

MINUTES

FLORIDA BARBERS' BOARD
Department of Business and Professional Regulation
Amerisuites Orlando Convention Center
8741 International Drive
Orlando, Florida 32809
Monday, February 21, 2005
9:00 a.m.

General Business Meeting

The General Business 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

Robyn Barineau, Executive Director, Department of Business and Professional Regulation (DBPR)
Charles Tunncliff, Office of the General Counsel, DBPR
Daniel Biggins, Assistant Attorney General, Department of Legal Affairs
Dana Ewaldt, Government Analyst, DBPR

Interested Parties Present

Cindy Green, Court Reporter
Rockne Locey, Endorsement Applicant
Gail Simon, Sunstate Academy
Tony Simon, Sunstate Academy
Maya Thomas, Maya's School of Beaute and Different Strokes
Roberto Balbuena, San Miguel Barbershop, Respondent
Herman Jones, Fashion Cuts Barbershop, Respondent
Edwin Stewart
Carol Collins

The meeting was opened with a roll call and a quorum was established. Chair Magda thanked the audience members for attending the meeting.

Approval of Minutes: General Business Board Meeting of 11/15/2004

Ms. Jeri Scott moved to accept the minutes from the November 15, 2004, General Business Board Meeting. Mr. Herman White, Vice-Chair, seconded the motion and the motion passed unanimously.

Disciplinary Matters

Motions for Waiver of Rights and Final Order

Pierre Flossie; Pompano Beach; Case No. 2004-024715

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)1, F.S., 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. The department suggested assessing a fine of \$500 and costs of \$143.43. Vice Chair White moved that the board find the Respondent was properly served with the Administrative Complaint, that the Respondent failed to respond within 21 days, thereby waiving their right to elect a hearing in this matter, that the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of this board, and that the board impose the penalty as recommended in the Petitioner's Motion for Finding of Waiver of Respondent's Rights and for Final Order of a \$500 fine and costs of \$143.43. Ms. Scott seconded the motion and the motion passed unanimously.

Tennyson Ross Young; Tamarac; Case No. 2004-020293

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 provision of this act by the department. The department suggested assessing a fine of \$500 and costs of \$165.05. Ms. Feliciano moved that the board find the Respondent was properly served with the Administrative Complaint, that the Respondent failed to respond within 21 days, thereby waiving their right to elect a hearing in this matter, that the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of this board, and that the board impose the penalty as recommended in the Petitioner's Motion for Finding of Waiver of Respondent's Right and for Final Order of a \$500 fine and costs of \$165.05. Vice Chair White seconded the motion and the motion passed unanimously.

Miami Wonder Cuts; Miami; Case No. 2004-029949

The Administrative Complaint charged the Respondent with multiple violations of section 476.204(1)(i), F.S., in that it is unlawful for any person to violate or refuse to comply with any provisions of Chapter 476 or Chapter 455 or a rule or final order of the Board. The department suggested assessing a fine of \$200 and costs of \$34.05. Vice Chair White moved that the board find the Respondent was properly served with the Administrative Complaint, that the Respondent failed to respond within 21 days, thereby waiving their right to elect a hearing in this matter, that the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of this board, and that the board impose the penalty as recommended in the Petitioner's Motion for Finding of Waiver of Respondent's Right and for Final Order of a \$200 fine and costs of \$34.05. Ms. Feliciano seconded the motion and the motion passed unanimously.

Motions for Waiver of Rights and Final Order (Continued)

Danny A. Curry; Miami; Case No. 2003-086055

The Administrative Complaint charged the Respondent with a violation of section 476.204(1)(c), F.S., 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)(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; a violation of section 476.204(1)(i), F.S., in that it is unlawful for any person to violate or refuse to comply with any provision of this chapter or Chapter 455 or a rule or final order of the board; a violation of section 476.194(1)(b), F.S., 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; and a violation of section 476.204(1)(h), F.S. in that it is unlawful for any person to violate any provision of section 455.227(1), s. 476.194 or s. 476.214. The department suggested assessing a fine of \$2,500 and costs of \$152.28. Vice Chair White moved that the board find the Respondent was properly served with the Administrative Complaint, that the Respondent failed to respond within 21 days, thereby waiving their right to elect a hearing in this matter, that the board accept the allegations as stated in the Administrative Complaint and adopt them as the findings of fact and conclusions of law of this board, and that the board impose the penalty as recommended in the Petitioner's Motion for Finding of Waiver of Respondent's Rights and for Final Order of a \$2,500 fine and costs of \$152.28. Ms. Scott seconded the motion and the motion passed unanimously.

Informal Hearings

San Miguel Barber Shop; Miami; Case No. 2004-029949

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)1, F.S., in that it is unlawful for any person to own, operate, maintain, open establish, conduct of or charge of either alone or with another person or persons a barbershop: which is not licensed. The department suggested assessing a fine of \$500 and costs of \$118.75. Mr. Charles Tunncliff, Assistant General Counsel, informed the board that the owner of the barbershop was present and offered mitigation. After much discussion with the owner, Mr. Balbuena, it was determined by the board that Mr. Balbuena had complied with the local occupational licensing requirements; Mr. Balbuena believed all requirements were met. Vice Chair White also moved to dismiss citation # 2004-029894 and its accompanying penalties. Ms. Scott seconded the motion and the motion passed unanimously.

Settlement Stipulations

Danny Olivera; Tampa; Case No. 2004-039648

Mr. Tunncliff indicated his office received a signed election of rights form, from the Respondent, stating that there were no disputed material facts and this case should be considered as a Settlement Stipulation. The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(a), F.S., in that it is unlawful for any person to engage in the practice of barbering without an active license as a barber. The department suggested assessing a fine of \$500 and costs of \$9.77. Vice Chair White made a motion to accept the Stipulation. Ms. Scott seconded the motion and the motion passed unanimously. Mr. Collins inquired if there would be a future related case opened against Tijerazo Hair Stylist. Mr. Tunncliff mentioned his attempt to have investigators / inspectors put related cases in the inspection reports.

Northwood Barber Shop; Tallahassee; Case No. 2003-083434

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)(1), F.S., in that it is unlawful for any person to own, operate, maintain, open establish, contact or have charge of, a barbershop: which is not licensed under the provisions of this chapter; and a violation of section 476.204(1)(i), F.S., in that it is unlawful for any person to violate or refuse to comply with any provision of this chapter or chapter 455 or a rule or final order of the board. The department suggested assessing a fine of \$600 and costs of \$85.66. Ms. Feliciano moved that the board adopt the Stipulation of the parties as the board's final action in this matter and incorporate it and all its terms into a final order. Vice Chair White seconded the motion and the motion passed unanimously.

Phil's Barber Shop; Gainesville; Case No. 2004-045174

The Administrative Complaint charged the Respondent with a violation of section 476.204(1)(i), F.S., in that it is unlawful for any person to violate or refuse to comply with any provisions of Chapter 476 or Chapter 455 or a rule or final order of the board. The department suggested assessing a fine of \$300 and costs of \$114.52. Vice Chair White moved that the board adopt the Stipulation of the parties as the board's final action in this matter and incorporate it and all its terms into a final order. Ms. Scott seconded the motion and the motion passed unanimously.

Bernabe Rodriguez; Delray Beach; Case No. 2004-027296

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)1, F.S., in that it is unlawful for any person to own or operate, maintain, a barbershop: which is not licensed; a violation of section 476.194(1)(e)2, F.S., in that it is unlawful to permit another person, in which a person is not licensed as a barber, to perform barbering services; and a violation of section 476.194(1)(b), F.S., in that it is unlawful for any person to engage in willful or repeated violation of Chapter 476 or any of the rules adopted by the Board. The department suggested assessing a fine of \$1,100 and costs of \$82.50. Ms. Feliciano moved that the board adopt the Stipulation of the parties as the board's final action in this matter and incorporate it and all its terms into a final order. Vice Chair White seconded the motion and the motion passed unanimously.

Mad Barbers; Orlando; Case No. 2003-070679

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(c), F.S., 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 \$500 fine and costs of \$298.34. Vice Chair White moved that the board adopt the Stipulation of the parties as the board's final action in this matter and incorporate it and all its terms into a final order. Ms. Feliciano seconded the motion and the motion passed unanimously.

John A. Jadin; Pompano Beach; Case No. 2004-035903

The Administrative Complaint charged the Respondent with violation of section 476.194(1)(a), F.S., in that it is unlawful for any person to engage in the practice of barbering without an active license. The department suggested assessing a \$500 fine and costs of \$171.94. Vice Chair White moved that the board adopt the Stipulation of the parties as the board's final action in this matter and incorporate it and all its terms into a final order. Ms. Feliciano seconded the motion and the motion passed unanimously.

Fashion Cuts; Ocala; Case No. 2004-026347

The Administrative Complaint charged the Respondent with violation of section 476.194(1)(e)1, F.S., in that it is unlawful for any person to own, operate, maintain, open, establish conduct or have charge of a barbershop which is not licensed. The department suggested assessing a \$500 fine and costs of \$169.76. Vice Chair White moved that the board adopt the Stipulation of the parties as the board's final action in this matter and incorporate it and all its terms into a final order. Mr. Collins seconded the motion and the motion passed unanimously.

Applications

Endorsement Applications

Rockne Locey; New York

Mr. Locey requested his application for endorsement be brought before the Board due to the verification of examination history from New York. Mr. Locey's license certification did not indicate how he was originally licensed in New York. Mr. Locey testified that he has held no other state's license and that he passed a practical and a written examination in the State of New York. Ms. Scott noted the rule of endorsement and the consistency that this rule must uphold. Vice Chair White argued that the license would not have been issued if the state board examination had not been taken and passed. Board Counsel informed the board that in accordance with Rule 61G3-16.005, F.A.C., Mr. Locey's testimony could be considered as demonstration of his satisfactory completion of a written and practical examination from New York. Chair Magda agreed that Mr. Locey's testimony should be accepted as his proof of passing a written and practical examination in New York. Chair Magda, Vice Chair White, Ms. Feliciano, and Mr. Collins voted to approve Mr. Locey's endorsement application. Ms. Scott voted against approving Mr. Locey's endorsement application.

Luz Vaughn; Columbia South America

Ms. Vaughn asked that her endorsement application be considered by the Board. Ms. Vaughn was not present at the Board Meeting. Ms. Vaughn's application paperwork verified her education being that of a cosmetologist rather than a barber. Vice Chair White moved to deny Ms. Vaughn's endorsement application. Mr. Collins seconded the motion and the motion passed unanimously.

Continuing Education Provider and Course Applications

South Tech Charter High School – HIV / AIDS and Other Communicable Diseases

After review of the course application, course materials / content, Vice Chair White made a motion to accept the continuing education course application as presented. Ms. Feliciano seconded the motion and the motion passed unanimously.

Bene's International School of Beauty, Inc – The Era of Aids

After review of the course application and course content, the Board felt that the course completion certificate was lacking required information; course number and number of hours. Vice Chair White made a motion to approve the course application with the contingency that the course completion certificate be corrected and sent to the Executive Director, within 30 days. Ms. Scott seconded the [contingency] motion and the motion passed unanimously.

Elite CME – Renewal – Barbers HIV / AIDS Education

Vice Chair White moved to approve the renewal of this course. Ms. Scott seconded the motion and the motion passed unanimously.

Committee Reports

Legislative Committee / Ms. Jeri Scott, Chair

Ms. Scott had no additional report. She volunteered to meet with Senator Gary Siplin on proposed legislation should the Board want to pursue any legislation during the 2005 legislative session.

Examination Committee / Char Feliciano, Chair

Ms. Feliciano mentioned that an application for a new examiner, Deg McCracken of Hallandale, was submitted to the Bureau of Education and Testing.

Budget Committee / Mr. Robert Collins, Chair

Mr. Collins noted the testing & CE budget increases on the financial report.

Newsletter Committee / VACANT, Chair

At the previous Board Meeting, Chair Magda asked if the newsletter had been mailed. Several of the board members, as well as barbershop owners, are reporting that the newsletter has not been received. Staff informed the Board that Ms. Malone-Garofalo researched this matter and in fact the newsletters had been mailed by the contracted mailer. Ms. Barineau offered to send a copy of the newsletter to all Board Members.

Continuing Education Committee / Mr. Herman White, Chair

Vice Chair White had no report.

Prosecuting Attorney's Report

Status Report

Mr. Tunncliff reported that as of January 4, 2005, there were 64 barber cases in the legal section.

Per the Board's request, at the November 2004 board meeting, Mr. Tunncliff reported that a case was opened against Best Value Barber Shop in conjunction with unlicensed activity related to the case against Mr. Nicola Italico.

Per the Board's request, at the November 2004 board meeting, Mr. Tunncliff reported that the 1995 citation issued against Mr. David L. Thomas has been paid.

Unpaid Citations

Mr. Tunncliff explained to the Board that a citation becomes a final order of the board within 90 days after its issuance if the respondent does not dispute the citation. He informed the board that non-payment / compliance of a citation results in the filing of an additional complaint against the individual or business.

Old Business

Barbering Definitions

Chair Magda asked that the members provide Ms. Barineau or Ms. Ewaldt with their proposed barbering definitions as soon as possible for inclusion in the next board meeting's agenda.

Apprenticeship / Internship

Mr. Daniel Biggins, Assistant Attorney General, reported on his findings of apprenticeship versus internship. His discussion referenced House Bill HB1611, 2004 Apprenticeship Bill. After checking with the Florida Department of Education (DOE), Commission of Independent Education (CIE) and the Department of Labor (DOL) the apprenticeship program, through the Workforce Innovation Act, would allow an individual to be paid / compensated while enrolled in the program. Ms. Gayle Simons, Sunstate Academy, stated that Barbering students often switch over to Cosmetology because there is not a practical portion to the cosmetology exam and because the initial fees are lower. Mr. Steve Campora, DOE, would like the Board to set standards for monitoring and or tracking. DOE has concerns with duplication efforts in monitoring / tracking. If DOE is not the sole monitor of the program, then it must be labeled "internship". Ms. Scott asked if the Barber Board would statutorily accept "apprenticeship" toward licensure and if so, if the Barber's Board then would have to adopt the programs. Chair Magda asked if the board felt as if they wanted to move forward on an apprenticeship / internship program. Vice Chair White, Mr. Collins and Ms. Scott feel as if the program should be statutorily in place first. Chair Magda asked

Mr. Biggins to draft the language before the Board makes a decision one way or another. He also asked Mr. Biggins to check with DOE and CIE on both an internship and an apprenticeship to gather their opinions. The Board suggested adding language to the statute for schools to offer the option of providing an apprenticeship or an internship program to be administered by the schools. Mr. Biggins will check with both DOE and CIE to make sure that they do not have a problem with an internship program, and if so, Mr. Biggins will invite Mr. Steve Campora to attend a Board Meeting to discuss views / position of DOE.

Barber Instructors

This topic will be discussed at the next board meeting.

Reciprocity

Chair Magda mentioned that attendees at the National Association of Barbers Boards of America (NABBA) annual conference, spoke about examination standardization from state to state and the general consensus was that there needs to be standardization throughout the United States. Chair Magda noted that possible refresher courses would need to be taken; i.e. Florida laws & rules and sanitation, specifically.

Ms. Scott will continue to review all out of country endorsements applications. The board requested staff to ask the application processing unit to have the endorsement applicants who are unable to provide proof of educational hours and / or passing of a written and practical examination information for a letter, when appropriate, from the licensing state or country indicating that records have been purged or are otherwise unavailable. When the applicant provides such a letter, to the department, the applicant may also request that the board review their application at the next available board meeting.

Other Business

As per 455.203, F.S., Vice Chair White made a motion to approve the new Executive Director,

Robyn Barineau. The motion was seconded by Ms. Feliciano and the motion passed unanimously.

Letter from Mr. Ed Magney, Director of Carrs Barbers Club, USA

Instead of addressing the issues noted in his letter, the board decided to invite Mr. Magney to attend the next meeting.

Email from Ms. Lyndell Suttles Regarding Apprenticeships

Ms. Barineau presented the email correspondence. Ms. Barineau will respond to Ms. Suttles indicating the board is currently researching apprenticeship and or internship programs.

Regulation

Unlicensed Activity Campaign / Public Service Announcement (PSA)

After discussion by the board, the board voted not to participate in the Department's unlicensed activity PSA campaign as they did not have enough information to make an informed decision on their participation.

Chairperson's Report / Comments

The National Association of Barber Boards of America (NABBA) Meeting Minutes

The NABBA minutes were included in the agenda for information purposes only. Chair Magda would like to contact NABBA about Florida being a host state for a future annual conference. This will be discussed further at the next board meeting.

Barbershop Landlord Discussion

Chair Magda asked if language could be incorporated in the statute to address landlord responsibility in hopes to alleviate some illegal activities going on in rented barbershop space. Mr. Biggins said that he does not believe anything can be done [currently] through Chapter 476. However, the possibility of redefinition of the word "barbershop" to clarify the actual location and to limit what goes on in a "barbershop" could be explored. Mr. Biggins will ask Mr. Mark Reddinger for his ideas and suggestions.

Board Attorney's Report

Rules Report

Proposed amendments to Rules 61G3-16.0010, F.A.C. and 61G3-16.007, F.A.C. were included in the agenda. Mr. Biggins mentioned the letter from the Joint Administrative Procedures Committee (JAPC) and their concerns with the assignment of value in conjunction to grading "area" or grading "criteria". After discussion, Ms. Scott made a motion to withdraw the proposed amendment changes to rule 61G3-16.007, F.A.C. The motion was seconded by Vice Chair White and the motion passed unanimously. A motion was made by Vice Chair White to withdraw the proposed amendment changes to rule 61G3-16.0010, F.A.C. The motion was seconded by Ms. Feliciano and the motion passed unanimously.

Bureau of Education and Testing

South Florida Proctors & Examination Administrators

Collectively, the Board wants to have a [practical] examination site location in South Florida. Chair Magda would like to see this pursued more vigorously in the future. To have site locations in North Florida, Central Florida and South Florida is fair to all students statewide. After discussion, Ms. Scott made a motion to approve Ms. Feliciano as lead examiner, as necessary, for the South Florida location. The motion was seconded by Vice Chair White and the motion passed unanimously.

Lively Vocational – Technical School Practical Examination Cost

The examination location and costs have been tabled until the next board meeting.

Comments on Examination Content Information

After discussion of the revised examination content, as presented by Ms. Lyra Erath, Vice Chair White made the motion to approve. The motion was seconded by Ms. Scott and the motion passed unanimously. After the motion, discussion ensued in reference to the wording of the written examination. As has been previously voiced, the board feels like the wording needs to be less sophisticated; brought down to an eighth grade level of comprehension. Chair Magda would like to further discuss this issue at the next board meeting, as well as ask Ms. Erath to attend the meeting.

Dates / Locations of Future Board Meetings

The board agreed to conduct its next meeting on Monday, May 16, 2005 at 9:00 a.m., in St. Augustine, Florida.

There being no further business, the meeting was adjourned at approximately 4:30 p.m.

RB/de