



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
TENNESSEE STATE BOARD OF BARBER EXAMINERS
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-1148
615-741-2294**

Minutes

**Tennessee State Board of Barber Examiners
Monday August 19, 2013 – 10:00 A.M. CST
Conference Room 1-B
Davy Crockett Tower
Nashville, Tennessee**

The Tennessee State Board of Barber Examiners held a meeting August 19, 2013 at 10:00 a.m. in Nashville, Tennessee.

The following members were present: J.B. Loring, President, Joe Jones, Vice President, Donald Collins, Larry High, and Ralph Payne.

Others present: Roxana Gumucio, Executive Director, Chris Whittaker, Attorney, Hosam William, Paralegal and Betty Demonbreun, Administrative Assistant.

J.B. Loring, President called the meeting to order.

J.B. Loring, President ask for roll call.

J.B. Loring, President asked all to join in prayer.

J.B. Loring, President called for "Pledge of Allegiance".

J.B. Loring, President called for change or approval of the June 17, 2013 board meeting minutes.

MOTION made by Larry High and seconded by Ralph Payne for approval of the June 17, 2013 board meeting minutes. Motion carried unanimously.

All Board Members encouraged to sign up for Notify email updates

Board staff continues to encourage callers to sign up and we would like all Board members, if you have not already done so to please sign up for email notification.

PSI Testing Approval Process Changes:

Roxana Gumucio submitted an example electronic application to the board for review and explained the benefit to electronic submission of the board testing applications to PSI. Roxana Gumucio requested the Board vote to approve the PSI proposed electronic application where all the schools can be noticed to get ready for the new process.

Motion made by Larry High and seconded by Donald Collins to approve the electronic application presented. Motion carried unanimously.

Roxana Gumucio also requested the Board vote to approve electronic application submission process submitted by PSI to shorten the application receipt and testing scheduling time to better aid applicants in the process.

Motion made by Donald Collins and seconded by Ralph Payne to approve all student applications be allowed to be submitted by an electronic application submission process by schools as presented in the PSI database. Motion carried unanimously.

Story about oldest barber in Tennessee:

Benjamin Flagg, 90 years young was honored by the Tennessean.

Inspector training scheduled for 9/30/13

This year's inspector training will be on September 30th to include technology updates, best practices for Notices of Violation, and an opportunity to connect with each other. If you have anything you would like us to share with the inspectors please email me the information by mid-September.

Board members asked about going back to inspecting Barber Schools once a year before each school could renew their license. Roxana will present the list of schools, with counties, at the Barber Board meeting on October 21 to continue discussions.

Knoxville CE Seminar July 21st and Nashville CE Seminar August 12th at Tennessee State University

Year End financial information will be presented in the next few months to the Board by Assistant Commissioner Bill Giannini.

CONSENT ORDERS for August totaling \$750.00 were presented for the board's approval.

MOTION made by Donald Collins and seconded by Larry High to approve the July through August 2013 Consent Orders. Motion carried unanimously.

LEGAL REPORT

Assistant General Counsel, Chris Whittaker presented the legal report as follows:

NEW CASES

1. 2013008361

First License Obtained: 07/07/2011
License Expiration: 07/06/2014

This complaint alleges that the Respondent overcharged a student (the Complainant in this matter) who withdrew from school prior to completing her education, that an instructor at the Respondent school used overtly sexual phrases during the course of instruction, and that classes at the school frequently wasted students' time and did not properly instruct students relative to certain barbering concepts. It appears that the school appropriately charged the Complainant a pro-rated amount for supplies used during the educational hours she attended, and that the reason her remaining balance upon leaving the school was so high was because a portion of the student loan proceeds which had been applied to her tuition and fees had to be removed from her account because she withdrew from school before completing her education. Additionally, the instructor in question and the school stated in their response that discussion of sexual issues is generally only taught as part of the HIV and disease transmission part of the education, and that the school has a clear policy in place against sexual harassment and discrimination of any kind. Finally, the school has a high passage rate for students who graduate from its barber program and take the barber exam (which speaks to the effectiveness of its teaching methods), and it appears that the Complainant's true motivation to leave school (as evidenced by a written statement to this effect signed by the Complainant) was so that she could be closer to home. Accordingly, the file contained insufficient evidence to substantiate the Complainant's allegations.

Recommendation: Dismiss the complaint.

2. 2013008341

First License Obtained: 07/29/2008
License Expiration: 07/28/2014

This complaint alleges that the Respondent school misrepresented to a student that she would be eligible for instructor hours toward a master barber instructor license if she participated in a paid program through the school prior to her obtaining a master barber license. It is unclear from the documentation in the file whether the Respondent school itself ever made any such representations to the student. However, there appears to be some evidence to suggest that the Complainant/student in question was paid for her work by the school and through a grant from an entity not subject to regulation by this Board. Additionally, there is some question as to

whether the Board's former Executive Director approved such an arrangement. Board member Ralph Payne recused himself from the consideration of and from voting on this matter due to his personal knowledge of the situation.

Recommendation: Refer this matter to Litigation with authorization for a formal hearing in order to conduct additional investigation relative to the facts of this complaint.

3. 2013010391

First License Obtained: 05/20/1994
License Expiration: 10/31/2013

This complaint alleges that the Respondent, a master barber and a barber instructor working for a barber school at all times relevant to this complaint, misrepresented to a student that she would be eligible for instructor hours toward a master barber instructor license if she participated in a paid instructor program through the school prior to her obtaining a master barber license. The file contains insufficient evidence to substantiate this allegation. However, there appears to be some evidence to suggest that the Complainant/student in question was paid for her work by the school and through a grant from an entity not subject to regulation by this Board. Additionally, there is some question as to whether the Board's former Executive Director approved such an arrangement. Board member Ralph Payne recused himself from the consideration of and from voting on this matter due to his personal knowledge of the situation.

Recommendation: Refer this matter to Litigation with authorization for a formal hearing in order to conduct additional investigation relative to the facts of this complaint.

4. 2013006071

First License Obtained: N/A
License Expiration: N/A

This complaint was opened as a result of a Cosmetology complaint, and it alleges that the Respondent shop is operating using unlicensed individuals to perform services and that it is using another shop's license to conduct business. There is no evidence in the file to substantiate these allegations, and the Cosmetology complaint alleging the same violations has been dismissed.

Recommendation: Dismiss the complaint.

5. 2013008371

First License Obtained: N/A
License Expiration: N/A

This complaint alleges that the Respondent, who holds a Cosmetology license but is not a licensed barber, offered to perform blade shave services to the Complainant by phone. It appears that the complaint is more appropriately filed as a Cosmetology complaint under T.C.A. § 62-4-127(b)(5) for "unlawful invasion of the field of practice of any profession" because the Respondent is a Cosmetology licensee.

Recommendation: Dismiss this complaint and refer the complaint to the Cosmetology Board with a recommendation that a complaint be opened for potential violation of the Cosmetology statute.

6. **2013011241**
First License Obtained: 03/19/2007
License Expiration: 03/31/2015

The Notice of Violation alleges that the Respondent barber shop is operating with an expired barber shop license. It is unclear from the available evidence whether barbering services were actually being provided at the time of the inspection. Board office records indicate that the shop license in question has been now renewed.

Recommendation: Close with a Letter of Warning.

7. **2013011271**
First License Obtained: 04/23/1980
License Expiration: 08/31/2013

The Notice of Violation alleges that the area inspector observed the Respondent, a licensed master barber, performing barber services in an assisted living facility that is part of a larger health care facility without a valid barber shop license. However, it appears that T.C.A. § 62-3-109(d) allows barbering services to be performed in this type of facility without a shop license. The inspector further states that the Respondent handed him an expired master barber license at the time of the inspection. However, the inspector called the Board's office and confirmed that the Respondent did have a current, valid license at the time of the inspection. As such, a Letter of Warning is recommended to remind the Respondent that his current master barber license must be posted at all times.

Recommendation: Close with a Letter of Warning.

8. **2013011301**
First License Obtained: N/A
License Expiration: N/A

The Notice of Violation alleges that the Respondent shop was open for business without a valid barber shop license. No services were being provided at the inspection time.

Recommendation: Close with a CEASE AND DESIST advisory notice.

9. **2013011311**
First License Obtained: 12/09/2009
License Expiration: 11/30/2013

The Notice of Violation alleges that the area inspector observed that all trash containers were open in a licensed barber shop. The inspector also observed clean towels improperly stored.

Recommendation: Authorize a formal hearing with authority to settle by Consent Order upon payment of a \$ 250.00 civil penalty.

10. 2013010401

First License Obtained: 08/28/2012
License Expiration: 08/31/2014

This complaint, filed by a barber school, alleges that the Respondent owes the barber school at which he obtained his education \$ 800.00, and as such, that he should not have been allowed to obtain his master barber license. The school further alleges that the Respondent was engaged in a romantic relationship with the employee of the school that signed off on his educational hours, and states that this is the only reason the Respondent's educational hours were released even though he still owed the school money. However, the evidence reflects that the employee of the school, who was an instructor and manager at the time the Respondent graduated (back in 2011), had both apparent and actual authority on behalf of the school to sign off on and to release the Respondent's educational hours. Further, if the school wished to object to the student's hours being released, it should not have allowed the student to graduate, it should have prevented the employee from releasing the Respondent's hours, and it should not have waited nearly two years to bring this matter to the Board's attention. Finally, to the extent that the barber school believes that the Respondent owes it money, such a claim is a contractual matter, which is outside the Board's jurisdiction and more appropriately addressed in civil court. In summary, there appears to be insufficient evidence to support the school's allegations.

Recommendation: Dismiss the complaint.

11. 2013010411

First License Obtained: 02/20/2006
License Expiration: 07/31/2014

This complaint, filed by a barber school, alleges that the Respondent, a former instructor and manager at the school, stole school files and other school property, that she engaged in a romantic relationship with a student, and that she improperly certified and released the educational hours of a student that the school claims still owed money to the school. First, it appears that this matter has, at least in part, been considered by the Board under the previous Executive Director and under a different complaint number. The prior complaint against the Respondent was dismissed. The Respondent vehemently denies the school's allegations, she provided several letters from witnesses which state that any property removed from the school was her personal property, and those same witnesses also stated that the Respondent frequently provided educational materials to students at the school from her own belongings in order to ensure that they received the best possible education and training. Additionally, as an instructor and manager for the school at all times relevant to this complaint, the Respondent had both

apparent and actual authority on behalf of the school to sign off on and to release the Respondent's educational hours. As such, there appears to be insufficient evidence to support the school's allegations.

Recommendation: Dismiss the complaint.

RE-PRESENTED CASE

12. 2013003441

First License Obtained: 07/13/2006

License Expiration: 06/30/2014

This complaint was previously presented to the Board at its April 2013 meeting as follows: *The Notice of Violation alleges that the area inspector observed an individual cutting the shop owner's hair while the shop license had been expired since 06/30/2012. The inspector states that neither the owner nor the individual posted their personal license in the shop. Board office records indicated that the shop license has now been renewed.* Based upon this information, the Board decided to authorize a formal hearing with authority to settle by Consent Order and payment of a \$ 250.00 civil penalty. UPDATE: The Respondent submitted a letter asking the Board to reconsider the matter stating that he cuts his own hair, that the individual observed by the inspector was not paid, and that the individual in question was simply getting the hair off his neck.

Board Decision: Leave the previously authorized Consent Order in place and require the Respondent to resolve this complaint via Consent Order to proceed to a formal hearing.

MOTION made by Donald Collins and seconded by Ralph Payne to approve the Legal Report. Motion carried unanimously.

OTHER BUSINESS

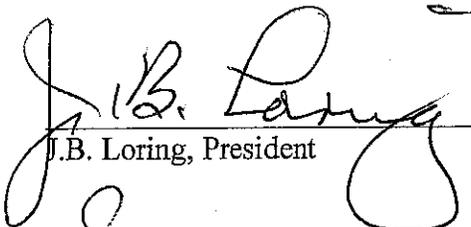
Letter to General Assembly

The Board previously approved a letter to be sent to the legislature regarding potential amendments to the barber statute to include pedicuring within the scope of barbering and to convert the existing 340 hour barber technician license into a 600 hour barber nail technician license, with a curriculum to be produced and approved by the Board. Chris Whittaker, attorney for the Board, advised the Board that the letter has been submitted to the legislature. J.B. Loring then proposed that Mr. Whittaker send the letter to the Attorney General's office with a request for an opinion as to the legality of the proposed changes prior to the legislature's consideration of said changes.

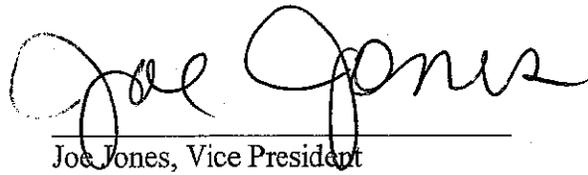
MOTION made by Donald Collins and seconded by Ralph Payne to request an opinion from the Attorney General's office as to the legality of the proposed changes to the barber statute relative to pedicuring and the barber technician license. Motion carried unanimously.

ADJOURN

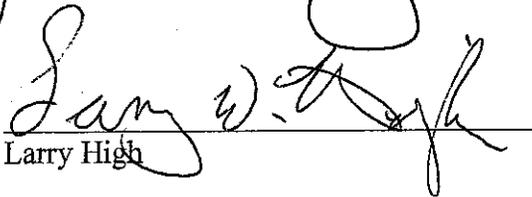
MOTION to adjourn made by Ralph Payne and seconded by Larry High. Motion carried unanimously.



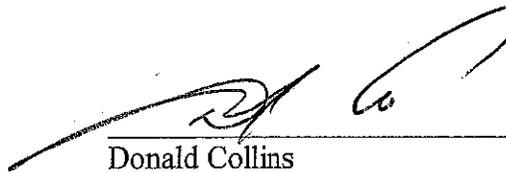
J.B. Loring, President



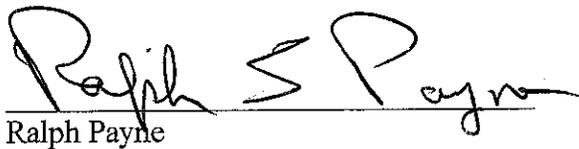
Joe Jones, Vice President



Larry High



Donald Collins



Ralph Payne