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FLORIDA BARBERS' BOARD

SHADE MEETING

OCTOBER 13, 2019

**THE FLORIDAYS RESORT
12562 INTERNATIONAL DRIVE
ORLANDO, FLORIDA**

REPORTED BY:

**CYNTHIA R. GREEN, COURT REPORTER
NOTARY PUBLIC, STATE OF FLORIDA**

APPEARANCES :

VERONICA WOLD, CHAIR

EDDIE STEWART, BOARD MEMBER

RUSSELL MAYER, BOARD MEMBER

MICHELINO NIBALDI, BOARD MEMBER (not present)

ANTONETT MUNCHALFEN, BOARD MEMBER (not present)

TIM FRIZZELL, BOARD COUNSEL

ROBERT MILNE, BOARD COUNSEL

KRISTA WOODARD, EXECUTIVE DIRECTOR

COURT REPORTER:

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P R O C E E D I N G S

October 13, 2019

12:50 p.m.

MR. MILNE: And then if we can conduct the roll again, please, Ms. Krista.

MR. FRIZZELL: We'll call to order and then --

MS. WOLD: Okay. So we're calling to order the Shade Meeting --

MR. MILNE: Yes.

CHAIR WOLD: -- of the Florida Barber Board. It's 10/13 at 12:50 p.m.

MS. WOODARD: Roll call.

MR. MILNE: And the meeting is now closed. And, Krista, if you can call the roll.

MS. WOODARD: Yes.

Veronica Wold?

CHAIR WOLD: Here.

MS. WOODARD: Eddie Stewart?

MR. STEWART: Here.

Russell Mayer?

MR. MAYER: Here.

MS. WOODARD: Michelino Nibaldi? (No response.)

Antonett Munchalfen? (No response.)

1 MR. MILNE: Is there an excused absence for
2 Mr. Nibaldi, in light of his wife just having
3 given birth? Is there a vote to excuse his
4 absence?

5 MR. STEWART: I make a motion to excuse his
6 absence.

7 CHAIR WOLD: All in favor say aye. (Board
8 members responded.)

9 Aye. Motion passes.

10 MS. WOODARD: Madam Chair, we have not
11 received any information from Ms. Munchalfen, so
12 we need to vote to --

13 CHAIR WOLD: So, do we have a motion about
14 here again?

15 MR. MILNE: Are you going to excuse
16 Ms. Munchalfen's absence?

17 CHAIR WOLD: No, we did not. No, we did
18 not. Is there a motion?

19 MR. MILNE: Is there a vote not to excuse
20 her absence.

21 CHAIR WOLD: Again?

22 MR. STEWART: No, let's don't keep excusing
23 her absence again.

24 MR. MILNE: So then the vote would be not
25 to excuse her continued absence?

1 CHAIR WOLD: Right. All in favor say aye.

2 MR. MILNE: Is there a motion?

3 CHAIR WOLD: He made a motion. Did you
4 second it?

5 MR. MAYER: Yes. I seconded it.

6 CHAIR WOLD: All in favor say aye. (Board
7 members responded.)

8 Motion passes.

9 MR. FRIZZELL: Is it the 750-hour proposal?

10 MR. MILNE: Yes.

11 MR. FRIZZELL: Or 700-hour proposal?

12 MR. MILNE: It's the 700.

13 Does everybody have the counterproposal to
14 what we voted on -- what you voted on last time,
15 which is -- got red writing at the top For Use
16 in Settlement Negotiations Only, and it's the
17 700-hour proposal from FAST.

18 Does everybody have a copy of that?

19 CHAIR WOLD: Uh-huh.

20 MR. MILNE: As Ms. Dailey, mentioned, they
21 are seeking to get a range. Tim has been in
22 extensive contact with all levels of the triad
23 of the accrediting and the Federal and State
24 Departments of Education, and they have all
25 conclusively said that a range won't work

1 because they are tied by their own regulations
2 to address the minimum.

3 CHAIR WOLD: Uh-huh.

4 MR. FRIZZELL: The minimum.

5 MR. MILNE: And if we have a minimum of
6 600, as you proposed at the last meeting, Tim,
7 if I'm not correct -- I think I'm correct in
8 saying the top range of that would be 900 hours.

9 MR. FRIZZELL: That is correct.

10 MR. MILNE: We can't go to 1050.

11 Now, having said that, you will see -- Tim,
12 do you have also our compromise --

13 MR. FRIZZELL: I do.

14 MR. MILNE: -- proposal?

15 MR. FRIZZELL: I do.

16 MR. MILNE: Tim is going to give you the
17 compromise proposal of 600 where we actually
18 carve out some competencies to remedy the Rule
19 that was drafted at 500 where there were no
20 competencies for any school to evaluate, which
21 was a glaring deficiency. That has now been
22 remedied and the competencies that you see in
23 the 600-hour compromise proposal shows with some
24 input from Eric Hall at the Department of
25 Education.

1 MR. FRIZZELL: Well, he just looked at it
2 and said that they wouldn't have any objection.

3 MR. MILNE: They could -- if we have to go
4 to trial we have Department of Education
5 witnesses who will testify on our behalf in
6 support of the Rule at 600 with this sort of
7 competencies that can be evaluated independently
8 objectively by the schools that are graduating
9 these students.

10 So, I don't know if you have any comments
11 on that. Our --

12 CHAIR WOLD: Remind me of the hours we
13 have?

14 MR. MILNE: They -- we initially started at
15 500.

16 CHAIR WOLD: I know we said 600, but --

17 MR. MILNE: They asked for 850.

18 CHAIR WOLD: -- I mean, what's the -- a
19 breakdown.

20 MR. MILNE: We have -- the breakdown is --

21 MR. FRIZZELL: Yes.

22 MR. MILNE: If you go to --

23 CHAIR WOLD: Of what we've --

24 (CROSSTALK)

25 MR. FRIZZELL: Right. If you go -- if you

1 look at the one that says just confidential --

2 CHAIR WOLD: Okay.

3 MR. FRIZZELL: -- that is the exact
4 breakdown. The only change was over here.

5 CHAIR WOLD: The wording.

6 MR. FRIZZELL: The wording, yes.

7 MR. MILNE: Yes.

8 MR. FRIZZELL: Because this is the
9 breakdown that came out of the --

10 MR. MILNE: They put in here cleansing and
11 whatever, sterilization, yes.

12 CHAIR WOLD: Hair.

13 MR. MILNE: So there is a compromise so
14 that you can have the schools advise on their
15 hair structure, cutting and cleansing and
16 shaving abilities, which we didn't have at the
17 last --

18 CHAIR WOLD: Right.

19 MR. MILNE: -- go-around. I think those
20 are practical requirements that you need if
21 you're going to graduate.

22 MR. FRIZZELL: And we're also -- they've
23 also requested to bring back "and shampooing"
24 under that. And so we --

25 CHAIR WOLD: It's up here.

1 MR. MILNE: We put it with cleansing, yes.

2 MR. FRIZZELL: Right. So -- right. But if
3 you -- but we bring it back in as (c) as opposed
4 to it's own separate. So it's included in that
5 hundred-and-fifty hours.

6 MR. MILNE: Right.

7 CHAIR WOLD: Yeah.

8 MR. MILNE: And then it's up to the
9 school's reportion, with their best discretion
10 and knowledge, how to allocate the hours amongst
11 that. And also we -- to protect them in the
12 short term from unintended revenue loss, we've
13 still got them grandfathered in under -- beneath
14 the rubric you'll see (c), allowing them to have
15 courses teaching them out for another hear, from
16 the first of next year they're offering
17 restricted courses at 1,200 hours, they can do
18 that for one more year.

19 CHAIR WOLD: Okay.

20 MR. MILNE: So that cushions the blow
21 somewhat, and that also gives them time to ramp
22 up, we think, to amend their rules. And I
23 think, Tim, you've advised that the Department
24 of Education, the accrediting agencies, will
25 look favorably on the fact that they have been

1 forced by state action --

2 MR. FRIZZELL: Uh-huh.

3 MR. MILNE: -- to make these amendments.

4 MR. FRIZZELL: To clarify, I've spoken with
5 -- I've spoken with all three of the triad.

6 Department of Education, here, Florida

7 Department of Education, they don't really have

8 a position on this. They just like tell us what

9 it is. That's the Comission on Independent

10 Education.

11 We have talked with other experts over at

12 Department of Education who has looked at this

13 exact proposal and has told me that they have no

14 objection to this. I spoke with NCEES who is

15 the major accrediting firm -- or major

16 accrediting agency in the United States.

17 They're not the only one, but they are the major

18 player, and they informed me that the range

19 would be -- would be unique in the United States

20 and that they -- since they established all of

21 their minimums or all of their requirements

22 based upon the minimum competencies --

23 CHAIR WOLD: Uh-huh.

24 MR. FRIZZELL: -- then a range would do

25 nobody any good. Also, they would consider a

1 change such as this to be a state mandated
2 change, which would basically grease the wheels
3 for these schools to come down to the 600 hours
4 within the year. It would not be a very onerous
5 process for them. And if they wanted to
6 increase that up from 600 up to 900 hours, I'm
7 not sure of the exact process that they'd have
8 to go through, but it would certainly be a lot
9 easier of a process then if that school was
10 opening up from closed.

11 MR. MILNE: And given that we have given
12 them this grandfathering window --

13 MR. FRIZZELL: They have a year to get that
14 done.

15 MR. MILNE: -- they will get their schools
16 in line with that without --

17 MR. FRIZZELL: Right.

18 MR. MILNE: -- so that can be ready to go
19 within that year.

20 MR. FRIZZELL: Likely, the biggest
21 roadblock is going to the US Department of
22 Education, simply because this will be brand new
23 for them. I have been in contact with them.
24 They did also tell me that the range would not
25 be useful because they established their

1 guidelines based upon the minimum, but it kind
2 of was -- and, you know, when you talk to
3 somebody like, you know, with the feds.
4 Whenever you're talking with one individual
5 person, it's hard for them to tell us what the
6 entire process is going to be. But I -- but
7 they're currently dealing with other changes
8 that Florida has been making, and so there will
9 be -- they will be familiar with this. They
10 will recognize the schools immediately. And so,
11 at the very least, the schools will not be
12 coming into this cold with this. And it's the
13 same process they're going to have to go through
14 with 600 hours, or their proposal is 700 hours.
15 So, either way, it's the exact same process.

16 MR. MILNE: And it's also fair to say,
17 Board members, that since our last meeting in
18 Tallahassee, we have done extensive due
19 diligence on the counterproposal, the realities
20 on the cutting room floor, if you'd like, of the
21 barber shops, how this is going to have an
22 impact on the restricted program of the
23 unintended consequences to the educational
24 institutions organizing under -- and try to find
25 a productive and practical compromise.

1 We believe that at this point now we have
2 -- if we go on forward with 600 we have a viable
3 case.

4 CHAIR WOLD: Okay.

5 MR. MILNE: So I think the first thing
6 would be to consider whether you want to accept
7 or reject the counter proposal at 700 hours.
8 That would be the first issue for you to reach
9 consensus on.

10 CHAIR WOLD: I make a motion to deny.

11 MR. MILNE: Okay. So any --

12 MR. MAYER: I'd second her motion.

13 MR. MILNE: And you, Eddie?

14 MR. STEWART: Very good.

15 MR. MILNE: Agreed?

16 MR. STEWART: Agreed.

17 MR. MILNE: All right. So since the
18 counterproposal has been denied, there will be a
19 vote in public as to what we're going --

20 MR. FRIZZELL: Okay.

21 MR. MILNE: -- to move forward with.

22 MR. FRIZZELL: Uh-huh.

23 MR. MILNE: Is there a vote to approve as
24 tweaked by Tim -- it must be Tim's due
25 diligence, to give him all the credit, the

1 proposal that you see here without the red
2 writing at the top of the page?

3 MR. FRIZZELL: The one that's simply titled
4 "Confidential".

5 CHAIR WOLD: Yeah, I'm okay with that one.

6 MR. MILNE: And, Board members?

7 CHAIR WOLD: Motion? Do I need to make a
8 motion?

9 MR. MILNE: Are you content with this?

10 MR. STEWART: Yes.

11 MR. MAYER: Yes.

12 MR. MILNE: Yes, all right. Is this the
13 point where we pause?

14 MR. FRIZZELL: What we would like to do is
15 not conclude the Shade Meeting? Leave the Shade
16 Meeting open. Take a short break to allow us to
17 go and talk with opposing counsel. Give her an
18 opportunity to go and consult with her clients,
19 with -- all while we're still under Shade --

20 CHAIR WOLD: Uh-huh.

21 MR. FRIZZELL: -- so that way we --

22 CHAIR WOLD: And we --

23 MR. FRIZZELL: -- we can come back, and if
24 there's any further --

25 CHAIR WOLD: -- talk about it.

1 MR. MILNE: Yeah.

2 MR. FRIZZELL: -- any further discussions
3 to be had.

4 MR. MILNE: That gives you room to maneuver
5 with us. We can talk this through with you
6 guys.

7 MR. FRIZZELL: So --

8 MR. MILNE: And we'll go and talk.

9 CHAIR WOLD: Okay.

10 MR. MILNE: If you'd give us a quick
11 recess, we'll go and talk with Ms. Dailey.

12 MR. FRIZZELL: To remind the members that
13 we're still under the Shade, so anything that
14 was discussed during this meeting remains
15 confidential and should not be discussed outside
16 the four walls, or while we're on break for that
17 matter.

18 MR. MAYER: How long is the break?

19 MR. MILNE: We're still in the Shade
20 Meeting, but we're going to be short, I think.

21 CHAIR WOLD: As long as they need.

22 MR. FRIZZELL: Hopefully short.

23 (A break was had.)

24 CHAIR WOLD: We are calling the Barber
25 Board back to order in the Shade.

1 MR. MILNE: We have had discussions with
2 counsel for the Petitioner and they have asked
3 whether -- if we go forward with the Rule as you
4 with to promulgate, the 600 hours, with these
5 changes that you've already approved, whether
6 you would consider a minor amendment to the Rule
7 reflecting that at 600, under the Federal and
8 State regulations, the range would be capped at
9 900 anyway. That's the 150 percent --

10 MR. MAYER: Correct. So I can't understand
11 why they're having -- they know it's going to be
12 capped --

13 MR. MILNE: Yeah.

14 MR. MAYER: -- why are they fighting back?
15 The only reason I can think of is because their
16 funding will go down.

17 MR. MILNE: Right. And they -- they like
18 to show what the law requires in the Rule.

19 We're going to, with your consent, take
20 that under advisement to see whether it's
21 necessary to have that or appropriate to put
22 that in the Rule. And we would ask that you
23 consider to go forward with the 600 hours, give
24 the Attorney General's Office the latitude to
25 consult and research the issue whether it would

1 be appropriate to put the 900 cap in words
2 reflecting the Federal and State requirements.

3 If we thought that would be something that
4 would settle this litigation, but keep your 600
5 hours and everything else as carved in stone, we
6 would ask that you give us that latitude to do
7 so. And we would also ask that if we come into
8 a position where we cannot -- we're deadlocked
9 -- to give us the authority to continue to
10 litigate or take the extreme option of
11 withdrawing the Rule and doing it all over again
12 at 600 hours from scratch. Or to enter into an
13 abatement so that we -- with the case and the
14 judge so that we can continue working on this to
15 get it fixed. That would be our recommendation.
16 Because I think, in honesty, we're almost there
17 now.

18 MR. MAYER: I would like to hear what Ed
19 has to say about this.

20 MR. MILNE: I want to hear from everybody.

21 MR. STEWART: I have nothing to say other
22 than whatever the attorneys feel like is the
23 appropriate action for us to take. I'd like for
24 you to do that.

25 Are we going to be here the rest of the day

1 waiting on them?

2 MR. MILNE: No.

3 CHAIR WOLD: No.

4 MR. MILNE: We're going to be very very --
5 we're going to finish in the next minute or two.

6 MR. FRIZZELL: But the point of you giving
7 us wide latitude is so that we don't have to
8 stay here, and that we can continue to work on
9 it. But it gives us wide discretion to be able
10 to resolve this matter without having to call
11 the Board back.

12 MR. MILNE: With everything else remaining
13 the same except for this one issue about whether
14 it would be appropriate to put in what's
15 required under law anyway, which is the cap of
16 900 hours.

17 MR. MAYER: Versus they're going to have to
18 agree to anyways.

19 MR. MILNE: The are, but they want to have
20 it listed in the Rule.

21 MR. FRIZZELL: They want it in black --
22 they want it in black and white.

23 (CROSSTALK)

24 MR. MILNE: The motion -- the motion -- if
25 we have consensus then, and then we can go

1 public and be finished with this, would be to
2 give us the discretion to continue to research
3 the issue about the 900-hour cap and if we
4 thought it would be appropriate for the purposes
5 of settling this and staying with the 600-hour
6 minimum, that we have the authority to do that
7 and finish the Rule that way. Also give us the
8 authority to abate these proceedings at court,
9 so we can adjourn the case and get this wrapped
10 up. But failing that, also give us the option
11 of pulling the Rule and bringing it back fresh
12 at 600, with everything that you've got, and
13 just go for it like that. Or to continue
14 litigating if we can't get an honorable
15 settlement.

16 MR. STEWART: So moved.

17 MR. MILNE: Well --

18 CHAIR WOLD: It's fine.

19 MR. MILNE: -- Veronica, are you happy with
20 that?

21 CHAIR WOLD: Yes.

22 MR. MILNE: We're trying to bring this
23 home. There's a little thing that they want --
24 oh, and I think they've also consented to
25 allowing us to dispense with a SERC anymore. We

1 did the SERC checklist. Part of our
2 negotiations was to let the SERC go.

3 CHAIR WOLD: Yes.

4 MR. MILNE: We're not going to have the
5 controversy.

6 CHAIR WOLD: Uh-huh.

7 MR. MILNE: Okay. So with that said, we
8 can -- if your consensus is to give us that
9 discretion and those instructions, I will put
10 the motion forward in open session.

11 Is that fair?

12 MR. STEWART: That's fair.

13 CHAIR WOLD: Yes.

14 MR. MILNE: Madam Chair, we can convene the
15 close of the Shade Meeting and put this to
16 public vote.

17 CHAIR WOLD: Okay. So we're closing the
18 Shade Meeting and --

19 MR. MILNE: Everybody agree?

20 MR. MAYER: You're making a motion? I'll
21 second it.

22 CHAIR WOLD: I don't have to make a motion,
23 do I?

24 MR. MAYER: I'll make a motion to close the
25 Shade Meeting.

1 MR. MILNE: I don't think it hurts.

2 CHAIR WOLD: Okay.

3 MR. MAYER: I make a motion to close the
4 Shade Meeting.

5 MR. STEWART: I second it.

6 MR. MILNE: All right.

7 CHAIR WOLD: Okay.

8 MR. MILNE: Shall I call her in?

9 CHAIR WOLD: Yes.

10 MR. MILNE: Okay.

11 CHAIR WOLD: So we're out of the Shade and
12 we're --

13 MR. FRIZZELL: So, from the portion from
14 when we -- right before we called roll, to this
15 moment right now, is what we'll need
16 transcribed.

17 (The October 13, 2019 Barbers' Board Shade
18 Board meeting concluded at 2:17 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, CYNTHIA R. GREEN, Court Reporter,
certify that I was authorized to and did report the
aforementioned October 13th, 2019 Barbers' Board
Shade Board Meeting, and that the transcript is a
true and complete record of my notes and recordings.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I financially interested in the outcome of
the foregoing action.

DATED this 18th day of October, 2019.

Cindy Green

CYNTHIA R. GREEN, Court Reporter
Notary Public, State of Florida
(electronic signature)