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:

Cindy R. Green, Court Reporter
Magnolia Court Reporting
407-896-1813
ReportingOrlando@aol.com
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.)
MR. MILNE: Is there an excused absence for Mr. Nibaldi, in light of his wife just having given birth? Is there a vote to excuse his absence?

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

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

Aye. Motion passes.

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

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

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

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

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

CHAIR WOLD: Again?

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

MR. MILNE: So then the vote would be not to excuse her continued absence?
CHAIR WOLD: Right. All in favor say aye.

MR. MILNE: Is there a motion?

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

MR. MAYER: Yes. I seconded it.

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

Motion passes.

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

MR. MILNE: Yes.

MR. FRIZZELL: Or 700-hour proposal?

MR. MILNE: It's the 700.

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

Does everybody have a copy of that?

CHAIR WOLD: Uh-huh.

MR. MILNE: As Ms. Dailey, mentioned, they are seeking to get a range. Tim has been in extensive contact with all levels of the triad of the accrediting and the Federal and State Departments of Education, and they have all conclusively said that a range won't work
because they are tied by their own regulations
to address the minimum.

CHAIR WOLD: Uh-huh.

MR. FRIZZELL: The minimum.

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

MR. FRIZZELL: That is correct.

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

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

MR. FRIZZELL: I do.

MR. MILNE: -- proposal?

MR. FRIZZELL: I do.

MR. MILNE: Tim is going to give you the
compromise proposal of 600 where we actually
carve out some competencies to remedy the Rule
that was drafted at 500 where there were no
competencies for any school to evaluate, which
was a glaring deficiency. That has now been
remedied and the competencies that you see in
the 600-hour compromise proposal shows with some
input from Eric Hall at the Department of
Education.
MR. FRIZZELL: Well, he just looked at it and said that they wouldn't have any objection.

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

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

CHAIR WOLD: Remind me of the hours we have?

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

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

MR. MILNE: They asked for 850.

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

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

MR. FRIZZELL: Yes.

MR. MILNE: If you go to --

CHAIR WOLD: Of what we've --

(CROSSTALK)

MR. FRIZZELL: Right. If you go -- if you
look at the one that says just confidential --

CHAIR WOLD: Okay.

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

CHAIR WOLD: The wording.

MR. FRIZZELL: The wording, yes.

MR. MILNE: Yes.

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

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

CHAIR WOLD: Hair.

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

CHAIR WOLD: Right.

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

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

CHAIR WOLD: It's up here.
MR. MILNE: We put it with cleansing, yes.

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

MR. MILNE: Right.

CHAIR WOLD: Yeah.

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

CHAIR WOLD: Okay.

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

MR. FRIZZELL: Uh-huh.

MR. MILNE: -- to make these amendments.

MR. FRIZZELL: To clarify, I've spoken with -- I've spoken with all three of the triad. Department of Education, here, Florida Department of Education, they don't really have a position on this. They just like tell us what it is. That's the Comission on Independent Education.

We have talked with other experts over at Department of Education who has looked at this exact proposal and has told me that they have no objection to this. I spoke with NCEES who is the major accrediting firm -- or major accrediting agency in the United States. They're not the only one, but they are the major player, and they informed me that the range would be -- would be unique in the United States and that they -- since they established all of their minimums or all of their requirements based upon the minimum competencies --

CHAIR WOLD: Uh-huh.

MR. FRIZZELL: -- then a range would do nobody any good. Also, they would consider a
change such as this to be a state mandated change, which would basically grease the wheels for these schools to come down to the 600 hours within the year. It would not be a very onerous process for them. And if they wanted to increase that up from 600 up to 900 hours, I'm not sure of the exact process that they'd have to go through, but it would certainly be a lot easier of a process then if that school was opening up from closed.

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

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

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

MR. FRIZZELL: Right.

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

MR. FRIZZELL: Likely, the biggest roadblock is going to the US Department of Education, simply because this will be brand new for them. I have been in contact with them. They did also tell me that the range would not be useful because they established their
guidelines based upon the minimum, but it kind
of was -- and, you know, when you talk to
somebody like, you know, with the feds.
Whenever you're talking with one individual
person, it's hard for them to tell us what the
entire process is going to be. But I -- but
they're currently dealing with other changes
that Florida has been making, and so there will
be -- they will be familiar with this. They
will recognize the schools immediately. And so,
at the very least, the schools will not be
coming into this cold with this. And it's the
same process they're going to have to go through
with 600 hours, or their proposal is 700 hours.
So, either way, it's the exact same process.

MR. MILNE: And it's also fair to say,
Board members, that since our last meeting in
Tallahassee, we have done extensive due
diligence on the counterproposal, the realities
on the cutting room floor, if you'd like, of the
barber shops, how this is going to have an
impact on the restricted program of the
unintended consequences to the educational
institutions organizing under -- and try to find
a productive and practical compromise.
We believe that at this point now we have -- if we go on forward with 600 we have a viable case.

CHAIR WOLD: Okay.

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

CHAIR WOLD: I make a motion to deny.

MR. MILNE: Okay. So any --

MR. MAYER: I'd second her motion.

MR. MILNE: And you, Eddie?

MR. STEWART: Very good.

MR. MILNE: Agreed?

MR. STEWART: Agreed.

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

MR. FRIZZELL: Okay.

MR. MILNE: -- to move forward with.

MR. FRIZZELL: Uh-huh.

MR. MILNE: Is there a vote to approve as tweaked by Tim -- it must be Tim's due diligence, to give him all the credit, the
proposal that you see here without the red
writing at the top of the page?

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

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

MR. MILNE: And, Board members?

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

MR. MILNE: Are you content with this?

MR. STEWART: Yes.

MR. MAYER: Yes.

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

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

CHAIR WOLD: Uh-huh.

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

CHAIR WOLD: And we --

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

CHAIR WOLD: -- talk about it.
MR. MILNE: Yeah.

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

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

MR. FRIZZELL: So --

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

CHAIR WOLD: Okay.

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

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

MR. MAYER: How long is the break?

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

CHAIR WOLD: As long as they need.

MR. FRIZZELL: Hopefully short.

(A break was had.)

CHAIR WOLD: We are calling the Barber Board back to order in the Shade.
MR. MILNE: We have had discussions with counsel for the Petitioner and they have asked whether -- if we go forward with the Rule as you with to promulgate, the 600 hours, with these changes that you've already approved, whether you would consider a minor amendment to the Rule reflecting that at 600, under the Federal and State regulations, the range would be capped at 900 anyway. That's the 150 percent --

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

MR. MILNE: Yeah.

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

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

We're going to, with your consent, take that under advisement to see whether it's necessary to have that or appropriate to put that in the Rule. And we would ask that you consider to go forward with the 600 hours, give the Attorney General's Office the latitude to consult and research the issue whether it would
be appropriate to put the 900 cap in words reflecting the Federal and State requirements.

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

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

MR. MILNE: I want to hear from everybody.

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

Are we going to be here the rest of the day
waiting on them?

MR. MILNE: No.

CHAIR WOLD: No.

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

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

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

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

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

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

(CROSSTALK)

MR. MILNE: The motion -- the motion -- if
we have consensus then, and then we can go
public and be finished with this, would be to give us the discretion to continue to research the issue about the 900-hour cap and if we thought it would be appropriate for the purposes of settling this and staying with the 600-hour minimum, that we have the authority to do that and finish the Rule that way. Also give us the authority to abate these proceedings at court, so we can adjourn the case and get this wrapped up. But failing that, also give us the option of pulling the Rule and bringing it back fresh at 600, with everything that you've got, and just go for it like that. Or to continue litigating if we can't get an honorable settlement.

MR. STEWART: So moved.

MR. MILNE: Well --

CHAIR WOLD: It's fine.

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

CHAIR WOLD: Yes.

MR. MILNE: We're trying to bring this home. There's a little thing that they want -- oh, and I think they've also consented to allowing us to dispense with a SERC anymore. We
did the SERC checklist. Part of our
negotiations was to let the SERC go.

    CHAIR WOLD: Yes.

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

    CHAIR WOLD: Uh-huh.

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

    Is that fair?

    MR. STEWART: That's fair.

    CHAIR WOLD: Yes.

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

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

    MR. MILNE: Everybody agree?

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

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

    MR. MAYER: I'll make a motion to close the
Shade Meeting.
MR. MILNE: I don't think it hurts.

CHAIR WOLD: Okay.

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

MR. STEWART: I second it.

MR. MILNE: All right.

CHAIR WOLD: Okay.

MR. MILNE: Shall I call her in?

CHAIR WOLD: Yes.

MR. MILNE: Okay.

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

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

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