State Board of Barber Examiners October 19, 2020

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BOARD MEMBERS:

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48 49 50 Dominic A. Muniz, Chairman, Professional Member Ronald Gray Jr., Vice Chairman, Professional Member Ginger Etter, Secretary, Consumer Protection Member K. Kalonji Johnson, Commissioner, Bureau of

Professional and Occupational Affairs Ken Jaram, Professional Member

Michael McAndrew, Professional Member

BUREAU PERSONNEL:

Ronald K. Rouse, Esquire, Board Counsel James Ritchie Espino Ostman, Esquire, Board Prosecution Liaison

Heather J. McCarthy, Esquire, Senior Prosecutor Kelly I. Diller, Board Administrator

Theodore Stauffer, Executive Secretary, Bureau of Professional and Occupational Affairs

Andrew LaFratte, MPA, William Penn Fellow, Department of State

Carolyn A. DeLaurentis, Deputy Chief Counsel, Prosecution Division

Cynthia K. Montgomery, Esquire, Deputy Chief Counsel, Department of State

Dean F. Picarella, Esquire, Senior Board Counsel Marc Farrell, Deputy Policy Director, Department of State

ALSO PRESENT:

Angela George, Manager, Gentlemen's Barbershop Jen Smeltz, Executive Director, Senate Consumer Protection and Professional Licensure Committee Kelly Kolling, Director of Operations, Barber School of Pittsburgh Mike Gent, Curriculum Coordinator, Pennsylvania

Department of Corrections

3 * * * 1 State Board of Barber Examiners 2 3 October 19, 2020 * * * 4 5 [Ronald K. Rouse, Esquire, Board Counsel, informed 6 everyone that the meeting of the State Board of Barber Examiners was being recorded, and those continuing to participate in the meeting were giving their consent to being record.] 10 11 [Pursuant to Section 708(a)(5) of the Sunshine Act, at 9:00 a.m. the Board entered into Executive Session 12 13 with Ronald K. Rouse, Esquire, Board Counsel, to have attorney-client consultations and for the purpose of 14 15 conducting quasi-judicial deliberations. 16 concluded its executive session at 10:30 a.m.l * * * 17 18 The regularly scheduled meeting of the State Board 19 of Barber Examiners was held on Monday, October 19, 20 2020. Dominic A. Muniz, Chairman, Professional 21 Member, called the meeting to order at 10:47 a.m. 22 23 Pledge of Allegiance [The Pledge of Allegiance was recited.] 24 * * * 25

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Roll Call
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2
   [Roll call was taken.]
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4
   Approval of minutes of the August 17, 2020 meeting
5
   CHAIRMAN MUNIZ:
6
                  The approval of minutes for August 17,
                  2020.
8
                       Do I have a motion?
9
   MR. GRAY:
10
                  Motion.
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   MS. ETTER:
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                  Second.
13
   MR. ROUSE:
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                  This is a motion to approve the amended
15
                  minutes of August 17, 2020. All those
16
                  in favor? All those opposed, say nay.
17
   [The motion carried unanimously.]
                               * * *
18
19
   [Introduction of Public Members]
                               * * *
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21
   Report of Prosecutorial Division
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   [James Ritchie Espino Ostman, Esquire, Board
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   Prosecutor, had nothing to report.]
                               * * *
24
25
   Report of Board Counsel
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5 1 MR. ROUSE: 2 I am starting with a matter that was 3 discussed in executive session. This is 4 regarding Item No. 2 on the agenda, 5 which is the matter of the BPOA v. 6 Michael Frye, Case No. 19-42-017123. I believe the Board would entertain a motion to grant the Motion to Deem 9 Facts Admitted and to direct Board 10 counsel to prepare the Adjudication and Order in accordance with the discussion 11 in executive session. 12 Is there such a motion? 13 MR. GRAY: 14 15 Motion. 16 MR. ROUSE: 17 Is there a second? MS. ETTER: 18 19 Second. 20 MR. ROUSE: 21 Any discussion? All those in favor, say 22 aye. All those opposed, say nay. 2.3 [The motion carried unanimously.] * * * 2.4 25 MR. ROUSE:

In the matter of BPOA v. Darriel Jones, 1 2 Case No. 18-42-011133 at Item No. 3 on 3 the agenda. I believe the Board would entertain 4 5 a motion to adopt the Adjudication and 6 Order as presented by Board counsel and to direct Board counsel to prepare the Board's final order. 8 9 Is there such a motion? 10 CHAIRMAN MUNIZ: 11 Motion. MR. ROUSE: 12 13 Is there a second? MR. GRAY: 14 15 Second. 16 MR. ROUSE: 17 Any discussion? All those in favor, say 18 aye. All those opposed, say nay. 19 [The motion carried unanimously.] * * * 20 21 MR. ROUSE: 22 Regarding the matter of BPOA v. Bobbie 2.3 Mitchell, Case No. 19-42-014126 at Item 2.4 No. 4 on the agenda. 25 I believe the Board would entertain

a motion to adopt the Adjudication and 1 2 Order as presented by Board counsel and 3 to direct Board counsel to prepare the Board's final order. 4 5 Is there such a motion? 6 MR. GRAY: Motion. MR. ROUSE: Is there a second? 10 MR. JARAM: 11 Second. 12 MR. ROUSE: Any discussion? All those in favor, say 13 14 aye. All those opposed, say nay. 15 [The motion carried unanimously.] 16 17 MR. ROUSE: 18 In the matter of BPOA v. Wesley Perone, 19 Case No. 18-42-007663 at Item No. 5 on 20 the agenda. 21 I believe the Board would entertain 22 a motion to adopt the Adjudication and 2.3 Order as presented by Board counsel and 2.4 to direct Board counsel to prepare the 25 Board's final order.

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1
                       Is there such a motion?
2
   MR. GRAY:
3
                  So moved.
   MR. ROUSE:
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5
                  Is there a second?
   CHAIRMAN MUNIZ:
6
                  Second.
   MR. ROUSE:
9
                  Any discussion? All those in favor, say
10
                  aye. All those opposed, say nay.
11
   [The motion carried unanimously.]
                               * * *
12
13
   MR. ROUSE:
14
                  In the matter of BPOA v. Styles Inspired
15
                  by Marc, Case No. 17-42-023563 at Item
16
                  No. 6 on the agenda.
17
                        I believe the Board would entertain
18
                  a motion to adopt the Adjudication and
19
                  Order as presented by Board counsel and
20
                  to direct Board counsel to prepare the
                  Board's final order.
21
                       Is there such a motion?
22
2.3
   MR. GRAY:
24
                  Motion.
25
   MR. ROUSE:
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9
1
                  Is there a second?
2
   MR. MCANDREW:
3
                  Second.
4
   MR. ROUSE:
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                  Any discussion? All those in favor, say
6
                  aye. All those opposed, say nay.
   [The motion carried unanimously.]
9
   MR. ROUSE:
10
                  In the matter of BPOA v. Shawn Cole,
                  Case No. 18-42-007211 at Item No. 7 on
11
12
                  the agenda.
13
                       I believe the Board would entertain
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                  a motion to adopt the Adjudication and
15
                  Order as presented by Board counsel and
16
                  to direct Board counsel to prepare the
                  Board's final order.
17
                       Is there such a motion?
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19
   CHAIRMAN MUNIZ:
20
                  Motion.
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   MR. ROUSE:
22
                  Is there a second?
2.3
   MS. ETTER:
24
                  Second.
25
   MR. ROUSE:
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10 Any discussion? All those in favor, say 1 2 aye. All those opposed, say nay. 3 [The motion carried unanimously.] * * * 4 MR. ROUSE: 5 6 In the matter of Dennis Maryanski, Case No. 18-42-007864 at Item No. 8 on the agenda will be discussed at the next 9 Board meeting. * * * 10 11 MR. ROUSE: 12 Regarding matter BPOA v. Dana Westover, 13 Case No. 18-42-002270 at Item No. 9 on 14 the agenda. I believe the Board would entertain 15 a motion to direct Board counsel to 16 17 prepare a final Adjudication and Order consistent with the discussion in 18 19 executive session. Is there such a 20 motion? 21 CHAIRMAN MUNIZ: 22 Motion. 2.3 MR. ROUSE: 24 Is there a second?

MR. GRAY:

25

1 Second.

2 MR. ROUSE:

Any discussion? All those in favor, say

4 aye. All those opposed, say nay.

5 [The motion carried unanimously.]

7 | Appointment - Act 53 of 2020 List of Offenses Directly

8 Related to the Profession

9 [K. Kalonji Johnson, Commissioner, Bureau of

10 Professional and Occupational Affairs, addressed Act

11 | 53 of 2020 signed by the Governor and effective 180

12 days from signing, which changed the way criminal

13 history information is used in the determination of

14 eligibility and suitability for licensure.

Commissioner Johnson noted that after the

16 publication of lists, Board Counsel would begin

17 drafting proposed regulatory packages for promulgation

18 subject to an intense period of public scrutiny,

19 | legislative oversight, and then go before the

20 Independent Regulatory Review Commission to be

21 discussed ad nauseam before being published as final.

22 Cynthia K. Montgomery, Esquire, Deputy Chief

23 Counsel, Department of State, explained that

24 Commissioner Johnson is tasked with publishing a

25 schedule of criminal convictions that may constitute

grounds to refuse to issue; suspend; or revoke a

license, certificate, registration, or permit for each

occupation and profession under the respective

practice act. She mentioned Board counsel and the

prosecution division looked at the Pennsylvania Crimes

Code to construct the list of crimes directly related

to the barbering profession.

Ms. Montgomery referred to § 3113(e) of Act 53 regarding acts of violence, where an individual could receive a license if it had been at least 3 years from incarceration or 3 years from imposition of the sentence, the individual remained conviction-free, and demonstrated significant rehabilitation.

Ms. Montgomery noted the Board must be convinced the individual does not pose a substantial risk to public health or safety or a substantial risk of further conviction. She stated the list presented to the Board today are crimes that are asked to be deemed by the Board to be directly related to the barbering profession. She provided a definition of "directly related," when evaluating items on the list.

Ms. Montgomery addressed preliminary determination, where a new provision in the law permits individuals who may be thinking of going into the barbering profession to ask for a preliminary

determination as to whether their criminal conviction may be an impediment to licensure. She stated the list would be used for that purpose and in making determinations for applicants.

Ms. Montgomery stated the applicant would have an opportunity to present evidence to convince the Board the applicant would not pose a significant risk to public health or safety or significant risk of further criminal convictions. She stated the idea is to let licensees and applicants know how the Board is going to be looking at criminal convictions once the law is effective around December 27.

Ms. Montgomery also stated that crimes not on the list did not mean that the crime would not come to the Board's attention. She commented that the prosecuting attorney would have to prove to the Board that the individual who has that conviction does pose a substantial risk.

Ms. Montgomery stated the list is also going to be part of a best practices guide to provide information to applicants explaining how to go apply for a professional or occupational license if the applicant has a criminal history that may be an impediment. She discussed the effect of the crime being on the list, which creates the presumption that

an individual convicted of the offense would pose a significant risk to public health or safety or a significant risk of committing further offenses. She explained that the burden would shift to the applicant or licensee to demonstrate they do not pose a risk.

1.3

Ms. Montgomery also explained that if a crime is not on the list, the prosecution division would have the duty to demonstrate to the Board's satisfaction and the Board would have to find the person does pose a significant risk and should be denied licensure.

Ms. Montgomery referred to § 3112 of Act 53, where the Board of Barber Examiners and Board of Cosmetology can issue a restricted license for no less than 1 year and no longer than 2 years, similar to a probationary license. She explained that the Board could impose restrictions by limiting the scope or location of their practice, requiring the restricted license holder to be supervised, and to notify the Board of any changes in supervision.

Ms. Montgomery discussed the purpose of the act, which is to be more transparent and allow applicants and licensees understand upfront how the Board is going to consider criminal convictions, so individuals know what to present and how to demonstrate that the applicant is not a significant risk to the public or a

risk of further criminal offenses.

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Mr. Rouse referred to the Barber's License Law Section 9(a), explaining all of the issues for which someone can be disciplined and explained how this information was used in determining which crimes were directly related to the barbering profession.

Mr. McAndrew requested further discussion concerning infectious disease, noting this to be extremely relevant during COVID-19.

Mr. Rouse referred to recklessly endangering another person or an aggravated assault charge on the proposed list of crimes directly related to the profession, because a criminal prosecutor would be charging those type of crimes if an individual knowingly continued to practice while testing positive for any such disease and imparted that disease to someone else.

Mike Gent, Curriculum Coordinator, Pennsylvania

Department of Corrections, requested further

clarification concerning licensure, noting all of

their applicants would be affected by this.

Ms. Montgomery referred to § 3112 regarding restricted licenses for barbers and cosmetologists. She explained that individuals would be granted a license to practice at the Board's discretion with an

1 unrestricted or restricted license of not less than 1
2 year and not more than 2 years. She also noted the
3 Board would have the option of granting a probationary
4 license.

Mr. Gent questioned whether individuals who committed a violent crime listed under the offenses should review this before enrolling in a class.

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Ms. Montgomery explained that the applicant could ask for a preliminary determination, noting a fee associated with the process but also noting an "in forma pauperis" process, where the applicant could ask for a fee waiver for the preliminary determination as to whether the crime the applicant committed would be an impediment to licensure.

Ms. Montgomery referred to § 3113(d)-(f) regarding crimes of violence, where an individual could receive a license if at least 3 years have elapsed since being released from incarceration or 3 years from imposition of sentence. She noted crimes of violence as set forth in 42 Pa.C.S. Section 9714. She stated § 3113 of Act 53 provides a process for individualized assessment based on the criteria in the act.

Mr. Gent questioned whether there is any part of the process where a case would not come before the

1 Board.

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Ms. Montgomery commented that every application for licensure would come before the Board for a determination of whether to grant an unrestricted license, probationary license, or a restricted license.

Mr. Jaram expressed concern with sex offenders
who may be cutting hair of children below the age of
14.

Chairman Muniz explained that the Board would be able to review cases further to make a decision on that.

Mr. Rouse noted crimes of violence would be added to the list, and a sex offense issues would be considered a crime of violence.

Ms. Montgomery provided a list of crimes of violence requiring an individual to wait for 3 years, either after incarceration or sentencing, before the applicant could come to the Board and ask for a license and referred to § 3113(e).

Mr. Gent expressed concern with students in the Department of Corrections not being able to receive a license while in prison if the elapsed time period is 3 years after release.

25 Mr. Rouse referred to the Barbers' License Law to

provide clarification regarding infectious disease and 1 2 COVID. He referenced, where a person can be 3 disciplined if they impart any contagious or 4 infectious disease to any recipient of such person's 5 services as a barber. He explained that COVID-19, as well as any other contagious disease, is a basis under 6 our Barbers' License Law for discipline and believes there is another section of the Barbers' License Law that discusses criminal offenses based on imparting a 10 contagious or infectious disease to recipients of

Chairman Muniz expressed his concern regarding barber programs in prison and questioned whether an aggravated assault conviction would come to the Board to determine whether the individual would be eligible or not eligible for the program.

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service.

Mr. Rouse reminded the Board to look at the list. When talking about an aggravated assault issue, there is a rebuttable presumption that someone would be a danger to the public. Then an individualized analysis must be performed, where factors are reviewed to make the determination of whether to issue a license or issuing a restricted license. He noted all problematic issues would be brought before the Board for further discussion.

Ms. Montgomery clarified § 3112 regarding a restricted license, where it says notwithstanding any provision of law to the contrary as an alternative to refusing to issue a license, the Board could issue a restricted license. She explained that notwithstanding any provision of the law under the contrary in § 3112 would be that § 3113(b) would not necessarily apply to barbers and cosmetologists, and the Board could issue a restricted license while an individual was incarcerated.

2.0

Ms. Montgomery stated the Board could issue a restricted license while the individual is incarcerated until they get past any effect of the conviction up until their release and receipt of an unrestricted license.

Ms. Montgomery clarified further, noting the law does say notwithstanding any other provision of law to the contrary, which means notwithstanding § 3113 for the Board and § 3112 is the rule, so the Board can issue a restricted license.

Mr. Rouse referred to the Barbers' Licensing Law Section 15(a), where any manager-barber, barber-teacher or teacher trainee, or student who has practiced the profession of barbering while suffering from a contagious or infectious disease or who shall

knowingly serve any person afflicted with such disease shall be guilty of a summary offense and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$300 or undergo an imprisonment not exceeding 30 days or both at the discretion of the Board.

Commissioner Johnson reiterated that nothing substantively changes for the Board in terms of obligations and responsibilities. He explained the list is being crafted because it provides a level of transparency and a level of responsibility to the public by providing licensees and perspective applicants with a very comprehensive list of what the Board could consider with regard to licensure.

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Commissioner Johnson commented that the legislature had taken the onus of the good moral character presumption and instead of pushing that burden on the applicant, it has shifted that burden to the Board. He noted an offense or conviction not on the list is then on the burden of the Board to show how that criminal history implicates their ability to practice safely, and a conviction on the list falls on the applicant or licensee.

Commissioner Johnson mentioned the best practice guide, which will be a navigator for individuals to

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21
   help shepherd them through the process. He stated the
1
   Board still has the same job prior to Act 53 to take
2
3
   each applicant and licensee on a case-by-case basis.]
                              * * *
 4
5
   CHAIRMAN MUNIZ:
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                  I would like to move forward. Could we
                  have a motion to approve the Act 53
                  list?
8
   MS. ETTER:
10
                  I motion to move forward.
11
   MR. ROUSE:
12
                  Is there a second?
13
   MR. JARAM:
14
                  Second.
15
   MR. ROUSE:
16
                  Any discussion? All those in favor, say
17
                  aye. All those opposed, say nay.
18
   [The motion carried unanimously.]
                              * * *
19
20
   [K. Kalonji Johnson, Commissioner, Bureau of
21
   Professional and Occupational Affairs, thanked the
22
   Board, Board counsel, and Deputy Chief Counsel
23
   Montgomery for their hard work making sure the process
24
   moves forward quickly and efficiently. He also
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thanked stakeholders who raised concerns and requested

25

1 their continued positive feedback to help the process
2 stay transparent.]

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4 Report of Board Counsel (cont.)

5 [Ronald K. Rouse, Esquire, Board Counsel, addressed

6 Act 41, noting the annex for 16A-4212 regarding

7 licensure by endorsement was revised after prior Board

8 discussion. He noted the revised annex, where to be

9 considered substantially equivalent for a barber, the

10 jurisdiction in which the applicant holds a current

11 and active barber's license must require at least 1000

12 training hours and successful completion of a barber

13 exam. He noted substantially equivalent shall be

14 determined by the Board on a case-by-case basis for

15 barber teachers.

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Mr. Rouse noted an individual demonstrates competency as a barber with experience in the profession by actively practicing as a barber for at least 2 of the 5 years immediately preceding the date of the application or passing Pennsylvania's Barber Examination within 18 months of the date of

22 application.

Mr. Rouse noted an individual demonstrates competency as a barber teacher with experience in the profession by actively practicing as a barber teacher

1 | for at least 2 of the 5 years immediately preceding

2 | the date of the application or passing Pennsylvania's

3 barber-teacher examination within 18 months of the

4 date of application.]

5 ***

6 MR. ROUSE:

8

7 Is there a motion to release annex 16A-

4212 as an exposure draft and release to

9 stakeholders for written comments.

Is there such a motion?

11 CHAIRMAN MUNIZ:

12 Motion.

13 MR. ROUSE:

14 Is there a second?

15 MS. ETTER:

16 Second.

17 MR. ROUSE:

18 Any discussion? All those in favor, say

19 aye. All those opposed, say nay.

20 [The motion carried unanimously.]

21 ***

22 Report of Commissioner

23 [K. Kalonji Johnson, Commissioner, Bureau of

24 Professional and Occupational Affairs, thanked Board

25 members for their patience in the new digital

environment.

1

2 Commissioner Johnson informed the Board of 3 revised guidance issued to barbershops and 4 practitioners regarding use of masks and the provision 5 of services under the amended masking guidelines. noted licensees are being asked to be mindful of 6 ensuring that any services that can be done while the mask is on be done in that manner but mentioned clarifications in terms of partial removal of the mask 10 for certain services. He encouraged everyone to take 11 a look at the Board's website for new COVID-19 12 guidance.]

13

14 Report of Board Chair - No Report

15 ***

16 Report of Board Administrator - No Report

17

18 Old/New Board Business

19 [Kelly I. Diller, Board Administrator, noted 2021

20 Board meeting dates for Board approval.]

21 ***

22 MR. ROUSE:

2.3

2.4

25

If you have had a chance to review the Board dates for 2021, is there a motion to accept the 2021 Board meeting dates?

Sargent's Court Reporting Service, Inc. (814) 536-8908

25 1 MR. MCANDREW: 2 Motion. 3 MR. ROUSE: 4 Is there a second? 5 COMMISSIONER JOHNSON: 6 Second. 7 MR. ROUSE: Any discussion? All those in favor, say 9 aye. All those opposed, say nay. 10 [The motion carried unanimously.] * * * 11 12 Applications 1.3 MR. ROUSE: 14 This was another matter that was 15 discussed in executive session at 9 a.m. 16 regarding the application of Alex 17 Pettis, Case No. 20-42-002768 at Item No. 13 on the agenda. 18 I believe the Board would entertain 19 2.0 a motion to provisionally deny the 2.1 application for barber and direct Board 2.2 counsel to send a letter to applicant 2.3 consistent with discussions in executive 2.4 session. 25 Is there such a motion.

1 CHAIRMAN MUNIZ:

2 Motion.

3 COMMISSIONER JOHNSON:

4 Second.

5 MR. ROUSE:

6 Any discussion? All those in favor, say

7 aye. All those opposed, say nay.

8 [The motion carried unanimously.]

9 ***

10 Miscellaneous

11 [Michael McAndrew, Professional Member, addressed

12 correspondence from Gary Fisher, Western Regional

13 | Safety Professional, Arizona Department of

14 Transportation (ADOT), to the National Association of

15 Barber Boards of America regarding the use of air

16 compressors in barbershops.

17 Mr. McAndrew stated Mr. Fisher had expressed a

18 concern with the use of air compressors in barbershops

19 and believes it is a safety hazard due to hair

20 projectiles going into the eyes of other barbers and

21 clients in the shop.

22 Chairman Muniz commented that the concern is

23 using the air compressor on the back of a client's

24 neck because it is not meant for the skin and using it

25 on tools and chairs, where clients may be breathing in

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the particles. He stated Mr. Fisher was asking the
1
2
   Board to make barbers aware of the safety hazard.
3
        Mr. Rouse encouraged everyone to look at the
4
   quidance on the Board of Barber Examiners website for
5
   recommendations in terms of keeping clients safe in
6
   barbershops.]
                               * * *
   Adjournment
   MR. ROUSE:
10
                  Do I hear a motion to adjourn?
11
   COMMISSIONER JOHNSON:
12
                  So moved.
   MR. ROUSE:
13
14
                  Is there a second?
15
   MS. ETTER:
16
                  Second.
17
   MR. ROUSE:
18
                  All in those in favor, say aye. All
19
                  those opposed, say nay.
20
   [The motion carried unanimously.]
                               * * *
21
22
   [There being no further business, the State Board of
23
   Barber Examiners Meeting adjourned at 12:17 p.m.]
                               * * *
2.4
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CERTIFICATE

I hereby certify that the foregoing summary minutes of the State Board of Barber Examiners meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Barber Examiners meeting.

Morgan McKendrick,

Minute Clerk

Sargent's Court Reporting Service, Inc.

STATE BOARD OF BARBER EXAMINERS 1 2 REFERENCE INDEX 3 4 October 19, 2020 5 6 7 TIME AGENDA 8 9 9:00 Executive Session 10 10:30 Return to Open Session 11 12 10:47 Official Call to Order 13 14 10:47 Pledge of Allegiance 15 Roll Call 16 10:48 17 18 10:49 Approval of Minutes 19 20 10:50 Introduction of Public Members 21 Report of Prosecutorial Division 22 10:55 23 24 10:55 Report of Board Counsel 25 Appointment - K. Kalonji Johnson, 26 11:03 27 Commissioner, Bureau of Professional 28 and Occupational Affairs 29 11:56 30 Report of Board Counsel (cont.) 31 32 12:02 Report of Commissioner 33 34 12:06 Old/New Business 35 36 12:07 Applications 37 38 12:10 Miscellaneous 39 40 12:17 Adjournment 41 42 43 44 45 46 47 48

49 50