

MINUTES

FLORIDA BARBERS' BOARD
Department of Business and Professional Regulation
Radisson Hotel Miami
1601 Biscayne Boulevard
Miami, Florida 33132
Sunday, February 22, 2004
9:00 a.m.

The meeting of the Florida Barbers' Board was called to order at approximately 9:00 a.m. by Mr. Peter "Dave" Magda, Chair.

Board Members Present

Peter "Dave" Magda, Chair
Herman White, Vice Chair
Robert Collins
Char Feliciano
Jeri Scott

Other Persons Present

Julie Malone, Executive Director, DBPR
Diane Guillemette, Assistant Attorney General, Department of Legal Affairs
Drew Winters, Assistant General Counsel, Office of the General Counsel, DBPR
Robyn Barineau, Government Analyst, DBPR

Interested Parties Present

Joe Vargas, Court Reporter
Sam Humphries, Commission for Independent Education
Jackie Lombardi, Florida Barber Academy
Ryan Lombardi, Florida Barber Academy
Ruth Mandell, Florida Barber Academy
Abigaly Alvarenga, Florida Barber Academy
Jack Bragin, Boca Beauty Academy
Linda Schierbaum, Margate School of Beauty
Karen Silvia, Margate School of Beauty
Bobby Coffiero, Deerfield Buzz
Leona Coffiero, Deerfield Buzz
Ruby Edwards
Sarah Floyd, West 13th Barbershop, Respondent
Johnny Cassidy, Respondent
Salvatore Agapito, Respondent

The meeting was opened with a roll call and a quorum was established.

Chair Magda welcomed new board member, Ms. Char Feliciano, and Ms. Diane Guillemette, Assistant Attorney General. He also mentioned the recent resignation of Mr. Darrell Wilson from the board and asked staff to send him a letter thanking him for his years of service on the board and encouraging him to reapply for a position on the board in the future.

Approval of Minutes: November 17, 2003

Ms. Jeri Scott moved to accept the minutes from the November 17, 2003, board meeting, as presented. Mr. Herman White, Vice Chair, seconded the motion and the motion passed unanimously.

Chair Magda inquired if Ms. Julie Malone, Executive Director, had determined if costs were assessed to the Florida Barbers' Board for appearance by department personnel at the August 18, 2003, board meeting. Ms. Malone reported that costs were not charged to the board for department personnel appearing at the August board meeting.

Ms. Guillemette reminded the board members about the Sunshine Law. She stressed to board members that there should be no conversations between them regarding current or future board business. She informed the board that all board communication should be directed to her, Ms. Malone or Ms. Robyn Barineau, Government Analyst.

Disciplinary Matters

Ms. Guillemette inquired if all the board members had received their board meeting materials, if the materials were legible, and if the members had reviewed all the materials. All members responded in the affirmative to these questions.

Defaults

West 13th Street Barbershop; Sanford; Case No. 2003-071741

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(c), Florida Statutes, in that it is unlawful for any person to hire or employ any person to engage in the practice of barbering unless such person holds a valid license as a barber. The department suggested assessing a fine of \$500 and costs of \$164.40. Ms. Sarah Floyd, owner of West 13th Street Barbershop, was present. Vice Chair White moved that the board find that the Respondent was properly served with the Administrative Complaint, the Respondent was in default, the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of

fact and conclusions of law of the board, and impose a penalty of a \$500 fine and costs of \$164.40. Mr. Robert Collins seconded the motion and the motion passed unanimously.

Johnny Cassidy; Delray Beach; Case No. 2003-002261

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)(1), Florida Statutes, in that it is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop which is not licensed under the provisions of this chapter; section 476.194(1)(e)(2), Florida Statutes, in that it is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop in which a person not licensed as a barber is permitted to perform services; and section 476.194(1)(b), Florida Statutes, in that it is unlawful for any person to operate any barbershop unless it has been duly licensed as provided in this chapter. The department suggested assessing a fine of \$1,050 and costs of \$116.19. Mr. Johnny Cassidy was present. Vice Chair White moved that the board find that the Respondent was properly served with the Administrative Complaint, the Respondent was in default, the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of the board, and impose a penalty of a \$1,050 fine and costs of \$116.19. Mr. Robert Collins seconded the motion and the motion passed unanimously.

In addition, the board asked Mr. Drew Winters, Assistant General Counsel, to check on the prior unlicensed activity case against Mr. Cassidy and report his findings to the board at the next board meeting. The board also asked Mr. Winters to include on each future board memo if licenses have been brought current when the case alleges violations of a delinquent license.

Salvatore Agapito; Margate; Case No. 2003-073003

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(a), Florida Statutes, in that it is unlawful for any person to engage in the practice of barbering without an active license as a barber issued pursuant to the provisions of this act by the department; and section 476.204(1)(h), Florida Statutes, in that it is unlawful for any person to violate any provision of section 455.2271(1), section 476.194, or section 476.214, Florida Statutes. The department suggested assessing a fine of \$1,000 and costs of \$111.36. Mr. Salvatore Agapito was present and offered mitigation in this matter. Vice Chair White moved that the board find that the Respondent was properly served with the Administrative Complaint, the Respondent was in default, the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of the board, and impose a penalty of a \$1,000 fine and costs of \$111.36, allowing Mr. Agapito to make six monthly installments of \$185.23 to clear this matter in full. Mr. Robert Collins seconded the motion and the motion passed unanimously. Ms. Malone approved the six-month payment plan.

Informal Hearings

Ernie's Barber Shop; Deltona; Case No. 2003-055950

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)(1), Florida Statutes, in that it is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop which is not licensed under the provisions of this chapter; and section 476.194(1)(e)(2), Florida Statutes, in that it is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop in which a person not licensed as a barber is permitted to perform services. The department suggested assessing a fine of \$700 and costs of \$150.79. Mr. Winters informed the board that this matter was paid in full on February 5, 2004. Vice Chair Herman White moved to assess a \$700 fine and costs of \$150.79. Ms. Jeri Scott seconded the motion and the motion passed unanimously.

Mr. Barbershop; Margate; Case No. 2003-07563

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)(1), Florida Statutes, in that it is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop which is not licensed under the provisions of this chapter. The department suggested assessing a fine of \$400 and costs of \$78.11. Mr. Winters informed the board that this matter was paid in full in December 2003. Ms. Scott moved to assess a \$400 fine and costs of \$78.11. Mr. Collins seconded the motion and the motion passed unanimously.

Calvin T. Davis; Riviera Beach; Case No. 2003-061752

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(a), Florida Statutes, in that it is unlawful for any person to engage in the practice of barbering without an active license as a barber issued pursuant to the provisions of this act by the department; and section 476.194(1)(b), Florida Statutes, in that it is unlawful for any person to operate any barbershop unless it has been duly licensed as provided in this chapter. The department suggested assessing a fine of \$1,000 and costs of \$104.59. Vice Chair White moved to assess a fine of \$1,000 and costs of \$104.59. The board did not approve the requested payment plan as a previous penalty remains unpaid. Ms. Scott seconded the motion and the motion passed unanimously.

Frank Liuzzo; Boca Raton; Case No. 2003-072988

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(c), Florida Statutes, in that it is unlawful for any person to hire or employ any person to engage in the practice of barbering unless such person holds a valid license as a barber; and section 455.227(1)(a), Florida Statutes, in that it is unlawful to make

misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession. The department suggested assessing a fine of \$1,000 and costs of \$146.69. Mr. Winters informed the board that this matter has been paid in full. Mr. Collins moved to assess a fine of \$1,000 and costs of \$146.69. Vice Chair White seconded the motion and the motion passed unanimously.

Defaults (continued)

Mr. Winters informed the board that Case No. 2003-057744 against Mr. Marlon Robert Brown of Deland was being pulled from the agenda as it should be heard by the Board of Cosmetology and not the Florida Barbers' Board.

Laveaux Ductan; Sunrise; Case No. 2002-014070

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)(1), Florida Statutes, in that it is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop which is not licensed under the provisions of this chapter. The department suggested assessing a fine of \$500 and costs of \$44.66. Vice Chair White moved that the board find that the Respondent was properly served with the Administrative Complaint, the Respondent was in default, the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of the board, and impose a penalty of a \$500 fine and costs of \$44.66. Ms. Scott seconded the motion and the motion passed unanimously.

**Gaddy Investment Corp., d/b/a Kelly's Barbershop; Orlando;
Case No. 2003-051065**

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)(1), Florida Statutes, in that it is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop which is not licensed under the provisions of this chapter. The department suggested assessing a fine of \$200 and costs of \$120.33. Vice Chair White moved that the board find that the Respondent was properly served with the Administrative Complaint, the Respondent was in default, the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of the board, and impose a penalty of a \$200 fine and costs of \$120.33. Mr. Collins seconded the motion and the motion passed unanimously.

Kreative Kutz, Inc.; Pembroke Pines; Case No. 2003-042500

The Administrative Complaint charged the Respondent with a violation of section 455.227(1)(k), Florida Statutes, in that it is unlawful to fail to perform any statutory or legal obligation placed upon a licensee and shall constitute grounds for which disciplinary action may be taken; two violations of section 476.204(1)(c), Florida Statutes, in that it is unlawful for any person to permit an employed person to practice

barbering unless duly licensed, or otherwise authorized, as provided in this chapter; a violation of section 476.194(1)(f), Florida Statutes, in that it is unlawful for any person to use or attempt to use a license to practice barbering when said license is suspended or revoked; and a violation of section 476.194(1)(b), Florida Statutes, in that it is unlawful for any person to engage in willful or repeated violations of this act or of any of the rules adopted by the board. The department suggested assessing a fine of \$2,500 and costs of \$151.51. Vice Chair White moved that the board find that the Respondent was properly served with the Administrative Complaint, the Respondent was in default, the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of the board, and impose a penalty of a \$2,500 fine and costs of \$151.51. Ms. Scott seconded the motion and the motion passed unanimously.

Shawn Jacobra Johnson; Palatka; Case No. 2003-058876

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)(1), Florida Statutes, in that it is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop which is not licensed under the provisions of this chapter; a violation of section 476.194(1)(a), Florida Statutes, in that it is unlawful to make misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession; and a violation of section 476.194(1)(b), Florida Statutes, in that it is unlawful for any person to engage in willful or repeated violations of this act or of any of the rules adopted by the board. The department suggested assessing a fine of \$1,500 and costs of \$317.23. Ms. Scott moved that the board find that the Respondent was properly served with the Administrative Complaint, the Respondent was in default, the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of the board, and impose a penalty of a \$1,500 fine and costs of \$317.23. Ms. Feliciano seconded the motion and the motion passed unanimously.

Applications

Indian River Community College

Provider Application

Course Application

Aids and Barbering – 2-4 Hours

Live Group Study

Vice Chair White moved to deny the provider application as the course completion certificate contains no space for the provider or course numbers. Ms. Scott seconded the motion and the motion passed unanimously.

Since the provider application was denied, the board did not consider the course application.

Exotica Academy, Inc.

Course Application

Barbering/HIV/AIDS – 2 Hours

Live Group Study

Vice Chair White moved to approve the course application. Ms. Feliciano seconded the motion and the motion passed unanimously.

ArcMesa Educators

Course Application (Renewal)

HIV/AIDS Review (Revised Edition) – 3 Hours

Home Study/Internet

Ms. Malone informed the board that the board rules do not allow course offerings via the Internet. Ms. Scott moved to approve the course application by home study only. Vice Chair White seconded the motion and the motion passed unanimously. Ms. Guillemette will prepare an order approving the course by home study only.

Department Attorney Report

Mr. Drew Winters, Assistant General Counsel, distributed a prosecuting attorney's report and indicated there are currently 66 barber cases in the legal section. He added that Mr. Charles Tunnicliff was recently appointed Chief Attorney over professions. He further stated that Ms. Susan Wilkinson, Staff Attorney, would be assisting him with future barber cases.

Committee Reports

Legislative Committee/Mr. Darrell Wilson, Chair

Chair Magda appointed Ms. Scott as the new temporary Legislative Committee Chair. Ms. Malone informed the board that she is not certain of the deadline to submit 2005 legislative proposals but will inform the board whenever this date is determined.

Examination Committee/Ms. Jeri Scott, Chair

Chair Magda appointed Ms. Feliciano as the new temporary Examination Committee Chair. Ms. Scott mentioned the information included in the supplemental materials relating to the high failure rate for the written examination. Chair Magda mentioned that the textbooks from which the written examination questions were taken were approved by the former board and this information may not have been conveyed to the schools which may have something to do with the high failure rate. Vice Chair White indicated that the examination questions may be too difficult for students who may not have more than an eighth grade education as their reading level may be too basic and they simply could not comprehend the questions. Ms. Scott indicated she feels the new barber psychometrician should not also handle the cosmetology

psychometric duties. Chair Magda disagreed with Ms. Scott and did not see a problem with the new psychometrician handling both barbers and cosmetology. Chair Magda mentioned to Mr. Sam Humphries, Commission for Independent Education, of the lack of communication between the board and the schools. Chair Magda informed Mr. Humphries that the board has asked for assistance with the communication between the board and the schools for years. Mr. Humphries assured Chair Magda that he would meet with staff at the Commission regarding this problem. Ms. Ruth Mandell, Florida Barber Academy, solicited the board's assistance with the books being utilized on the examination for proper teaching tools. She added that schools are required to submit textbooks and paperwork they utilize for student instruction to the Commission for Independent Education and is sure the board has no idea what the schools submit. In addition, Ms. Mandell suggested the board consider requiring all licensees to attend at least one board meeting every renewal cycle as part of their continuing education requirement.

Budget Committee/Mr. Robert Collins, Chair

Mr. Collins indicated that Ms. Malone will discuss the board's financial statements in her report.

Newsletter Committee/VACANT, Chair

Ms. Malone reported to the board that she has suspended preparation of the newsletter until all the current rule changes are finalized so that these changes can be incorporated into the newsletter. Ms. Scott reminded the board that as a cost savings effort, only the barbershops will be mailed newsletters and they will be asked to post the newsletter in their barbershops. In addition, Ms. Malone informed the board that the newsletter will also be posted on their webpage.

Continuing Education Committee/Mr. Herman White, Chair

Vice Chair White had no report.

Old Business

Barbering Definitions

Chair Magda asked that the members be prepared to discuss in detail any possible changes to the barbering definitions at the next board meeting.

Other Business

Executive Director Report

Ms. Malone mentioned the financial statement for the periods ending September 30, 2002, and September 30, 2003. She added that the ending balance as of

September 30, 2003, was \$951,514. She hopes to have the financial statements for the periods ending December 31, 2002, and December 31, 2003, within the next couple of weeks.

Ms. Malone informed the board that the cost allocation methodology from the August 2003 board meeting prepared by the Bureau of Finance and Accounting was provided for informational purposes.

Ms. Malone advised the board that the letter from Carmen Triggiano regarding a barber postal stamp was provided for informational purposes.

Ms. Malone informed the board that the minutes from the 77th Annual Conference of the National Association of Barber Boards of America (NABBA) held in September 2003 were provided for informational purposes. Vice Chair White indicated that there should be a correction to these minutes as he did not report to the conference attendees that the barber and cosmetology boards have merged. Chair Magda asked Ms. Malone to send a letter to NABBA making this correction.

Ms. Malone distributed a copy of legislation drafted by Representative Harper of West Palm Beach regarding apprenticeship programs for barbers and cosmetologists. Rep. Harper asked for the board's opinion of this legislative language. Ms. Malone informed the board that an additional full time position would be necessary in the board office and that additional staff would be required as application processors, customer contact center representatives, inspectors, and investigators. Ms. Scott also interjected that an apprenticeship program would greatly affect schools. Ms. Karen Silvia of Margate School of Beauty asked about the benefits of an apprenticeship program. Ms. Malone reminded attendees that this is merely a legislative proposal submitted by Rep. Harper and it has not yet been filed as a bill. Ms. Scott indicated that the language can be lobbied against and she does not feel this proposed language is a good idea. Chair Magda stated that the proposed language would be a disservice to the barbering industry. After additional discussion, the board agreed that some of the potential problems with the proposal legislation are:

- The proposal does not reach the goal of licensure;
- The proposal allows for unlicensed activity with little or no training or testing;
- The expense to monitor apprentices and sponsors exceeds the proposed fee and benefit to the barbering industry and the public;
- The proposal does not allow the board to consider the competency of a sponsor;
- The proposal allows a sponsor to circumvent board approval when a sponsor appoints a temporary sponsor in their absence;
- The proposal lowers barbering standards in Florida; and
- The proposal allows for cheap, substandard alternatives in the marketplace which will create an unnecessary salary cap

Chair Magda asked all members to thoroughly review this legislative proposal and contact Ms. Guillemette, Ms. Malone or Ms. Barineau with other concerns or questions. Ms. Malone added that she would contact all members with the status of this legislative proposal as soon as she is made aware of any changes.

Board Attorney Report

Ms. Guillemette mentioned the letter received from the Joint Administrative Procedures Committee (JAPC) regarding the board's changes to rules 61G3-16.001, 61G3-16.010, 61G3-16.006, and 61G3-16.007, Florida Administrative Code. She added that before the former Assistant Attorney General, Ms. Erica Glover, left the Department of Legal Affairs, she contacted JAPC and drafted some additional language for rules 61G3-16.001 and 61G3-16.006, Florida Administrative Code, which has been approved by JAPC and have been included in the agenda. Ms. Guillemette indicated that these amendments contain no substantive changes to the language as previously approved by the board. Vice Chair White moved to approve rules 61G3-16.001, 61G3-16.010, 61G3-16.006, and 61G3-16.007, Florida Administrative Code, as amended in the agenda. Ms. Scott seconded the motion and the motion passed unanimously.

Ms. Guillemette advised the board that JAPC did not approve the suspension authority language as originally drafted for rule 61G3-21.014, Florida Administrative Code. Ms. Guillemette distributed some additional suspension authority language she prepared. After further discussion, the board agreed on the following language:

1. The Board shall suspend any license issued pursuant to Chapter 476, Florida Statutes, in a case where the licensee has engaged in:
 - a. Gross malpractice or gross incompetency in the practice of barbering;
 - b. Practice by a person knowingly having an infectious or contagious disease; or
 - c. Commission of any of the offenses described in section 476.194.
2. The Board shall consider the aggravating and mitigating circumstances listed in rule 61G3-21.002, Florida Administrative Code, in applying this rule.

Vice Chair White moved to approve the suspension authority language as amended. Ms. Scott seconded the motion and the motion passed unanimously.

Regulation

Ms. Malone referred the board members to the complaints and investigations report included in the agenda and indicated this report was for informational purposes.

Bureau of Education and Testing

Ms. Malone referred to the report included in the supplemental information relating to statistics for the written examinations, practical examinations and the practical reexaminations. Ms. Scott reported to the board that Ms. Malone gathered the

following information for her: For the period July 1, 2002, through July 1, 2003, the department received 205 barber examination applications and 57 restricted barber examination applications; for the period July 1, 2003, to present, the department has received 141 barber examination applications and 42 restricted barber examination applications.

Mr. Jackie Lombardi, Florida Barber Academy, inquired about a previous issue relating to school/instructor signatures on applications. He inquired as to who monitors the signatures on the applications. He mentioned that he knows of individuals who are downloading application forms and signing their own applications in lieu of signatures from instructors at schools. He suggested supporting documentation be attached to applications such as copies of transcripts or diplomas with school seals to prevent fraud or forgery. Ms. Malone will research the possibility of changing the barber application forms to include information for validation purposes. The board suggested Mr. Lombardi prepare a letter to the department outlining all the problems he is aware of relating to fraudulent barber applications.

Ms. Scott moved to approve Mr. Robert Venci's application as a barber examiner/trainee. Vice Chair White seconded the motion and the motion passed unanimously.

Chair Magda asked that once the new examination rules are effective, Ms. Feliciano will determine if there are any schools in the south Florida that might be willing to offer the practical examinations at their locations to accommodate south Florida applicants.

New Business

Barbershop Inspections by County Health Departments

Ms. Guillemette suggested the board consider that if county health departments inspect barbershops, should the barbershop need to be fined because of a violation, the county health department would most likely keep the fine payments. The board agreed not to pursue this issue.

Barber Schools

Chair Magda indicated he previously mentioned the problems with communication between the board and the schools. Mr. Humphries again agreed to discuss this matter with staff in Tallahassee.

Reciprocity

Ms. Guillemette will research to determine whether or not other documentation can be accepted when countries do not offer licenses. Chair Magda indicated that this initiative needs to be discussed at the next board meeting.

Apprenticeship

Chair Magda indicated that this initiative needs to be discussed at the next board meeting.

Other Business (continued)

Dates/Locations of Future Board Meetings

The board agreed to conduct its next meeting on Monday, May 3, 2004, at 9 a.m., in Orlando, Florida.

Board Member Report/Comments

There were no additional comments by board members.

Chairperson Report/Comments

Chair Magda asked that the following items be included on the next board meeting agenda: Barbering schools, apprenticeship, barbering definitions, and reciprocity. Chair Magda asked Ms. Scott and Ms. Guillemette to meet and discuss any legislative proposals for review at the next board meeting.

Chair Magda indicated that standardization should be discussed at the next board meeting.

There being no further business, the meeting was adjourned at approximately 3:35 p.m.

JM/rb