

**Oregon Health Licensing Agency  
Board of Cosmetology  
Minutes of January 8, 2007**

**MEMBERS PRESENT**

Mike Snook, Chairperson  
Deely Klarr, Vice-Chairperson  
Linda Bergmann, Practitioner  
Debora Masten, Practitioner  
Judith Petersen, Practitioner  
Patricia Hall, Practitioner  
George Robb, Public Member

**STAFF PRESENT**

Susan Wilson, Director  
Larry Peck, Regulatory Operations Manager  
Angela Allen, Administrative Assistant

**GUESTS**

Heidi Zuniga, SCB

**CALL TO ORDER**

Michael Snook, Chairperson called the meeting of the Board of Cosmetology to order on January 8, 2007, at 9:04 a.m. at the Oregon Health Licensing Agency in the Rhoades Conference Room, 700 Summer Street NE, Suite 320, Salem, Oregon.

**APPROVAL OF AGENDA**

**MOTION**

Ms. Klarr made a motion and Ms. Bergmann seconded to approve the agenda. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

**APPROVAL OF MINUTES**

**MOTION**

Ms. Klarr made a motion and Ms. Petersen seconded to approve the minutes of November 6, 2006. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

**REPORTS**

Revenues & Expenditures

Ronald Riggs, Fiscal Services Division Manager, provided members with an overview of the Board's fiscal status including revenue and expenditures for July 1, 2005 – November 30, 2006 reporting a \$315,411 cash balance.

Online Renewals

Mr. Riggs stated there were a total of 3,576 online renewals from June through December 2006 for cosmetology.

Enforcement

Yvette Tamamoto, Compliance Specialist, reported the Board of Cosmetology percentage of complaints received.

**January 1 through November 30, 2006:**

- Total Number of Licenses – 68,866
- Total Number of Complaints – 142
- Overall Percent of OHLA Complaints – 61%

Ms. Tamamoto presented a breakdown of complaints received, the ratio of complaints per licensee base, and proposed orders and final orders for the months of January through November of 2006 and four-year comparison report detailing the comparison numbers for 2002 through 2005.

Ms. Tamamoto drew the Board's attention to a summary of enforcement actions noting there were 6 complaint files closed since the last board meeting.

Licensing

Larry Peck, Regulatory Operations Division Manager, provided the Board with statistics on the total number of active, inactive, and expired licenses. He presented a four year comparison detailing the comparison numbers for 2003 through 2006.

Mr. Peck reported licensing statistics from January 1, 2006 through November 30, 2006 noting the following:

**Practitioner Certification**

**Certificates Issued**

- Barber – 18
- Hair Design – 725
- Facial Technology – 821
- Nail Technology – 734
- Licensees – 1,538

**Reciprocity**

- Barber – 85
- Hair Design – 431
- Facial Technology – 363
- Nail Technology – 351
- Licensees – 706

**Certificates Renewed**

- Barber – 3,008
- Hair Design – 8,600
- Facial Technology – 4,960
- Nail Technology – 5,703
- Licensees – 12,207

**Late Renewals**

- Barber – 268
- Hair Design – 1,330
- Facial Technology – 737
- Nail Technology – 838
- Licensees – 1,966

### **Certificate of Identification**

- Certificate of Identification – 173

### **Facility Licensure**

- Original Licenses Issued – 753
- Licenses Renewed – 3,590
- Late Renewals – 410
- Total Licenses – 4,343

### **Independent Contractor Licensure**

- Original Licenses Issued – 1,163
- Licenses Renewed – 5,259
- Late Renewals – 829
- Total Licenses -- 6,229

Mr. Peck noted the next two reports reflect the monthly activity for 2005.

The Board discussed concern that practitioners were not adequately informed about the separation of licenses and the change in fee structure. Ms. Wilson presented a chronology outlining discussions regarding the individual fields of practice in board meetings and during outreach campaigns that were conducted from 2003 through 2006.

### Examinations

Mr. Peck provided full year comparison reports from 2003 through 2006, and 2005 and 2006 month-by-month breakdown, which indicates the number of examinations conducted and the pass/fail percentages for the following examination categories: Oregon Laws & Rules, Hair Design, Barber, Esthetics, Nail Technology, and Certificate of Identification.

### Outreach and Communication

Kraig Bohot, Communications Officer, reported that OHLA was quoted in the December 22, 2006 edition of the Portland Tribune article, *Explore Lack of Regulation of Medi-Spas* on current regulations in Oregon. He stated one of the major issues is who should be overseeing procedures being performed in medi-spas.

Mr. Bohot stated that the cosmetology section of the OHLA Web site at [www.oregon.gov/OHLA](http://www.oregon.gov/OHLA) has been updated to include information on the National-Interstate Council (NIC) examination and the option for applicants to take the examination at a Laser Grade site or at the board office. The "Profession Overview" and "How to Get Licensed" pages on the cosmetology section of the Web site are currently being revised.

Mr. Bohot reported that OHLA is launching an article in *Northwest Stylist* on how the proposed uniform fee structure will work if approved by the 2007 Legislature, which convenes January 8, 2007. There will also be an explanation of how, over the past decade, cosmetologists have been subsidized by other OHLA-regulated professions, which traditionally have paid more than their individual costs. Mr. Snook asked if this was calculated by license or individual. Ms. Wilson replied that it was calculated by individual, because of the deficit for the last 10 years. She stated that 12,000 individuals will see a fee decrease. Ms. Klarr stated that she knows of retired hairdressers that had all four licenses, but chose to retain only one license to use for discounts at the beauty supply stores. Mr. Snook stated that it is important that practitioners are aware that when they don't renew licenses, and leave Oregon, it may create a problem, if other states do not recognize Oregon's individual fields of practice. Ms. Hall asked if

individuals who don't renew all licenses will have a second chance to renew them. Mr. Bohot stated that postcards will be sent out as reminders to renew licenses. Mr. Snook inquired if a link to sites for other state requirements could be added to the cosmetology section of OHLA's Web site. Mr. Bohot explained that practitioners can find a list of states on the NIC Web site.

Mr. Bohot reported that the *License Inquiry* feature on the agency's Web site is being updated to reflect disciplinary action on a license, which will provide consumers information regarding a practitioner's current license status. A demonstration of the feature raised discussion on whether the search would reflect a practitioner's home or business address. Mr. Bohot clarified that the address listed on the license will be reflected on the license inquiry search results.

### 2007 Legislation

Ms. Wilson presented an overview on how a bill becomes a law. She stated that OHLA's budget and performance measures will be presented to the legislature in early February. She provided the Board with a press release from the Speaker of House, Jeff Merkley, notifying the public of a leadership change in the House and committee assignments, and President of the Senate, Peter Courtney, announced committee assignments with the Senate.

### September 17, 2007 Meeting Information

Ms. Wilson stated that after receiving bids on three hotels/conference centers in Medford, Oregon for the Board of Cosmetology meeting on September 17, 2007. The recommendation is the Rogue Regency Inn in Medford. She stated that travel will begin on Sunday, and it may be a two-night stay. Mr. Peck stated that there will be a van provided for board members and designated staff. Staff noted that Ms. Patnode would be contacting board members with more details.

## **ITEMS FOR BOARD ACTION**

### Proposed Administrative Rules – Certificate of Identification

Patricia Allbritton, Administrative Services Division Manager, presented the Board with an issue statement on proposed revisions to the Certificate of Identification (CID) authorization, which allows practitioners to perform services outside of or away from a licensed facility. The proposed change relates to locations and/or settings where CID services may be provided.

At the November 6, 2006 board meeting, Jean Miner, a practitioner and facility owner in Junction City, Oregon, presented board members with an overview of *"Taking the Spa Experience Home"*. She requested the Board consider amending the current practice restrictions in Oregon Administrative Rules 817-035-0050 to allow for certificate of identification holders to provide services to persons other than a "client" at the client's residence, work place or office, and at other locations. The change would facilitate offering services for the purpose of spa parties, special events or celebrations on an infrequent basis. Ms. Allbritton stated the concern was to ensure compliance with standards for services provided are being followed. She presented a preliminary rule schedule and the proposed administrative rules. The Board reviewed the following:

### **817-035-0050**

#### **Application and Criteria for Certificate of Identification**

- (1) ~~A practitioner who provides services outside of a licensed facility must hold a certificate of identification.~~ To perform services outside of a licensed facility, a practitioner must hold a valid *certificate of identification* (CID) to practice at locations approved by the Agency. Approved locations for providing services under a CID includes the following:**
  - (a) Client's residence, office or place of business;**

**(b) Premises where individual scheduled events are being held, such as a wedding, specific party or social gathering, charity function (profit or non-profit) or organization/association meeting, which occurs on a non-repetitive basis that would require licensure as a facility as defined in ORS 690.005(7).**

Mr. Snook disagreed with the proposed amendment stating individuals will be able to set up anywhere and it will be very difficult to monitor. Ms. Wilson stated the CID provision has always been in ORS 690 and is difficult to monitor. Mr. Peck pointed out that anyone can get a CID license and provide services at the client's house. He noted the proposed revision would allow a person to provide services to individuals who reside at the house and also to individuals who attend the event/party. Ms. Klarr stated that it will be confusing to distinguish between when to use a temporary facility license versus a CID license. Mr. Peck stated that all practitioners who work at spa parties, special events, or celebrations are required to have a separate CID license. Mr. Snook pointed out that when individuals are providing services within homes sanitation is a huge issue. The Board referred the issue to the Rules Committee.

#### MOTION

Ms. Masten made a motion and Ms. Klarr seconded to have the Rules Committee review the requirements of a temporary facility for one event versus an emergency situation where the agency will evaluate how long a license should be issued. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

#### Product Safety Committee – Regulating Laser Use by Estheticians

Ms. Tamamoto, Compliance Specialist, presented the Product Safety Committee recommendations regarding the use of lasers in the practice of esthetics. She stated that the Board's Product Safety Committee met on January 5, 2007, to review licensed and unlicensed estheticians working with a physician or in conjunction with a physician, and to develop criteria to be used during inspections and investigations relating to advanced esthetics devices. Following discussion, members concurred that an effective public protection criterion is requiring "professional liability insurance" for performing laser services, until such time as training and education can be identified, approved and implemented. The recommendations are as follows:

- Services are provided under the direct supervision of a licensed physician;
- Services are provided in a licensed cosmetology facility by certified practitioner; professional liability insurance is required.
- Upon approval of this recommendation, refer this issue to the OHLA / Cosmetology Rules
- Advisory Committee; recommend adoption of rules within the next six months.

Board members discussed the minimum level of liability insurance that would be required. Ms. Masten stated that there is a minimum requirement of liability insurance that an individual is required to have. Ms. Masten stated that the Board should require that a doctor is overseeing laser use. Mr. Peck stated that the FDA states "a licensed practitioner" doesn't mean a physician and it's entirely up to the states on define "a licensed practitioner". Ms. Masten stated that estheticians should not be doing laser hair removal without a medical director or onsite physician. Ms. Klarr inquired on the types of complaints OHLA has received on lasers. Ms. Tamamoto replied OHLA has review seven complaints per year regarding from laser burns. Mr. Snook stated the agency would not receive the more serious complaints, because they would be filed as a lawsuit against the facility.

Ms. Wilson suggested practitioners at the time of renewal, provide proof of liability insurance and manufacturer training. Mr. Peck stated that a type of endorsement would need to be placed on the certification list to indicate that the practitioner has shown proof of liability insurance and training at time

of renewal. Mr. Snook asked if other professions needed liability insurance. Ms. Masten replied that due to the high level of risk to the public, liability insurance is necessary for laser use. Ms. Wilson stated that there are two kinds of lasers classed by the FDA for hair removal, but the Class 4 laser medical devices is used more extensively. Ms. Allbritton explained that the intended use statement for lasers should align with the esthetics scope of practice and that training and professional conduct of standards need to be identified. Mr. Snook suggested adding a new program for lasers in the near future. The Board agreed to have the Rules Committee review the following:

- Services provided under the direct supervision of a licensed physician
- Proof of standard liability insurance if using lasers for hair removal
- Certificate of training from the manufacturer
- Compliance with national standards (accreditation)

Ms. Wilson stated another requirement will be posting the national standards for safety at the facility. Ms. Masten replied that American National Standards are required in every facility that uses lasers. Mr. Robb inquired if the machines are licensed by the state and suggested that the machines be inspected to make sure they are working properly. Ms. Masten explained that lasers are not licensed by the state and all lasers are computerized and most will shut down if they are not working properly.

The Board discussed who is responsible for having the liability insurance when laser services are provided under direct supervision of a licensed physician. Ms. Masten stated that the doctor's liability insurance will only cover the service if the individual is an employee of the licensed physician. Mr. Robb explained that with x-ray machines the physician and some of the technicians carry liability insurance, because there is nothing to prevent a patient from suing both parties. The Board suggested defining "direct supervision of a licensed physician," because it can be construed that liability insurance is not required if the individual is providing laser treatments under direct supervision of a licensed physician. Mr. Snook suggested that research be conducted on liability insurance for lasers. Ms. Wilson inquired on the cost of liability insurance per year. Ms. Masten replied that liability insurance is approximately \$2,000 a year. Ms. Masten added that lasers should only be used by estheticians for laser hair removal. Board members concurred. Staff will consult the Attorney General on this issue.

#### MOTION

Ms. Bergmann made a motion and Ms. Masten seconded to send the use of laser hair removal by only estheticians issue to the Rules Committee (recommendations noted below) The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

- Proof of liability insurance
- Proof of manufacturer training
- Certificate on the device being used
- Follow the American National Standards for safe use
- Clearly define the statement "under the direct supervision".

#### Public Comment

No Public Comment

#### Board Interest File

Mr. Snook addressed the Board Interest file.

The Board Meeting adjourned at 1:14 p.m.

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Samantha Patnode, Board Liaison