 9 and 10.

Ms. Weaver briefed the Board on the documents in the Board's package and responded to questions from Mr. Kuykendall and Mr. Moore.

10. Consider the following reports:

Year-to-Date Quarterly report of Renewals, Duplicates, and Late Fees
Year-to-Date Quarterly Report of New Licenses, Permits, Enrollments, and Exams
Year-to-Date Report on Performance Measures

See #9.

11. Consider the TSBBE's appropriations for FY2004 - FY2005 and financial report (09/01/02 - 06/30/03).

Chairman Kuykendall introduced the item and deferred to Glenn Parker who briefed the Board on the financial documents in the Board's package.

Mr. Parker noted the Agency is in good financial shape and will end the year without any revenue or expenditure problems.

He stated the Legislature reduced the Agency's budget by a far less amount than the anticipated 7%. He commented that, in January, Dr. Beran had written a letter to the Governor and Lt. Governor imploring them not to cut the Agency's budget by 7%; but during the Legislative hearings, the Agency was told to make the full cut. Nevertheless, the Agency's budget was not cut the full amount; the net effect was the Agency had to cut its budget by \$29,000 less than originally expected.

The immediate effect was the Agency eliminated the 40-hour leave without pay that was imposed on the staff during March, April, and May. The second effect is the inspectors will be able to go back to the full-time inspection routine; they no longer will be have the 50% travel budget. The Agency also will be able to buy supplies.

He noted all money collected goes into the general fund except for revenue from the sell of law books and lists.

Mr. Moore asked if the 40-hour leave without pay actually was a financial reduction in staff salaries. Mr. Parker stated everyone on the payroll is short one week's pay over the last three months.

Mr. Moore asked if there's a recovery. Mr. Parker responded he is working with the state's human resources people to see if a recovery is possible of a partial amount, if not the full amount. Mr. Moore expressed his appreciation of that effort and that the Agency's employees work hard, they're underpaid, and that they're good people and volunteered to take financial sacrifices to assure continued employment.

Mr. Parker continued that the Agency's revenues are fine and that the Agency will cover all of its expenditures and indirect costs but the Agency has a tight budget and always will have a tight budget.

He then briefed the Board on the Agency's indirect costs (payroll related costs, payments to other agencies, bond debt service) as requested at the May Board meeting.

Mr. Kuykendall commented the Agency requested relief from the bond debt service at every opportunity during the legislative session without any success.

Mr. Parker presented a comparison of the Agency's current year appropriation with the appropriations for the next biennium. He noted TexasOnline will cause a reduction of approximately \$30,000 per year; as a result, the Agency will have to cut expenses. The Agency doesn't want to affect anyone's pay or lay off anyone. The Agency's budget is tight now but will get tighter next year. He noted, for example, the Legislature did not give a special appropriation for benefit replacement pay and longevity pay or to cover legislative salary increases. In the past, the Legislature had provided these appropriations.

Mrs. Wiggins asked if the money the Agency has and the \$29,000 have to be spent before September 1. Mr. Parker said the money must be spent before August 31.

Mr. Parker then responded to questions from the Board.

Mr. Kuykendall complimented the inspectors on their travel reduction and meal-reduction expenses.

12. Consider additional revenue sources for the TSBBE.

Chairman Kuykendall introduced the item and deferred to Dr. Beran; he referred to Mr. Parker's comment in the financial report that the Agency will take a \$30,000 cut off the top to start the new fiscal year for State Office of Risk Management (\$16,000) and several thousand for benefit replacement pay and longevity. To accommodate the \$30,000, in the Board's package were some options for the Board to consider to raise revenue for the Agency. Dr. Beran then deferred to Glenn Parker.

Mr. Parker said one option is to try to live with the reduction. But, the Agency's budget has been cut over the years and the Agency now has fewer inspectors than in the past. The Agency is at the point that any further cuts in the budget would make it very difficult for the Agency to do its job. During the legislative session, the Agency asked the Legislature for an increase in appropriations to cover the State Office of Risk Management and other things. The Agency offered to raise some of its fees. The Legislature denied these requests.

Mr. Parker noted the Agency gets to keep the revenue from the sale of law books and lists and that the Board requires students to have law books and rule books. Mr. Parker offered several options to the Board for increasing revenue:

- (1) require reciprocity applicants to purchase law books and rule books (\$1,000 per year)*
- (2) require shop permit holders to purchase the books*
- (3) require the purchase whenever shop permit holders renew their permits (\$22,000 year)*
- (4) increase the price of books by some amount (\$3.00/\$10,000 - \$11,000 per year)*
- (5) add the price increase to a requirement that shop permit holders would purchase the books (\$30,000 per year).*

Mr. Kuykendall stated his position is it would be reasonable for reciprocity licensees to buy the law of the state in which they wish to practice because they are subject to being cited for violating the law. But, with regard to new shop permits for individuals with existing shops, that would be an unfair taxation or fee for an existing shop owner to pay. But, for first-time barbershop permits, the fee should apply.

Mr. Kuykendall requested an action item for the next Board meeting.

13. Consider the status report of the audit by the State Auditor's Office.

Chairman Kuykendall introduced the item and deferred to Dr. Beran and Mr. Parker to give an oral overview of what has been captured in their conversations and comments with the lead auditor. Dr. Beran said the auditor will provide a written preliminary report the following week which he will share with the Board members.

Mr. Kuykendall asked Dr. Beran and Mr. Pitner to revisit the possibility of outsourcing the collection of fines and penalties.

14. Consider the 2005 Sunset Review Cycle and an overview of the Sunset Process for the TSBBE beginning June 2003.

Chairman Kuykendall introduced the item and deferred to Dr. Beran who referred the Board members to the Sunset questions in the Board members' package.

Dr. Beran then briefed the Board members on various questions asked by the Sunset Commission where he needed input from the Board members (the items with the stars beside them).

Mr. Kuykendall asked the audience for any items to be included in the Board's Sunset package. There was none.

15. Consider the following bills enacted by the 78th Texas Legislature: SB1152 [expansion of populations subject to TexasOnline], HB660 [permissive criminal history check], SB287 [additional public member on Board].

Chairman Kuykendall introduced the item and deferred to Dr. Beran. He referred the Board members to the actual bills in the Board members' package.

Dr. Beran stated that SB1152 provides that the initial license for a barber, booth rental, and barbershop permit will be available through TexasOnline and he anticipates that the Board, at some point in time, shall pass a rule for a subscription fee for these licenses just as it did for barber renewal and manicurist renewal.

Mr. Moore asked if TexasOnline will set the fee. Dr. Beran said it will.

SB660 provides that the Barber Board may do a background check on applicants for a barber license. A fee for the background check would be charged to the applicant and passed on to the Texas Department of Public Safety.

SB287 provides the Board will have an additional public member who will be appointed by the Governor.

16. Consider methodologies by which the TSBBE can comply with the following performance measures set forth in HB1 given the health certificate is still required for the initial license and renewal.

	<u>2004</u>	<u>2005</u>
Percent of Licensees Who Renew Online	13%	18%
Percent of New Individual Licenses Renewed Online	0%	10%

Chairman Kuykendall introduced the item and deferred to Dr. Beran who briefed the Board on the TexasOnline performance measures included in the Board's package.

Dr. Beran restated Mr. Moore's thoughts that the Agency can encourage examinees to go online to obtain their initial license after the examination since Agency will have their health certificates on file.

Dr. Beran also presented another option that the licensees can sign an affidavit that they have a health certificate then follow up with a random audit.

At the September meeting, the Executive Director will brief the Board on any methodologies suggested by the inspectors.

17. Consider the agenda for the Inspectors' meeting, July 8, 2003.

Chairman Kuykendall introduced the item and deferred to Dr. Beran who briefed the Board on the agenda items for the inspectors' meeting on July 8th.

Dr. Beran showed the new inspectors' map to the Board with the new boundaries for seven regions rather than eight regions. The new map was drawn with input from all of the inspectors with the attempt to accommodate all inspectors as much as possible.

18. Pursuant to §551.071 and §551.074 of the Texas Government Code, the Board will enter into Executive Session to consider authorizing the 1.8% pay raise for the Executive Director authorized by HB1 (78th Texas Legislature).

At 3:45 p.m., Chairman Kuykendall took the Board into Executive Session to discuss personnel matters and brought the Board out of Executive Session at 3:58 p.m.

19. Adjourn

Chairman Kuykendall adjourned the meeting at 4:05 p.m.