

MINUTES

**FLORIDA BARBERS' BOARD
Department of Business and Professional Regulation
Casa Monica Hotel
95 Cordova Street
St. Augustine, Florida 32257
Monday, May 16, 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
Lyra Erath, Psychometrician, Bureau of Education & Testing DBPR

Interested Parties Present

Becky Noel, Court Reporter
Nancy Bradley, Commission for Independent Education
Jackie Lombardi, Florida Barber Academy
Guido Verdone, Endorsement Applicant
Angela Verdone
Rosaria Verdone
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 02/21/2005

Ms. Jeri Scott moved to accept the minutes from the February 21, 2005, 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

Kateline Gaspard; Coral Springs; Case No. 2003-072281

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; 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 this act or of any of the rules adopted by the board; 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 \$1,500 and costs of \$117.37. Vice Chair White moved that the board find the Respondent was properly served with the Administrative Complaint, 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 \$1,500 fine and costs of \$117.37. Ms. Scott seconded the motion and the motion passed unanimously.

Compound Barber, Inc; Ft. Lauderdale; Case No. 2004-036490

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)2, 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 in which a person not licensed as a barber is permitted to perform services; a violation of section 476.194(1)(f), F.S., 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 476.194(1)(b), F.S., in that it is unlawful for any person to engage in willful or repeated violations of Chapter 476 or any of the rules adopted by the Board;. The department suggested assessing a fine of \$2,000 and costs of \$268.43. Vice Chair White moved that the board find the Respondent was properly served with the Administrative Complaint, 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 \$2,000 fine and costs of \$268.43. Ms. Scott seconded the motion and the motion passed unanimously. After the motion passed, Mr. Collins initiated discussion of a payment plan for this Respondent. After discussion by the board, Vice Chair White made a motion to amend the original motion to include a payment plan calling for monthly payments of \$250 until paid in full. Ms. Scott seconded the amended motion and the motion passed unanimously.

Motions for Waiver of Rights and Final Order

29th Street Barbershop; Miami; Case No. 2004-022683

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 provisions of Chapter 476 or a rule of the Board by violating multiple sanitary rules and is therefore subject to disciplinary action by the Barbers' Board. The department suggested assessing a fine of \$600 and costs of \$31.37. Vice Chair White moved that the board find the Respondent was

properly served with the Administrative Complaint, 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 \$600 fine and costs of \$31.37. Ms. Scott seconded the motion and the motion passed unanimously.

Thomas H. Gregory; Largo; Case No. 2004-000438

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 engage in the practice of barbering without an active license as a barber issued pursuant to the provisions of this act by the department. The department suggested assessing a fine of \$500 and costs of \$34.29. Ms. Feliciano moved that the board find the Respondent was properly served with the Administrative Complaint, 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 \$34.29. Vice Chair White seconded the motion and the motion passed unanimously.

William Estimond; North Miami; Case No. 2004-034268

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 engage in the practice of barbering without an active license as a barber issued pursuant to the provisions of this act by the department. The department suggested assessing a fine of \$500 and costs of \$109.89. Vice Chair White moved that the board find the Respondent was properly served with the Administrative Complaint, 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 \$109.89. Ms. Scott seconded the motion and the motion passed unanimously.

Trevineo King; Pembroke Pines; Case No. 2004-041484

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 engage in the practice of barbering without an active license as a barber issued pursuant to the provisions of this act by the department. The department suggested assessing a fine of \$500 and costs of \$210.82. Ms. Scott moved that the board find the Respondent was properly served with the Administrative Complaint, 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 \$210.82. Ms. Feliciano seconded the motion and the motion passed unanimously.

Disciplinary Actions (Continued)

Original Barbershop; North Miami; Case No. 2004-037318

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)2, 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 in which a person not licensed as a barber is permitted to perform services. The department suggested assessing a fine of \$500 and costs of \$98.12. Vice Chair White moved that the board find the Respondent was properly served with the Administrative Complaint, 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 \$98.12. Ms. Scott seconded the motion and the motion passed unanimously.

Gerald Kancey; Miami; Case No. 2004-020100

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(f), F.S., 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. The department suggested assessing a fine of \$500 and costs of \$37.97. Vice Chair White moved that the board find the Respondent was properly served with the Administrative Complaint, 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 cost of \$37.97. Ms. Scott seconded the motion and the motion passed unanimously.

Settlement Stipulations

Kwik Kuts Barbershop; Sunrise; Case No. 2004-035114

Mr. Tunncliff indicated that his office should receive 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)(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 \$262.51. Ms. Scott made motion to accept the settlement stipulation. Vice Chair White seconded the motion and the motion passed unanimously. Mr. Tunncliff will prepare the Final Order, for this case, once the signed settlement stipulation is received by his office. Mr. Tunncliff added, that if the signed settlement stipulation is not received by his office, this case would be reconsidered as a Motion for Waiver of Rights and be presented to the board at the next board meeting.

Isloda Albert; Palm Springs; Case No. 2003-095478

The Administrative Complaint charged the Respondent with a violation of section 476.194(1)(e)2, 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 in which a person not licensed as a barber is permitted to perform services; a violation of 476.194(1)(e)1, F.S., in that it is unlawful for any person to own, operate, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop which is not licensed; 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 of any of the rules adopted by the Board. The department suggested assessing a fine of \$1,500 and costs of \$116.31. 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.

Manuel H. Palacios; Weston; Case No. 2004-021032

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, 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 \$149.80. 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.

Applications

Endorsement Applications

Guido Verdone / New York

Mr. Verdone requested that his application for endorsement be brought before the full board for review / approval. Mr. Verdone did not qualify for endorsement due to the lack of verification of licensure examination history from New York; the license certification did not indicate how he was originally licensed in the State of New York. Mr. Verdone was sworn in by the Court Reporter. Mr. Verdone testified that he had held a New York Barbers' license for 23 years and that he passed both a written and practical state board examination. His sworn testimony included information of his education history in Italy. Vice Chair White pointed out that the New York Barbers' license would not have been issued to Mr. Verdone had a state board examination not been passed. Board Counsel informed the board that in accordance with Rule 61G3-16.005, F.A.C., Mr. Verdone's sworn testimony could be considered demonstration of his satisfactory completion of a written and practical examination from New York. Chair Magda agreed that Mr. Verdone's testimony should be accepted as his proof of examination. Vice Chair White made a motion to approve the endorsement application for licensure based on presented evidence by Mr. Verdone. Ms. Feliciano seconded the motion and the motion passed unanimously.

Continuing Education Provider and Course Applications

Florida Department of Health – HIV / AIDS 101/104

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

Florida Medical Education Services – HIV / AIDS Update (Renewal)

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

North Florida Cosmetology Institute – HIV for Barbers (Renewal)

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

Informed – HIV / AIDS Update for Barbers (Renewal)

After review of the course application and course content, it was noted that the course completion

certificate was lacking required information. The completion certificate did not indicate the number of hours earned from the course. 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. Feliciano seconded the [contingency] motion and the motion passed unanimously.

Prosecuting Attorney's Report

Status Report

Mr. Tunncliff reported that as of April 15, 2005, there were 60 barber cases in the legal section.

Mr. Tunncliff will research why the inspection report that was included in the Trevineo King case did not indicate that there were any unlicensed barbers at the time of the inspection. Mr. Tunncliff will report his findings at the next board meeting.

Mr. Tunncliff informed the board that a new attorney has been hired to handle the barber disciplinary cases and that he will bring the new attorney to the next board meeting for introduction.

Committee Reports

Legislative Committee / Ms. Jeri Scott, Chair

Ms. Scott asked the board to consider proposing legislation to amend section 476.144, F.S., to allow licensure by endorsement for restricted barbers; allowing the written examination for restricted barbers to test on more than just laws and rules; and to eliminate the ability of Florida students to become restricted barbers. Mr. Biggins will draft language to rewrite the restricted barber endorsement to go back to the original intent.

Examination Committee / Ms. Char Feliciano, Chair

Ms. Feliciano reported that the new examiner, Deg McCracken, has recently attended his first practical examination. He is in training and will be scheduled for the next standardization. At this point, Ms. Erath reported that no other examiner applications have been received by the Bureau of Education and Testing.

Budget Committee / Mr. Robert Collins, Chair

Mr. Collins has concerns with the approximately \$70,000 increase in the continuing education and testing expense from December 2003 to December 2004. Ms. Barineau has been asked to research this matter and report her findings at the next board meeting.

Committee Reports (Continued)

Newsletter Committee / VACANT, Chair

Chair Magda reported that a letter was recently mailed to Mr. Kirkpatrick of the National Association of Barber Boards of America (NABBA) inquiring about costs associated with hosting a national meeting. To date, he has not received a response from NABBA.

Continuing Education Committee / Mr. Herman White, Chair

Vice Chair White had nothing to report at this time.

Old Business

Barbering Definitions

Chair Magda requested that all board members be ready to discuss barbering definitions at the next board meeting. He reminded all board members to send any proposed barbering definitions to the board office staff for inclusion in the next board meeting agenda.

Barber Instructors

Ms. Scott informed the board that most states along the east coast offer barbering instructor licenses. Ms. Nancy Bradley, Commission for Independent Education (CIE), advised the board that the CIE manages the oversight of all Florida private barbering schools and that the credentials of private barbering school instructors are monitored by the CIE. Ms. Bradley added that barber instructors are required to hold a Florida barber license, have 3 years of practical experience and they must complete eight hours of continuing education annually. Mr. Jackie Lombardi, Florida Barber Academy, added that he felt the board should not pursue licensing of barber instructors.

Other Business

Newsletter Articles

Ms. Barineau informed the board that she will be compiling another board newsletter within the next few months and asked the members for article ideas. She reminded the board that they previously voted to only publish future newsletter on the barbers' board website.

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

Ms. Barineau informed the board that in accordance with their request, at the February 21, 2005, board meeting, she invited Mr. Ed Magnay of Carrs Barbers Club USA, Inc., to attend the board meeting to address his concern outlined in his letter of December 30, 2004. Mr. Magnay was not present at the meeting and there was no further discussion of this matter.

Board Attorney Report

Rules Report; Rules 61G3-16.0010 & 61G3-16.007, F.A.C.

Mr. Biggins reminded the board that at the last board meeting they voted to withdraw Rule 61G3-16.007, F.A.C., as the Joint Administrative Procedures Committee (JAPC) notified the board that they had no statutory authority to examine restricted barber examination candidates on anything other than Florida laws and rules on the written portion of the examination. Mr. Biggins suggested changing the current wording of the rule by removing all non law and rule related material and putting those items back into the practical portion of the examination. The suggested amending of rule 61G3-16.007(2), F.A.C., to read as follows:

“The written portion of the examination for restricted licensure shall cover the laws and rules which govern the practice of barbering in Florida.”

Vice Chair White moved to amend rule 61G3-16.007(2), F.A.C. as stated above. Ms. Scott seconded the motion and the motion passed unanimously. Mr. Biggins will submit the proposed change to JAPC.

Mr. Biggins suggested that the items that are being removed from the written portion of the examination be placed back in to the practical portion. Ms. Erath added that the item bank can be utilized for the written exam [to consist of 30 – 35 questions] pertaining to Florida rules and laws. Ms. Erath also noted that the shave service will need to be placed back in to the practical portion of the restricted barbers' examination. She went on to add that several of the no-charge exam sites are not

setup to accommodate a shave demonstration, thus, possibly presenting an issue for practical examination sites. After discussion, the board agreed that a candidate performing a shave around the model's ears, sideburns, and neckline were sufficient to the performance of a shave in the practical portion of the examination. At this point, there is no need to change the rule for the practical portion of the restricted barbers' examination.

Further discussion ensued as to the initial / original intent of section 476.144(6)(a)1, F.S., for restricted barbers' licensure. Chair Magda noted that the statute was originally intended to help those individuals, coming from another state or country, who did not qualify for the full barbers' license (due to no chemical training) to obtain licensure via examination. Chair Magda requested that all members think about suggested changes to this section and be prepared to discuss further at a later date.

Ms. Barineau reminded the board about the 100 percent continuing education monitoring initiative and that in accordance with the board's rule, those not in compliance after the next renewal cycle may be issued a citation in accordance with rule 61G3-16.0091(7), F.A.C. Mr. Biggins pointed out that currently there is no penalty to address the non-compliance of the continuing education requirement. The board voted to amend the citation rule. Mr. Biggins will draft language for rule 61G3-21.009(3)(m), F.A.C., assigning a \$100 monetary penalty for a citation should a licensee renew their license and not be in compliance with their continuing education requirements. After discussion, Vice Chair White made a motion to adopt the rule amendment. The amendment will read as follows:

"Attempting to renew a license when not in compliance with continuing education requirements in violation of rule 61G3-16.0091, F.A.C., in the amount of \$100."

Ms. Scott seconded the motion and the motion passed unanimously.

Apprenticeship / Internship

As previously requested by the board, Mr. Biggins, gave an overview of the draft legislation he prepared proposing a barber apprenticeship program or a barber internship program. Mr. Biggins stated that an apprenticeship program would fall under the direction of the Florida Department of Education (DOE) with the board having the ability to assist in the development of standards and that an internship program would fall under the direction of the Florida Barbers' Board. Chair Magda expressed concerns that he would not want the internship program to replace going through a school education program. Chair Magda went on to add that the main focus is to have a program that works with a school that would not replace the school program nor would an internship eliminate the licensure requirement of a written and practical examination. Ms. Nancy Bradley, Commission for Independent Education (CIE), informed the board that she is concerned about the funding and costs of an internship program. She added that on-the-job training may not allow interns / students to be properly educated as sponsors have business to operate and, therefore, may be more concerned with the operation of the business as opposed to the training of the intern / student. Ms. Bradley reminded the board that they currently have oversight of the curriculum being taught in the schools and that she feels the CIE would be receptive to an alternative educational program. Ms. Bradley stated that she sees an internship as a positive experience for the student. Chair Magda spoke to Ms. Bradley about the importance for more frequent communication between the CIE and the board.

Bureau of Education and Testing

Ms. Lyra Erath presented the board with her research of costs associated with traveling examiners to north, central and south Florida practical examination sites. Ms. Erath stated that the Orlando practical examination location is convenient for candidates across the entire state as well as being cost effective for the board. The board agreed that out of a matter of fairness to all barber and restricted barber examination candidates, a south Florida practical examination site should be secured. Chair Magda agreed that until additional south Florida examiners are located, it would be more costly to travel other examiners to south Florida. Ms. Feliciano expressed concern that the examination site procurement was not voted on by the full board. Ms. Erath indicated that other professions' examination sites are determined by the department. Mr. Lombardi campaigned to the board for his school to be considered as a south Florida practical examination site. Chair Magda asked the board to consider utilizing Mr. Lombardi's facility as an examination site. Ms. Erath noted that until additional south Florida

examiners can be hired, it is not very feasible to utilize Mr. Lombardi's school. Mr. Lombardi spoke to the board defending a south Florida location. He feels that costs associated with travel are placing an undue burden on the student. Mr. Lombardi made the statement that he is prepared to legally defend this situation and push for privatization. Ms. Erath informed the board that she is currently requesting a report that will show where the practical examination candidates reside. Chair Magda agreed the report will be useful and he would like the board to review the report for the practical examination location purposes.

Ms. Erath reported to the board that the barber written examination is performing at a 6.5 grade reading level and the restricted barber written examination is performing at a 6.75 grade reading level. Ms. Erath indicated that the examination items are performing in good ranges. Ms. Erath reminded the board that standardization will need to be conducted this year. Discussion ensued about the required statutory time-frame requirements of standardization. Ms. Erath will research mandatory annual standardization and report her finding back to the board.

Chairperson Report / Comments

Chair Magda had no additional report.

Elections

Ms. Scott moved to reelect Dave Magda and Herman White as Chair and Vice Chair respectively of the Florida Barbers' Board. Ms. Feliciano seconded the motion and passed unanimously.

Adjournment

Dates / Locations of Future Board Meetings

The board agreed to conduct a legislative workshop on Sunday, July 31, 2005, and a general business meeting on Monday, August 1, 2005, in Orlando, Florida.

There being no further business, the meeting was adjourned at approximately 4:35 p.m.

RB/de