

**Oregon Health Licensing Agency
Board of Cosmetology
Minutes of November 6, 2006**

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
Cerynthia Murphy, Licensing Supervisor
Kraig Bohot, Communications Officer
Angela Allen, Administrative Assistant
Samantha Patnode, Board Liaison

GUESTS

Heidi Zuniga
Jean Miner, Taking the Spa Experience Home

Note: The recorder malfunctioned and there is no tape record.

CALL TO ORDER

Michael Snook, Chairperson called the meeting of the Board of Cosmetology to order on November 6, 2006, at 9:06 a.m. at the Oregon Health Licensing Agency in the Rhoades Conference Room, 700 Summer Street NE, Suite 320, Salem, Oregon.

BOARD INTRODUCTION

Mr. Snook introduced George Robb as the new public member. Mr. Robb said he graduated from Portland State University and was a licensed x-ray tech and the administrator of the Salem Radiology Consultants before he retired.

APPROVAL OF AGENDA

MOTION

Ms. Klarr made a motion and Mr. Robb 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 May 8, 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 for the July 1, 2005 – September 30, 2006 reporting a \$341,713 cash balance.

Mr. Riggs, Fiscal Service Division Manager reported for the past 10 years, cosmetologists have been paying less in fees for licensing and regulatory services than other regulated professions in the agency. Regulated professions such as respiratory therapists at 2% are paying more than their share per licensed practitioner. The previous formula used for calculating fees was 70% for cosmetology and 2 % for every additional board or program. The new formulation assessed usage and measures workload for cosmetology at 86%. The uniform fee proposal will align the smaller programs and boards licensing fees with actual per unit services provided

Mr. Snook questioned the fairness for licensed practitioners with individual fields of practice and whether it is a benefit or liability for Oregon practitioners. He stated practitioners licensed in Hair Design encounter a lack of recognition in other states.

Ms. Wilson provided history regarding Oregon's move to change the "bundled" certificate, a collection of services held together under a single cosmetology license to its 2006 status. She stated when the 1977 Legislature merged two boards – Barber Board and Cosmetology Board – it established independent fields of practice for four service areas. Oregon school curriculum and the state examination tested in four distinct areas -- barber, hair design, manicure and facial technology, but the law allowing issuance of a single certificate in each field of practice didn't correspond. With the assistance OHLA Assistant Attorney General, in 2003 the agency proposed language to synchronize the independent fields of study with an actual certificate. The 2003 Legislature approved the change and today a majority of the 28,000+ individual practitioners opted to gain certification in only one field of practice since the individual fields of practice certification was implemented officially in July 2005. Those certified are showing a much more accurate picture of who is actually providing services in the individual fields of practice.

Online Renewals

Mr. Riggs stated there were a total of 1,516 online renewals from June through August 2006 for cosmetology.

Enforcement

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

January 1 through September 30, 2006:

- Total Number of Licenses – 70,031
- Total Number of Complaints – 131
- Overall Percent of OHLA Complaints – 64%

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 September of 2006.

Ms. Tamamoto reviewed a comparison for 2002 through 2005.

Comparing 2004 and 2005

- Total Number of Complaints for 2004 – 202
- Total Number of Complaints for 2005 – 166

Ms. Tamamoto drew the Board's attention to a summary of enforcement actions noting there were 50 complaint files closed since the last board meeting.

Licensing

Cerynthia Murphy, Licensing Supervisor, provided the Board with statistics on the total number of active, inactive, and expired licenses. She presented a four year comparison detailing the comparison numbers for 2003 through 2006.

Ms. Murphy reported licensing statistics from January 1, 2006 through September 2006 noting the following for 2006:

Practitioner Certification

Certificates Issued

- Barber – 16
- Hair Design – 595
- Facial Technology – 693
- Nail Technology – 611
- Licensees – 1,275

Reciprocity

- Barber – 73
- Hair Design – 361
- Facial Technology – 299
- Nail Technology – 1,026
- Licensees – 589

Certificates Renewed

- Barber – 2,577
- Hair Design – 7,270
- Facial Technology – 4,180
- Nail Technology – 4,783
- Licensees – 10,266

Late Renewals

- Barber – 212
- Hair Design – 1,093
- Facial Technology – 620
- Nail Technology – 714

Certificate of Identification

- Certificate of Identification – 139

Facility Licensure

- Original Licenses Issued – 623
- Licenses Renewed – 2,992
- Late Renewals – 336

Independent Contractor Licensure

- Original Licenses Issued – 965
- Licenses Renewed – 4,400
- Late Renewals – 679

Ms. Murphy explained the next two reports reflect the monthly activity for 2005 and 2006.

Examinations

Ms. Murphy provided full year comparison reports from 2003 through 2006, 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.

Mr. Snook pointed out that the national examination is focusing more on anatomy and stated the standard cosmetology textbook is being used to establish questions, and clarified that the Board of Education determines the curriculum. Brenda Hoxsey, OHLA Contractor and Practical Examination Proctor provided outreach and the following information to schools:

- Laser Grade Testing Centers locations: Oregon sites – Aurora, Corvallis, Creswell, Hillsboro, McMinnville, Redmond, Salem, California sites – Eureka, Redding. Idaho States – Boise, Caldwell. Washington sites – Longview, Pasco and Yakima.
- Differences in Administration of Examination. Laser Grade Testing – Fee is \$55 per examination. OHLA – Fee is \$25 per examination. Same day licensure.
- NIC Examination at OHLA and Laser Grade: The NIC examinations are administered in English and Spanish on computer and the Vietnamese examination are administered in written format. Spanish and Vietnamese no longer have interpreter assisted exams.
- Study References: NIC candidate information bulletins (CIB) is a tool to prepare students for the NIC examinations. The CIB can be obtained on NIC's Web site at www.nicesting.org

Mr. Snook inquired if interpreter assisted examinations were still being given. Ms. Murphy stated that interpreter testing is still being administered and noted there is a high failure rate in Vietnamese testing. She stated that the NIC examination is being administered in Vietnamese now.

NIC Examination and Laser Grade Facility Information

Ms. Murphy provided NIC Examination and Laser Grade Facility Information. She noted that 21 individuals have tested since July; the fee is \$55 per examination and it takes 7 to 10 days for licensure.

Ms. Murphy recapped the information provided to schools for board members.

Ms. Murphy pointed out that the esthetics examination is sourced using the following references:

- Milady's Standard Fundamentals for Estheticians
- Milady's Standard Textbook for Professional Estheticians
- Salon Fundamentals Esthetics
- NIC Health & Safety Standards

She provided the pass/fail rates for NIC versus the previous Oregon examination:

OLD

NEW

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	PASS	FAIL	PASS	FAIL
Barbering	56%	44%	83%	17%
Esthetics	81%	19%	49%	51%
Hair	73%	27%	79%	21%
Nails	72%	28%	68%	32%
Laws/Rules	86%	14%	83%	17%

Mr. Robb asked what Laser Grade Testing entails. Staff explained Laser Grade Testing gives practitioners the opportunity to test in remote locations to eliminate travel to Salem.

ODE Esthetics Curriculum

Ms. Murphy reported on changes made to the Esthetics Curriculum by the Oregon Department of Education.

NACCAS Information – School Comparisons & Statistical Reports

Ms. Murphy provided NACCAS Information which noted the following information:

Oregon

	2002	2003	2004
# of Entities Submitting Annual Reports to NACCAS	19	33	18
# of Students Scheduled to Graduate	1,035	1,302	1,452
# of Students Who Did Graduate	680	873	1,017

Nationwide

	2002	2003	2004
# of Entities Submitting Annual Reports to NACCAS	857	894	896
# of Students Scheduled to Graduate	77,457	84,732	91,609
# of Students Who Did Graduate	53,303	59,050	64,827

Practical Examination Evaluation

Ms. Murphy presented the practical examination evaluation schedule for schools for the 2005 - 2007 biennium.

NIC Conference – Portland, Maine

Ms. Masten reported on the Portland, Maine NIC conference held on August 28, 2006, as a very informative and interesting conference and noted that Oregon has set the licensing standard for other states.

Ms. Wilson stated that other states are moving forward to OHLA's governance model as it relates to license recognition and ease.

AOCC Conference – Eugene, Oregon

Ms. Wilson stated that she attended the AOCC Conference in Eugene on September 9, 2006, and noted that it was informative and well received by the schools. She said information related to scoring criteria and other pertinent information was distributed to schools. She was accompanied by OHLA contractor Brenda Hoxsey and they answered questions regarding the NIC examination and Laser Grade testing sites.

Esthetics Taskforce

Ms. Wilson reported on the Esthetics Taskforce Meeting held on October 26, 2006. The purpose of the meeting was to review the current required core competencies and hours of training required for licensure in the field of esthetics: review National Coalition of Estheticians Association (NCEA) model curriculum for advanced estheticians and the National Interstate Council for State Boards of Cosmetology (NIC) advanced esthetics examination.

The following key points and statements were made during discussion:

- Require a “syllabus” from manufacturers who provide instruction on the use of equipment to verify the individual has received required training.
- The National Coalition of Esthetics Association (NCEA) advanced training curriculum does not focus on specific equipment or modalities but rather advanced treatment and risk factors including skin disorders or diseases involved within those treatments.
- The principals, theory and science of skin care are essential while the various equipment and devices used in delivery of services is secondary.
- Career colleges can choose to teach an advanced level esthetics course as a separate field of practice in addition to the courses currently offered. It would be optional not mandatory.
- The National Interstate Council for State Boards of Cosmetology (NIC) will offer an advanced esthetics examination (available June 2007).
- Students can be integrated into an advanced esthetics course whether they have the basic education or not. Schools have discretion to assess where a student’s baseline knowledge and competency falls within the advanced program and the appropriate amount of “credit” to be given the student for previously completed education as they do now.

Committee members were in agreement regarding the need to establish increased hours in the current basic esthetics curriculum.

The next committee meeting is February 8, 2007.

Outreach and Communication

Kraig Bohot, Communications Officer, reported on the meeting between Department of Education (DOE) and Oregon Health Licensing Agency on October 23, 2006, which focused on updating ODE staff on the new NIC examination, scoring formula, remote testing centers, comparative pass/fail rates between the NIC and the previous state examination, practical examinations and OHLA/Board of Cosmetology online resources.

Mr. Bohot stated that OHLA and the Board of Cosmetology continue to focus regulatory efforts on safeguarding the public while allowing esthetic practitioners to use equipment and devices that are appropriate for their scope of practice. Ms. Masten stated she will assist Regulatory Operations Division with development of a checklist for enforcement officers to assist in conducting inspections. Mr. Peck stated that handouts or a brochure will be developed to answer questions from practitioners when

equipment is being inspected. Ms. Wilson stated practitioners will need explanation regarding how OHLA will review training on new equipment and devices.

Ms. Wilson inquired if laser treatment is being used for facial and skin treatments to kill bacteria. Ms. Masten stated that individuals are performing facial treatments but also performing other services with the same laser equio that are not in the scope of practice and there is a high risk of damage to the eyes. The Public Safety Committee will meet to discuss esthetic devices including laser systems. The committee will be reviewing the following:

- Pinpoint which devices/lasers are within the scope of practice for an esthetician and identify absolute risk criteria for estheticians using lasers.
- Discuss whether an unlicensed person needs to practice under the direct supervision of a physician.
- Determine if a physician's referral or prescription would be sufficient for an esthetician to practice and the physician would accept all legal liability for the patient.
- Other Federal Drug Administration (FDA) tools for continued consumer protection such as warning signs being posted in the facilities.
- Create checklist for inspectors to utilize during inspections for estheticians which includes information on what they should be looking for and what to expect in a facility of estheticians. Identify a list of absolute risk criteria for certain devices.
- Schedule training for inspectors following the committee meeting

Mr. Bohot noted that OHLA served on the Oregon State Board of Nursing (OSBN) task force that drafted the policy guideline, *Nursing Scope of Practice for Cosmetic and Dermatologic Procedures*, which authorize inclusion of some procedures prohibited in esthetics practice, such as Botox injections and cryotherapy. He stated there are a number of overlapping procedures such as microdermabrasion and vacuum massage.

Mr. Bohot reported that Alan Bennett, a Public Affairs Representative with the FDA, addressed how the FDA regulates "medical devices" at a special outreach event at OHLA on August 7, 2006. Mr. Bohot noted that OHLA recently incorporated the FDA classification system for medical devices into the administrative rules for cosmetology (OAR 817).

Mr. Bohot reported that OHLA is launching a series of articles in *Northwest Stylist* to remind practitioners of safety and infection control requirements. The campaign will be publicly launched in February 2007 to capitalize on the potential for media coverage during the television "sweeps" period.

Mr. Bohot provided the Board with an overview of the Agency's Annual Performance Report, and key measures for the fiscal year 2006:

- Percentage of contested case disciplinary action be resolved informally
- Percentage of critical status complaints investigated within one week of receipt
- Percentage of applicants who attain same-day licensing status
- Percentage of licensee who renew online

- Percentage of customers rating the agency's customer service as good or excellent

Mr. Bohot reported completion of the Board and Council Member Orientation Handbook, and informed members that filming of the new board/council member video would begin on November 6, 2006.

Taking the Spa Experience Home – Jean Miller

The Board discussed Taking the Spa Experience Home with Jean Miller. Mr. Snook stated concern that individuals may believe that because this service is being performed in homes a resurgence of unlicensed home salons will occur. Ms. Miller stated that she expects a high standard of regulation. Mr. Peck explained that under the existing law, a practitioner could perform these services under their current license if it is only for demonstration purposes. He stated that a temporary permit can be issued to perform this service, but the home setting must meet all requirements of a full salon. Mr. Peck stated that Enforcement will review this issue and report at the January 8, 2007 board meeting.

Cosmetology / Massage Therapy Workgroup

Mr. Bohot stated that the Board of Cosmetology and Board of Massage Therapist met on August 4, 2006 to view a demonstration of vacuum massage, to determine if the service fits within the scope of practice of estheticians and if there is any risk to the public. It was determined that vacuum massage could be provided by both professions, but for different reasons: estheticians for improving the appearance of the skin and massage therapists for therapeutic body treatments. The Board of Cosmetology and Board of Massage Therapists Workgroup will continue to meet on issues that arise of common interest to foster a collaborative approach to regulation.

ITEMS FOR BOARD ACTION

Vacuum Massage Position Statement

Samantha Patnode, Board Liaison, presented the Board with a position statement on vacuum massage. The Board of Cosmetology adopted the position statement at the May 2006 meeting regarding the practice of "vacuum massage" within the context of providing esthetic services. She reported that following approval of the Position Statement, the agency received additional information from stakeholders and manufacturers, and was requested to re-evaluate the parameters in using this device to deliver esthetic services. The Board's Product Safety Committee met June 6, 2006 and concurred with proposed changes. Recommendations for revising the Position Statement are as follows:

- Eliminate the use of a "body suit" in delivery of services as a criteria
- Require training and certification by the manufacturer in the safe and effective use of device to conform to OAR 817-015-0050(4).

The position statement will be posted to the OHLA's Web site.

MOTION

Ms. Masten made a motion and Ms. Peterson seconded to approve the position statement on vacuum massage. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

Collaboration with other Regulated Professions Position Statement

Ms. Patnode presented the Board with a position statement on collaboration with other regulated professions. Scope of practice issues, particularly when different professions' scopes of practice overlap and conflict arises, have been and will continue to be issues for the Board of Cosmetology. Partnerships

with other regulatory entities is crucial to clarifying scope of practice issues and serves the public and practitioners best to foster a collaborative approach to regulation and provide clarification on issues. All regulatory professions are governed by Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) that specify which services regulated professions can and cannot provided to the public. The position statement reflects regulatory perspective and will be distributed and further discussed with agency, board, stakeholders and the public. The position statement will be posted to the OHLA's Web site.

MOTION

Ms. Bergmann made a motion and Ms. Masten seconded to accept the position statement on collaboration with other regulated professions. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

Certification of Identification Application Questions

Ms. Murphy stated the Board of Cosmetology Item Writing Committee met on August 14, 2006, to review and revise the certificate of identification requirements for licensure. The committee suggested the written examination be replaced with the following:

- A written questionnaire attached to the application, which the applicant must successfully answer all questions on the application and return to the agency .
- An attestation statement on the application affirming the applicant has read and understands, and will abide by the current Oregon Administrative Rules and Oregon Revised Statutes governing the practice of cosmetology; and
- An original business card which is provided to each client indicating the name and address of the agency and practitioner's certificate number.

MOTION

Ms. Klarr made a motion and Ms. Masten second to approve the changes for the requirements to obtain a certificate of identification. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

2007 Subcommittees

MOTION

Ms. Bergmann made a motion and Mr. Robb seconded to accept the 2007 Subcommittee membership (noted below). The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

- **Enforcement Committee:** Deely Klarr; Mike Snook; Patricia Hall
- **Industry Liaison Committee:** Mike Snook; Linda Bergmann
- **Item Writing / Examination:** Debora Masten; Deely Klarr
- **Legislative / Rules Committee:** Debora Masten; Mike Snook
- **Product Safety / Public Protection:** Debora Masten; Deely Klarr; George Robb
- **Scholarship / Education Committee:** Judith Petersen; Linda Bergmann; Mike Snook

2007 Board Meeting Dates

MOTION

Mr. Robb made a motion and Ms. Bergmann seconded to approve the proposed 2007 board meeting dates (noted below). The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

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- January 8, 2007
- March 5, 2007
- May 14, 2007
- September 17, 2007 – Southern Oregon
- November 5, 2007

2007 Chair and Vice Chair

MOTION

Ms. Masten made a motion and Ms. Petersen seconded that current members serving as chair and vice chair remain the same. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, Ms. Hall, and Ms. Petersen voting aye.

Board Interest File

Mr. Snook addressed the Board Interest file.

The Board Meeting adjourned at 2:04 p.m.

Samantha Patnode, Board Liaison