

1 BEFORE THE ARKANSAS STATE BOARD OF COSMETOLOGY

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5 ADMINISTRATIVE HEARINGS
6 AND
7 BOARD MEETING

8 January 22, 2007

9

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11 BE IT REMEMBERED that on Monday, the 22nd day of
12 January 2007, before the Arkansas State Board of Cosmetology and
13 its department staff, at 8:30 a.m., in the South Basement
14 Conference Room of the Main Street Mall, located at 101 East
15 Capitol Avenue, Little Rock, Pulaski County, Arkansas, business
16 and administrative hearings came on for hearing, as follows:

17

18

19 SUSAN B. WHITSON, CCR

20 Arkansas Supreme Court Certificate No. 158

20 9810 Woodland Drive
Mabelvale, Arkansas 72103
21 (501) 455-1170
WhitsonCCR@aol.com
22
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24
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SUSAN B. WHITSON, CCR, INC. (501) 455-1170

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1 APPEARANCES:

2 Board Members:

- 3 JANE POWELL - President
VEDA TRAYLOR - 1st Vice President
4 PATRICIA TURMAN - 2nd Vice President
LaJOY GORDON - Secretary
5 BARBARA WARD - Treasurer
CLIFFORD KEENE
6 NICK DOWNEY
ANN PICKERING
7 SHERRON WEST (not present)

8

9 Staff Members Present:

- 10 KATHY WITTUM - Executive Director
AMBER McCUIEN

11

12 Board Inspectors Present:

13 SHEILA CAUDLE
ROSE HORNER

14 PAT BLAND JACKSON
LAVONNE GREEN

15

16 ON BEHALF OF THE BOARD:

17 ARNOLD JOCHUMS, ESQ.
ERIKA GEE, ESQ.

18 Assistant Attorney General
323 Center Street, Suite 200

19 Little Rock, Arkansas 72201

20 HEARING OFFICER:

21 KENDRA AKIN JONES, ESQ.
Assistant Attorney General

22 323 Center Street, Suite 1100
Little Rock, Arkansas 72201

23

24

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1 ON BEHALF OF SCOTTIE BURCHETT:

2 SHERRY BURNETT, ESQ.

3 ON BEHALF OF THE BOARD:

4 KENT WALKER, ESQ.

5 Walker Law Firm

6 RESPONDENTS PRESENT:

7 Randy Cole

8 ADDITIONAL WITNESSES PRESENT:

9 Natasha Paintin

10 ALSO PRESENT:

11 Scottie Burchett

12 Chris Strawn

13 Linda Lee

14 Court Reporter:

15 Susan B. Whitson, CCR
Arkansas Supreme Court Certificate No. 158

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1 PROCEEDINGS

2 MS. POWELL: The Arkansas State Board of

3 Cosmetology will come to order.

4 Madam Secretary, will you take the roll?

5 MS. GORDON: Everyone is here except Sherron West.

6 MS. POWELL: Ms. Ward, treasurer, will you give
7 the treasurer's report, please.

8 MS. WARD: We had 163.56 in our treasury, and I
9 spent 65.89 for supplies, and the balance is 97.67.

10 MS. TRAYLOR: How much money are you taking up
11 today?

12 MS. WARD: Ten dollars. I need ten dollars today.

13 MR. DOWNEY: How much?

14 MS. TRAYLOR: Ten.

15 MS. WARD: Ten.

16 MS. TRAYLOR: Someone has a board -- I don't --
17 having to have a board meeting where you have to pay to
18 go to.

19 MS. POWELL: Have you not given a report on what
20 you collected today?

21 MS. WARD: No. Because I only collected two.

22 MS. POWELL: Okay.

23 MS. WARD: Okay. As soon as we collect the
24 rest --

25 MS. POWELL: Okay.

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1 MS. WARD: -- I'll give that after that.

2 MS. POWELL: Okay. Thank you.

3 At this time we have some board updates, I think,
4 that Director Wittum would like to give you.

5 MS. WITTUM: The good news is Arnie Jochums is
6 still employed with the A.G.'s office, even though
7 there is a changeover in Attorney Generals.

8 Good news, too, Erika Gee has joined the Attorney
9 General's office as of two weeks ago, I believe.

10 MS. GEE: (Nodding head up and down.)

11 MS. WITTUM: And in their restructuring at the
12 A.G.'s office, Erika is going to be our new legal
13 counsel. Arnie is going to show her the ropes and then
14 she is going to be thrown out there to swim with us.

15 Welcome, Erika. We appreciate you.

16 MS. GEE: Thank you.

17 MS. TRAYLOR: I hate to tell you, it's sink or
18 swim, though.

19 MS. WITTUM: Cliff's term expired
20 January 15th of this year.

21 As I understand it, he's not going to seek
22 reappointment, but he is going to fill his position
23 until that position is filled by the Governor's office.

24 Kathy Gossage has resigned as of January 15th.
25 She will not be serving in her position until that one

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1 is filled.

2 I have talked to the Governor's office. They, of
3 course, are struggling themselves with trying to get
4 acclimated with the new staff. They also have a
5 backlog of appointments to be made, but they are
6 working on it and, hopefully, ours will not be too long
7 in coming.

8 You have in a packet of information in front of
9 you an updated -- actually, an updated contact sheet.

10 I went ahead and took off Kathy's information.

11 You also have an updated exam schedule for 2007.

12 As I understood it, LaJoy and Nick switched places in

13 February, so that's the change that is on this copy you

14 have here. And I went ahead and just marked through

15 Kathy's name on the later months, when she was

16 scheduled. We will need to make arrangements to get

17 Barbara and then our new board members rater trained so

18 that we can start adding them to the list, as well. I

19 just figured we would update it as we go along.

20 And you have also a copy of the financial report

21 that shows you the expenditures the office has had from

22 July through December. And then if you have any

23 questions about any of that, you can let me know.

24 Also, pursuant to Arkansas Code Annotated

25 17-26-201(e), you need to approve for the board to be

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1 reimbursed their expenses for this year, since this is

2 our first meeting of 2007.

3 MS. POWELL: Do I have a motion for expenditures?

4 MS. TURMAN: I make the motion.

5 MS. POWELL: I have a motion.

6 I'm sorry.

7 You all are going to have to speak up. I can't

8 hear. I only got one ear and it's not good.

9 MS. TURMAN: Okay. I make a motion that we pay

10 for the expenditures.

11 MR. DOWNEY: I second.

12 MS. POWELL: I have a motion and a second.

13 Is there any discussion?

14 All those in favor, raise your right hand.

15 (Hands raised.)

16 It's unanimous.

17 Thank you.

18 MS. WITTUM: You received in your packet the

19 minutes for September and November regular meeting, as

20 well as the October special legislative meeting that

21 you do need to give approval for.

22 MS. POWELL: We can take the -- I'm sure that all

23 the board has had a copy of those and had the time to

24 review those. Is that correct?

25 BOARD MEMBERS: (Nodding head up and down.)

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1 MS. POWELL: Do you want to take these all
2 combined, September, November, and October special
3 legislative meeting minutes to be approved?

4 Do I have a motion?

5 MR. DOWNEY: I make a motion we approve the
6 minutes for the September, November, and the October
7 special legislative meeting.

8 MS. TURMAN: I'll second that motion.

9 MS. POWELL: I have a motion and a second.

10 Is there any discussion?

11 All those in favor, raise your right hand.

12 (Hands raised.)

13 MS. POWELL: The motion carries. It is unanimous.

14 MS. WITTUM: You also received the examination
15 reports for November and December. That finished out

16 the exams for last year.

17 And I also provided in the packet that was on your
18 place today just some stats to look at, the exam
19 stats -- it looks like this -- that shows you 2004,
20 2005, and 2006, to kind of give you a comparison of
21 what we've seen in exams for those three years.

22 The -- I think it was past 2004, I couldn't locate
23 all of the months for each of the years previous to
24 that, so I didn't include them in this comparison.

25 Just some office updates. We are in the heart of

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1 our renewals, as you know. The office staff and our
2 two temporary workers have been diligently working to
3 get those renewed. So far we have renewed over 10,000
4 practitioners, shops, and school licenses.

5 As you know, in the past, the inspectors were
6 brought in out of the field to help with renewal
7 season, and we've chosen not to do that this year. So
8 far I think that's been a good decision. They have

9 been able to be out in their territories and so far, I
10 think, the office is handling the renewals fairly well.

11 The -- it was brought to my attention that there
12 was some people who were concerned about the messages,
13 the calling in to the office on that main number, and
14 either receiving the voice message that said no phone
15 calls or no messages could be left because the box was
16 full, or just not receiving an answer at all. I will
17 tell you it's not because we're partying and not doing
18 our work. The office is being bombarded with phone
19 calls at this time, mostly from people who are checking
20 status on their renewals.

21 The -- I checked with D.I.S. to find out why the
22 mailbox kept getting full. Shaunta assures me that she
23 has been regularly checking the mailbox and retrieving
24 those messages off of it several times a day to prevent
25 or try to prevent people from not being able to leave

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1 messages.

2 According to D.I.S., the office was initially set
3 up for that main number to hold 60 messages, and they,
4 because of the problems that we were having, they upped
5 that to 135 messages. So we hope that that will
6 alleviate that problem.

7 They also have a mechanism in there where after 30
8 days the oldest message is purged off of the system.
9 So whether they have been listened to or not, they are
10 going to come off. So Shaunta is aware of that and she
11 will continue to check the mailbox several times a day
12 to retrieve those messages that are on there.

13 The office's Operations Appropriation Request for
14 2007-2009 has been filed into House Bill 1165. You
15 have a copy of that in your packet of information
16 there. If you have any questions about that, you can
17 let me know.

18 I know that Joint Budget Committees are -- the
19 Joint Budget Committee is meeting this week, Tuesday
20 through Thursday. I do not know which day ours will be
21 brought up, and we'll probably try and be over there in
22 the capitol several times in the next three days so

23 that I can be there when it does come up.

24 We received notice that Thelma's Beauty Academy

25 has closed. The effective date was January the 6th

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1 of this year, so that brings our total of schools to

2 56.

3 Does anybody have any questions over any of that?

4 MS. TURMAN: Kathy, where is this school located?

5 MS. WITTUM: Pardon?

6 MS. TURMAN: Where is this school, Thelma's

7 School, located?

8 MS. WITTUM: Here in Little Rock.

9 MS. TRAYLOR: Ms. Mattie is not in real good

10 health, either. We saw her at the continuing ed

11 workshop. And she also received a plaque for her

12 outstanding work. But she was there for a little while

13 and she's just -- she just looks bad. She really looks

14 bad. I don't know if she's worried, which I'm sure she

15 is. And I think closing the school has just about done
16 a number on her. But it's something about the owner --
17 the man that owned it died or something happened to
18 him, and they would no longer fund the school.

19 MS. CAUDLE: It was Mr. Joshua.

20 MS. TRAYLOR: Now, did he die?

21 MS. CAUDLE: (Nodding head up and down.)

22 MS. TRAYLOR: That's what I was thinking.

23 But she looks bad.

24 And, by the way, she used to be a board member,
25 too.

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1 MS. WITTUM: I think that's it for the business.

2 MS. POWELL: At this time I'll turn the meeting
3 over to our Hearing Officer, Kendra Akin.

4 HEARING OFFICER JONES: Do we have a list of those
5 present for the hearings?

6 MS. WITTUM: We have a sign-in sheet.

7 HEARING OFFICER JONES: Just a sign-in sheet?

8 MS. WITTUM: But it doesn't clearly reflect who is
9 here for which case.

10 HEARING OFFICER JONES: Okay.

11 MS. WITTUM: So we may want to find out if anyone
12 is here specifically for a hearing.

13 MR. JOCHUMS: Is anybody in the audience here
14 specifically for a hearing this morning?

15 (No response.)

16 MR. JOCHUMS: But they are not actually set until
17 nine. We are 15 minutes early.

18 HEARING OFFICER JONES: We can wait, then.

19 MR. JOCHUMS: We can take up some other --

20 MS. WITTUM: Do you want to go ahead and review
21 the complaints?

22 They are set for this afternoon, the complaints.

23 MS. POWELL: Do you want to give the report from
24 the legislative committee?

25 MS. WITTUM: We'll do this.

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1 MS. POWELL: Okay.

2 ADMINISTRATIVE HEARING NO. HO 07-115

3 MR. JOCHUMS: Okay. We're going to take a matter
4 that we had set for the afternoon, but I think we can
5 do it this morning since we've been notified that none
6 of the parties wanted to be here, and that's the Kim
7 Pham case.

8 And we probably need Madam Hearing Officer to help
9 us with this.

10 HEARING OFFICER JONES: Okay.

11 MR. JOCHUMS: And that's HO 07-115.

12 HEARING OFFICER JONES: Do we have any information
13 on that?

14 MR. JOCHUMS: This is continued from last month.

15 HEARING OFFICER JONES: Okay. Okay. Do all of
16 the board members have the information on this case?

17 It's Linda Balch vs. Kim Pham, which is HO 07-115.

18 This is one that we continued from the last
19 meeting.

20 MR. JOCHUMS: They are probably under the -- if
21 they got it, it will be under the current hearings. It

22 was set for one o'clock.

23 MS. WITTUM: It was -- it had a memo from me
24 attached to it.

25 MS. TRAYLOR: Okay.

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1 MS. WITTUM: You also have a copy of two letters
2 that was laying --

3 MR. JOCHUMS: Wait until she calls it.

4 MS. WITTUM: Okay.

5 HEARING OFFICER JONES: Is everybody ready to
6 proceed?

7 Good morning. My name is Kendra Akin Jones and
8 I'm going to be the Hearing Officer today in the matter
9 of Linda Balch vs. Kim Pham, doing business as U.S.
10 Nails, HO No. 07-115.

11 This case is continued from our last meeting in
12 November.

13 Today is January 22, 2007, and we're located in

14 the conference room of the Main Street Mall.

15 The respondent, we will note for the record, is
16 not present.

17 And, Mr. Jochums, if you would identify yourself.

18 MR. JOCHUMS: Yes.

19 My name is Arnold Jochums. I will be presenting
20 this matter this morning.

21 HEARING OFFICER JONES: At this time --

22 MR. JOCHUMS: And I would like to call Kathy
23 Wittum.

24 HEARING OFFICER JONES: Ms. Wittum.

25 MR. JOCHUMS: But first let me just give sort of a

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1 refresher opening.

2 I'll say this matter was before you at the last
3 meeting. It involves a nail place, and the young lady,
4 or female, Linda Balch, had filed a complaint that she
5 believed that she was effected by -- by -- as a result
6 of being treated in this particular nail salon. She

7 later died of unrelated cancer prior to the hearing.

8 We had a hearing. A representative from the
9 family, or at least a friend of hers was here, and
10 people from the nail salon were here, and they both
11 gave testimony.

12 At the conclusion of all that, Mr. Keene moved to
13 dismiss the charges. That motion was -- failed. And
14 then there was another motion that we continue it until
15 the January meeting to get some additional information
16 from the doctor.

17 And so now we are here at this time to consider
18 the matter further.

19 I've already called Kathy.

20 Kathy, can you --

21 HEARING OFFICER JONES: Just one moment, before
22 you get started.

23 Anybody who is going to be a witness in this
24 matter, Ms. Wittum and whomever else might be called,
25 please raise your right hand and let the court reporter

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1 swear you in at this time.

2 WHEREUPON,

3 KATHY WITTUM,

4 having been called for examination, and having been first duly

5 sworn by the undersigned notary public, was examined and

6 testified, as follows:

7 DIRECT EXAMINATION.

8 BY MR. JOCHUMS:

9 Q Ms. Wittum, you are the director of the cosmetology board?

10 A Yes.

11 Q Can you bring the board up to date on what has transpired

12 since our last meeting?

13 A We have received the information from Dr. Buffington that

14 you requested. That has been compiled in the memo that you

15 should have a copy of.

16 There were three questions that we asked Dr. Buffington.

17 One was: "Would you please explain what you observed during the

18 initial visit, (i.e., how did the finger(s) look; was there

19 visual signs of mucus or damage to the nail(s) or the

20 finger(s).)"

21 His response to that question is: "Patient was found to
22 have a fungus infection of her fingernails and cellulitis with
23 redness and draining."

24 The second question we asked was: "How much time would have
25 reasonably lapsed between the contraction of cellulitis and any

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1 visible signs it would have produced?"

2 His response was: "Typically, three to four days would be
3 expected between contraction of cellulitis and any visible
4 signs."

5 The third question we asked is: "In your medical opinion,
6 would this condition have been caused by the nail services she
7 received at U.S. Nails?"

8 His response: "I have no opinion one way or the other
9 whether this condition was caused by the nail services she
10 received at U.S. Nails."

11 We gave you copies of the November information, so that you
12 could update yourself on what was said there. But between my

13 recollection of that testimony and what Dr. Buffington has given,
14 I believe his information really gives us no additional insight
15 than what we had previous.

16 It is, as Mr. Jochums said, unfortunate that Ms. Balch is
17 deceased and not able to provide her own testimony in this
18 situation. But based upon the fact that it appeared she received
19 nail services from more than just this one nail place, I believe
20 there is reasonable evidence that her condition may not have been
21 directly caused by the people at U.S. Nails.

22 After reviewing the cosmetology law, it appears to me that
23 Ms. Pham may have violated Rule 4.2(c)(15), with regard to
24 continuing to provide service when she knew that her client was
25 possibly infected or had some type of ailment to her nails.

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1 MR. JOCHUMS: Madam Hearing Officer, I want to
2 make the memorandum an exhibit to today's hearing.

3 HEARING OFFICER JONES: Okay.

4 MR. JOCHUMS: I don't know what number we would
5 have.

6 HEARING OFFICER JONES: The memorandum would be
7 Exhibit 1 from the January 22, 2007 hearing.

8 (WHEREUPON, HO 07-115 Exhibit No. 1 was received
9 in evidence.)

10 BY MR. JOCHUMS:

11 Q Now, you have some -- have you acquired some other
12 information from the family?

13 A Yes.

14 We have a letter from Lisa Balch, who is the daughter of the
15 complainant, and she -- you should have a copy of that before
16 you.

17 But she basically identifies herself and says that she --
18 she had received my letter letting her know of the date change.
19 It was actually made out to who we believed was her -- was the
20 complainant's husband, James Balch. But, according to Lisa
21 Balch, her father has been deceased since 1981.

22 She says she will not be able to make today's meeting;
23 however, she did want to make it clear that her mother did become
24 ill due to the negligence of U.S. Nails in DeQueen. The
25 medication prescribed for the nail fungus was very expensive,

1 almost \$400. When she mentioned in front of the staff that her
2 nails had become sore, she was hurried to the next available
3 manicurist and offered free services. If she had lived, my
4 mother would have attended this meeting with the hope that no one
5 else would have to incur the expense and inconvenience she did.

6 And she appreciates being advised of the board's decision on
7 this case.

8 Q Now, did you also actually talk to her?

9 A No. I did not.

10 Q Okay. But you have provided her notice that the hearing
11 would be today?

12 A Yes.

13 Q And you reasonably believe she doesn't plan on coming?

14 A Right.

15 MR. JOCHUMS: Let's make that Exhibit 2, if we
16 can.

17 HEARING OFFICER JONES: So noted.

18 The letter from Lisa Balch will be Exhibit 2.

19 (WHEREUPON, HO 07-115 Exhibit No. 2 was received

20 in evidence.)

21 BY MR. JOCHUMS:

22 Q And did you also receive a letter from the respondent?

23 A Yes. I notified her of the date change and she stated she
24 would not be present, but she did want to just send a letter to
25 reiterate her position. You should also have a copy of that

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1 before you.

2 She says in her letter, would you please to present my
3 letter to the board on January 22nd. Hopefully it will help
4 the board in making a decision.

5 The U.S. Nails has been open since 2002. We have never had
6 any problem with customers and we have never failed in any visit
7 of inspector, Ms. Pat Jackson.

8 For Ms. Linda Balch's problem, our nail tech tried to do
9 the best to help her nails as --

10 Q Much?

11 A -- as much as they can for acrylic nails. Customer be

12 required to return for filling every two weeks so we would not be
13 responsible for any returning of six week acrylic nails, as
14 Ms. Linda Balch always does.

15 Those are my opinion. Thank you and wishing everybody best
16 wishes. Sincerely Kim Pham.

17 MR. JOCHUMS: Okay. Madam Hearing Officer, I
18 would like to make that document Exhibit 3, please.

19 HEARING OFFICER JONES: So noted, the letter from
20 Kim Pham will be Exhibit 3.

21 (WHEREUPON, HO 07-115 Exhibit No. 3 was received
22 in evidence.)

23 MR. JOCHUMS: Okay. That concludes what the staff
24 has to conduct in regard to this -- this case, Madam
25 Hearing Officer.

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1 HEARING OFFICER JONES: Are there any questions
2 the board would like to ask of Ms. Wittum at this time?

3 MS. TURMAN: I would like to ask something.
4 I don't know if I'm out in left field or not, but

5 I cannot recall from the minutes or anywhere else where
6 a member of her family spoke. Who is this -- I mean
7 I --

8 THE WITNESS: No. I don't believe one was here at
9 the last visit.

10 MS. TURMAN: Okay.

11 MR. JOCHUMS: I stand corrected.

12 MS. TURMAN: Okay. Thank you.

13 HEARING OFFICER JONES: Are there any other
14 questions for Ms. Wittum at this time?

15 If there are no further questions, we will close
16 the record at this time and let the board deliberate to
17 make a decision, at which time we will go back on the
18 record.

19 (WHEREUPON, the Commission retired to deliberate,
20 off the record, from 8:58 a.m. to 9:08 a.m., and
21 returned with the following motion.)

22 HEARING OFFICER JONES: Now we may proceed.

23 MS. POWELL: Do I have a motion?

24 MS. TURMAN: Madam President, I would like to make
25 a motion that we have insufficient evidence to proceed,

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1 and I would like to drop all charges.

2 MR. KEENE: Second.

3 MS. POWELL: We have a motion and a second.

4 Is there any discussion?

5 All those in favor, raise your right hand.

6 (Hands raised.)

7 MS. POWELL: All those opposed?

8 (Hands raised.)

9 MS. POWELL: One.

10 Passes with one opposition. Motion carries.

11 HEARING OFFICER JONES: The motion does carry.

12 Please reduce this to writing and insure that service

13 is made upon all the parties. And let the respondent

14 know that if they do care to appeal the decision, they

15 can under APA 25-15-201.

16 If there are no other questions or comments

17 related to this hearing, it is concluded and the record

18 of this hearing will be closed.

19 MR. JOCHUMS: Madam Hearing Officer, I notice
20 several people came in. You might read out some of
21 these names.

22 HEARING OFFICER JONES: Okay. Do we have anyone
23 here Kendall's Kreations?

24 MS. McCUIN: Randy Cole is here.

25 HEARING OFFICER JONES: Randy Cole is here.

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1 Is that the only one that we have here at this
2 time?

3 MS. McCUIN: To my knowledge. Yes.

4 ADMINISTRATIVE HEARING NO. HO 07-307

5 HEARING OFFICER JONES: Okay. Randy Cole of
6 Randy's Styling Salon. This is 07-307.

7 If the respondent would please come forward to the
8 table. 07-307.

9 Good morning. You all have a seat.

10 MS. WITTUM: Board, you had an Amended Hearing

11 Order for this case laying at your seat this morning.

12 It was with the historical reviews.

13 HEARING OFFICER JONES: Does everybody have the
14 Amended Order?

15 Okay. Morning. My name is Kendra Akin Jones.
16 I'm going to be the Hearing Officer in the matter of
17 Kendall -- or excuse me -- Randy Cole, which is
18 HO No. 07-307, to be heard before the Arkansas State
19 Board of Cosmetology.

20 Today is January 22, 2007, and we are located in
21 the conference room of the Main Street Mall.

22 Would the respondent please identify yourself for
23 the record.

24 MR. COLE: Randy Cole.

25 HEARING OFFICER JONES: And, Mr. Cole, do you have

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1 counsel with you today?

2 MR. COLE: No, ma'am.

3 HEARING OFFICER JONES: Okay. And did you receive

4 a copy of the Order and Notice of Hearing?

5 MR. COLE: Yes, ma'am.

6 HEARING OFFICER JONES: Okay. Is the state
7 represented by counsel today?

8 Mr. Jochums?

9 MR. JOCHUMS: Yes.

10 HEARING OFFICER JONES: Please identify yourself
11 for the record.

12 MR. JOCHUMS: Yes.

13 My name is Arnold Jochums. I will be representing
14 the staff in this matter.

15 HEARING OFFICER JONES: For the respondent's
16 benefit, as well as anyone present today who may not
17 have appeared before an administrative hearing, the
18 board will base its decision solely on the evidence
19 presented here today. And this hearing is being held
20 under the Administrative Procedures Act, which means
21 that I don't have to follow the strict rules of
22 evidence for allowing issues to be brought before
23 this -- this board.

24 To insure the efficiency of the proceeding I may

25 grant some requests and deny some objections as the

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1 hearing proceeds.

2 The board members know this case only as it
3 appears and is set forth in the Notice of Hearing. If
4 there is anything you want to have submitted for them
5 to review, you may do so today and it will be
6 considered by them, and it must be offered into
7 evidence to do so.

8 This hearing is subject to the Freedom of
9 Information Act, and therefore all deliberations of the
10 board are open to the public.

11 For anybody who is going to be a witness here in
12 this hearing, please raise your right hand, and let the
13 court reporter swear you in.

14 (WHEREUPON, four witnesses were sworn.)

15 HEARING OFFICER JONES: Are there any preliminary
16 matters, Mr. Jochums?

17 MR. JOCHUMS: Yes.

18 I would ask that we make, as Board's Exhibit 1,
19 the letter dated December 21, 2006, to -- no, January
20 3, 2007, to Mr. Cole, and the attached Order and Notice
21 of Hearing.

22 And as Exhibit 2, the inspector's report
23 consisting of, I think, three pages -- two.

24 HEARING OFFICER JONES: Anything further,
25 Mr. Jochums?

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1 MR. JOCHUMS: No.

2 HEARING OFFICER JONES: So noted. Exhibit 1 will
3 be the letter dated January 3, 2007; and Exhibit 2 will
4 be the inspector's report.

5 (WHEREUPON, HO 07-307 Exhibits Nos. 1 and 2 were
6 received in evidence.)

7 HEARING OFFICER JONES: Mr. Cole, is there
8 anything you would like to present to the board for
9 evidence today? Any paperwork you have or anything you

10 would like them to look at?

11 MR. COLE: Not at this time.

12 HEARING OFFICER JONES: Okay. Opening statements?

13 Mr. Jochums?

14 MR. JOCHUMS: The allegations in this case involve

15 operating an establishment with an expired license,

16 failing to have all licenses posted.

17 And is that it?

18 MS. WITTUM: Uh-huh.

19 MR. JOCHUMS: Those are -- those are the

20 allegations in this matter, and we'll present one

21 witness in regard to those. Perhaps two.

22 HEARING OFFICER JONES: Mr. Cole, is there

23 anything you would like to say in opening to the board?

24 MR. COLE: Well, my daughter was not working in

25 the shop at that time. And I had always kept the

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1 license current, thinking that she would come back to

2 work some time. And she had told me that she got her

3 license but I was under the impression that she had
4 gotten both of them.

5 And the inspector had been in there previously in
6 the summer, and if I'm not mistaken in the spring, and
7 she didn't bring it to my attention. And it was just
8 an oversight on my part. Tosha has not been conducting
9 business there.

10 HEARING OFFICER JONES: Okay. At this time we'll
11 move to witnesses.

12 Mr. Jochums, you may call your first witness.

13 MR. JOCHUMS: Okay. Have we identified all the
14 people at the table?

15 HEARING OFFICER JONES: I don't believe we have.

16 MS. PAINTIN: I'm Natasha.

17 HEARING OFFICER JONES: Okay. Please state your
18 full name for the record.

19 MS. PAINTIN: My name is Natasha Paintin.

20 HEARING OFFICER JONES: Okay.

21 WHEREUPON,

22 BRENDA MORGAN,

23 having been called for examination, and having been first duly

24 sworn by the undersigned notary public, was examined and
25 testified, as follows:

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1 DIRECT EXAMINATION

2 BY MR. JOCHUMS:

3 Q Madam Inspector, please state your name.

4 A Brenda Morgan.

5 Q Ms. Morgan, are an inspector for the cosmetology board?

6 A Yes, sir. I am.

7 Q Did you have occasion to go to Randy's Styling Salon?

8 A Yes, sir. I did.

9 Q Okay. And was that in October of this -- of last year? Of
10 2006?

11 A Yes, sir. It was.

12 Q What did you -- well, first let me -- first tell the board a
13 little bit about Randy's. Where is it located and about what
14 size is it?

15 A Randy's is in Cabot. It's -- Randy is a barber. We'll get
16 that clear first. And Natasha is a cosmetologist.

17 And it is his salon and it's in a plaza there in downtown

18 Cabot.

19 I've been there many, many times. They have always had

20 things as it should.

21 Natasha has -- I don't even know if I've ever met her. I

22 really don't know that I have.

23 But Randy has been -- always kept the cosmetology license

24 establishment up for her, just in case she wanted to come back,

25 and she always kept her cosmetology.

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1 I'm not sure who paid for the cosmetology license or what,

2 so -- but, I believe, in the summer time, the last time, he was

3 not there.

4 THE WITNESS: And there was one time that you --

5 did you not --

6 MR. COLE: It was off one time.

7 THE WITNESS: -- renew the license. Yes.

8 I'm not sure about the history of it, so...

9 BY MR. JOCHUMS:

10 Q Okay. Thank you.

11 Now, on the occasion when you were there you noticed,

12 though, that the establishment license was expired?

13 A Yes, sir.

14 Q Is that correct?

15 And what -- what licenses were they required to have posted?

16 A An establishment license for the salon and the cosmetologist

17 practitioner license.

18 Q And were either of those licenses posted?

19 A I believe there was '05's posted.

20 Q On both licenses?

21 A Yes.

22 Q Now, the day you were there, there was no cosmetologist

23 working. Is that correct?

24 A No, sir. It was him.

25 Q Is this more than one barber kind of place?

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1 A No.

2 Q So it -- except for one barber and one cosmetologist --

3 A It's him.

4 MR. JOCHUMS: I have no other questions of this
5 witness.

6 HEARING OFFICER JONES: Mr. Cole, is there any
7 questions that you would like to ask of Ms. Morgan?

8 MR. COLE: Well, I believe her license was there.
9 I think me and her both overlooked them or something.
10 I -- Tosha hadn't been there. Her stuff is --

11 HEARING OFFICER JONES: Well, I'll give you a
12 chance in just a minute to tell your full side of the
13 story, but do you have any questions for the inspector?

14 Anything you want to ask her and have her
15 elaborate on for you?

16 MR. COLE: No, ma'am.

17 HEARING OFFICER JONES: Okay. Does the board have
18 any questions of this witness?

19 If there are no other questions, Ms. Morgan, thank
20 you.

21 Mr. Jochums, next witness.

22 MR. JOCHUMS: Okay. I want to call, briefly,

23 Kathy Wittum.

24 WHEREUPON,

25 KATHY WITTUM,

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1 having been called for examination, and having been first duly
2 sworn by the undersigned notary public, was examined and
3 testified, as follows:

4 DIRECT EXAMINATION

5 BY MR. JOCHUMS:

6 Q Ms. Wittum, you've been sworn.

7 Are you familiar with this case?

8 A Yes. I am.

9 Q And did the inspector report that -- the situation with
10 regard to the cosmetology establishment license?

11 A Yes. She did.

12 Q And since that time, has -- has the license been renewed?

13 A The establishment license has not.

14 Now, there was some confusion on the initial report that
15 went out, the hearing order that went out. There was some

16 confusion on Natasha's.

17 We had -- initially did not find record that she had renewed

18 the -- it was brought to our attention that she had. So the

19 Amended Hearing Order reflects the fact that the establishment

20 license itself has not been renewed but hers has.

21 Q And in working with this, this file, have you recommended a

22 penalty?

23 A Yes.

24 Q And can you explain what you're recommending, please.

25 A I recommended that -- a penalty of \$354.

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1 That's based on the board's fee schedule that they use, a

2 25-dollar base for the establishment license not being current,

3 and a dollar a day for each day since, as well as five dollars

4 for not posting her license.

5 MR. JOCHUMS: Okay. I have no other questions for

6 this witness.

7 HEARING OFFICER JONES: Mr. Cole, are there any

8 questions you would like to ask Ms. Wittum?

9 MR. COLE: Well, I would just like to say that
10 when the inspector did come in and bring it to my
11 attention that the license weren't current, that I
12 mailed a check on it.

13 HEARING OFFICER JONES: But do you -- I'm going to
14 give you -- I am, I'm going to give you a chance in
15 just a minute to tell everything you want to tell to
16 the board.

17 MR. COLE: Okay.

18 HEARING OFFICER JONES: But do you have any
19 questions for Ms. Wittum?

20 MR. COLE: No, ma'am.

21 HEARING OFFICER JONES: Okay. Does the board have
22 any questions for this witness?

23 Okay. Mr. Jochums, any further witnesses?

24 MR. JOCHUMS: No, ma'am.

25 Staff rests.

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1 HEARING OFFICER JONES: Mr. Cole.

2 MR. COLE: Yes, ma'am.

3 HEARING OFFICER JONES: You can question any
4 witnesses that you may have with you, and I'm going to
5 give you a chance to tell your side.

6 WHEREUPON,

7 RANDY COLE,

8 having been called for examination, and having been first duly
9 sworn by the undersigned notary public, was examined and
10 testified, as follows:

11 DIRECT TESTIMONY

12 MR. COLE: No. I would just like to say that when
13 she did come in and bring it to my attention -- because
14 I was under the impression that Tosha -- when I asked
15 her -- I didn't ask her, she told me when I renewed my
16 license and stuff, I was under the impression that she
17 had done both of them. And my license renew in July
18 and yours are in January and stuff. And then when the
19 inspector did bring it to my attention on 10/27, I
20 mailed a check to the board on 11/1.

21 And then when I called the board, they said they

22 hadn't received that check, but then last week I got
23 the check back in the mail, and it is dated 11/1.
24 Which -- which I did you know, try to get the situation
25 fixed. I just --

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1 Like I said, I wasn't aware of it until she brung
2 it to my attention. When she did, I mailed the check
3 for the \$30 for the renewal within three days. I guess
4 it got mixed up at the board or something. But then
5 they sent it back to me and told me that I needed to
6 send \$50. \$30 for '06 and then \$20 for '07, and I've
7 mailed that back to them.

8 HEARING OFFICER JONES: Would you like to present
9 the check that you have there for the board to look at?

10 MR. COLE: Yes, ma'am.

11 HEARING OFFICER JONES: Okay. If you would just
12 bring it up here to Ms. Wittum, that would be fine.

13 Anything further you would like to say at this
14 time?

15 MR. COLE: No.

16 HEARING OFFICER JONES: Would you like to ask your
17 daughter any questions on the record? Have her say
18 anything?

19 MR. COLE: No.

20 HEARING OFFICER JONES: Let her tell her story?

21 MR. COLE: No.

22 MS. McCUIN: Kathy --

23 CROSS-EXAMINATION

24 BY MR. JOCHUMS:

25 Q Before you do that, did you get a letter with this check?

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1 A Yes, sir.

2 MS. McCUIN: -- we had received his check in the
3 office Friday. We did try to contact Mr. Cole Friday
4 to let him know that we did have his check and that we
5 would go ahead with the renewal.

6 HEARING OFFICER JONES: Wait a minute.

7 You need -- we can have you come up here and you
8 can give us the information, but I've got to have you
9 sworn in and noticed for the record. Okay?

10 MS. McCUIN: Okay.

11 HEARING OFFICER JONES: We'll do that in just a
12 minute.

13 THE WITNESS: I believe maybe the letter they sent
14 back with the check was one that I needed to send them
15 with the \$50.

16 BY MR. JOCHUMS:

17 Q Oh, okay. You don't have one with you?

18 A No, sir.

19 MR. JOCHUMS: Thank you.

20 Then I've got no objection to the board seeing
21 this --

22 HEARING OFFICER JONES: Okay.

23 MR. JOCHUMS: -- his check. And we'll make it
24 Respondent's 1.

25 HEARING OFFICER JONES: Okay. The check will be

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1 Exhibit 1 for the respondent.

2 (WHEREUPON, HO 07-307 Respondent's Exhibit No. 1

3 was received in evidence.)

4 HEARING OFFICER JONES: Mr. Cole, would you like

5 to ask your daughter any questions at this time?

6 MR. COLE: No, sir.

7 HEARING OFFICER JONES: Make any statements at

8 this time?

9 MR. COLE: I think that's it.

10 HEARING OFFICER JONES: Okay.

11 MR. JOCHUMS: Let me ask her a question.

12 WHEREUPON,

13 NATASHA PAINTIN,

14 having been called for examination, and having been first duly

15 sworn by the undersigned notary public, was examined and

16 testified, as follows:

17 DIRECT EXAMINATION

18 BY MR. JOCHUMS:

19 Q You're Natasha?

20 A Yes, I am.

21 Q And you have a cosmetology license?

22 HEARING OFFICER JONES: Let's -- let's clearly get
23 your name and everything for the record, just to make
24 sure.

25 THE WITNESS: My name is Natasha. Natasha

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1 Paintin.

2 BY MR. JOCHUMS:

3 Q You're the respondent's daughter?

4 A Yes, sir.

5 Q Where -- where are you now employed or are you employed?

6 A I'm not.

7 Q You're not working now?

8 A No. I'm not.

9 I just had a son, he's two years old, so I'm staying at home
10 with him.

11 Q Okay.

12 A See, I haven't even been -- I haven't even been working.

13 I have been keeping my license up, my practitioner's license

14 up, so -- when I do go back to work, because you don't want them
15 to lapse, you know, so I've been keeping that up. When I told
16 him that I had my license, that's what I meant, my 2006, that I
17 had them. And they -- they -- they weren't posted at the shop,
18 so...

19 Q Where do you live?

20 A 82B Liberty Lane, Cabot.

21 COURT REPORTER: I didn't hear that.

22 BY MR. JOCHUMS:

23 Q Do you go by your dad's shop occasionally?

24 A Huh?

25 Q Do you go by your dad's shop occasionally?

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1 A Not really, no, sir. Not unless I need to borrow some
2 money.

3 MR. JOCHUMS: No further questions.

4 THE WITNESS: Unless my son needs a haircut, you
5 know. He cuts both of my kids' hair.

6 BY MR. JOCHUMS:

7 Q The reason I was asking you, you said that your license was
8 there. I was just wondering how you --

9 A Yeah. Yeah. I keep my license there, because if not,
10 otherwise they might be lost. So they were posted. They was
11 only posted with a thumb tack, though, and they were like
12 sticking on the wall beside my mirror. And I do have a lot of
13 stuff kind of stacked over back there, because like I say, I
14 haven't been working, so she may not have been able to see them.
15 But I do have the 2006 license so -- but I have not done -- I
16 haven't done any cutting hair, though. I haven't done any
17 business there.

18 MR. JOCHUMS: Thank you.

19 I have no other questions.

20 HEARING OFFICER JONES: Does the board have any
21 questions for Mr. Cole?

22 MS. PICKERING: I do.

23 HEARING OFFICER JONES: Go ahead.

24 MS. PICKERING: Okay. This says that in
25 February 1, '06, then, of course, it tells how many

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1 days between that and December 1, '06, were you not
2 warned in February '06 that you did not have your
3 establishment license?

4 MR. KEENE: That says as of the date they expired,
5 but they were there.

6 MS. PICKERING: They were there?

7 Well, I mean -- okay. What I'm trying to say,
8 what -- I guess I missed something.

9 MR. KEENE: You did.

10 MS. PICKERING: All right. In '06, is that of
11 February -- yeah, February 1, '06, is that when you
12 went in and realized he didn't --

13 MS. MORGAN: Maybe I can clarify that.

14 February 1 -- I --

15 HEARING OFFICER JONES: Okay. Wait a minute.

16 Let's -- Ms. Morgan, you can clarify the question
17 if Mr. Cole doesn't want to answer it himself.

18 Do you understand what Ms. Pickering was trying to
19 ask?

20 MR. COLE: I think I got the gist of it. She was

21 talking about February of '06 was I warned?

22 HEARING OFFICER JONES: Right.

23 MR. COLE: No. I wasn't.

24 HEARING OFFICER JONES: Okay.

25 MS. PICKERING: Was not brought out to your

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1 attention --

2 MR. COLE: No, ma'am.

3 MS. PICKERING: -- that you didn't have an

4 establishment license?

5 MR. COLE: No, ma'am.

6 MS. PICKERING: Well, how did --

7 MR. COLE: We discussed the fact that Tosha wasn't

8 working at that time.

9 MS. PICKERING: Okay. But you had your barber

10 establishment license?

11 MR. COLE: Yes, ma'am.

12 MS. PICKERING: Well, I guess my question, I'm --

13 I'm confused on this.

14 I guess my question is, how could he have been --
15 how could he be charged for a dollar a day since
16 February 1 until December 21st, if he had not -- no
17 one had brought it to his attention that he didn't
18 have -- that Mr. Cole did not have an establishment
19 license for cosmetology?

20 HEARING OFFICER JONES: Ms. Morgan, can you answer
21 Ms. Pickering's question and clarify this for us,
22 please.

23 MS. MORGAN: I can, I can clarify why she's saying
24 February 1st.

25 January 31st is the deadline for '06 license to

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1 be renewed.

2 And, evidently, you're saying that I was there, I
3 don't remember the date, on February 1 of '06.

4 MS. PICKERING: He said February 1. Uh-huh.

5 MS. MORGAN: We normally don't -- I wouldn't warn
6 him, I wouldn't, you know, do a warning on paper.

7 HEARING OFFICER JONES: Maybe -- Ms. Wittum, can
8 you clarify where the February 1st date in the
9 hearing comes from?

10 MS. PICKERING: And he was charged a dollar a day
11 until December, is --

12 MS. WITTUM: Okay. The February 1 date on here is
13 not indicating that Ms. Morgan was there at the salon.
14 It is the start date for us to start calculating the
15 dollar a day. Because come February 1 of each year,
16 that's when the penalties become applicable for anyone
17 who doesn't renew their license.

18 MS. PICKERING: Okay. All right. So he does not
19 have to be -- it does not have to be brought to his
20 attention?

21 MS. WITTUM: No, ma'am.

22 MS. PICKERING: Okay. All right. That's the
23 question, I guess, I was getting to.

24 HEARING OFFICER JONES: Okay. Thank you for that
25 clarification, Ms. Wittum.

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1 Does any of the board members have any questions
2 for Mr. Cole?

3 MR. KEENE: Yes. Yeah.

4 Okay. I believe you stated earlier that there --
5 the inspector had been by twice before in 2006?

6 MR. COLE: I couldn't swear to both times.

7 I know she was there in the summer, because I
8 remember us talking about how hot it was. And if I'm
9 not mistaken, she had been in, maybe, in the spring,
10 but I couldn't swear to it.

11 MR. KEENE: Okay. Did you bring a copy of any of
12 your inspections?

13 MR. COLE: No. I tried to find one.

14 I found the last copy of -- but I couldn't find
15 the one, the previous one.

16 MR. KEENE: What's the date on it?

17 MR. COLE: It's 10/27/06.

18 MR. KEENE: That was the one where she found you

19 in violation. Right?

20 MR. COLE: Well, she come in and we had discussed
21 that -- because I told her I knew Tosha had renewed her
22 license, and I was under the impression that she had
23 renewed both of them. But -- and we discussed how I
24 want to keep her license current.

25 And I told her that I had talked with Tosha and

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1 it -- if she hadn't renewed them, that I would get it
2 in the mail as quick as I could. And that's what I
3 did.

4 MR. KEENE: But what license are you talking
5 about?

6 MR. COLE: It was, I guess, the establishment
7 license.

8 MR. KEENE: Okay.

9 HEARING OFFICER JONES: Any further questions for
10 Mr. Cole?

11 Does anybody have any questions they would like to

12 ask Natasha?

13 Okay. At this time we will have closing

14 arguments.

15 Mr. Jochums?

16 MR. JOCHUMS: The -- the only charge here is

17 operating without a -- or not having a -- a current

18 establishment license, and the gentleman has admitted

19 that he didn't have one and has since purchased one.

20 So it's just a matter, I think, at this point of

21 you assigning an appropriate amount of penalty.

22 HEARING OFFICER JONES: Mr. Cole?

23 MR. COLE: Yes, ma'am.

24 HEARING OFFICER JONES: You may make your closing

25 argument to the board at this time.

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1 MR. COLE: I think I talked all I need.

2 HEARING OFFICER JONES: Okay. At this time we

3 will close the record for deliberations for the board.

4 When there is a motion, we will go back on the record
5 for that motion.

6 (WHEREUPON, the Commission retired to deliberate,
7 off the record, from 9:30 a.m. to 9:37 a.m., and
8 returned with the following motion.)

9 HEARING OFFICER JONES: At this time we will be
10 back on the record for a motion to be made.

11 MS. POWELL: Do I have a motion?

12 MS. GORDON: Finding the allegations being true, I
13 will order the respondent to pay a fine in the amount
14 of \$177, payable within 30 days of the receipt of the
15 board order. Failure to pay the fine as ordered will
16 result in the suspension of the respondent's
17 establishment license beginning 30 days from the
18 receipt of the order and continuing for a period of 90
19 days from the date the respondent relinquishes his or
20 her license to the board.

21 MS. PICKERING: I'll second that.

22 MS. POWELL: I have a motion and a second.

23 Is there any discussion?

24 All those in favor, raise your right hand.

25 (Hands raised.)

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1 HEARING OFFICER JONES: All those opposed?

2 (Hands raised.)

3 MS. POWELL: One opposition.

4 Motion carries.

5 HEARING OFFICER JONES: Please note for the record

6 that the motion did pass, it will be reduced to writing

7 and service will be attempted upon all parties.

8 If the respondent cares to appeal the decision of

9 the board, an appeal may be taken under the

10 Administrative Procedures Act 25-15-201. If there are

11 any other specific provisions of the board, it may also

12 be appealed under those.

13 If there are no other questions or comments, then

14 this hearing is concluded and the record of such is

15 closed.

16 Thank you, Mr. Cole.

17 ---O---

18 HEARING OFFICER JONES: Okay. I'm just going to
19 kind of run through this list of those who have not
20 contacted the board and make sure that no one is here.

21 Is there anybody here for Kendall's K creations?

22 Kendall Johnson?

23 Autumn Raspberry, doing business as Statements

24 Salon?

25 Valarie Folsom, doing business as Tangles Salon?

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1 Shauna Turner?

2 Thank Tuyen Thi Ha?

3 Okay. Then it looks as if we have no other
4 respondents present for hearings this morning.

5 We will read these into the record.

6 RESPONDENTS WHO DID NOT APPEAR FOR HEARING

7 On January 22, 2007, we have had a call for
8 hearings for 07-279, Kendall Johnson, there is not a
9 respondent present. The recommended fine of \$240 will
10 be instated.

11 07-282, Autumn Raspberry, doing business as
12 Statements Salon, once again, there is no respondent
13 present. The recommended fine of \$50.

14 For hearing 07-290, Valarie Folsom, doing business
15 as Tangles Salon, recommend amount of 175.

16 07-301, Shauna Turner, recommended fine amount of
17 \$50.

18 And 07-311, Thank Tuyen Thi Ha, recommended fine
19 of \$255.

20 At this time, do we have a motion to accept the
21 recommended fines?

22 MR. KEENE: I'll so move.

23 MS. GORDON: I second.

24 MS. POWELL: I have a motion and -- motion and a
25 second.

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1 All those in favor?

2 (Hands raised.)

3 MS. POWELL: Motion is unanimous.

4 HEARING OFFICER JONES: Please note --

5 MR. DOWNEY: Do you want to add the 25-dollar
6 fine?

7 MS. POWELL: I'm sorry?

8 MR. DOWNEY: We normally do a 25-dollar
9 administration fee whenever they fail to show.

10 MS. POWELL: Okay. Then do you want to --

11 MR. DOWNEY: Would you like to change your motion?

12 MS. POWELL: Who made the motion?

13 MR. KEENE: I did.

14 MS. POWELL: Do you want to change it to include
15 an admin fee?

16 MR. KEENE: Okay.

17 MS. POWELL: We usually always do, so --

18 MR. KEENE: Okay.

19 MS. POWELL: Okay. So I have a motion.
20 Do you want to redo your second?

21 MS. PICKERING: I'll second it.

22 MS. POWELL: Okay. We have a motion and a second.

23 All those in favor, raise your right hand.

24 (Hands raised.)

25 MS. POWELL: The motion is unanimous.

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1 HEARING OFFICER JONES: The motion is unanimous,
2 that the recommended fines plus a \$25 administrative
3 fee will be assessed to each of these individuals.

4 Please reduce that to writing and inform all
5 parties of the decision of the board. And that if they
6 care to, they can appeal it, and they can take that
7 under the Administrative Procedures Act, 25-15-201.

8 If there are no other questions or comments, this
9 portion is concluded.

10 ---o---

11 HEARING OFFICER JONES: Do we want to read into
12 the record the ones who decided to just pay their fine?

13 MS. POWELL: Yes.

14 RESPONDENTS WHO HAVE WAIVED THEIR RIGHT TO A HEARING

15 HEARING OFFICER JONES: Okay. At this time we
16 will read into the record those individuals who have

17 decided to pay their fine.

18 And that is 07-278, Sharon Liles, doing business

19 as Nails by Sharon.

20 07-294, Tinh Ho, doing business as Beautiful Nails

21 and Spa.

22 07-285, Mike Quoc Bui, doing business as Nail

23 Time.

24 07-297, J.C. Penney Corp., Inc., doing business as

25 J.C. Penney Styling Salon #636.

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1 The next one is 07-292, Sanford Thomas, doing

2 business as Elite Salon.

3 07-281, Christy Baker, doing business as Kerizme

4 Salon.

5 07-305, Elisha Jordan.

6 07-306, Tamika Rhoten.

7 07-300, Joy Smith, doing business as Cuts of Joy.

8 07-311, Ngoc Lac, doing business as American

9 Nails.

- 10 07-293, Hanh Thi Truong.
- 11 07-299, Thanh Ha, doing business as Wonder Nails.
- 12 07-302, Donna Duncan.
- 13 07-303, Patrick Haynes.
- 14 07-304, Mary Crofford.
- 15 07-298, James Haley, doing business as Supercuts.
- 16 07-289, Melody Cain, doing business as Melody's
- 17 Beauty and Tanning Salon.
- 18 07-283, Evalyn Dang.
- 19 07-284, Minh Trinh, doing business as Nail Tech.
- 20 All these individuals have come to the board and
- 21 paid the recommended fines that were listed in their
- 22 Notice of Hearing.
- 23 If there are no other questions and comments, this
- 24 portion is now closed.
- 25 MS. WITTUM: Can --

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1 MR. JOCHUMS: We need to get a motion to approve

2 those.

3 HEARING OFFICER JONES: Oh. Those were paid,
4 though. Do we have to have a motion?

5 MR. JOCHUMS: We still do, though.

6 HEARING OFFICER JONES: Okay. We need a motion to
7 approve those that have paid their fine.

8 MS. TRAYLOR: I so move.

9 MS. TURMAN: Second.

10 HEARING OFFICER JONES: All of those in favor of
11 the motion to approve those as just read.

12 (Hands raised.)

13 HEARING OFFICER JONES: Please reflect that the
14 decision of the board is unanimous, and let the
15 respondents know of their paying of the fine, and that
16 the board did approve that. And if they do care to
17 appeal, which I'm not sure if they would, but
18 25-15-201.

19 If there are no other questions or comments, then
20 it is closed.

21 MS. WITTUM: Also, we also have one request for a
22 continuance.

23 HEARING OFFICER JONES: Okay.

24 MS. WITTUM: 07-312, Jacquita Hayden, with
25 Lynndale's Fundamentals of Beauty; she requested a

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1 continuance, as she wouldn't be able to prepare for
2 today.

3 HEARING OFFICER JONES: That --

4 MR. JOCHUMS: That doesn't need a motion. That's
5 just notice.

6 HEARING OFFICER JONES: Yeah. That's just notice
7 for the board.

8 Anything further at this time?

9 MR. JOCHUMS: There is nothing further in the
10 nature of a hearing --

11 HEARING OFFICER JONES: Right.

12 MR. JOCHUMS: -- that would require you.

13 HEARING OFFICER JONES: That's what I meant.

14 MS. WITTUM: We have attempted to get a hold of
15 Kent Walker to see if he would be able to come on over

16 for the legislative committee.

17 We left a message for him; so, hopefully, we'll
18 hear from him shortly.

19 At this time I would like to request that the
20 board consider extending the grace period from
21 17-26-416, which is basically the three year law. In
22 light of the fact that our legislative packet includes
23 removing that from the law, I would request that the
24 board not have us look at any of the time for students
25 now.

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1 If you remember, the grace was to end
2 December 31st of '06. So, when that motion was made,
3 the -- our understanding was that on January 1 of '07,
4 we would begin to look at how long a student has been
5 out of school and possibly remove those hours from that
6 student's record.

7 Does anybody have any --

8 MR. KEENE: I'll make a motion that we extend the

9 hours for the 17-26-416, to be at the end of the
10 legislative session.

11 MS. WITTUM: Okay.

12 MS. GORDON: Second.

13 MS. POWELL: I have a motion and a second.

14 Is there any discussion?

15 All those in favor, raise your right hand.

16 (Hands raised.)

17 MS. POWELL: Motion is unanimous.

18 MS. WITTUM: I also have a question, and just want
19 some guidance on the conversion of academic to clock
20 hours. As you know, we do everything in clock hours.

21 I have checked with some of the other states and
22 there is a mixture of which ones do accept academic
23 credit and those that don't consider it at all.

24 I have a person who is looking to enroll who has
25 only been able to provide evidence that she attended a

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1 cosmetology course at a vo-tech back in around 1990-91,
2 and those credits are in academic form, not clock
3 hours.

4 If this board is willing to accept this credit,
5 then we just need to determine how many clock hours she
6 would actually be eligible for.

7 So the first thing I need to know is, is the board
8 willing to have academic credit converted to clock
9 hours?

10 MR. DOWNEY: And I have to say this form before
11 that --

12 MS. WITTUM: Yes.

13 MR. DOWNEY: -- that we do throughout the United
14 States, to convert, so it can very easily be done so --

15 COURT REPORTER: You need to speak up, please.

16 MR. KEENE: This vo-tech school, where was that?

17 MS. WITTUM: It was in Fayetteville, Fayetteville
18 High School.

19 MR. KEENE: But it was a vo-tech under --

20 MS. WITTUM: Fayetteville High School. But it --

21 MR. KEENE: I thought that the vo-tech schools in
22 this state still had to go by clock hours. Don't they

23 still have to clock in?

24 MS. WITTUM: Well, this was back in -- this was
25 back in 1990-91. And so I don't know if things were

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1 different then, but --

2 MR. KEENE: Yeah. No, I mean, you --

3 MS. TRAYLOR: I thought you always had to have
4 clock hours in Arkansas.

5 MS. WITTUM: Well, all that the school was able to
6 provide is a copy of the student's transcript, which
7 gives us evidence that she attended the cosmetology
8 course, and we have her academic credit.

9 MS. TRAYLOR: They always break it down in clock
10 hours.

11 MS. POWELL: Did you check with the school to see
12 if they require clock hours for that student during her
13 enrollment?

14 MS. WITTUM: They have no -- they have no records

15 of clock hours.

16 MS. POWELL: They have no hours?

17 MR. KEENE: Does our office have any information
18 on her? There should be.

19 MR. DOWNEY: There should be monthly records.

20 MS. WITTUM: We checked all of the records that
21 had been either put on microfiche or scanned into the
22 computer system, and this person is not in there.

23 MS. POWELL: So does that possibly mean that this
24 school was not demonstrating a time clock or clock
25 hours --

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1 MS. WITTUM: I can't say.

2 MS. POWELL: -- and submitting to the board?

3 MS. WITTUM: I can't say.

4 MR. KEENE: Well, Jane, that still doesn't make
5 sense on why we would not have something in our office
6 on her.

7 MS. POWELL: It would if the school wasn't -- if

8 the school wanted to give academic credit but they had
9 no intentions to submit clock hour credit to the state
10 board for a license.

11 MR. KEENE: Huh.

12 MS. POWELL: They may have the program in their
13 school, but it doesn't mean that they are going to give
14 them clock hours or even apply it towards a license.

15 MR. KEENE: Okay.

16 MS. POWELL: I mean, I thought I've heard people
17 speak on public -- the private -- the public schools
18 speak on that before, that they -- most of theirs
19 typically do not ever get a license or that they don't
20 plan on it.

21 Is that not what --

22 MS. WITTUM: Well, it's my understanding that they
23 still report, same as everyone else. They just don't
24 have --

25 MS. POWELL: They don't have --

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1 MS. WITTUM: -- a lot of their people to come up
2 here to examine them.

3 MS. POWELL: So you're saying that if there is a
4 vo-tech school that's got a cosmetology program, that
5 you would expect them to submit monthly hours for
6 anyone in that program irregardless?

7 MS. WITTUM: Yes.

8 MS. GORDON: There should be a record of their --

9 MR. KEENE: Don't they have to have permits?

10 There should be something in the office --

11 MS. GORDON: There should be office hours where
12 she had permit to --

13 MS. WITTUM: There is no record of this person. I
14 checked under all of the variations of names that she
15 gave, as well as her social, and there is no record.

16 MS. POWELL: There is no record of her enrollment
17 or hours?

18 MS. WITTUM: Right.

19 MR. DOWNEY: Has anyone checked with that school
20 in Fayetteville to see?

21 MS. WITTUM: Yes.

22 I talked with the school. This was all they were
23 able to provide, just a copy of her transcript.

24 MS. GORDON: They are doing clock hours now on
25 their students, aren't they, and sending in on

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1 commission forms?

2 MS. WITTUM: Yes.

3 Now the students attend Fayetteville Beauty
4 School, which is where she attended. But when I spoke
5 with Fayetteville Beauty School, they didn't have
6 records back this far.

7 MR. KEENE: That's, what, 16 years ago?

8 MS. WITTUM: Yeah.

9 MR. KEENE: Wow.

10 MS. TURMAN: Kathy, could they inform you when
11 they did start doing clock hours or anything like that
12 and verify how long they have been doing the clock
13 hours?

14 MS. WITTUM: Well, my impression was that they had
15 always done it.

16 Now, our office doesn't have documentation of
17 that, and their facility doesn't have documentation of
18 that. All we have is the academic credit that she
19 received.

20 Now, I do have NACCAS's formula. And I initially
21 had told this person that based on that formula, she
22 could be given 210 clock hours.

23 Now, I have since realized that I made a mistake
24 in calculating that, because it -- she did not receive
25 a full credit on each of these. She received half of a

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1 credit.

2 So it would actually be half of 210, if you take
3 NACCAS's formula and calculate it out.

4 MS. POWELL: That's a total of 105 hours?

5 MS. WITTUM: Uh-huh.

6 MR. DOWNEY: And how long a period of time did

7 this individual go to --

8 MS. WITTUM: She attended in the fall and spring
9 semesters between 1990 and '91.

10 MR. DOWNEY: And that's all the hours that she
11 obtained was like a hundred and -- what, 105?

12 MS. WITTUM: That's all the credit she received,
13 basically.

14 MR. DOWNEY: Yeah. Would be 105 hours.

15 MS. WITTUM: Now, in speaking with her, she said
16 she thought she was over or close to a thousand hours.

17 MR. DOWNEY: Wow.

18 MS. TRAYLOR: I don't know how she got that many
19 hours.

20 MS. WITTUM: And I don't know if Chris wants to --
21 if Chris wants to add anything. This person is looking
22 to enroll. I don't know if she --

23 MS. STRAWN: She already did.

24 MS. WITTUM: Okay.

25 MS. STRAWN: And she went to Fayetteville Beauty

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1 College from -- all of her high school years. And then
2 she thinks that she accrued right at 1,200 hours. And
3 Tammy agreed with that. She remembered the student and
4 she remembered that the girl had a bunch of hours.

5 And I don't know why that -- you know, I don't
6 know if you have records of other students that
7 attended at that time, you know. And she had names
8 that she could -- because it's strange that suddenly --
9 you know, her hours can't be found, because she really
10 did have a bunch of hours.

11 But she declined going back to cosmetology
12 because, number one, she couldn't understand where the
13 210 hours came from. It was very -- it offended her.
14 And she was --

15 And I don't even -- I didn't even know this girl
16 until she got wind that the hours were being
17 resurrected.

18 She's a girl that lived in Van Buren and she got
19 word through the grapevine that hours from whenever
20 were going to be resurrected until December 31, '06.

21 So she called the closest school to her, which was my
22 Fort Smith campus, and that's when it started. And I
23 referred her to you, and --

24 MS. POWELL: Will you state your name, please, for
25 the court reporter.

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1 MS. STRAWN: Chris. Chris Strawn.

2 But she -- she accrued, she believes, right at
3 1,200 hours.

4 MS. TRAYLOR: Well, how long was she enrolled?

5 MS. STRAWN: And because she went -- she went --
6 she went to high school and then she went through the
7 summer time and, you know, she -- she accrued a bunch
8 of hours, and but there is no record of her.

9 MS. POWELL: So, Director Wittum, are you saying
10 that there was two or three schools involved in this
11 person's enrollment?

12 MS. WITTUM: No.

13 MS. POWELL: Is that what -- is that what I -- I
14 mean, I can't hear real good. Is that what she is
15 saying?

16 MS. WITTUM: No.

17 She -- she attended Fayetteville High School
18 during the fall and spring semesters, and went to
19 Fayetteville Beauty School --

20 MS. POWELL: Okay.

21 MS. WITTUM: -- as part of that vo-tech course.

22 MS. POWELL: Okay.

23 MS. WITTUM: And this is what we have evidence
24 that she received.

25 MS. POWELL: So that's part of the evidence from

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1 the vo-tech and the beauty school?

2 MS. WITTUM: Yes. Yes.

3 MS. POWELL: Okay.

4 MS. WITTUM: Now, I spoke with Tammy at
5 Fayetteville.

6 MS. STRAWN: Uh-huh.

7 MS. WITTUM: And she did remember the student.

8 MS. STRAWN: Uh-huh.

9 MS. WITTUM: But she could not tell us how many
10 clock hours this student received. Not documented.

11 MS. STRAWN: No. She didn't say that there had
12 been this amount of hours. She just said that she was
13 very close to graduating at that time, so -- but there
14 is no record.

15 You know, we're not required, have not been
16 required to keep records for that long. And so she
17 wouldn't have any records.

18 MS. GORDON: Yes.

19 When the student started, what -- what -- how was
20 she classified in school? Was it 10th grade
21 completion? 11th grade year she started?

22 MS. WITTUM: I would -- I would think she would
23 have had to have been, in order to have entered the --

24 MS. GORDON: So that means she would have gone
25 those two years of high school.

1 MS. STRAWN: I, you know, she's just --

2 MS. GORDON: And you say she went in the summer
3 months, or she said --

4 MS. STRAWN: She, according to her, she went -- I
5 think Kathy has as much information and email as I do
6 about it.

7 But it was -- it was throughout high school and
8 then between, you know, the summers and all that.

9 MS. GORDON: So this --

10 MS. TRAYLOR: How many years did she --

11 MS. WITTUM: Now, this -- this transcript does
12 indicate that we're talking about her senior year. The
13 12th year.

14 MS. STRAWN: Okay. Okay.

15 MS. GORDON: Only her senior year?

16 MS. STRAWN: Okay.

17 MS. WITTUM: It doesn't say that she enrolled in
18 the 10th grade and 11th as well.

19 MS. GORDON: Well, 11th we're saying --

20 MS. WITTUM: I mean, this could just be a portion
21 of the time that she actually went there.

22 MS. GORDON: But this is what the records are
23 saying?

24 MS. POWELL: But this is what they have. Correct?

25 MS. TRAYLOR: Is this the only records they have?

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1 MS. WITTUM: This is what we were provided from
2 them.

3 MS. TRAYLOR: Okay. That's not showing two years.
4 That's only showing one year.

5 MR. DOWNEY: One year.

6 MS. WITTUM: Uh-huh.

7 MS. TRAYLOR: So there is no way she could have
8 gotten 1,200 hours in one year --

9 MS. WITTUM: Huh-uh.

10 MS. TRAYLOR: -- and go to school.

11 MS. WARD: And it doesn't say how many hours that

12 she -- I mean how many periods she took?

13 MS. WITTUM: She took -- she took four -- five.

14 She took four one semester and five the next.

15 MS. POWELL: That's English.

16 MS. WITTUM: Three of those were cosmetology, four

17 of those were cosmetology in the spring. So she's got

18 seven, a total of seven periods that she took.

19 MS. WARD: Okay. But three -- three in one

20 semester and four the other semester?

21 MS. WITTUM: Yes.

22 MS. WARD: So she would get three hours a day or

23 four hours a day.

24 MS. WITTUM: Uh-huh.

25 MS. WARD: And there is no way, if you just go

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1 that many times in one summer, that you're going to

2 have 1,200 hours.

3 MS. WITTUM: No. But she --

4 MR. KEENE: Well, no, wait a minute.

5 I went through that same kind of program, and I
6 went all the way through two -- you know, one school
7 year and two summers, and I completed.

8 MS. WARD: Yeah. But she only went, she said, one
9 summer and one year, according to the transcript, one
10 year, and then she went in the summer.

11 MS. POWELL: Fall and the spring, do --

12 MR. KEENE: But she's not saying that she
13 completed, either.

14 MS. WARD: No, but --

15 MR. KEENE: I did complete.

16 MS. WARD: Yes. But if you go one summer and one
17 year, you're not going to have 1,200 hours. Not going
18 just that many hours.

19 MR. KEENE: Four hours every day when the school
20 is open --

21 MS. WARD: One semester --

22 MR. KEENE: -- and then all day on Saturday, you
23 can complete.

24 MS. WARD: Yeah. But it doesn't say she went on
25 Saturday.

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1 MR. KEENE: But we're saying that's probably not a
2 complete record of her time in that -- in that program.

3 MS. WARD: And normally, when you're going through
4 the vo-tech program, you don't go on Saturdays. And if
5 you went three hours one time and four hours the other
6 time --

7 MR. KEENE: Maybe now. But we're talking in 1990.

8 MS. WARD: Yeah. But normally they didn't,
9 either.

10 Most of the times they don't have them.

11 MR. KEENE: But I did. I did go all day on
12 Saturday. Believe me, I was there every Saturday.

13 MS. POWELL: Well, it does say that she received a
14 half a credit, is what the school is willing to
15 document.

16 MS. WARD: So she's getting a half a credit.

17 That's not that much.

18 And we don't know her attendance, either, at that

19 time.

20 MR. KEENE: And the school is only going to give
21 you credit during the school year. They are not going
22 to give it to you during the summer months.

23 MS. WARD: Yeah. But you get one credit for each
24 hour you're there. If you're there three periods,
25 you're going to get three credits that year. If you're

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1 there four periods, you get four credits. If you're
2 there four periods one semester and three periods the
3 next semester, you're going to get 3 1/2 credits that
4 year.

5 MR. KEENE: Which would come to how many hours?

6 MS. WARD: Okay. You take -- take 15 1/2 hours
7 times how many weeks she was enrolled.

8 MR. KEENE: This doesn't say how many weeks she
9 was enrolled.

10 MS. WARD: No. But you go for one school year,

11 ever how many weeks are they in school.

12 MS. POWELL: Well, they are typically --

13 MR. KEENE: Well, that would be more than 200
14 hours.

15 MS. WARD: Yeah, but --

16 MS. GORDON: If she went four hours a week.

17 MS. WARD: But if she went three hours --

18 MS. GORDON: That would be like 32 hours --

19 MS. WARD: If she went three hours one semester
20 and then four hours the next semester, so that would be
21 3 1/2 hours each -- you know, total. And I think there
22 is, what, 42 weeks --

23 MR. KEENE: Well, I think the real problem here is
24 there is no record of her, period. I mean, if the
25 school is not --

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1 MS. WARD: Yeah, but I mean --

2 MR. KEENE: If these schools she went to don't
3 have a record and we don't have a record --

4 MS. POWELL: I need order.

5 MS. TURMAN: No. Wouldn't you think a name

6 like --

7 MS. POWELL: Excuse me, please. I need order so

8 that we can all talk one at just one time -- one at a

9 time.

10 I think -- you want to restate your question?

11 It's kind of gotten off track here.

12 MS. WITTUM: Well, the first question is would we

13 accept academic credit and convert it to clock.

14 And based on the NACCAS formula, I sense that that

15 would be acceptable for everyone?

16 Yes?

17 MR. KEENE: (Nodding head up and down.)

18 Would be for me.

19 MS. WITTUM: Any comment?

20 So now the next question is, what do we do about

21 this particular person here?

22 If we go based on the NACCAS formula, based on

23 this information that we have, then she's only going to

24 get 105 hours.

25 MS. TRAYLOR: I think that's -- that's all they

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1 have got records of.

2 MR. DOWNEY: That's all the documentation there.

3 MS. TURMAN: Do we make a -- do we have to make a
4 motion that we accept that? Do we have to have a
5 motion?

6 MS. WITTUM: It probably wouldn't be a bad idea
7 for it to be official.

8 MS. TURMAN: I think we should.

9 I make a motion that we accept it, the 105 hours.

10 MS. GORDON: She's making a motion.

11 State what your motion is for.

12 MS. TURMAN: The conversion.

13 MS. POWELL: The conversion.

14 MS. GORDON: To convert --

15 MS. POWELL: I have a motion to accept the
16 conversion, NACCAS conversion of academic to clock
17 hours.

18 Do I have a second?
19 MR. DOWNEY: I'll second it.
20 MS. POWELL: I have a second.
21 Is there any discussion?
22 All those in favor, raise your right hand.
23 (Hands raised.)
24 MS. POWELL: It's unanimous.
25 Motion carries.

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1 MS. WITTUM: So now the next question is what to
2 do with this particular student here.
3 MS. POWELL: Ms. Traylor?
4 MS. TRAYLOR: My suggestion is that all we can
5 give her is what you have a record of.
6 MR. DOWNEY: That's correct.
7 MS. TRAYLOR: I don't think we can go in and say,
8 well, she might have done this and she might have done
9 that.

10 MR. KEENE: That's true.

11 MS. TRAYLOR: Who knows. The school can't confirm
12 it. So I think you would have to go with what you've
13 got a record of, and that's it.

14 MS. POWELL: Is that a motion?

15 MS. TRAYLOR: I so move. Yes.

16 MS. POWELL: Okay. I have a motion.

17 Do I have a second?

18 MS. GORDON: I second it.

19 MS. POWELL: I have a motion and a second.

20 Is there any discussion?

21 MS. GORDON: Yes.

22 MS. POWELL: Yes?

23 MS. GORDON: If she -- if it shows on record that
24 she attended four hours, then that's what -- am I
25 understanding the credit hours would be that she was

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1 enrolled in school and she attended the school four
2 hours a day for one semester and 3 1/2 for the next

3 semester?

4 MS. WITTUM: There is no documentation here of
5 what hours they had during that time.

6 MS. GORDON: I understand that.

7 But I'm saying didn't you tell me that she had so
8 many credit there?

9 MS. WITTUM: Yes.

10 MS. GORDON: So many hours?

11 MS. WITTUM: Yes.

12 Well, based on NACCAS, she would get --

13 MS. POWELL: This 105 hours.

14 MS. WITTUM: She would get 105 clock hours.

15 MS. GORDON: I understand that.

16 But I'm saying if she was enrolled in the school
17 for four hours a day --

18 MS. POWELL: But we don't know that.

19 MS. GORDON: Okay. That's my question.

20 MS. POWELL: The director has said she's got a
21 transcript here stating for the 12th grade, that the
22 individual received credit hours, a half of a credit --
23 a half a credit on each one of these time frames.

24 So which -- when she did the NACCAS equation, it
25 came up to 105 clock hours.

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1 MS. TRAYLOR: Well, if that's what they have a
2 record of, that's what they have a record of, and we
3 have to go on their record.

4 MS. POWELL: Mr. Downey?

5 MR. DOWNEY: Also, at any time that she's got
6 documentation to prove differently, she can approach
7 the board and we can go from there. But we can only do
8 what documentation we have.

9 MS. TRAYLOR: From the school.

10 MR. DOWNEY: From the school.

11 MS. POWELL: Is there any further discussion?

12 MR. KEENE: If the instructor at the time
13 certified a letter of how many hours she felt this
14 person would --

15 Why are you shaking your head? I haven't even
16 finished what I'm saying.

17 MS. TRAYLOR: Well, the instructor --

18 MR. KEENE: And I do believe that this board has
19 accepted certified letters from instructors in the
20 past.

21 MS. POWELL: Ms. Ward?

22 MS. WARD: Just because they are supposed to be
23 there so many periods, so many hours, doesn't mean they
24 were in attendance. So you can't verify their
25 attendance except for by the credits that they have

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1 received, because that may be one of the reasons they
2 didn't get as many credits.

3 MS. POWELL: Well, and too, what -- this was
4 issued -- that is dated in two thousand -- or 1991.
5 And during that time, I understand that the state was
6 operating under the assumption that after three years,
7 those hours were null and void anyway. Is that -- is
8 that correct?

9 MS. WITTUM: (Nodding head up and down.)

10 MS. POWELL: So, to expect anyone to -- at that
11 time to have maintained documentation of anything for
12 that many years, the board or the school or memory or
13 whatever, I think is presumptuous.

14 Is there any further discussion?

15 All those in favor of the motion to maintain the
16 conversion of the academic hours to the clock hours,
17 and of this particular person, of the documented facts
18 only.

19 (Hands raised.)

20 MS. POWELL: All those in favor.

21 All those opposed?

22 (Hands raised.)

23 MS. POWELL: One.

24 Any abstentions?

25 (Hands raised.)

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1 MS. GORDON: I just did an abstain.

2 MS. POWELL: One abstention. One opposition.

3 Motion carries.

4 MS. TURMAN: Madam President?

5 MS. POWELL: Yes.

6 MS. TURMAN: I would like to address the board.

7 I'm sorry for my all my gyrations a while ago, but

8 I thought there was a spider. I'm deathly afraid of

9 spiders. I noticed a spider coming down from the

10 ceiling, I thought I was getting a spider on me and so

11 I started to run out of here, so I thought --

12 MS. POWELL: The chairman did not notice any

13 gyrations.

14 MS. TURMAN: I was ready to leave the seat, let me

15 tell you. So I thought I would just --

16 MS. POWELL: I did not notice.

17 MS. TURMAN: I was ready to leave the seat. I'm

18 sorry.

19 MR. JOCHUMS: Let's take a break.

20 MS. POWELL: At this time we'll take a 15 minute

21 recess.

22 (WHEREUPON, a brief break was held at this time.)

23 MS. POWELL: The meeting will come back to order.

24 At this time I'll turn the meeting over to

25 Director Wittum.

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1 MS. WITTUM: Kent Walker left a message on my
2 voice mail that he would be able to be here around
3 11:30.

4 So I want to go ahead and just give you the cost
5 analysis that you asked for, to show the -- the
6 expenses between the board examining or outsourcing.

7 And I took the calendar year 2006 examination
8 stats to pull these figures together.

9 Last year we scheduled 1,445 examinations, and the
10 breakdown is there in that grid. This total does
11 include retakes, whether it be practical retakes or
12 written retakes.

13 Based on those figures, the board collected
14 \$43,350 in examination fees from candidates.

15 Then the table below reflects what our expenses

16 were to purchase the testing materials, cover the
17 examiner -- examiner costs. Which is, we paid N.I.C.
18 \$43,439, and board members stipend and travel expenses
19 totalled \$35,067. So that was a total of \$78,506.

20 Now, on the back side shows you two scenarios.
21 Using those same 2006 exam stats, Scenario A would
22 provide for the board to still pay N.I.C. for the --
23 the testing materials. If we did that, the candidates
24 would be required to pay \$45 to P.C.S., and their cost
25 would go to \$65,025, because we only charge the \$30

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1 exam fee. P.C.S. would charge 45. The board costs
2 would remain the same, at \$43,439, because we would
3 still be paying N.I.C. This particular scenario does
4 not depict any revenues being collected, because we
5 would not be -- unless the board chose to, we would not
6 be charging the candidates to -- to do the exam. Their
7 fee would go directly to P.C.S.

8 Scenario B provides for P.C.S. to pay N.I.C. They
9 would pay N.I.C. for the rater training and the
10 practical testing materials. They would require the
11 candidates to pay \$65 for the exam fee, and that would
12 go directly to P.C.S.

13 As the -- the grid down there demonstrates, the
14 board's costs would diminish to \$21,675, because we
15 would only have to purchase the written testing
16 materials, and those are \$15 per.

17 Similar to Scenario A, this scenario does not
18 include any revenues being collected from the exam fee
19 that would come directly to the board.

20 Do you have any questions on this information?

21 MR. KEENE: Which one of these, Scenario A or B,
22 is your preference?

23 MS. WITTUM: Well, I have concerns, really, about
24 both of them, in light of the fact that either the
25 board is going to basically suffer a loss at purchasing

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1 the materials, or we would have to add an exam fee for
2 the candidates in order for it to be cost efficient for
3 the board to -- to purchase the testing materials that
4 we need.

5 I mean, either way the board is not going to make
6 any money. I mean from a business standpoint --

7 MR. KEENE: Uh-huh.

8 MS. WITTUM: -- this would not be a good decision
9 to make.

10 Now, I -- I think there are other reasons why it
11 might be necessary for the candidates -- for the
12 outsourcing to take place, for the board members to not
13 be the ones examining. And you just have to weigh
14 which one is better.

15 MR. KEENE: Are you -- are you saying that the
16 board makes money off giving the examination right now?

17 MS. WITTUM: No. No. We don't. Huh-uh.

18 Because it shows over here on the first page that
19 we only collected \$43,350 in exam fees, but we paid a
20 total of 78,000, over 78,000 --

21 MR. KEENE: Right.

22 MS. WITTUM: -- to actually give those exams. So
23 we don't make any money one way or the other.
24 If you -- if you want to continue to not make
25 money off of it, then, you know, I -- if I had to

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1 choose between Scenario A and Scenario B, I would
2 probably lean towards Scenario A, just for the
3 students' benefit. Because, I mean, their costs
4 dramatically increase if they are going to have to pay
5 \$65 in exam fee --

6 MR. KEENE: Right.

7 MS. WITTUM: -- versus the \$30 that they pay right
8 now.

9 Right. In Scenario A we really are in no better
10 position than we would -- or no worse position, I
11 should say, than we are right now.

12 MR. KEENE: Well, I don't think the board is in
13 the -- is in a business of making money.

14 MS. WITTUM: Right.

15 MR. KEENE: Of course, I don't think we should
16 ever choose anything that's going to cost the board
17 money, because that in turn could cost taxpayers.

18 MS. WITTUM: Uh-huh.

19 MR. KEENE: Okay.

20 MR. DOWNEY: If we increased our fee to what
21 Scenario A cost for P.C.S., to the cost of \$45 per
22 student, then we would be at break even, the way I'm
23 looking at it.

24 MS. WITTUM: Right.

25 MR. DOWNEY: So it would be a simple matter to

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1 just increasing our exam fee to \$45.

2 If we outsource, we're going to -- the students
3 are going to have to go up on it anyway.

4 MS. WITTUM: It would be better for them to only
5 go up \$15 versus double.

6 MR. DOWNEY: Exactly.

7 But we could collect \$45 for our exams for our
8 agency, is what I'm saying. It would be a break even
9 thing, more or less, for us. Wouldn't cost us very
10 much. So that's what we need to be doing.

11 MS. TRAYLOR: Well, Kathy, up here on A, are we
12 losing some money on the exams? Is it costing?

13 MR. DOWNEY: It always has. It always has.

14 MS. WITTUM: Yeah. We would make no money at all.

15 MS. TRAYLOR: Well, I knew we weren't making any.
16 I didn't know if we were break even.

17 MS. WITTUM: Well, under Scenario A, we would
18 purchase everything that we need -- or that P.C.S.
19 would need in order for those exams to take place.

20 The only difference would be that we would not be
21 paying the board members travel expenses to go and do
22 the practical exams. The staff would still take care
23 of the written exams, and then P.C.S. would take care
24 of the practical.

25 MS. TRAYLOR: I don't know why I thought they took

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1 care of all of it.

2 MS. POWELL: Well, there is that.

3 MS. WITTUM: Well, we could. I mean, we could
4 have them do all of it, but then your costs
5 dramatically increase even more than what they do here.

6 I mean, if you -- if you look at Option 2B, which
7 is what I -- I was using as my guide here, for them --
8 for P.C.S. to outsource the written and the practical,
9 the exam candidates would have to pay \$105 to examine.

10 MS. TRAYLOR: That's what I was saying. I was
11 saying versus \$45.

12 MS. WITTUM: That to me would seem unreasonable.

13 No. \$45 is more reasonable, I think, given the
14 fact that --

15 MS. TRAYLOR: But that would hurt some students,
16 too.

17 MS. WITTUM: Possibly, but not as much as 105.

18 MS. TRAYLOR: Yeah.

19 MS. WITTUM: And you just have to look at the
20 benefits of outsourcing the exams.

21 The -- the thing that strikes me more than
22 anything is the fact that there is not -- there is not
23 an adequate system in place to allow for any exam
24 candidate who has a unpleasant experience during exams
25 to appeal that. I mean, they -- they have to come and

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1 talk to the same people who are going to be examining
2 them. And that -- that's not -- you know, that's just
3 not a good system to have in place.

4 If -- if the exams were outsourced, P.C.S. has a
5 complaints division, they have a complaint process for
6 anyone who is not satisfied with their -- the exam
7 experience. And P.C.S. takes care of investigating
8 that and then they report those findings back to the
9 board. And if it's justified, if the candidate's
10 complaint is justified, then they would address that
11 with the examiner.

12 MR. DOWNEY: Okay. Before we -- we need to
13 realize, though, that our law requires the board to do

14 the exam. And in order for any of this change to take
15 place, there would have to be a change in the law.

16 MS. WITTUM: Right.

17 Which is why we're looking at it now. Because if
18 we're going to make any changes in the law, now is the
19 time to do it.

20 MR. DOWNEY: I just make the statement that I am
21 totally opposed to outsourcing our exams.

22 MS. GORDON: Is that a motion?

23 Do you want our opinion now? Is that what --

24 MS. WITTUM: You have to decide if you want to
25 include outsourcing in -- in our structure, because if

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1 you do, then we have to include that in the legislative
2 packet.

3 MS. GORDON: I'm against outsourcing.

4 MS. POWELL: Is that a motion?

5 MS. GORDON: That's what I asked, if that was a

6 motion when he did.

7 MS. POWELL: Does someone want to make -- I'm
8 sorry. I can only hear out of one ear, so you all may
9 have to tell me if it's a motion where I can hear it.

10 MR. DOWNEY: Madam Chairman, I make a motion that
11 we do not outsource our exam. That we stay with the
12 law that was written for the examiners to be board
13 members or staff.

14 MS. POWELL: Okay. I have a motion.
15 Do I have a second?

16 MS. GORDON: Second.

17 MS. POWELL: I have a motion and a second.
18 Is there any further discussion?

19 All those in favor, raise your right hand.

20 (Hands raised.)

21 MS. POWELL: All those opposed?

22 (Hands raised.)

23 MS. POWELL: I have one opposition.

24 Motion carries.

25 MS. WITTUM: You have on your agenda all of the

1 dates that are coming up in 2007 that you might want to
2 make note of.

3 If anyone is interested in attending the regional
4 conference in May, it would be a good idea for me to
5 get an idea that you're interested. I haven't yet
6 received the registration information, but that should
7 be coming before too much longer. I do have -- I think
8 they have narrowed it down to a hotel, so before long I
9 will be able to get that information to you in case you
10 want to go ahead and make your room reservation.

11 The N.I.C. rater training is scheduled for
12 June 23rd and 24th. You do need to make a decision
13 on whether or not the board members who have not
14 attended rater training are going to wait for this
15 rater training or if you want me to start looking at
16 other states that they might could go to between now
17 and then.

18 MS. POWELL: Well, June is just a --

19 MS. WITTUM: Stone's throw away.

20 MS. POWELL: -- a stone's throw away.

21 MS. PICKERING: In my opinion, I would --

22 MS. POWELL: Anyone else have an opinion?

23 MS. PICKERING: I would say, in my opinion, I

24 would say we just leave it at June 23rd and 24th.

25 That's my one opinion.

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1 MS. WITTUM: What it's going to do to those of you

2 who are rater trained is that I will have to depend on

3 you for this first part of the year to be -- to be

4 available to come in more frequently than towards the

5 latter part of the year, we'll be able to incorporate

6 the new ones.

7 MS. TRAYLOR: I need the change in time to --

8 MS. GORDON: Do you need that in a motion?

9 MS. WITTUM: No.

10 Do you want to break for lunch early or do you

11 want to --

12 MS. POWELL: What time is it?

13 MS. WITTUM: Five until 11.

14 (Mumblings of the board.)

15 MS. POWELL: Okay. At this time we're going to

16 open the floor for public comments.

17 If anybody would like to come up and make a

18 comment, please do so. And state your name for the

19 record.

20 MS. LEE: On any subject?

21 MS. POWELL: I need you to come up to the table.

22 MS. LEE: Ah, don't make me.

23 MS. POWELL: I'm sorry. I can't hear today.

24 MS. LEE: My hair doesn't look good from the back.

25 I'm Linda Lee from Lee's School of Cosmetology.

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1 I just want to ask the board for clarification on
2 the grades that are on the Internet, and if they should
3 have the grades posted on the Internet and the
4 inspector walks in, will they look on the Internet and

5 see that they are on there or do they -- because the
6 licenses are coming in a little slow this time of year.
7 So some of our students are wanting to work and we've
8 been told two different things. I've talked to one
9 person, they said, no, the license has to be posted.
10 And then I was told that as long as it's on the
11 Internet, they can work.

12 So I just need clarification.

13 MS. POWELL: I'll ask Director Wittum to give
14 explanation.

15 MS. WITTUM: Well, I -- you are required to have
16 the licenses posted.

17 I think, given the fact that we are in the middle
18 of renewal season --

19 MS. LEE: Right.

20 MS. WITTUM: -- and the licenses are going to be a
21 little slower getting out, I don't -- I would not write
22 up a penalty if someone was out there working and the
23 inspector came by.

24 MS. LEE: Is there a cutoff when they will be
25 required to have their license posted after renewal?

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1 MS. WITTUM: We -- we are current on all of the
2 renewals that have come in, as of last week. So we are
3 planning to have all of the licenses or all the
4 renewals that have come in for January done by
5 January 31st. So --

6 MS. LEE: But these are newly licensed, that they
7 can look their name up on the Internet.

8 MS. WITTUM: Uh-huh.

9 MS. LEE: So how will -- they won't be renewed,
10 they will just be original.

11 MS. WITTUM: Yeah. But their licenses all get
12 generated as we're doing the renewals.

13 MS. LEE: Okay.

14 MS. WITTUM: So they will be -- as soon as those
15 grades are posted and the computer recognizes them as
16 licensed, their license is cued to print and it goes
17 out with all the rest of them.

18 MS. LEE: Okay. I just know that we were told two

19 different things by the staff in the office, and so
20 there was some confusion on that.

21 So am I hearing they can work without their
22 license, if they have been --

23 MS. WITTUM: Yes.

24 MS. LEE: Okay.

25 MS. WITTUM: What I would suggest that they do is

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1 print off -- go check themselves on the computer --

2 MS. LEE: Oh, they can print it off the computer
3 and do it.

4 MS. WITTUM: -- and print that off and just stick
5 that up there. That way I think all of the inspectors
6 will be able to see that they are licensed and they
7 will recognize that, even though it's not the actual
8 license, that it's acceptable.

9 MS. LEE: Okay. I do want to make a public
10 comment about the hours online. Love it.

11 MS. WITTUM: Thank you.

12 MS. LEE: And everybody has been so patient in
13 getting us where we need -- especially you -- getting
14 us straightened out about what happens. But it's
15 wonderful, so...

16 MS. WITTUM: Well, I hope the school reports are
17 working. In fact, I meant to ask those of you who are
18 here --

19 MS. POWELL: I think they are now.

20 MS. WITTUM: -- if they are working better?

21 MS. LEE: Yes.

22 MS. WITTUM: The -- the last update that was made
23 was to allow you to print more than just that one
24 section of duties.

25 MS. LEE: Yeah. I've seen changes daily happen,

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1 so you all are really on top of it. So we appreciate
2 it.

3 MS. WITTUM: Okay.

4 MS. TURMAN: Linda, I do want to make a comment.

5 I think it's nice that you're being recognized

6 that changes are being made and to make it better for

7 the students and the schools, and I appreciate those

8 comments.

9 MS. POWELL: Does anyone else want to make a

10 comment?

11 Okay. We're going to go ahead -- since there is

12 no further comment from the public, we're going to go

13 ahead and take our break until twelve o'clock, our

14 lunch break, and we'll resume at twelve o'clock.

15 (WHEREUPON, a lunch break was held at this time.)

16 MS. POWELL: The meeting will come to order at

17 this time.

18 I would like to -- we're going to introduce Kent

19 Walker, our legislative committee attorney.

20 MR. WALKER: Good afternoon, everybody.

21 BOARD MEMBERS: Good afternoon.

22 MR. WALKER: Do you just want me to proceed,

23 Ms. Powell?

24 MS. POWELL: Yes, I do.

25 MR. WALKER: Okay. I'm just sort of here to give

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1 you an update on where the board is in terms of the
2 legislation that we all worked on, the proposals that
3 we did, the meetings around the state on that, the
4 Legislative Committee met and the board has approved.

5 I will tell you that the actualization of what you
6 all voted on is still being processed, it's still in
7 draft form.

8 One of the reasons is the committee members and
9 the staff that are assigned to assist us are working on
10 retirement bills. Today is the final day for bringing
11 bills dealing with any retirement issues to be filed
12 with the legislature, so the staff are working on that
13 in terms of deadlines, so that's their first priority.

14 And our package is, as the session goes, sort of on the
15 back burner, so to speak. That will change as
16 retirement bills go through and then they can start
17 working on state agencies, in getting their packages

18 through the legislature.

19 That being said, everything that we've talked
20 about in terms of the board and that you all approved
21 being put into draft form and then will be submitted, I
22 don't know who the sponsor will be yet, we haven't
23 gotten that far. I don't know if it will be a House or
24 a Senate bill. It will be in the state agency's
25 committee regardless, either the House or the Senate;

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1 but, again, I don't know who the sponsors will be.

2 So that's sort of the -- the update, if you will.

3 The update is we are just sort of in a holding pattern.

4 Are there any questions from anyone?

5 MS. WITTUM: Okay. I updated Kent on the decision
6 that was made this morning about the outsourcing. So
7 nothing will be added to the packet dealing with that.

8 MR. WALKER: This is easy.

9 I'm glad I'm that clear. Or maybe I'm not.

10 Okay?

11 MS. POWELL: Any other comments?

12 MR. WALKER: I mean, most of you all have been
13 through this before, so that you know the process and
14 how it works.

15 You realize, too, once the bill is submitted, that
16 although you can ask for the changes you want, it comes
17 down to the legislature voting those changes and
18 proposals through. And they can always change whatever
19 they want to as well. Similar as you the board can
20 change anything that, for example, Ms. Wittum may
21 propose, and you all have that power and ability to do
22 that. And the legislature will, you know, have the
23 same power and ability as well. So we may not get
24 everything we want, I guess, is what I'm trying to say.
25 But that's par for the course, as far as bills are

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1 concerned.

2 That's all I've got.

3 MS. POWELL: Thank you, Mr. Walker.

4 MR. WALKER: All right. Thank you.

5 MS. LEE: Can he take questions?

6 MS. POWELL: Pardon me?

7 MS. LEE: Can he take questions?

8 MS. POWELL: I don't --

9 MS. LEE: Will he take questions?

10 MS. POWELL: I don't know.

11 Do we have a public comment session for the legal
12 counsel?

13 MS. LEE: We just need the website where we can
14 get a copy of all that.

15 MS. POWELL: Kathy can give you all that.

16 MS. LEE: Okay. Kathy?

17 MS. POWELL: Yeah.

18 MS. LEE: Okay. Great.

19 MS. POWELL: She is going to be able to direct you
20 so that you can stay updated on the website.

21 MS. LEE: Thank you.

22 MS. WITTUM: Well, once you -- once the bill is
23 filed, you'll be able to get a copy of it off of the
24 General Assembly's website.

25 Now, at this time there is nothing on our website,

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1 other than the minutes for the Special Legislative
2 Meeting that was held October 30th, and that went over
3 what the board wanted in the legislative packet.

4 MR. WALKER: Thank you, all.

5 MS. WARD: Thank you.

6 MS. TRAYLOR: Bye.

7 MS. WITTUM: We are down to just this.

8 MR. JOCHUMS: Is that it?

9 MS. WITTUM: Uh-huh.

10 MR. JOCHUMS: Madam Chairman, we just have one
11 item left, and I had previously thought that this
12 meeting was going to take much more of the day, and we
13 had communicated -- it's involving this legal report
14 seen on the agenda.

15 The -- it involved the presence of another
16 attorney, and I told them after 1:30. So I really

17 don't think we can take that up at this time, because
18 that would be unfair to them, since we told them we
19 would do it after 1:30.

20 So, if you don't have anything else to do, I guess
21 you have to continue until -- the meeting until 1:30.

22 MS. WITTUM: Are there any comments or anything
23 from the public?

24 MS. BURCHETT: I have one. Scottie Burchett.

25 So the draft copy that he's referring to will not

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1 ever be anywhere that it can be seen before it's
2 written into a bill, or is that what he's referring to?

3 MS. WITTUM: That's what he is referring to.

4 The legislative research is preparing that now,
5 and -- and when it's filed, it will be available.

6 Now, I -- they will communicate with Kent, since
7 we have hired him to take care of that for us. So you
8 can probably maybe talk to Kent or I can ask him if
9 there is going to be any possibility that it will be

10 available before that time.

11 MS. BURCHETT: Okay. But does it pretty much --

12 it should reflect the minutes of the -- the legislative

13 meeting that was held?

14 MS. WITTUM: Yes. Uh-huh.

15 MS. BURCHETT: Those minutes are on our website?

16 Is that correct?

17 MS. WITTUM: Yes. Yes. It's October 30th.

18 Do you want to adjourn until 1:30?

19 MS. POWELL: If there is no further business,

20 we'll take a recess until 1:30.

21 (WHEREUPON, a break was held at this time.)

22 MS. POWELL: The meeting will come to order.

23 At this time I need to turn the meeting over to

24 Mr. Jochums.

25 MR. JOCHUMS: Thank you.

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1 I know we recessed until 1:30, but if no one

2 objects, we'll go ahead and get started, I think.

3 We appreciate Ms. Burnett coming before 1:30.

4 And what -- what I want to visit with you about is
5 a case that we now have pending in Saline County
6 Circuit Court.

7 Some of you may not have been on the board in
8 November 2005. Probably most of you were, but some of
9 you may not. So I'm going to briefly say something
10 about this matter.

11 The regulatory background is that this board has
12 more power over schools than any other board that I
13 know about, including you can't earn credits until
14 you've registered and got an appropriate student
15 permission card.

16 I think some people interpreted the statute that
17 does that to mean you can't even be there. Now, it
18 doesn't say that.

19 We had a hearing on November 14, and there was an
20 issue where there were four students that had been
21 identified that were at the particular school that
22 Ms. Burchett is responsible for prior to their getting
23 permission cards. There was testimony about problems.

24 One of them didn't have a social security number.

25 Another one had some other problems. All of them good

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1 faith problems beyond the ability of the teacher.

2 Now, in this case the teacher is not a private
3 entity who can say you can't come in here. This is
4 part of a public school system. The students were
5 delivered to her.

6 There was testimony from the staff, Ms. Burchett
7 gave some extensive testimony. And in the Findings of
8 Fact, the board concluded that they had violated the
9 act, because in each case the student was on the
10 attendance books but had not enrolled with the board.

11 And at the -- as the result of this conclusion,
12 your -- this board, ordered that her instructor's
13 license be placed on probation for one year.

14 Shortly after, within the legal time frame,
15 Ms. Burchett did file a Petition for Judicial Review

16 with the Saline County Circuit Court, and that matter
17 is still pending there.

18 As long ago as back in the summer, this case was
19 troubling me and I went to my supervisors and discussed
20 it. And, ultimately, several people, including a civil
21 deputy who is now Governor Beebe's chief lawyer, agreed
22 that I should make efforts to resolve the matter
23 without going to the circuit judge.

24 And after -- and after rereading the transcript, I
25 concluded that Ms. Burchett, all that she did was have

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1 people in the classroom who had not received the
2 board's student card. There was no evidence presented
3 in the hearing that the individuals' hours had been
4 submitted or that they were submitted prior to the date
5 of the hearing.

6 Now, one of the students I think later came in and
7 asked for hours to be awarded, but those hours had not
8 been turned in by the school.

9 In my judgment, allowing high school and college
10 students to attend class for college or high school
11 credit as opposed to board hours prior to the time they
12 are registered is simply not a violation of the statute
13 or regulation.

14 And I propose that the board set aside the finding
15 of violation and placing of Ms. Burchett on probation.
16 This would moot the need for any further judicial
17 review, in my judgment, and I think especially at this
18 time when we've got some bills out there that we want
19 to get past that assist the industry, we don't need a
20 negative court decision, which I think in all
21 likelihood may -- would very likely occur, if we
22 don't -- don't do what I suggest and the matter has to
23 go before a circuit judge.

24 So that -- that is my -- my recommendation is
25 that, subject, of course, to any questions you have or

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1 any presentation Ms. Burchett would like to make, I
2 would -- I would suggest that some -- one of you move
3 that we set aside the Findings of Fact, Conclusions of
4 Law and Order from the November 14th hearing.

5 That's -- thank you.

6 If any of you have questions of me or anybody
7 else, or if you would like to instruct them.

8 MS. BURNETT: No. We don't have anything further
9 to say. I think we've set out all of our issues in our
10 appeal brief and our petition. And, you know, we
11 certainly want this matter resolved quickly. It's been
12 sitting there for some time.

13 And if we do not get positive results today, I
14 will immediately ask the court to make a determination
15 on that.

16 The Administrative Procedures Act certainly allows
17 for attorneys fees and costs. Hopefully we can avoid
18 all that. But I just wanted to let everyone know that
19 that is certainly a possibility.

20 Thank you.

21 MR. KEENE: If you're waiting on a motion, I'll
22 make one.

23 MR. JOCHUMS: Well, I'm -- either you agree or you
24 don't agree.

25 This is your -- a board decision. If you're ready

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1 to make one, make one.

2 The chairman can take over the meeting.

3 MS. POWELL: Does any of the other board have any
4 other discussion on this matter?

5 Any questions?

6 MR. DOWNEY: I've got a statement to make.

7 If we fall into this, the strong arm end of this,
8 what are we going to tell a private school on them,
9 when they come down with this situation. Are we going
10 to have to just let it go? Just because it's a state
11 entity, we can't do anything but -- that's the only
12 thing we can do is do probation. We can't fine. We
13 can definitely fine a private school on them.

14 So what are we going to do if something comes up

15 like that with a private school?

16 MR. JOCHUMS: Well, I think ultimately the answer
17 would be that you wouldn't do anything to them either,
18 because the rule does not prohibit people from being in
19 the building. It prohibits them from earning hours.

20 You may want to amend your rule so it does do
21 that, but it doesn't do that right now.

22 MS. POWELL: I think the confusion, if I
23 recollect, was over -- one of the confusion --
24 confusing issues was what the board considered accruing
25 accredited hours, at what point that was established.

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1 Was it established at the time that the student clocked
2 in on a time card or was it at the time that the school
3 submitted the hours to the office.

4 I -- I would like to ask the director at what time
5 she feels that, legally, when is the submission of
6 accredited hours?

7 Is that when the student puts in the application

8 or when they clock in on a time card or when they --
9 when the school submits it to the office?

10 Because I know there is several processes that
11 take place. And I know that -- I thought that -- and I
12 think the board understood, that was the purpose of the
13 application, or to the -- to get a permit. So, but I
14 don't --

15 Maybe I'm not understanding.

16 MS. WITTUM: My understanding of what I was taught
17 by my predecessor, as well as what all of you have told
18 me, is that they become eligible for the hours upon
19 that MAT date, once it's established.

20 MR. DOWNEY: Correct.

21 MS. WITTUM: But, now, as I'm understanding what
22 Arnie is saying, the law doesn't prohibit them from
23 being in the school, even if it's within or after that
24 MAT date has been established. Correct?

25 They can be in there?

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1 MS. BURNETT: Mr. Jochums --

2 MR. JOCHUMS: It says you cannot earn hours. It
3 doesn't say anything at all about you being present
4 anywhere.

5 MS. BURNETT: May I? If you don't mind.

6 MR. JOCHUMS: Please.

7 I believe you have the section in front of you.

8 MS. BURNETT: I do. I have it right here in front
9 of me. I don't have it memorized. I wish I was that
10 good.

11 It told, it's very specific, it's Arkansas Code
12 Annotated 17-26-415. And I'm a bit confused that --
13 that the board and the board members are not familiar
14 with one sentence in here. It is so clear.

15 It says, "All students of cosmetology,
16 manicure" -- and then it goes on -- "shall be
17 registered with the board before accredited hours can
18 be obtained."

19 So they have got to be registered before they get
20 any credit for their hours. It doesn't mean they can't
21 be in there and getting credit for some outside

22 situation, such as a high school student keeping on
23 with their high school credit, because they are going
24 toward graduation. It's that they don't get
25 accreditation, they don't get their hours through this

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1 organization until they become registered.

2 So whatever your registration means, whatever that
3 is, when you determine that student is registered,
4 that's when they qualify for accreditation --
5 accredited hours. I mean, that's what the statute
6 says.

7 MS. WITTUM: Well, and the registration process is
8 the submission of the enrollment form and us
9 establishing that MAT date.

10 MS. BURNETT: Sure.

11 So, whatever that process is -- it says shall be
12 registered. It doesn't say may be or -- it says shall.
13 So it's very mandatory.

14 MS. POWELL: And I think the board understood
15 that.

16 I think the -- once again, the confusion came when
17 Ms. Burchett explained that the student was clocking
18 in, which demonstrated that the student believed to be
19 getting hours. I think that is what the -- the
20 confusion was --

21 MS. BURNETT: The confusion was, uh-huh.

22 MS. POWELL: -- with the board.

23 Because -- and that's why I asked the question,
24 and I'm still not getting the answer. And when -- when
25 is the hour? The hour the student clocks on the

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1 hour -- on the clock?

2 Because I know many times students have come to
3 the board and not been properly enrolled and they have
4 asked the board to give forgiveness for the school not
5 getting them enrolled, and so they would ask us to give
6 them the hours. The board understood that the student

7 was not properly enrolled, but the board had give mercy
8 on the student, as I remember that day, they did for
9 one of the -- another student.

10 And -- and I just -- I think that was the
11 confusion. That's my confusion, is to what by the
12 student clocking in did the student believe? Did they
13 believe they were enrolled? Did they believe they were
14 getting the hours? And does that contradict our law?

15 MR. JOCHUMS: Well, I don't think it matters what
16 they believe. They didn't get them. They weren't
17 submitted.

18 So the violation would be submitting them and --
19 and you couldn't be -- and all the -- there was nobody
20 to contradict the testimony of the respondents that the
21 student knew she wasn't getting credit in the one case,
22 and in another one -- maybe several cases -- and that
23 they, in fact, had not submitted those hours to
24 anybody.

25 MS. BURNETT: That's right.

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1 MR. JOCHUMS: So no hours were obtained so there
2 couldn't be a violation of the section.

3 MS. POWELL: So what is --

4 MR. JOCHUMS: And that's what I think the judge is
5 going to think, and I think --

6 MS. POWELL: So what you're saying, then, is the
7 student can be in the school and not enrolled and they
8 can be there indefinitely clocking in on a time card
9 and not receive hours, as long as the school doesn't
10 send them to the office. Am I understanding that?

11 MR. JOCHUMS: Yeah. I believe that's what it
12 says.

13 MS. POWELL: Thank you.

14 MS. TURMAN: Madam President, I don't think we
15 would have any problem with that, if they hadn't
16 stating that they were clocking in. I mean, I think
17 that's where our problem was with the situation.

18 I mean, I think they can clearly read that, you
19 know --

20 MS. POWELL: Well, obviously we were wrong.

21 Mr. Jochums has explained that, according to our law,
22 that they can clock in and the school just does not
23 submit the hours. And there is -- and that's
24 indefinite, for an indefinite period of time, and the
25 student -- the school is not in violation.

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1 MS. TURMAN: I mean, I --

2 MS. POWELL: Is that correct?

3 MR. JOCHUMS: I think that's what I said.

4 MS. POWELL: Thank you.

5 MS. TURMAN: I would like to know, then, why
6 wasn't that explained to us on that date?

7 MR. JOCHUMS: Well, I --

8 MS. POWELL: Well, I think --

9 MR. JOCHUMS: Well, I know I was -- I don't think
10 I understood until I read their appeal what -- how we
11 were wrong, and that was just an error on my part.

12 MS. POWELL: Thank you.

13 MR. JOCHUMS: I didn't -- I didn't speak up at
14 that time.

15 MS. POWELL: Ms. Burchett, did you have something
16 to say?

17 MS. BURCHETT: I would as just like to explain why
18 the students were clocking in before they were
19 permitted. And each situation was different for each
20 student.

21 But when I send permits in, you know, I will put
22 the date that the student began, you know, the date
23 that I received everything on the -- on the MAT form --
24 I mean on the registration form.

25 Now, that doesn't -- that doesn't tell the office

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1 what MAT date to give them. You know, I don't know if
2 they give them the date that they receive it in the
3 office or what.

4 But in the past, the students have been able --
5 they put the MAT date as of the date that they started.

6 So if I didn't have -- and it really went back to when
7 my school started there. Because I wouldn't let the
8 students clock in because -- you know, they were
9 signing in and out every day, and then I had attendance
10 records, but -- but, because I thought I had to wait
11 until my final inspection before the students could get
12 hours.

13 Well, then after the final inspection, you know, a
14 couple of weeks into school, then I found out, well,
15 no, those students should have been clocking in because
16 they are registered and they should have gotten hours
17 and everything. And so -- so that's why I always, as
18 soon as they turned everything in to me that -- to be
19 registered for the board, then normally I hand carry it
20 down here that day. But -- but they, when they turn
21 everything in to me, then -- and I turn it in, then
22 usually the MAT date on the -- on the permit is the
23 date that I put that they began.

24 So if I don't have time cards to prove when they
25 clocked in, then they don't get those hours.

1 These students knew that they may or may not
2 receive the hours for that time, because it would be a
3 board -- you know, a board decision or office decision
4 when their paperwork was turned in.

5 You know, one was trying to get -- prevent losing
6 ten dollars, a single parent and trying to prevent
7 that. If she -- if I registered her and then her
8 financial aid didn't go through, then she would be
9 registered and I would have to drop her. So she took a
10 chance of possibly not getting those hours when her
11 permit was not here.

12 But, you know, so that's why I have students clock
13 in. I can't submit hours to the board if the name is
14 not on the hour form. You know, I can't give them
15 those hours unless there is a place on the hour form to
16 put their hours down.

17 So, you know, I can't give a student hours until
18 they are permitted. It's not even possible.

19 MS. POWELL: Thank you.

20 Let me ask -- I had another question for the
21 director.

22 Now that we're going through the law revision, has
23 this been addressed for clarification? Due to the new
24 understanding of Mr. Jochums, maybe this is a decision
25 that the board should have visited on enrollment,

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1 permitting and printed hours?

2 MS. WITTUM: Well, I just heard what Arnie said
3 just like you guys did, so I need to go and look back
4 at --

5 MS. POWELL: Our language?

6 MS. WITTUM: This section and the revisions to see
7 exactly what was proposed, because it may need to be
8 clarified.

9 MS. POWELL: Because I don't remember offhand. I
10 know that the -- I think the intent of the board is
11 different than maybe what we're getting now.

12 Ms. Ward?

13 MS. WARD: I was under the impression that until
14 they received that matriculation date, the permit, they
15 were not allowed to get hours. Could we make it more
16 specific so that it's understood there could be no more
17 misunderstanding about when they start accumulating
18 their hours?

19 MS. POWELL: I think that is the language that
20 Director Wittum is going to be looking into for our
21 proposed laws and see that it is not compromising or
22 that it is very clear language.

23 MS. WITTUM: Now, I do want to clarify that --
24 that under my direction, the MAT date is the date we
25 receive the enrollment form. If you want it to be the

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1 date that they actually started, then you need to tell
2 me that now so that I can make sure that language gets
3 appropriately placed.

4 MS. POWELL: I think the purpose of that MAT date,

5 I understood, was to be that documented date to be
6 given so that the student could acquire hours after
7 that time.

8 MS. WITTUM: Uh-huh.

9 MS. POWELL: After that date. That was the date
10 that the office received the information, that was my
11 understanding of a MAT date.

12 MS. TURMAN: But isn't it in our rules and
13 regulations that the student shouldn't be in the area
14 if they are not earning hours? It's somewhere in our
15 rules and regulations that they should not be --

16 MS. POWELL: I don't -- I think that according to
17 Mr. Jochums he has explained that there is nothing in
18 there that they can't be in the facility.

19 MR. JOCHUMS: I don't recall that.

20 MS. TURMAN: Not in the facility, but in the area
21 the classes are --

22 MS. POWELL: The facility is in the area.

23 MS. TURMAN: I mean they can be in the front door
24 without -- they can be in the recreation area. I'm
25 talking about where these classes are being instructed.

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1 You know, I -- there is something in here. I don't
2 know.

3 MS. POWELL: I don't think there is any difference
4 between the facility and the area of instruction. It's
5 on the facility receiving --

6 MS. TURMAN: Instruction?

7 MS. POWELL: -- instruction, as far as I know.
8 Unless there is a board member that can find any
9 information that -- do you know that?

10 MS. PICKERING: (Shaking head from side to side.)

11 MS. POWELL: Anyone?

12 MS. BURNETT: I think, if you will allow me to
13 speak just a moment, I that I think that the prior
14 history has been that you all accommodated some
15 students where they didn't get everything in on time
16 but then they finally got it in and their -- the MAT
17 date was somewhat different than when they first
18 started. And at times the board or whoever authorizes

19 the registration, gets the hours, would go back as an
20 accommodation to the student and look at those hours
21 prior.

22 Am I saying that correctly?

23 MS. BURCHETT: (Nodding head up and down.)

24 MS. BURNETT: And then gives them some credit for
25 that.

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1 That has been something that I think that whoever
2 deals with the registration wouldn't have to do, but
3 they did that, and that was, in my opinion, a good
4 thing to do. Maybe that's where the confusion, you
5 know, came in as far as the instructors giving those --
6 the time sheets or time and not understanding for sure.

7 It didn't come in on our case because she never
8 gave credit, accredited hours until after she was fully
9 registered or any of the students were fully
10 registered.

11 But I think that has been the history.

12 And I'll let Ms. Burchett say what she knows about
13 that.

14 MS. BURCHETT: Well, that's -- like I said, that's
15 just why I try to keep as many records as possible,
16 because in the past the board -- the office either
17 requested copies of time cards or whatever, and -- and
18 that's why the students knew up front, that until their
19 registration papers were in the office, I could not
20 tell them that they would be receiving any hours. They
21 knew that. They were -- they were -- but they wanted,
22 they agreed, I'll be here and I'll clock just in case I
23 get to get them. And at the end of the month, if their
24 registration wasn't there, you can go back and pull my
25 cards, Sheila saw them, they have a big X mark on them

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1 with my initials and then no MAT date.

2 So, I mean, you know, that's how I keep records.

3 MS. BURNETT: But, Ms. Burchett, in the -- in the

4 past history, had students been given credit, is what
5 I'm saying, prior?

6 MS. BURCHETT: Yeah. Once their -- once their --
7 their paperwork came to me, then if the MAT date
8 encompassed some of those time cards, then they were
9 allowed those hours. So if they did -- but if they
10 didn't have a time card, then they wouldn't be able to
11 get those hours.

12 You know, I did nothing -- the students knew
13 exactly what was going on. They knew they may or may
14 not get those hours. They were -- they were fine with
15 that.

16 You know, I don't -- I don't think it is against
17 the law to clock a time card to have a record just in
18 case, you know.

19 MS. POWELL: I really -- I understand what you're
20 saying. I just really think that the intent of that
21 law was to make sure that the schools gave the students
22 the hours at the time that they were there. I think it
23 was -- maybe it's not real clear, but I do believe that
24 the intent of that law was to protect the students from

25 being taken advantage of and put in a training

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1 institution and not receiving, you know, hours. Since
2 we originally started out a clock hour state, it
3 appears that clock hours were the issue here. Time and
4 money.

5 MS. BURCHETT: That -- that was never the issue
6 with any -- with any of my students.

7 The issue was there -- you know, there wasn't a
8 permit for someone and so it was investigated and
9 that's what they found, that I actually had three
10 students with no permits and reasons for it. And --
11 and the students were -- were well aware that they --
12 that they may or may not receive those hours during
13 that period of time.

14 MS. BURNETT: I mean, there is certainly some lag
15 time, no matter what's going to happen. I mean I know
16 no one is going to be able -- well, I say no one, but I
17 think they have put in place some safeguards now where

18 the registration process at their school has allowed
19 Ms. Burchett to start earlier and get all the documents
20 necessary to finish the registration. There is always
21 going to be a little bit of time in there that you
22 don't have it back yet.

23 So I don't know if there is a clear line that you
24 want to draw to say, you know, that just absolutely no
25 hours at all until you get the MAT date, absolutely

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1 none at all. And that maybe the schools could put the
2 students on notice right up front, which, you know,
3 we --

4 MS. BURCHETT: That's what it is. That's what it
5 is.

6 MS. BURNETT: I mean, she did. She did that. But
7 I don't know what any other school would do. Certainly
8 that would help if the students are -- if that's your
9 concern. But these students -- and in fact, if you

10 recall, they came back -- they came, a couple of them
11 came and testified to that, that they knew up front
12 they weren't getting them. I'm not saying that
13 couldn't happen because I certainly can see that it
14 could happen. It just didn't happen in this case.

15 MS. POWELL: All right. In response, I think we
16 have addressed that issue as -- in proposal for the
17 grace period for the -- I think there has been a --

18 MS. WITTUM: Two weeks.

19 MS. POWELL: -- a two week grace period given to
20 the -- was that just to the private -- I mean public
21 schools?

22 MS. WITTUM: No. To all schools.

23 MS. BURNETT: That's good.

24 MS. BURCHETT: To my knowledge there is nowhere in
25 anything that we are treated any differently. You

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1 know, I follow the same laws and rules and I'm not
2 treated any differently.

3 But I didn't break the law and I didn't break a
4 rule, because the way it's stated, if -- if the
5 students would have been given accredited hours, if I
6 would have submitted their hours to the board, then I
7 would have broken the law or I -- and I would have
8 broken the rule. But I didn't do that so I didn't
9 break either one. So that's why we're back.

10 MS. TURMAN: I still say if we had known this,
11 that we had this --

12 MS. POWELL: I can't hear.

13 MS. TURMAN: I still say if we had known it that
14 day, if we had -- what confused us with -- me, was that
15 she was allowing the students to clock in. And also,
16 you know, if -- I read it and reread it and still am
17 reading it, you know, I clearly can read; but I do know
18 that that was what was confusing to us that day, was
19 that the students were clocking in.

20 MS. POWELL: Is there any further discussion?

21 Ms. Ward?

22 MS. WARD: Isn't this kind of going back to like
23 earlier when we had someone who said they got hours for

24 attending -- or that they got credits for attending
25 school but they did not get hours, they would not have

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1 had a matriculation, they would not have had a permit,
2 otherwise state board would have had a record of it.
3 When they get that matriculation and they get the
4 permit, that's when the hours start. If they are there
5 before then, they do not get hours because they don't
6 have that permit. And how do you know if they are
7 going to meet all the requirements until they get that
8 permit. And I think that's -- that's one thing we need
9 to be more specific on so that, they can't come back
10 and say, well, I attended but I didn't get hours, I
11 want hours for that time I attended. So we need to
12 be -- get that more clarified more clearly so when they
13 have hours, they have to have that matriculation and
14 they have to have that permit.

15 MS. POWELL: Uh-huh. I agree. Point well taken.

16 Yes?

17 MS. BURCHETT: The students still received college
18 credit and high school credit for the time that they
19 were there, but they did not receive hours. So it's
20 not like they were there for nothing.

21 MS. POWELL: But they received credit hours?

22 MS. BURCHETT: College.

23 MS. BURNETT: Yeah. College credit.

24 MS. BURCHETT: They received college credit and
25 high school credit and no cosmetology hours for that

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1 brief period of time.

2 MS. POWELL: I understand.

3 MS. BURNETT: Which they --

4 MS. BURCHETT: Which they were totally aware of.

5 MS. BURNETT: That -- yeah. That is the confusing
6 part.

7 MS. POWELL: Well, if you tell a student you're
8 going to receive academic hours because you're going to

9 school, and then -- but you tell them they are not
10 going to receive the clock hours because they are not
11 properly registered with the board, I think that's a
12 compromising position for a student to be in.

13 MS. BURCHETT: But they chose -- they agreed and
14 understood and chose to do that, to take the chance
15 of -- of being -- maybe being able to have those hours,
16 maybe not.

17 MS. TURMAN: But I don't think that's the
18 student's decision to take that chance, you know, if
19 they want to take that chance. I think it's -- I think
20 that the guidelines should be they are either going to
21 get them, or if they understood they still took that
22 chance, I just don't think it should be up to that
23 student. I think they should be --

24 MS. POWELL: Well, and that is something, as the
25 board knows, we are addressing. Further updated

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1 language. The director has already said she's -- and

2 we've already visited on that issue.

3 MS. TURMAN: Yeah. So --

4 MS. POWELL: -- time and time again on that new
5 language for the application, registration. And I know
6 because the public schools have had a difficult time
7 getting their applications in properly, that there has
8 been a two week grace period extended for that purpose,
9 although it's extended to all schools.

10 So, I mean, I think there has been ample language
11 discussed, and -- as to how to fix this problem, as I
12 know most of you have expressed a concern and do see it
13 as a problem. And I hope that this legislative packet
14 will fix that, for the student and -- but the question
15 is still here on the table to -- as Mr. Jochums has
16 said, what the board's decision is on this situation
17 from last year.

18 MR. JOCHUMS: Basically you've got two choices.
19 One, to follow what I recommended, and the other is not
20 to do anything, which leaves it right where it is, and
21 we can let Saline County Circuit Court decide what it
22 is.

23 So, unless there is more questions or discussion,
24 somebody make a motion what you want to do.

25 MS. TURMAN: Madam President?

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1 MS. POWELL: Yes.

2 MS. TURMAN: I -- I, since Mr. Jochums is our
3 legal counsel, I have -- and he says we've done
4 something probably that's illegal, I have no other
5 choice but to -- to rescind what we have done.

6 I don't know if that's making any sense or not.

7 MS. POWELL: I have a motion to accept
8 Mr. Jochums' recommendation.

9 MS. TURMAN: Recommendation.

10 MS. POWELL: Do I have a second?

11 MS. GORDON: (Hand raised.)

12 MS. POWELL: I have a second to accept
13 Mr. Jochums' recommendation.

14 All those in favor?

15 Is there any more discussion?

16 All those in favor, raise your right hand.

17 (Hands raised.)

18 MS. POWELL: Four.

19 All those opposed?

20 All those opposed?

21 MS. TRAYLOR: Abstain.

22 MR. DOWNEY: Abstain.

23 MS. POWELL: I have two abstentions.

24 Is that right?

25 Maybe I need to have that --

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1 I counted that wrong.

2 All those for, raise your right hand, please.

3 (Hands raised.)

4 MS. POWELL: Okay. Mr. Keene didn't raise his
5 hand.

6 All right. I see it.

7 I do see it.

8 So we have five.

9 Okay. Motion carries.

10 MR. KEENE: I think there -- and I'm not sure, but
11 maybe you can tell us. Do we -- would it require a
12 motion to have her record cleared of this?

13 MR. JOCHUMS: I think that automatically happens
14 by rescinding this order.

15 MS. TURMAN: We did that.

16 MR. KEENE: Well, I just want to make sure that
17 it's in her personal record that it won't --

18 MS. BURNETT: We certainly would want that -- to
19 make sure that it doesn't negatively impact any future
20 she --

21 MR. JOCHUMS: If you want to make sure, make a
22 second motion.

23 MR. KEENE: Okay. Well, I move that -- to have
24 the office clear Ms. Burnett's record.

25 MS. POWELL: Burchett.

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1 MR. KEENE: Sorry. The attorney --

2 MS. BURNETT: That's all right. It's so close.

3 MR. KEENE: -- of the previous violation that
4 proposed or gives her the years probation.

5 MS. GORDON: I second.

6 MS. POWELL: I have a motion and a second.

7 Is there any discussion?

8 All those in favor, raise your right hand.

9 (Hands raised.)

10 MS. POWELL: All those opposed?

11 Any abstentions?

12 (Hands raised.)

13 MS. POWELL: Two abstentions.

14 MS. BURNETT: Thank you.

15 MS. POWELL: Is there any further business?

16 MS. BURNETT: Now I will file a motion to withdraw
17 that with the Circuit Court and get an order allowing
18 that to be withdrawn.

19 MR. JOCHUMS: And we will submit a follow-up
20 order --

21 MS. BURNETT: Submit yours.

22 Thank you.

23 MR. JOCHUMS: -- explaining what happened.

24 MS. BURNETT: Thank you.

25 Have a nice day.

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1 MS. POWELL: Hearing no further discussion, this
2 meeting is adjourned.

3 (WHEREUPON, at 1:52 p.m., the above-entitled
4 proceedings were concluded.)

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1 CERTIFICATE
2 STATE OF ARKANSAS)
3 COUNTY OF PULASKI)
4 I, SUSAN B. WHITSON, Certified Court Reporter and
5 notary public in and for Pulaski County, State of Arkansas, do
6 hereby certify that the witnesses were duly sworn by me prior to

7 the taking of testimony as to the truth of the matters attested
8 to and contained therein; that the hearing and meeting of the
9 Arkansas State Board of Cosmetology, held January 22, 2007, was
10 taken by me in Stenotype and reduced to computer-generated
11 typewritten form by me or under my direction and supervision; and
12 that the same is a true and correct reflection of the proceeding
13 that occurred, to the best of my knowledge and ability.

14 I FURTHER CERTIFY that I am neither counsel for,
15 related to, nor employed by any of the parties to the action in
16 which this proceeding was taken; and, further that I am not a
17 relative or employee of any attorney or counsel employed by the
18 parties hereto, nor financially interested, or otherwise, in the
19 outcome of this action; and that I have no contract with the
20 parties, attorneys, or persons with an interest in the action
21 that affects or has a substantial tendency to affect
22 impartiality, that requires me to relinquish control of an
23 original transcript or copies of the transcript before it is
24 certified and delivered to the custodial attorney, or that
25 requires me to provide any service not made available to all

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1 parties to the action.

2 SIGNED AND SWORN this _____ day of

3 _____.

4

5 _____

6 SUSAN B. WHITSON, CCR, #158

7 NOTARY PUBLIC IN AND FOR

8 PULASKI COUNTY, ARKANSAS

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10 My Commission Expires: June 4, 2012.

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