



Oregon

John A. Kitzhaber, MD, Governor

Health Licensing Agency

700 Summer St. NE, Suite 320

Salem, Oregon 97301-1287

Telephone (503) 378-8667

FAX (503) 585-9114

TTY (503) 373-2114

E-Mail: ohla.info@state.or.us

WHO: Oregon Health Licensing Agency
Board of Cosmetology

WHEN: April 25, 2011 – 9 am

WHERE: Oregon Health Licensing Agency
Rhoades Conference Room
700 Summer St NE, Suite 320
Salem, Oregon

What is the purpose of the Meeting?

The purpose of the meeting is to conduct regular board business. Please use appropriate language, manners and protocols when conducting board business. A working lunch may be served for board members and designated staff in attendance. A copy of the agenda is printed with this notice. Please visit <http://egov.oregon.gov/OHLA/COS/meetings.shtml> for current meeting information.

Is the public or licensees allowed to attend the Meeting?

Yes. Members of the public are invited and encouraged to be in attendance at all board/council meetings. All public audience members are asked to sign-in on the attendance roster prior to the meeting. Persons wishing to comment may indicate the topic they wish to discuss on the attendance roster. Comments may be heard under public comment at the end of the meeting. Please wait to be recognized by the Chairperson prior to commenting.

What if the board/council enters into executive session?

Prior to entering into executive session the board/council chairperson will announce the nature of and the authority for holding executive session, at which time all audience members are asked to leave the room with the exception of news media and designated staff. Executive session would be held according to ORS 192.660.

No final actions or final decisions will be made in executive session. The board/council will return to open session before taking any final action or making any final decisions.

Who do I contact if I have questions or need special accommodations?

The meeting location is accessible to persons with disabilities. A request for accommodations for persons with disabilities should be made at least 48 hours before the meeting. For questions or requests contact a board specialist at (503) 373-2049.

All members are asked to please give at least 24-hour notice if they are unable to attend the meeting so arrangements may be made.



Oregon Health Licensing Agency
Board of Cosmetology



9 am, Monday, April 25, 2011
700 Summer Street N.E., Suite 320
Salem, Oregon

Revised April 7, 2011

Call to Order

- 1. Approval of Agenda**
- 2. Approval of Minutes**
 - ◆ January 24, 2011
- 3. Reports**
 - ◆ Director's Report
 - ◆ Outreach and Communication
 - ◆ Statistical Report
 - Licensing, Active License Trends & Web Site Traffic
 - ◆ 2009-2011 Budget
 - Revenues & Expenditures
 - ◆ Regulatory Division Report
 - ◆ Policy, Legislation & Administrative Rules
 - OHLA Temporary Administrative Rules

Working Lunch

- 4. Items for Board Action**
 - ◆ Adopt Permanent Administrative Rules
 - Hearing Officer Report
 - Legislation & Rules Committee Reports
 - Temporary Rule Documents
 - ◆ Esthetician Scope of Practice – Skin/micro-needling
- 5. Public Comment**
- 6. Other Board Business**
 - ◆ Board Interest File
- 7. Executive Session (If needed)**

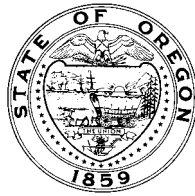
Agenda is subject to change.

For the most up to date information visit www.oregon.gov/OHLA

Approval of Minutes



January 24, 2011



Oregon Health Licensing Agency
Board of Cosmetology



9 am, Monday, January 24, 2010
700 Summer Street NE, Suite 320
Salem, Oregon

MINUTES

MEMBERS PRESENT

Debora Masten, Chair
Herb Hirst
Shelly Couch
Tiffany Galvan
Heidi Zuniga

MEMBER VIA TELEPHONE:

Sharon Wiser, Vice-Chair

MEMBERS ABSENT:

None

GUESTS PRESENT:

Rep. Matt Wingard	Cynthia Shaw
Mike Snook	Judith Culp
Karen Dieckman	Deborah Anderson
Cindy Long	Dawn Phillips

*This meeting was live audio streamed.

STAFF PRESENT

Randy Everitt, Director
Katherine Lozano, Assistant Attorney General
Sylvie McMillan, Fiscal Services and Licensing Manager
David Sparks, Regulatory Operations Manager
Kraig Bohot, Public Information Officer
Samie Patnode, Policy Analyst
Nancy Sellers, Senior Policy Analyst
Amanda Perkins, Board Specialist
Sinnamon Harris, Board Specialist
Callie Zink, Administrative Services Manager

(Guests Present, continued)

Dale Smith
Sam Hays
Mike Turner

Call to Order

Debora Masten, Chair, called the meeting of the Board of Cosmetology to order at 9 am, Monday, January 24, 2010, at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon. Roll was called.

1. Approval of Agenda

MOTION:

Herb Hirst made a motion with a second by Heidi Zuniga to approve the agenda. Motion passed unanimously.

2. Approval of Minutes

MOTION:

Herb Hirst made a motion with a second by Tiffany Galvan to approve the minutes for November 8, 2010. Motion passed unanimously.

3. Reports

• Director's Report

Randy Everitt, Director, presented a letter from former Governor Ted Kulongoski addressed to the board expressing the former governor's sincere appreciation for the board's service and dedication during his administration.

Everitt described the new audio/visual broadcast of today's full board meeting to the members and how stakeholders would be able to gain access via their own computers. Everitt pointed out the system is still in its testing phase and in the near future a link will be available on the OHLA website for interested parties to log in to listen and see the board meetings live.

• Outreach and Communication

Kraig Bohot, Public Information Officer, presented his ideas for the monthly *Northwest Stylist & Salon* publication: Formaldehyde in products, Cosmetology umbrella certification (legislation), civil penalties, reduced fees for initial certifications, and practical examination procedures. Bohot also shared an article from *The Bend Bulletin* regarding the OHLA/Board of Cosmetology formaldehyde temporary rule, a question and answer piece in the *Salem Statesman Journal* featuring OHLA Inspector Trampus Schuck, and another grant for Oregon Collaborative for Healthy Nail Salons (OCHNS) member Zero Waste Alliance. Bohot said OHLA will continue to communicate developments on these issues and more and requested feedback from board members and other key stakeholders in determining what the central issues are for the cosmetology profession.

• Statistical Report

Sylvie McMillan, Fiscal Services and Licensing Manager, presented an overview of statistics related to the board. Statistics included were licensing, examination and regulatory statistics, active license trends, complaints, and website traffic.

• 2010-2011 Budget

McMillan presented the statement of cash flow for the 7/01/09-12/31/09 period and the projected cash flow statement 7/01/2009 through 6/30/2011. McMillan reminded the board the cost allocation for indirect costs changed on October 1, 2010 to 78.27 percent. McMillan noted that those indirect costs are projected only for the Director's Office, Business Services and Licensing divisions. The fee changes coming up June 1, 2011, that will reduce the initial license costs, are reflected in the projected cash flow. The goal is three months' worth of working capital reflected in the "Ending Cash Balance Goal" of \$578, 922.

• Regulatory Operations Division Report

David Sparks, Regulatory Operations Manager, reported on enforcement activity and explained the new format for the Regulatory Operations Division report. Between July 2009 and December 2010, 262 complaints were filed with the agency. Sparks explained that of the 262 complaints, 61 remained open. Sparks supplied a chart reflecting the open complaints for the biennium. Please refer to chart below:

Open Complaints	
Complaint Count	Complaint Type Description
9	Critical Complaint Regarding Licensing
35	Licensing Concern
15	Safety/Sanitation Issues
2	Services Provided

Sparks said for the current reporting period October 29, 2010, through January 18, 2011, the agency received 24 complaints.

Sparks explained with the new investigative protocol each complaint is reviewed to determine if enough information was provided that a reasonable person would believe that a violation of OHLA or cosmetology statute or rule had taken place. If not, the case is closed for “failure to meet reasonable cause standard.” In the past, Sparks stated, OHLA has taken anonymous complaints, for example, alleging someone was cutting hair without a license. No more information was provided, not where or who the alleged person was. That did not provide enough information for the agency to act upon and too much staff time had been taken up with such complaints. So from time to time the board will see a complaint closed with “failure to meet reasonable cause standard.”

Sparks provided statistics for follow-up inspections since the last board meeting: of the 263 follow-up inspections, 34 resulted in violations and civil penalties. These figures show 87 percent were in compliance.

Sparks said he was in the process of working with Oregon Occupational Safety and Health Administration (OR-OSHA) to create an interagency agreement. The agreement will state how referrals and joint inspections will be accomplished.

- **Policy, Legislation and Administrative Rules**
 - Legislative Overview**

Nancy Sellers, Senior Policy Analyst, presented a memorandum outlining an overview of the legislative process and the role of the board member in this process.

Hierarchy of Law Governing State Agencies

- US and Oregon Constitutions
- Oregon Revised Statutes
 - *Oregon Laws*
 - *Budget Notes*
- Governor’s Executive Orders/Agency Directives
- Oregon Administrative Rules
- Agency Policies
- Agency Practices

OHLA works closely with the Governor's Office, Department of Administrative Services, partner agencies, stakeholder groups and the Legislature to ensure that all bills, potential amendments and budgets that may impact the agency and its stakeholders are fully vetted and understood.

Sellers made it clear to the board that as OHLA board members they can be a great asset in the legislative process. Board members often play a dual role: both as agents of the state in their official capacity with OHLA, and as private citizens working in their individual professions. If a legislator, staffer or other agent of the Legislature contacts a board member directly regarding policies and legislation of the agency, please clarify with him or her that you are speaking as an individual, and not as a representative of the regulatory/advisory board of which you are a member.

Persons acting as agents of the executive branch of government – including agency management, employees and appointed board and council members – are not allowed to advocate for or against legislation, budgets or other legislative initiatives without the express permission of the Governor's Office.

Sellers reminded board members that if legislators or staffers are looking for an *official response*, please direct them to her or Samie Patnode, Policy Analyst, and they will follow up promptly and keep the board informed.

-Legislation Information Notification Update System (LINUS)

Sellers explained the LINUS bill tracking system to the board and how the agency is tracking any bills of interest to the agency or that may have a statewide impact. She provided a handout for the board to review and explained the priority labeling, summaries, and the location of each bill. With the LINUS system the agency will know when a particular bill has been scheduled for a hearing. Sellers said more than 1600 bills have dropped so far this session with 4,000 expected. Currently, the agency is tracking 103 of those bills. Sellers encouraged board members to contact either her or Samie if they have a bill they are interested in and wish to have information sent to them.

-817-060-0050 Use of Formaldehyde Products Temporary Rule

Samie Patnode, Policy Analyst, presented the temporary rule that became effective on November 15, 2010 which adopted, by reference, current standards under Oregon Occupational Safety and Health Division (OSHA), ORA 437-002-0360(31) relating to formaldehyde. Patnode stated the temporary rule expires on May 10, 2011.

4. Executive Session

Debora Masten called for the Board of Cosmetology to enter into executive session at 10:30 am pursuant to ORS 192.660(2)(f) for the purpose of considering information or records exempt from public inspection and pursuant to ORS 192.660(2)(h) "to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed." No decisions will be made in executive session.

Debora Masten concluded executive session and reconvened regular session at 12:12 pm. Masten stated no decisions were made.

5. Public Comment

Oregon State Representative Matt Wingard, representing Legislative House District 26, spoke to the Board of Cosmetology regarding barber Dale Smith, Sherwood, who is out of compliance in regards to his barber certification. Rep. Wingard asked the board to see beyond the statutes and rules to see the human being in front of them and to find a way to return Mr. Smith back to work as soon as possible. Rep. Wingard said that {barbering} is Mr. Smith's life and for older people, being able to work, where they are productive, and contributing, is critical. Rep. Wingard further stated that part of the Board of Cosmetology's mission statement is the idea of the public health and well being, and an individual's health and well being may very well be at stake based on the decisions that are reached here. Rep. Wingard said his intention was to come to the board meeting today to show support for Mr. Smith and to thank the board members for the work that they do. He encouraged the board to look beyond the printed word and find a clever way to solve this "so we all meet our mission and Mr. Smith gets back to work."

Barber Dale Smith, of Sherwood, came forward to provide comment regarding his certification status. He stated he has been a barber for 50 years and he is the only barber in the Sherwood area. Mr. Smith acknowledged that he let his certification lapse. Mr. Smith stated he thought he "could just pay up his dues and have his certification reinstated so he could get back to work." Because he does not have a current certification, Mr. Smith expressed the importance of returning to work and asked members of the board to allow him to pay only delinquency fees to reinstate his certification.

Barber Sam Hays appeared before the board in support of Dale Smith. Mr. Hays and Mr. Smith have been friends for several years. Mr. Hays stated his intention was not to bring any embarrassment to the Board of Cosmetology and there was no doubt that Mr. Smith let his certification lapse. Hays explained that Mr. Smith is an integral part of the Sherwood community and Hays is trying to help Mr. Smith to obtain certification again. Hays said he wasn't sure if it was inexperience or an age issue, but a written test is probably something that Mr. Smith would be unable to pass.

Everitt stated that last Friday, one of the agency's inspectors inspected Mr. Smith's barbershop and found him out of compliance and that Mr. Smith had been out of compliance for the last five years. Everitt said Mr. Smith does not need to return to barber school as had been reported in the news media. That requirement has never been in the statute nor is the issue. Everitt said Mr. Smith, by virtue of the statute today, must take a practical examination (which is a demonstration of skills, not a written test). The agency has been in conversations with Mr. Smith on a number of occasions to explain to him how this system of recertification works. Based on current statute and on advice from the agency's legal counsel, the board will be presented with a number of options to consider. Everitt stated he has asked Mike Snook, former board chair and a cosmetology and barber school owner, to lend whatever assistance to Mr. Smith he deems appropriate to bring Mr. Smith into compliance. The agency, Everitt continued, is very concerned about this issue, and wants Mr. Smith to go back to work, have a thriving career, and work in his profession for as long as he can. However, the agency must work within the statutes provided by the Legislature. Regardless of the news media attention this issue has created, the fact still remains that there is a human being here. The agency is required to do certain things and a board that has its obligations to fulfill. Everitt reiterated that we are all trying to do the right thing for Mr. Smith.

Masten addressed the audience and the other board members and stated that while all of them may wish to give Mr. Smith special treatment – because obviously the lapse of certification was an oversight on his part – unfortunately, there are consequences when these things happen. If the board gives

preferential treatment to one certificate holder it would set a precedent to give special consideration to all those certificate holders who forget to renew. Masten stated the board members must keep in mind that they have to go by legally sound principals of equality within the state for all certificate holders.

Herb Hirst commented the idea of helping someone out is very appealing, and certainly the board will do everything it possibly can. But ORS 690.085 {see below} is very specific about a person who has not renewed for a period of three years after the date of expiration. Hirst stated he has no doubt that Mr. Smith is more than qualified as he has been cutting hair for 50 years and he could pass a practical examination easily; but a lot of things change over a period of time, for example, new procedures, new pieces of equipment, and new laws. Hirst said one issue that has always bothered him about the cosmetology profession is that there is no requirement for continuing education. Hirst stated the board has a responsibility to make sure it doesn't end up setting precedents that would result in the board sitting in one of these types of sessions every month.

The following are the statute and the administrative rules under discussion:

ORS 690.085 Renewal of certificates, registrations, and licenses.

(5)A certificate that has not been renewed for a period of three years after date of expiration may be reinstated if the applicant:

- (a) Submits an application for certification;**
- (b) Satisfactorily passes the examination as specified by board rule;**
- (c) Submits payment of required fees; and**
- (d) Meets other requirements as determined by board rule.**

817-030-0018 Examination for Reinstatement of Certification

Pursuant to ORS 690.085(5), a certificate that has expired beyond three years, unless previously approved by the board, may be reinstated upon compliance with all of the following criteria and submission of required documentation:

- (1) A signed and completed application form prescribed by the agency in accordance with requirements specified in OAR 331-030-0000 and 817-030-0015, which includes the applicant's expired certificate number(s);**
- (2) A completed official practical examination transcript issued by the appropriate Oregon licensed career showing attainment of a passing score on the practical examination conducted by the Oregon licensed career school within two years preceding the date of application;**
- (3) Attainment of a passing score on the Board approved written examination(s); and**
- (4) Payment of the required application, examination and certificate fees specified in OAR 817-040-0003.**

Everitt introduced Nancy Sellers, Senior Policy Analyst, who framed the statutory requirements and options for the Board of Cosmetology to consider. Sellers provided the board with an issue statement addressing questions relating to OHLA's statutory and administrative authority to recertify a barbering certificate that has lapsed for longer than three years. The issue statement discussed Mr. Smith's original licensure in Oregon in 1957, the agency renewal notification process, and a timeline of events leading up to today's board meeting. The issue statement also noted that Mr. Smith seeks recertification, and has stated publicly and to OHLA that he does not believe he should be required to retest to be recertified. Sellers stated that neither the board nor the agency has the authority to waive in whole or part OAR 817-

030-0018(1)(2) or (4) per legal counsel advice from the Department of Justice (DOJ). Sellers said the issue at hand is to determine what leeway the board has in regards to OAR 817-030-0018(3) **“Attainment of a passing score on the Board approved written examination(s).”** Sellers read the “Questions before the Board” section from the issue statement. By statute, Mr. Smith cannot be certified in Oregon until he is able to meet all of the requirements set forth by the Board of Cosmetology. McMillan said the practical examination is conducted at a private career school and Mr. Smith cannot come in for the Oregon Laws and Rules examination until the practical examination has been completed and passed. In conclusion, Sellers read from the issue statement: “The Board should consider its role as a regulatory body protecting public safety. It must base its decisions on legally sound principles and equitable treatment of all licensee/registrants.” The issue statement also provided background information and statistics. As of January 21, 2011, the Board of Cosmetology regulates 4,651 actively certified barbers within the state. Of the 4,651 active barbers, 751 are between the ages of 65 and 89. The issue statement’s requested action was for the board to answer the questions based upon advice sought by OHLA from DOJ and refer the matter to the agency for resolution.

Masten stated the board needed to decide whether to accept the 1957 written examination in part or whole and, if in part, what else would the board require for Mr. Smith to be reinstated? Hirst stated with drastic changes in Oregon laws and rules since 1957 he would like to see Mr. Smith pass Oregon Laws and Rules examination at a minimum. Shelley Couch stated the board’s function was to protect the public and she concurred with Hirst that the Oregon Laws and Rules examination should be required of Mr. Smith. Heidi Zuniga stated with Mr. Smith’s years of experience, the knowledge should be there and he may be able to just refresh. Sharon Wiser stated she tries to instill in her students the need and importance to follow the law. Tiffany Galvan agreed Mr. Smith should at minimum take the Oregon Laws and Rules examination.

MOTION:

Herb Hirst made a motion that the Board of Cosmetology accept in part the 1957 written examination under the Board of Barber Examiners of a passing score and, upon completion of the Oregon Laws and Rules examination, Mr. Smith be reinstated in accordance with ORS 690.085(5). A second was made by Heidi Zuniga.

During discussion of the motion, Wiser asked for clarification of the term “partial.” Hirst stated the 1957 written examination, to the best of the board’s knowledge, did not include Oregon Laws and Rules as they stand today and that examination also needs to be passed. Hirst stated Mr. Smith would still have to take a practical examination.

MOTION:

Herb Hirst *amended* his motion to state: the Board of Cosmetology conditionally accepts Mr. Dale Smith’s passage of the 1957 written examination under the Board of Barber Examiners as full attainment of a passing score on a board-approved written examination as required in OAR 817-030-0018(3) upon completion of training in the laws and regulations of Oregon pursuant to OAR 817-030-0018(4). A second was made by Shelley Couch. Roll call vote was taken with the following results: Sharon Wiser nay, Tiffany Galvan yea, Herb Hirst yea, Shelley Couch yea, Heidi Zuniga nay, and Debora Masten yea. The motion passed.

Everitt explained the next steps for Mr. Dale Smith: He does not have to take the written field-of-practice examination, but he must take the Oregon Laws and Rules examination, the practical

examination administered through a private career school of his choice, fill out an application, and submit all required fees, which will meet both the statutory and the rule requirements. Everitt stated the agency will provided Mr. Smith with a packet of information and Mr. Snook is here to discuss the practical examination if Mr. Smith so wishes. It is up to Mr. Smith now to proceed and the agency will help in any way it can to smooth the process, Everitt added.

6. Items for Board Action

- **Lobbyist Contract**

Masten opened the deliberation regarding continuing or terminating the lobbyist contract. Everitt framed the question before the board. He stated the agency has been working with Markee & Associates, Inc., for a number of years and has always found his services to be respectful, valuable, and an asset in what has been accomplished in the past and up to this point. Everitt said an overview of Mr. Markee's services was sent to board members last week for review. Everitt asked the board to take into consideration the Board of Cosmetology's budget at this point as well as the services the agency can now provide to the board. Everitt said the contract's termination date is June 2011, and in answer to Hirst's question Everitt responded the contract allows for either party to give a 30-day written notice of termination of contract. Hirst asked if there are any other boards under the OHLA umbrella that currently have a lobbyist. Everitt stated there are not. Couch asked if anyone else within the agency can provide the same services. Everitt responded that he has been a registered lobbyist since he has been with this agency, which means he carries the agency's agenda to the Legislature. Everitt also noted Nancy Sellers has approximately 20 years of experience with the Legislature, not only as an agency director but as a legislative assistant. The agency's knowledge of the legislative system is fairly well developed at this particular stage. It is the agency's responsibility to represent the board to the Legislature. There is a difficult economic issue to consider and the use of this particular lobbyist has been less over the last six months to a year.

MOTION:

Herb Hirst moved that given the information the board has received from the OHLA director and knowing the Board of Cosmetology's fiscal condition, that it exercise the opt-out clause effective February 28, 2011, providing more than the 30-day notice required to Markee & Associates, Inc., and that the Board of Cosmetology no longer have a lobbyist other than those provided by OHLA staff. The motion was seconded by Sharon Wiser. The motion passed unanimously.

NOTE: Items for Board Action discussion on administrative rules began before the executive session and were completed afterwards.

- **Approve Proposed Administrative Rules**

Patnode presented an issue statement with a summary of all the proposed changes to adopt, amend and repeal certain Board of Cosmetology administrative rules recommended by OHLA and the Board of Cosmetology Legislation and Rules Committee regarding Chapter 817. A recommendation for proposed administrative rule fiscal impact was also included in the issue statement. Patnode made changes to the proposed administrative rule document as instructed by the board during the meeting. She also recommended scheduling two Legislation and Rules Committee meetings to continue to review proposed administrative rules for those issues that required more work. Patnode noted she will review OAR 817-005-0005, Definitions, and present her changes to the Legislation and Rules Committee at a later date for review. Patnode noted the agency's assistant attorney general will also review all the administrative rule changes.

MOTION:

Herb Hirst made a motion with a second by Shelley Couch to recommend to the agency that the proposed administrative rules be filed with the Secretary of State. The motion passed unanimously after a roll call vote was taken.

Patnode offered potential dates for two more Legislation & Rules Committee meetings. The board decided on March 14, 2011, and April 11, 2011, with the start time of 9 am for both meetings.

Patnode reviewed with the board those areas in the administrative rules where changes had been made for fiscal impact and noted such areas for the Statement of Need and Fiscal Impact form also to be filed with the Secretary of State.

- Appoint Alternates to Committees

Masten appointed Tiffany Galvan as alternate committee member to both the Legislation and Rules Committee and the Education and Examination Committee.

7. Other Board Business/Board Interest

Board members were provided with information on their notebook computers to take with them. Patnode presented "Making Rules in Oregon" tutorial and offered to go over the material with board members. The board decided to take the materials home for further review and Patnode asked board members to read through the material while making notes and let her know if they had any questions. Patnode told the board it was its duty, as the governing body, to review and consider all comments received either verbal or written, and to deliberate and decide if more rule changes needed to be made or not.

Board interest files included: the Third Annual NW Environmental Health Conference (the Advancing Worker Health in Salons break-out session may be of interest) and a question and answer correspondence between Kraig Bohot and Leif Hoffmann regarding research questions of Mr. Hoffmann.

The meeting adjourned at approximately 2:12 pm.

Prepared by: Sinnamon Harris, Board Specialist

Director's Report

Outreach and Communication



Overview of Public Information Activities at OHLA

Board members are familiar with the monthly content featured in the *Northwest Stylist*, but what are the other activities that constitute the public information program at OHLA?

Here's a quick snapshot:

Licensing Line – OHLA's electronic news digest highlights agency-wide issues and developments in OHLA-regulated professions.

Print Publications – Agency and profession-specific brochures, reports and fact sheets provide information dissemination beyond the online world.

OHLA Website – With unique sections for each board, council and profession OHLA oversees, the agency website features more than 50 global pages (agency-wide information) and more than 270 total pages, not counting external links, photos and PDF / Word files.

Media Relations – From responding to media inquiries to proactively issuing news releases to monitoring media coverage, OHLA informs and clarifies licensing and regulatory issues.

Presentations – Need a PowerPoint? Communications delivers.

Public Record Requests – OHLA responds to numerous public record requests for licensing and regulatory information on licensees and agency and board/council activities.

Application Forms – Communications develops and maintains application forms for all OHLA-regulated professions and agency-wide forms.

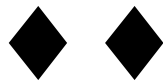
Kraig Bohot / OHLA Communications

503-373-1939 – *direct line*

kraig.bohot@state.or.us

www.oregon.gov/OHLA

Statistical Report



**Licensing, Active License Trends &
Web Site Traffic**

Oregon Health Licensing Agency

Board of Cosmetology

2009-11 Biennium

	Jul09-Sep09	Oct09-Dec09	Jan10-Mar10	Apr10-Jun10	Jul10-Sep10	Oct10-Dec10	Jan11-Mar11	
Licensing	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
New issued Facility licenses	169	113	153	158	189	137	192	1111
New issued Independent Contractor registrations	253	216	288	329	332	243	294	1955
New issued Certificate of Identification certificates	28	37	61	71	65	49	76	387
New issued Barber certificates	16	22	15	16	10	12	17	108
New issued Hair Design certificates	168	285	343	259	305	283	274	1917
New issued Esthetician certificates	147	183	281	281	247	216	278	1633
New issued Nail Tech certificates	119	155	214	176	188	175	184	1211
Re-issued authorizations	89	85	167	217	285	177	152	1172
Renewals - Over the counter (OTC) or by mail	6198	3164	2868	2728	4289	3630	4388	27265
Renewals - Online	3883	2231	2821	2767	3406	3292	3567	21967
% of authorizations renewed OTC or by mail	61%	59%	50%	50%	56%	52%	55%	55%
% of authorizations renewed online	39%	41%	50%	50%	44%	48%	45%	45%

Examination Report

	Jul09-Sep09	Oct09-Dec09	Jan10-Mar10	Apr10-Jun10	Jul10-Sep10	Oct10-Dec10	Jan11-Mar11	Total
Oregon Laws and Rules	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
State Exams passed	362	437	458	462	495	453	469	3136
State Exams failed	51	49	41	58	52	56	61	368
% Passed	88%	90%	92%	89%	90%	89%	88%	89%
National Hair Design Exam	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
National Exams passed	135	190	6	0	0	0	0	331
National Exams failed	20	12	2	0	0	0	0	34
% Passed	87%	95%	75%	0%	0%	0%	0%	91%
State Hair Design Exam	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
State Exams passed	0	24	247	227	314	293	282	1387
State Exams failed	0	3	31	39	48	60	63	244
% Passed	0%	89%	89%	85%	87%	83%	82%	85%
National Barber Exam	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
National Exams passed	7	8	0	0	0	0	0	15
National Exams failed	3	0	0	0	0	0	0	3
% Passed	70%	100%	0%	0%	0%	0%	0%	83%
State Barber Exam	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
State Exams passed	0	1	7	12	8	14	17	59
State Exams failed	0	2	3	13	18	9	15	60
% Passed	0%	33%	70%	48%	31%	61%	53%	50%
National Esthetics Exam	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
National Exams passed	128	125	4	0	0	0	0	257
National Exams failed	65	53	10	0	0	0	0	128
% Passed	66%	70%	29%	0%	0%	0%	0%	67%
State Esthetics Exam	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
State Exams passed	0	18	207	247	249	218	285	1224
State Exams failed	0	1	14	21	22	30	34	122
% Passed	0%	95%	94%	92%	92%	88%	89%	91%
National Nail Tech Exam	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
National Exams passed	105	139	18	0	0	0	0	262
National Exams failed	24	39	24	0	0	0	0	87
% Passed	81%	78%	43%	0%	0%	0%	0%	75%
State Nail Tech Exam	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	Total
State Exams passed	0	14	148	162	195	177	186	882
State Exams failed	0	2	40	67	88	80	86	363
% Passed	0%	88%	79%	71%	69%	69%	68%	71%

Oregon Health Licensing Agency

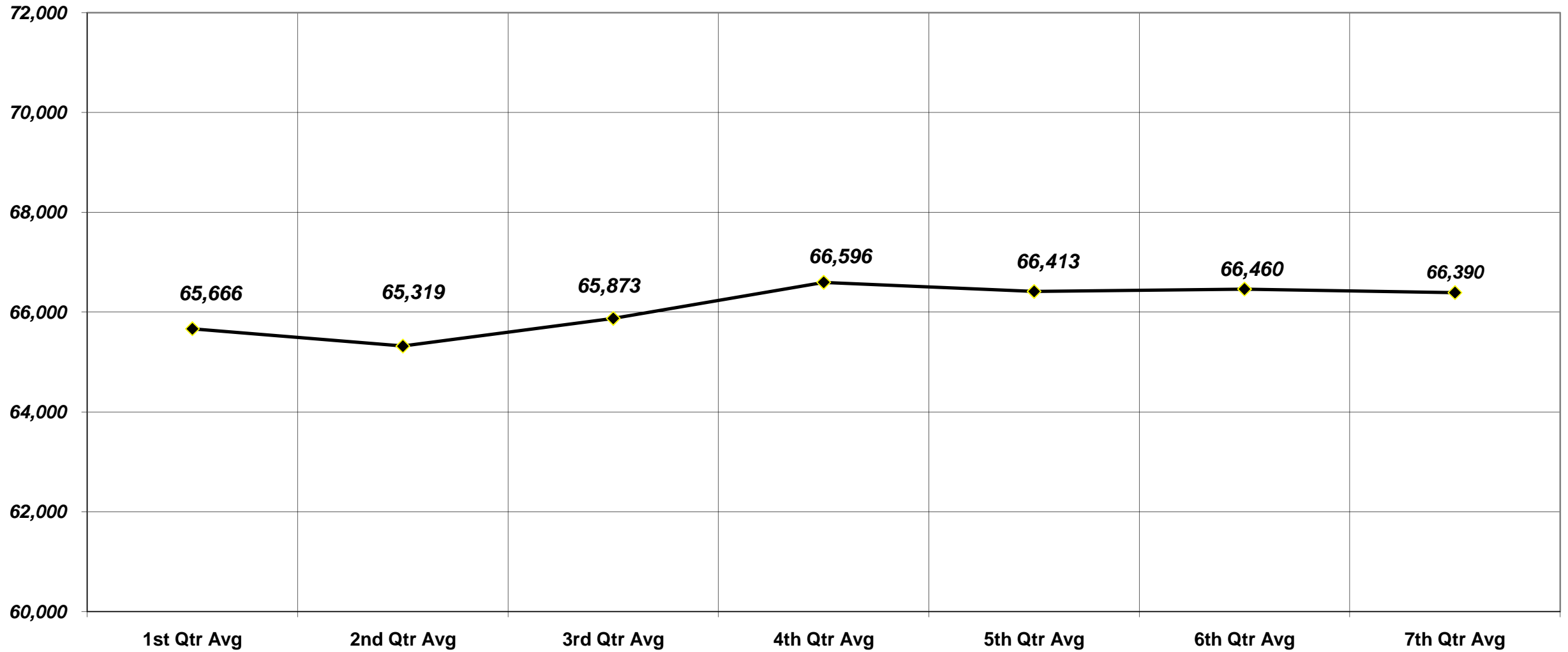
Board of Cosmetology

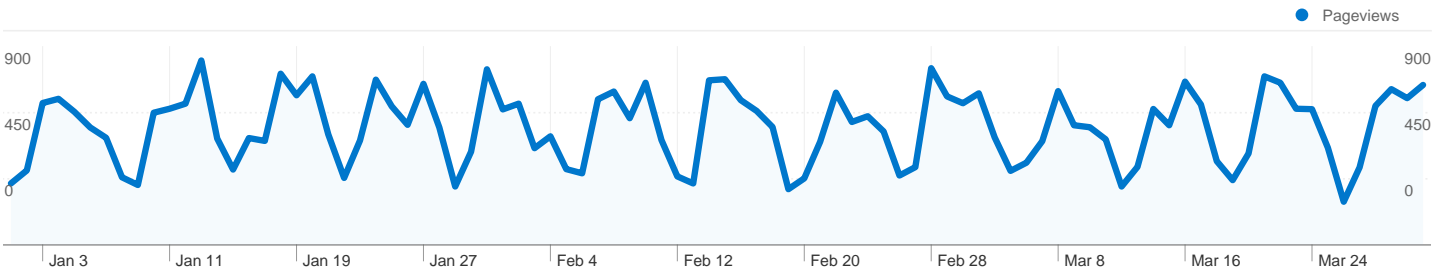
2009-11 Biennium

Jul09-Sep09 Oct09-Dec09 Jan10-Mar10 Apr10-Jun10 Jul10-Sep10 Oct10-Dec10 Jan11-Mar11 Apr11-Jun11

Regulatory	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr	7th Qtr	8th Qtr	Total
Critical Complaints regarding licensing	12	9	6	4	3	7	0	0	41
Critical Complaints regarding safety/sanitation	1	1	0	1	0	0	0	0	3
Complaints regarding licensing concerns	12	11	20	28	41	26	13	17	168
Complaints regarding safety/sanitation issues	14	8	8	7	9	10	13	6	75
Complaints regarding services provided	4	1	5	4	8	2	7	4	35
Complaints closed	42	30	39	43	45	19	22	0	240
Inspections	1950	558	879	2098	3489	1370	1636	269	12249
Notice of Proposed Sanctions	172	75	85	48	24	41	4	22	471
Final orders issued	163	115	84	48	24	35	5	1	475

Oregon Health Licensing Agency
Board of Cosmetology
Average active license trend through March 2011
2009-11 Biennium





293 pages were viewed a total of 48,136 times

Pivoted by 283 sources

Filtered for pages containing "/OHLA/COS"

Content Performance

Pageviews 48,136 % of Site Total: 35.35%	Unique Pageviews 38,354 % of Site Total: 35.41%	Avg. Time on Page 00:01:19 Site Avg: 00:01:16 (4.72%)	Bounce Rate 40.61% Site Avg: 46.25% (-12.21%)	% Exit 33.24% Site Avg: 35.60% (-6.64%)	\$ Index \$0.00 Site Avg: \$0.00 (0.00%)
---	--	--	--	--	---

Pivot by: Source

1 - 5 of 283

	Total	google	oregon.gov	(direct)	bing	yahoo
Page	Pageviews	Pageviews	Pageviews	Pageviews	Pageviews	Pageviews
/OHLA/COS/index.shtml	10,967	7,127	600	567	895	805
/OHLA/COS/how_to_get_licensed.shtml	4,787	2,734	513	280	327	256
/OHLA/COS/forms.shtml	4,199	927	2,329	217	128	187
/OHLA/COS/COSlaws_rules.shtml	3,895	2,077	226	298	432	340
/OHLA/COS/COSfees.shtml	3,118	1,739	238	189	201	179
/OHLA/COS/contact_us.shtml	2,801	1,747	194	186	223	192
/OHLA/COS/Reciprocity.shtml	1,739	1,110	125	119	76	121
/OHLA/COS/cosoverview.shtml	1,676	1,011	97	90	137	113
/OHLA/COS/Features/Bacterial_Skin_Infections.shtml	783	215	1	94	34	30
/OHLA/COS/docs/Forms/Cosmetology_Practitioner_Packet.pdf	661	225	239	89	18	35

1 - 10 of 293

2009-2011 Budget



Revenues & Expenditures

Oregon Health Licensing Agency
Board of Cosmetology
Cumulative Revenue and Expenditures
For the Biennium 2009-11

OREGON HEALTH LICENSING AGENCY COSMETOLOGY FUND 7520 STATEMENT OF CASH FLOWS FOR THE PERIOD 07/01/09 - 3/31/11	
09-'11 Beginning Cash Balance	\$ (99,912)
Revenues	\$ 4,281,782.41
Dept of Education Transfers In	\$ 4,000.00
Transfer Out - Cost/Cash Adj.	\$ (67,378.21)
Expenditures	\$ 4,043,140.83
Less: Accrued Expenditures	\$ (6,545.45)
Less: Total Expenditures	\$ (4,036,595.38)
Subtotal: Resources Available	\$ 81,896.36
Change in (Current Assets)/Liabilities	\$ (232.70)
Ending Cash Balance (Actual)	\$ 81,663.66
Ending Cash Balance Goal	\$ 578,922.00
Cost Allocation_7/1/2009 - 1/31/2010	
Indirect Cost %	76.39%
Cost Allocation_2/1/2010 - 9/30/2010	
Indirect Cost %	75.35%
Cost Allocation_10/1/2010 - 6/30/2011	
Indirect Cost % - DO / BSD / LICEN	78.27%
Regulatory Usage Costs	

Oregon Health Licensing Agency
Board of Cosmetology
Cumulative Revenue and Expenditures
For the Biennium 2009-11

OREGON HEALTH LICENSING AGENCY COSMETOLOGY FUND 7520 STATEMENT OF CASH FLOW FOR THE PERIOD 07/01/09 - 06/30/11	
09-'11 Beginning Cash Balance	\$ (99,912.46)
Revenues	\$ 5,056,326.15
Dept of Education Transfers In	\$ 8,400.00
Transfer Out - Cost/Cash Adj.	\$ (67,378.21)
Expenditures	\$ 4,742,659.16
Less: Accrued Expenditures	\$ -
Less: Total Expenditures	\$ (4,742,659.16)
Subtotal: Resources Available	\$ 154,776.32
Change in (Current Assets)/Liabilities	\$ -
Ending Cash Balance (Estimate)	\$ 154,776.32
Ending Cash Balance Goal	\$ 578,922.00
Cost Allocation_7/1/2009 - 1/31/2010	
Indirect Cost %	76.39%
Cost Allocation_2/1/2010 - 9/30/2010	
Indirect Cost %	75.35%
Cost Allocation_10/1/2010 - 6/30/2011	
Indirect Cost % - DO / BSD / LICEN	78.27%
Regulatory Usage Costs	

**Regulatory
Operations Division
Report**



BOARD OF COSMETOLOGY

Regulatory Operations Division Report April 25, 2011

Between July 2009 and April 2011, 322 complaints were filed with the agency.
Of the 322 complaints, 82 remain open.

Open complaints	
Complaint Count	Complaint Type Description
53	Licensing Concern
20	Safety/Sanitation Issues
9	Services Provided

Licensing concerns: 53

- 21 investigations are complete and are in the process of being closed
 - 11 resulted in civil penalties
 - Seven will be closed without action
 - One was referred to a different agency
 - One resulted in a Notice of Intent to Suspend
 - One resulted in a Notice of Intent to Revoke
- 32 are under investigation

Sanitation Issues: 20

- Three investigations are complete are in the process of being closed
 - Two resulted in civil penalties
 - One the investigation found no violations of laws or rules
- 17 are under investigation

Service concerns: 9

- One resulted in a civil penalty
- Eight are under investigation

The current regulatory reporting period is between January 18, 2011, and April 19, 2011.

The Agency received 60 complaints during this reporting period.

Licensing concerns: 30

- **10** investigations are complete and are in the process of being closed
 - **Five** resulted in civil penalties
 - **Five** will be closed without action
- **20** are under investigation

Sanitation Issues: 20

- **Five** investigations are complete are in the process of being closed
 - **Two** resulted in civil penalties
 - **Three** the investigation found no violations of laws or rules
- **15** are under investigation

Service concerns: 10

- **Three** resulted in a civil penalties
- **Seven** are under investigation

Policy, Legislation & Administrative Rules

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on March 1, 2011 by the
Date prior to or same as filing date

Oregon Health Licensing Agency OAR 331
Agency and Division Administrative Rules Chapter Number

Samantha Patnode, Policy Analyst 700 Summer St. NE, Suite 320, Salem, OR 97301-1287 503-373-1917
Rules Coordinator Address Telephone

to become effective March 17, 2011 through August 28, 2011
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Investigatory appearances before the agency and active military status protocols for authorization holders.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT: 331-010-0050

AMEND: 331-020-0040

SUSPEND:

Stat. Auth.: ORS 676.615

Other Auth.: ORS 408.450

Stats. Implemented: ORS 676.607, 676.608, 408.450

RULE SUMMARY

The purpose of this temporary rule is to clarify what constitutes an appearance before the agency during investigations of alleged violations of statutes or rules under the authority of the agency, its boards or councils.

The purpose of this temporary rule is to allow authorization holders in active military status waiver of renewal, fees and continuing education requirements, as well as protocols for restoration of former authorization status.

Authorized Signer Randall Everitt, Director 3/16/2011
Printed name Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
ARC 940-2005

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Health Licensing Agency
Agency and Division

OAR Chapter 331
Administrative Rules Chapter Number

In the Matter of:
ADOPT: 331-010-0050

AMEND: 331-020-0040

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Investigatory appearances before the agency and active military status protocols for authorization holders.

Statutory Authority: ORS 676.615
Other Authority: ORS 408.450
Stats. Implemented: ORS 676.607, 676.608, 408.450

Need for the Temporary Rule(s):

The temporary rule is necessary to properly implement the agency's investigative protocol, used for regulatory investigations of matters related to all of the professions under the authority of the agency, its boards and councils.

A new investigative protocol was implemented on or about August 30, 2010, for all agency programs. All individuals who are subjects of a complaint made to the Oregon Health Licensing Agency, its boards, or its councils are subject to this protocol, which was designed to ensure efficiency, consistency and fairness in all agency investigations. However, to properly implement the steps of the investigatory protocol, the agency needs to clarify what constitutes an appearance before the agency. Investigatory appearances before the agency are accompanied by a distinct set of rights for the subjects of investigations and requirements for the agency under ORS 676.608(8), but neither statute nor rule currently describes which activities constitute such an "appearance," impeding consistent implementation of appearance requirements under the appropriate protocol step by agency staff, and preventing subjects of investigations from clearly understanding when their appearance rights are triggered. A rule clarifying what activity constitutes an "appearance" would provide staff clear guidelines regarding when to fulfill investigatory appearance requirements, and would inform the subjects of investigations when, within the protocol steps, their appearance rights are triggered. The agency must act promptly on this matter because the investigative protocol has already been implemented and is being used in all investigations.

The temporary rule is necessary to allow authorization holders in active military status waiver of renewal, fees and continuing education requirements, as well as protocols for restoration of former authorization status.

Documents Relied Upon, and Where They Are Available:

Documents relied upon by the agency are the investigative protocols and assistant attorney general advice.

All documents are available at the Oregon Health Licensing Agency 700 Summer Street NE, Suite 320, Salem, OR 97301-1287. To obtain information or copies of information please contact Samantha Patnode, Policy Analyst, at 503-373-1917, during normal business hours Monday Through Friday between 7:30am to 4:30pm. Email: samie.patnode@state.or.us

Justification of Temporary Rule(s):

The temporary rule is necessary to acknowledge federal standards for authorization holders in active military status and provide clarity regarding appearance before the agency as it relates to investigations and the investigative protocol.

Authorized Signer	Randall Everitt, Director Printed name	3/16/2011 Date
-------------------	---	-------------------

OREGON HEALTH LICENSING AGENCY

DIVISION 10

AGENCY GENERAL ADMINISTRATION RULES

331-010-0050

Authorization Holders; Military Leave

(1) A practitioner authorized to practice under a program listed in ORS 676.606 is not required to renew the authorization or pay renewal fees while in active military service unless required by the authorization holders branch of the military.

(2) To be restored to former authorization status the authorization holder must notify the agency in writing within 60 days of being honorably discharged.

(3) No fees will be due until the following renewal period.

(4) Requirements for completing continuing education hours during an authorization holder's active duty period shall be evaluated on a case by case basis.

DIVISION 20

AGENCY REGULATORY OPERATIONS RULES

331-020-0040

Complaint Processing and Investigation

Pursuant to ORS 676.608, complaints filed with the Oregon Health Licensing Agency will be handled as follows:

(1) The agency will determine if the complaint is related to a profession or occupation regulated and administered by the agency and the complaint falls within authority delegated to the agency by statute.

(2) The agency investigator(s):

(a) Will review the information and as applicable, interview parties and witnesses, and examine physical evidence relating to the complaint;

(b) Will advise on whether an authorization holder or other individual practiced within the acceptable standards of the particular program;

~~(c) May attempt to informally resolve the matter;~~

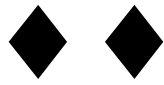
~~(d)~~ (c) Will make recommendations for agency action.

(3) After receiving advice from the investigator(s), the agency will determine what action will be taken in accordance with ORS 676.608.

(4) As used in ORS 676.608(8), to "appear before the agency" includes: an investigative interview conducted on agency premises or before a board, council, or subcommittee of a board or council; any depositions authorized by the agency; pre-hearing conferences; contested case hearings; and appearances compelled by subpoena. It does not include an investigative interview conducted telephonically or outside of agency premises.

Stat. Auth.: ORS 183, 676.605, 676.608, 676.615
Stats. Implemented: ORS 183, 676.605, 676.608, 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

Items for Board Action



**Adopt Permanent
Administrative
Rules**



ISSUE:

To adopt, amend and repeal certain Board of Cosmetology administrative rules.

DISCUSSION:

Review and discuss changes to the administrative rules recommended from the Oregon Health Licensing Agency and the Board of Cosmetology Legislation and Rules Committee regarding Chapter 817. The following is a summary of changes:

817-005-0005 Definitions

Align definitions with statutory requirements, reduce to avoid duplication and modify for readability including defining educational institutions and revising definition of official transcript. Number of definitions reduced from 65 to 48.

817-010-0065 Safety and Infection Control Rules; Facility Standards

Align with statutory changes made during the 2009 Legislative Session revising the name of Certificate of Identification to Freelance Authorization and adopting reference the most current American National Standards for Safe Use of Lasers (ANSI).

817-020-0006 Facility Licensing and Operational Requirements

Revise to show a current registration with the Secretary of State Corporations Division and what documentation is required.

817-030-0005 Qualification for Certification

Revise to provide clarity on application requirements including pathways to certification. Pathway 1 Graduate from an Educational Institution including a high school, career school, or community college , Pathway 2 Reciprocity if the applicant has a active certification in another state. Requires that all applicants take all pertinent field of practice written examinations and the Oregon laws and rules examination.

Delete Pathway 3 Non-credential because the agency and the board do not have statutory authority to send non-credentialed candidates to a school for additional training or a practical examination. Upon request from the board the Department of Education Private Career Schools may refer the candidate to a career school if documentation listed under ORS 345.400 is not available.

Provides specific information related to competency based schools.

817-030-0030 General Examination Information

Merge several rules to make one fluent administrative rule related to examinations including scheduling, languages, computer based testing, monitoring, prohibitions and consequences.

817-030-0065 Written Retake Examination Requirements

Revise to make one section relating to retake examinations including scheduling, and number of failed examinations allowed and procedures for retaking. Also indicates the documentation necessary to take a 4th and 7th examination.

817-030-0071 Practical Examination Evaluation

Adopt rule which explains requirements and procedures for having a specific educational institutions practical examination approved as the Boards certifying examination including scheduling and consequences.

817-035-0010 Issuance and Renewal of Certificate, Licenses, Registrations or Freelance Authorizations

Revise to align renewal with agency standards and protocols. Protocol for practitioner certificate and facility license holder include renew, renew late up to 3 years, and after 3 years reapply.

New protocol for an independent contractor or freelance authorization holder would allow them to enter a dormant status. No limit would be applied; however a fee would need to be paid to reactivate the authorization. **New reactivation fee to become effective July 1, 2011.**

Requires for renewal current Secretary of State business licensing and business name information be submitted for a facility license and if an independent contractor or freelance authorization holder are operating as a business and not as an individual they must submit current documentation.

817-035-0050 Application and Criteria for Freelance Authorization

Align with statutory changes made during the 2009 Legislative Session revising the name of Certificate of Identification to Freelance Authorization. Remove renewal requirements and moved to OAR 817-035-0010. Repealed subsections (7) do to lack of statutory authority to limit where a freelance authorization holder may work.

Requires for initial authorization if a freelance authorization holder is operating as a business and not as an individual they must submit current documentation.

817-035-0070 Independent Contractor Registration Eligibility

Requires for initial authorization if an independent contractor registration holder is operating as a business and not as an individual they must submit current documentation.

817-035-0110 Posting Requirements

Align with statutory changes made during the 2009 Legislative Session revising the name of Certificate of Identification to Freelance Authorization. Allow practitioners, independent contractors or freelance authorization holders to cover address with removable covering. Requires facilities and independent contractors post most recent inspection certificate in public view.

817-040-0003 Fees

Lower fees related to initial certification holders, **effective June 1, 2011**. Change delinquency to up to three years. Align with statutory changes made during the 2009 Legislative Session revising the name of Certificate of Identification to Freelance Authorization.

817-060-0050 Use of Formaldehyde Products

Adopt permanently by reference the requirement by reference adopt Oregon related to use of formaldehyde the .

Division 90 Civil Penalties

All rules related to civil penalties have been revised for consistency and accuracy.

The following administrative rules are being repealed to streamline and clarify duplicate information:

817-030-0015 Practitioner Application Requirements

Merged with 817-030-0005 Qualification Application Requirements.

817-030-0018 Examination for Reinstatement of Certification

Merged with 817-030-0005 Qualification Application Requirements and 817-035-0010 Issuance and Renewal of Certificate, Licenses, Registrations or Freelance Authorizations.

817-030-0020 Examination Requirements

Merged with 817-030-0030 General Examination Information.

817-030-0040 Type of Examination

Merged with 817-030-0030 General Examination Information.

817-030-0045 Sections Which the Applicant Must Pass

Merged with 817-030-0005 Qualification Application Requirements.

817-030-0055 Notification of the Examination Results

Merged with 817-030-0030 General Examination Information.

817-035-0030 Document Issuance

Repeal due to documents issuance information being in OHLA rules.

The agency has final rulemaking authority under ORS 676.615 and will consider the recommendations made by the Board for permanent administrative rules being filed with Secretary of State Office.

Proposed rules were published in the March 1, 2011 Oregon Bulletin. Public comment was accepted through March 28, 2011 at 5 pm, three written comments were received. A public rule hearing was held on March 28, 2011 at 9 am, one individual testified.

All written and oral comment including the hearing officer report was forwarded to the board for review and consideration.

RECOMMENDATION:

Adopt permanent administrative rules for the following effective dates:

- May 5, 2011 all rules with exception of certain fees;
- June 1, 2011 fee reduction for initial practitioners;
- July 1, 2011 establish fee for safety and infection control training and reactivation of a dormant authorization

**OREGON HEALTH LICENSING AGENCY,
BOARD OF COSMETOLOGY**

DIVISION 5

DEFINITIONS

817-005-0005

Definitions

The following definitions apply to OAR chapter 817, divisions 1 through 120.

~~(1) "Acceptable" means satisfactory or adequate; fulfilling the needs or requirements of a specified rule or provision.~~

~~(2)~~ **(1) "Adequate ventilation"** means ventilation by natural or mechanical methods which removes or exhausts fumes, vapors, or dust to prevent hazardous conditions from occurring in accordance with OAR 437, Division 2 and/or to allow the free flow of air in a room in proportion to the size of the room and the capacity of the room.

~~(3)~~ **(2) "Affidavit of Licensure"** means an original document verifying licensing history and status, including information disclosing all unresolved or outstanding penalties and/or disciplinary actions. The document is issued and signed by the regulatory authority in the state which issued the license with an official seal or stamp affixed to the document; it is not the certificate or license form issued which authorizes the holder to practice. Refer to OAR 331-030-0040.

~~(4)~~ **(3) "Agency"** means the Oregon Health Licensing Agency. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

~~(5)~~ **(4) "Approved"** means accepted by the Agency, Board of Cosmetology or to the appropriate entity.

~~(6)~~ **(5) "Article"** means those items which ~~complement~~ **complement** services provided in the practice of barbering, hair design, esthetics or nail technology, including but not limited to neck-strips, neck dusters, towels or linens, and cloth or plastic capes.

~~(7)~~ **(6) "Barbering"** has the definition set forth in ORS chapter 690.005.

~~(8)~~ **(7)** "Board" means, pursuant to ORS 690.155 and 690.165, the entity that determines practice standards, education and training, and provides consultation to the agency on all disciplinary actions in accordance with ORS 690.167.

~~(9)~~ "Career school" means, pursuant to ORS 345.010, an establishment licensed under ORS chapter 345, to teach barbering, hair design, esthetics or nail technology, or any combination thereof.

~~(40)~~ **(8)** "Certificate" means the document authorizing the holder to perform services in a field of practice, i.e. barbering, hair design, esthetics or nail technology (see, respectively, sections (7), (26), (33) and (44) of this rule).

~~(14)~~ **(9)** "Certificate of Identification-Freelance Authorization" means authorization allowing a practitioner to perform services of barbering hair design, esthetics or nail technology outside of a licensed facility, and in a client's residence or place of business.

~~(42)~~ **(10)** "Chemical service" means the use of any product which restructures or removes hair or changes the shape or appearance of skin, hair or nails.

~~(13)~~ "Clean" means the absence of soil or dirt, or the removal of soil or dirt by washing, sweeping, clearing away, or any other appropriate method used as a preliminary process in rendering a sanitary condition as defined in subsection ~~(57)~~ of this rule.

~~(14)~~ "Cleanable" means a surface that can be made clean as defined in subsection ~~(13)~~ of this rule.

~~(45)~~ **(11)** "Common area" means an area of a facility which is used by all practitioners performing services, including, but not limited to reception areas, dispensing areas, sinks, shampoo bowls, hair dryers and hair dryer areas, and employee lounge areas.

~~(46)~~ **(12)** "Communicable disease or condition" means diseases or conditions diagnosed by a licensed physician as being contagious or transmittable which include but are not limited to the following:

- (a) Chickenpox;
- (b) Diphtheria;
- (c) Measles;
- (d) Meningococcal Disease;
- (e) Mumps;

- (f) Pertussis (whooping cough);
- (g) Plague;
- (h) Poison oak;
- (i) Rubella;
- (j) Scabies;
- (k) Staphylococcal skin infection (boils, infected wounds);
- (l) Streptococcal infections (Strep throat);
- (m) Tinea (ring worm);
- (n) Tuberculosis.

~~(17)~~ **(13)** "Demonstration permit" means an authorization as defined in ORS 690.005 to practice on a limited basis for a maximum of 30 consecutive days.

~~(18)~~ "Dermis" means the underlying or inner layer of the skin; the layer below the epidermis; the corium or true skin, including papillary layer, capillaries, tactile corpuscles, melanin (pigment), subcutaneous tissue, adipose or subcutis tissue, arteries and lymphatics.

~~(19)~~ **(14)** "Director" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

~~(20)~~ **(15)** "Disinfect" means to use a process to destroy harmful organisms, including bacteria, viruses, germs and fungi.

~~(24)~~ **(16)** "Dispensing area" means an area having non-porous surfaces and a sink with hot and cold running water where service preparations are conducted, such as mixing of chemicals, cleaning of tools and equipment, disposing of residues and rinsing parts of the body exposed to chemicals.

~~(22)~~ **(17)** "Disposable towels" means single-use paper towels or roller-type cloth towels furnished by laundries.

(18) "Educational Institution" means an Oregon high school under ORS 336, Oregon career school licensed under ORS 345 or an Oregon community college under ORS 341.

~~(23)~~ **(19)** "EPA" means Environmental Protection Agency, a branch of the Federal Government, which approves and registers chemical compounds and agents.

~~(24)~~ "Epidermis" means the outermost and protective covering of the skin. The epidermis is nonvascular but has many small nerve endings and varies in thickness from 1/200 to 1/20 inch. The epidermis is made up of the stratum corneum (horny layer), stratum lucidum (clear transparent layer), stratum granulosum (granular layer), stratum spinosum (spinous layer), and stratum germinativum (basal layer).

~~(25)~~ **(20)** "Equipment" means those items needed to run a facility which includes but is not limited to waiting chairs, barber or style chairs, shampoo chairs, cabinets, sinks, shampoo bowls, stationary dryers, pedi bins or whirlpool foot spas, paraffin wax containers, and nail technology tables.

~~(26)~~ **(21)** "Esthetics" has the definition set forth in ORS 690.005.

~~(27)~~ **(22)** "Ethical" means conforming to professional standards of conduct in all occupational practices and in accordance with OAR 817, division 120.

~~(28)~~ **(23)** "Exfoliate or exfoliation" means the process of sloughing off, removing, or peeling dead skin cells of the epidermis.

~~(29)~~ **(24)** "Facility" has the definition set forth in ORS 690.005.

~~(30)~~ **(24)** "Field of practice" **has the definition set forth in ORS 690.005** means any of these disciplines: barbering, hair design, esthetics and/or nail technology.

~~(31)~~ **(25)** "Fire retardant container" means an air-tight metal or other approved container recognized by a national testing lab for the use of disposing of chemical waste or storing linens with chemical residue.

~~(32)~~ "Fraud" means the intentional act of deceiving or cheating; a willful violation (refer to ORS 646 "Trade Regulations and Practice").

~~(33)~~ **(26)** "Hair design" has the definition set forth in ORS 690.005, which includes the braiding of hair.

~~(34)~~ **(27)** "High-level disinfectant" means a chemical agent, which has demonstrated tuberculocidal activity and is registered with the EPA.

~~(35)~~ "Incompetency" means performance from which it may be concluded that the person either lacks or did not employ the knowledge and skill necessary to practice in an acceptable manner.

~~(36)~~ **(28)** "Independent Contractor" means an individual defined in ORS 690.005 who qualifies for a recognized business status under the provisions of ORS 670.600.

~~(37)~~ **(29)** "License" has the definition set forth in ORS 690.005.

~~(38)~~ **(30)** "Licensed health care facility" means a facility as defined by ORS 442.015 (16), such as a hospital, special inpatient care facility, rehabilitation center, center for the treatment of alcoholism or drug abuse, assisted living care or nursing facility, or psychiatric hospital, which is licensed by a state regulatory agency or local governmental unit for the purpose of providing health care services.

~~(39)~~ **(31)** "Low-level disinfectant" means a chemical agent which has demonstrated bactericidal, germicidal, fungicidal, and limited virucidal activity and is registered with EPA.

~~(40)~~ **(32)** "Manicuring" means services performed upon the nails of the hands as part of nail technology defined in ORS 690.005.

~~(41)~~ **(33)** "Manipulating" means, as referred to in ORS 690.005 articulation or massage, pressure, friction, stroking, tapping or kneading by manual or mechanical means, with or without lubricants such as salts, powders, liquids or creams, for the purpose of providing skin care.

~~(42)~~ **(34)** "Materials and supplies" means those items which complement the use of tools, including but not limited to hair tints, bleaches, permanent wave solutions, tonics, hair oils, shampoos, rinses, disinfectants, and chemicals.

~~(43)~~ "Misconduct" means performing in an unethical, unprofessional or dishonest manner; or, acts involving violence against persons.

~~(44)~~ **(35)** "Nail Technology" has the definition set forth in ORS 690.005, which includes the following:

- (a) The application and removal of artificial nails;
- (b) The application of mini-art work, etching or imprinting on nails.

~~(45)~~ "Negligence" means failure to exercise care in the safety and sanitary methods relating to ORS chapter 690.

~~(46)~~ "Non-absorbent" means incapable of absorbing or entrapping water or other liquids.

~~(47) "Official transcript" means an original document certified by the, career school indicating hours and types of course work, examinations and scores that the student has completed, which has been mailed by USPS or other recognized mail service provider directly to the agency by the career school in a sealed envelope, or authorized transcript transmitted directly to the agency in a manner approved by the board.~~

(36) "Official transcript" means:

(a) An original document authorized by the appropriate office in the Oregon Department of Education and certified by an educational institution indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, final practical examinations scores for each field of practice, enrollment information and a signature by an authorized representative on file with the agency. Original documents must be submitted directly to the agency from the educational institution by United States Postal Service mail or other recognized mail service providers in a sealed envelope; or

(b) A document authorized by the appropriate office in the Oregon Department of Education and certified by an educational institution indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, final practical examinations scores for each field of practice, enrollment information and a signature by an authorized representative on file with the agency. Non-original documents shall only be accepted when, and in the manner, approved by the Agency.

~~(48)~~ **(37) "Pedicuring" means services performed upon the nails of the feet as part of nail technology defined in ORS 690.005.**

~~(49)~~ **(38) "Permit" means either a demonstration permit as defined in subsection (17) (13) or a temporary facility permit as defined in subsection (63) (46) of this rule.**

~~(50) "Practitioner" means any person whom the agency has certified to perform services on the public in any field of practice as defined in subsection (30) of this rule.~~

(39) "Practitioner" has the definition set forth in ORS 690.005.

~~(54)~~ **(40) "Premises" means the entire area of the facility, licensed by the agency and designated as a facility.**

~~(52) "Probation" means continuation of certification, licensure, registration and/or permit under conditions set by the agency.~~

~~(53)~~ "Public view" means open to view and easy for the public to see.

~~(54)~~ **(41)** "Reasonably accessible" means not more than three minutes travel time from any work location.

~~(55)~~ "Reciprocity" means that an applicant, holding an active certificate or license in another state, meets the applicable qualifications and requirements pertaining to minimum competency through satisfactory completion of a national written and practical examination recognized and/or approved by the Board.

~~(56)~~ **(42)** "Registration" means an authorization to practice in barbering, hair design, esthetics and/or nail technology as an independent contractor.

~~(57)~~ "Sanitary" means free of agents of infection, disease, or infestation by insects and vermin and free of soil, dust, or foreign material; referring to cleanliness.

~~(58)~~ "Sanitized" means rendered free of soil, dust, foreign material, and agents of disease or infestation by insects or vermin through the use of effective cleaning.

~~(59)~~ **(43)** "Sanitizing container" means a receptacle, holding a disinfecting agent, which is large and deep enough to submerge the tool(s) or implement(s) or portion(s) thereof, which are to be disinfected.

~~(60)~~ **(44)** "Sharp edged or pointed, non-electrical tools and implements" means those items which may on occasion pierce or cut the skin and draw blood, includes razors, cuticle nippers, cuticle pushers, nail clippers, tweezers, comedone extractors, shears, and metal nail files.

~~(61)~~ **(45)** "Soiled" means an article that has been used and has not been cleaned or disinfected before use on the next client.

~~(62)~~ "Suspend" means, as used in ORS 690.075, to place a certificate, license, registration and/or permit in an inactive status for an unspecified period of time.

~~(63)~~ **(46)** "Temporary facility permit" means an authorization as defined in ORS 690.005, not to exceed 30 consecutive days.

~~(64)~~ **(47)** "Tools and implements" means all portable articles and instruments, which the practitioner can carry to use in the performance of services on clients, including but not limited to combs, shears, clippers and yoyettes.

~~(65)~~ **(48)** "Work area" means an area where services are performed and preparations are conducted including but not limited to shampoo area, work stations and dispensing area.

Stat. Auth.: ORS 690.165 & 690.205(1)
Stat. Implemented: ORS 690.165 & 690.105(1)
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1982, f. & ef. 1-29-82; BH 2-1982, f. & ef. 3-31-82; BH 1-1983(Temp), f. & ef. 10-4-83; BH 4-1984, f. & ef. 12-7-84; Renumbered from 817-010-0002; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 2-1996, f. 6-28-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2009, f. & cert. ef. 6-1-09

**DIVISION 10 SAFETY AND INFECTION CONTROL RULES: FACILITY
STANDARDS**

817-010-0065 Requirements and Standards

- (1) All tools and implements that come in direct contact with a client, ~~shall~~ **must** be disinfected or disposed of after use.
- (2) Only disinfecting agents that meet the criteria set forth in OAR ~~817-010-0005~~ **817-050-0005**(34) and (39) are approved for use.
- (3) Holders of a facility license, independent contractor registration, or ~~certificate of identification~~ **freelance authorization must** provide and maintain adequate disinfecting or sterilizing equipment for the number of practitioners, usage requirements, and volume of business.
- (4) Optional sterilization equipment used in lieu of disinfectants ~~shall~~ **must** be checked annually to ensure it is reaching the temperature and/or pressure required by manufacturer's instructions.
- (5) When used according to the manufacturer's instructions, each of the following is an approved method of disinfecting tools and implements:
- (a) Complete immersion in the disinfecting solution of the object(s) or portion(s) thereof to be disinfected;
 - (b) Steam sterilizer, registered and listed with the U.S. Food and Drug Administration; or
 - (c) Dry heat sterilizer or autoclave, registered and listed with the U.S. Food and Drug Administration.
- (6) All disinfecting agents ~~shall~~ **must** be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.
- (7) Nail files, cosmetic sponges, buffer blocks, sanding bands or sleeves, orangewood sticks, and disposable nail bits that have not been approved by the agency for disinfection and reuse, ~~shall~~ **must** be given to the client or discarded after use on each client. Presence of these articles in the work area (facility) ~~shall~~ **be is** prima facie evidence of use.

(8) Protective gloves that are not cleaned with soap and water and disinfected ~~shall~~ **must** be disposed of after use on a client (refer to provisions of OAR 817-015-0030(3) and (5).

(9) All manual or mechanical devices and equipment used in the practice of barbering, esthetics, hair design or nail technology must meet all “*product registration requirements*” imposed by any federal, state, county, or local authority.

(10) All manual or mechanical devices or equipment used in the practice of barbering, esthetics, hair design or nail technology must be used in accordance with the “*product safety requirements*” imposed by any federal, state, county, or local authority.

(11) Each practitioner, facility owner or independent contractor must verify, maintain, or be able to access documentation related to any device classified by the U.S. Food and Drug Administration (FDA) that is used in the practice of barbering, esthetics, hair design, and nail technology, as defined in ORS 690.005.

(12) Practitioners may not use any manual or mechanical device or equipment unless the use is part of the delivery of services within the practitioner’s scope of practice under ORS 690, and is consistent with the manufacturer’s intended use of the device and with client health and safety. In determining whether the use of any manual or mechanical device or equipment is consistent with client health and safety, the agency will consider the information provided in the documentation required by section (11) of this rule.

(13) The documentation requirements described in section (11) of this rule apply to specialized items used in the practice of barbering, esthetics, hair design or nail technology and may not apply to those items used in the delivery of basic services, which have been defined as an “article”, “equipment”, or “materials and supplies” in OAR chapter 817, division 005, such as scissors, combs, orangewood sticks, shampoo bowls, styling chairs or nail files.

(14) Practitioners must permit any representative of the agency to inspect any manual or mechanical device or equipment used in the practice of barbering, esthetics, hair design or nail technology or the documentation required by section (11) of this rule, upon demand.

(15) Practitioners, facility owners and independent contractors providing laser hair reduction skin care services, shall comply with requirements of the March 16, 2007 edition of the American National Standards for Safe Use of Lasers (ANSI) Z136.1-2007. ~~ANSI publications may be obtained from Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, Florida 32826 — ISBS 13: 9877-0-912035-65-9 & ISBN 10:0-912035-65-X.~~

Stat. Auth.: ORS 690.205
Stats. Implemented: ORS 690.205
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 2-1980, f. & ef. 5-29-80; BH 2-1982, f. & ef. 3-31-82; BH 4-1984, f. & ef. 12-7-84;
BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 78-1-94; BH 1-1996, f.
5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f.
5-12-00, cert. ef. 5-15-00; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02;
BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2008, f. 5-27-08, cert. ef. 6-1-08

817-010-0090 Use of Drinking Cups

~~Disposable cups shall be available for customers' use if beverages are served in facilities, and disposed of after use by the same methods as other waste materials.~~

~~Stat. Auth.: ORS 690
Stats. Implemented:
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94,
cert. ef. 7-1-94~~

DIVISION 20

LICENSING AND OPERATION OF A FACILITY

817-020-0005 [Renumbered to 817-020-0006]

817-020-0006

817-020-0006

Facility Licensing and Operational Requirements

Pursuant to ORS 690.055 a facility license must be obtained when operating a business establishment, providing services in one or more fields of practice defined in ORS 690.005.

(1) Subject to ORS 676.612, a facility license may be issued if the applicant:

(a) Is at least 18 years of age, if the applicant is a natural person, and meets requirements of ORS 690.055;

(b) ~~Has a~~ **Submits proof of:**

(i) A current registration ~~registered~~ as required by Secretary of State, Corporations Division pursuant to ORS 648.007; and

(ii) A current copy of the Assumed Business Name (ABN) filing if applicant is operating under an assumed business name prior to applying for a facility license, "Assumed Business Name" (ABN) defined under ORS 648.005 prior to applying for a facility license, and submits with facility application a current copy of the ABN filing;

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to ~~Secretary of States~~ **Secretary of State**, Corporations Division under ORS 648.005 through 648.990.

(c) Files an application on prescribed forms with the agency and pays the required application and license fees. If the facility is owned by a corporation, the application must state the name of and the form must be signed by the corporate officer;

(d) Complies with all applicable administrative rules and regulations of the Board and other state agencies regarding health, safety, and infection control standards;

(e) Complies with the specifications for building, fire and plumbing codes as specified in OAR 817-010-007, and complies with ventilation, exit and fire standards established by the Department of Consumer and Business, Building Codes Division and Office of the State Fire Marshal;

(f) Provide a map or directions to the facility if it is located in a rural or isolated area; and

(g) Attests that the application information is correct.

(2) License holders must comply with the notification requirements of OAR 331-010-0040.

(3) Facility license holders offering services within the licensed premises, other than those regulated under ORS 690.005, such as massage, tanning, tattooing or body piercing, ~~shall~~ **must** ensure compliance with appropriate licensing laws and regulations if required.

(4) Client services referred to in subsection (3) of this rule, must have a treatment area that is separated by a permanent, solid barrier, private or screened from the entrance, waiting area or other treatment areas when cosmetology services regulated under ORS 690.005 are being performed to ensure client privacy and prevent contact with chemical or other air-borne irritants. This does not pertain to sale of products.

(5) Any location where services are performed solely by independent contractors, who are registered by the agency, must be licensed as a facility.

(6) The cleanliness and sanitary condition of any shared or common area used by or provided for separately licensed facilities or independent contractors located at one premises is the responsibility of each license or registration holder at that premises.

(7) All facility license holders and independent contractor registration holders located at one premises will be cited for violations of rules or regulations found in the shared or common area of a facility, unless a contractual agreement exists that indicates specific responsibility for the cleanliness of a shared or common area within the premises.

(8) Facility License -- Residence.

(9) In addition to the requirements of this rule, applicants for a facility license located within a residence ~~shall~~ **must** have an identifying house number or a sign that is easily visible from the street and indicates the location of the facility. The license holder ~~shall~~ **must**:

(a) Comply with all applicable regulations of OAR chapter 817, division 010, including maintaining equipment the Board requires for all facilities;

(b) Provide an entrance to the facility that is separate from the entrance to residential living areas; and

(c) Maintain separation between the residential living area and facility by solid walls extending from floor to ceiling, with connection doors kept closed during hours of facility operations and serving clients as required in ORS ~~60.205~~ **690.205**.

(10) Inspections and Investigations:

(a) Pursuant to ORS 676.608 or 690.225, a facility owner or license holder ~~shall~~ **must** allow the agency's representative to inspect the facility or conduct an investigation. Obstructing or hindering the normal progress of an investigation or the inspection, threatening or exerting physical harm, or enabling another individual or employee to impede an investigation or inspection may result in disciplinary action.

(b) License holders must contact the agency in writing to make arrangements for an inspection if the agency has been unable to perform an inspection after one year because the facility was closed.

Stat. Auth.: ORS 676.605, 690.055 & 690.165, 690.205, 690.225
Stats. Implemented: ORS 676.605, 690.055 & 690.165, 690.205, 690.225
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; Renumbered from 817-020-0005, 817-020-0011, 817-020-0012, BOC 1-2009, f. & cert. ef. 6-1-09

817-020-0011 [Renumbered to **817-020-0006**]

817-020-0012 [Renumbered to **817-020-0006**]

DIVISION 30

EXAMINATIONS QUALIFICATION FOR CERIFICATION

817-030-0005

~~Qualification and Training Requirements~~ Application Requirements

An individual applying for a certification in a field of practice must:

- (1) Meet the requirements of OAR 331 division 30;**
- (2) Submit a completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application, and examination fees; and**
- (3) Meet all education, examination and training requirements in effect at the time of application through one of the following pathways;**
 - (a) Certification Pathway 1 – Graduation from an educational institution:**
 - (A) Submit official transcript from an educational institution showing proof of hours for a field of practice as required by the Department of Education pursuant to ORS 345.400 and OAR 581-045-0200; or**
 - (B) Submit a passing score of a board approved practical examination within two years before the date of application in each field of practice; and**
 - (C) Completion and passage of a board approved written examination within two years before the date of application including the Oregon laws and rules examination. An applicant who has taken the Oregon laws and rules examination within two years is not required to retake the Oregon laws and rules if seeking licensure in an additional field of practice.**
 - (D) An applicant is not required to provide proof of official transcripts in a field of practice they were previously certified in Oregon.**
 - (b) Certification Pathway 2 – Reciprocity:**
 - (A) Submit an affidavit of licensure pursuant to OAR 331-030-0040 from another state, which is active with no current or pending disciplinary action and is substantially equivalent to Oregon certification requirements pursuant to ORS 690.047; and**

(B) Completion and passage of a board approved written examination within two years before the date of application including the Oregon laws and rules examination. An applicant who has taken the Oregon laws and rules examination within two years is not required to retake the Oregon laws and rules if seeking certification in an additional field of practice.

(c) Upon passage of all required examinations and before receipt of certificate, the applicant must pay all certification fees.

(4) An applicant coming from a competency based educational institution under ORS 345.400 may be required to submit additional information to the agency.

~~To obtain an Oregon certificate in one or more fields of practice, individuals must complete required application documentation prescribed by the agency under OAR 331-030-0000 and 817-030-0015 provide satisfactory evidence of meeting certification requirements, which includes qualifying criteria listed in one of the following certification pathways, and submit payment of required fees.~~

~~CERTIFICATION PATHWAY ONE~~

~~(1) Graduate from Oregon Licensed Career School: Applicants must meet the education and training requirements in effect at the time of application. Applicants shall complete and pass courses required by the Oregon Department of Education, Private Career Schools, in one or more of the following educational programs offered through an Oregon licensed career school, and must also pass a written and practical examination approved or recognized by the Board of Cosmetology in accordance with OAR 817-030-0040:~~

~~(a) Hair design — 1,450 hour course;~~

~~(b) Barbering — 1,100 hour course;~~

~~(c) Esthetics — 250 hour course;~~

~~(d) Nail technology — 350 hour course;~~

~~(e) Mandatory completion of a 150 hour safety and infection control course and a 400 hour career development course in addition to any one or more of the approved programs listed in (a) through (d) of this rule. The Board recognizes a final practical examination, prescribed by the Department of Education, Private Career Schools in collaboration with the Board, which establishes standard examination criteria and testing protocols, as its qualifying practical certification examination. Authorized Oregon licensed career school personnel conduct the practical examination.~~

CERTIFICATION PATHWAY TWO

~~(2) Non-Credentialed Applicants from Another State or Country: Applicants who have completed schooling requirements established by a regulatory authority in another state or country must submit all required application documentation (OAR 817-030-0015) to the agency for evaluation to determine qualification and fitness to practice. Approved applicants will be required to take the Oregon qualifying written and practical examination (OAR 817-030-0040) if the following criteria apply:~~

~~(a) Certification or licensure in another state or country was not attained;~~

~~(b) Reciprocity requirements listed in subsection (3) of this rule have not been met.~~

CERTIFICATION PATHWAY THREE

~~(3) Oregon Certification by Reciprocity: The Board recognizes at its discretion other states', and countries', equivalent education, examination and licensing requirements. To be certified in one or more a field of practice, applicants are required to meet OAR 817-030-0015(1) and the following criteria:~~

~~(a) The applicant shall arrange for Affidavit of Licensure as defined in OAR 331-030-0040 be provided to the Agency. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.~~

~~(b) Completion of a state-approved board examination for certification/licensure and graduation from a licensed cosmetology school.~~

~~(c) Completion of the Oregon Laws and Rules examination.~~

~~(4) Applicants holding current certification/licensure from out of state who do not qualify for Oregon certification by means of reciprocity as specified in subsection (3) of this rule must complete and pass the qualifying examination(s) required in OAR chapter 817, division 030.~~

Stat. Auth.: ORS 690.035, 690.046 & 690.165

Stats. Implemented: ORS 690.035, 690.046 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1981, f. & ef. 10-1-81; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f-5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0015

Practitioner Application Requirements

(1) Applicants must meet all of the requirements of OAR 331-030-0000 in addition to the provisions of this rule. Before being authorized to take an examination at any of the agency approved testing locations, the completed application documentation must be on file with the agency and eligibility for examination established. Refer to OAR 817-030-0020.

(2) Applicants must provide, or cause to be delivered to the agency, prescribed documentation verifying training and/or licensure, according to one of the qualification pathways listed under OAR 817-030-0005:

(a) Official transcript/Oregon Career School: completed official transcript, issued by an Oregon licensed career school of barbering, hair design, esthetics or nail technology, and completed original official transcript of practical examination, signed by the authorized school personnel proctoring the Board sanctioned examination, certifying that criteria for the practical examination was met and that the applicant satisfactorily demonstrated minimum competencies established by the Department of Education, Private Career Schools, in collaboration with the Board.

(b) Out-of-state non-credentialed: documentation of schooling and/or training experience, including official transcript from the licensed school mailed or transmitted directly to the agency from the originating state's regulatory authority, work study or apprenticeship records.

(c) Reciprocity: The applicant shall arrange for Affidavit of Licensure as defined in OAR 331-030-0040 be provided to the Agency. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(3) Application documentation required for an examination and certification must be submitted to the Oregon Health Licensing Agency in English. If documents require translation, a copy of the official document(s), in the original language, must be submitted with the written translation in English.

Stat. Auth.: ORS 676.615, 690.035 & 690.165

Stats. Implemented: ORS 676.615, 690.035 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1981, f. & ef. 10-1-81; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; Renumbered from 817-030-0010; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2001(Temp), f. 1-31-01, cert. ef. 2-1-01 thru 7-29-01; BOC 3-2001, f. 3-30-01, cert. ef. 4-1-01; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0018

Examination for Reinstatement of Certification

Pursuant to ORS 690.085(5), a certificate that has expired beyond two years, may be reinstated upon compliance with all of the following criteria and submission of required documentation:

- (1) A signed and completed application form prescribed by the agency in accordance with requirements specified in OAR 331-030-0000 and 817-030-0015, which includes the applicant's expired certificate number(s);
- (2) A completed official practical examination transcript issued by the appropriate Oregon licensed career showing attainment of a passing score on the practical examination conducted by the Oregon licensed career school within two years from the date of application;
- (3) Attainment of a passing score on the Board approved written examination(s); and
- (4) Payment of the required application, examination and certificate fees specified in OAR 817-040-0003.

Stat. Auth.: ORS 690.035, 690.046, 690.048 & 690.165
Stats. Implemented: ORS 690.035, 690.046, 690.048 & 690.165
Hist.: BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05; BOC 1-2006, f. & cert. ef. 3-15-06

817-030-0020

Examination Requirements

- (1) The agency will conduct examinations for certification. A schedule of examination dates and times shall be available upon request. The agency reserves the right to alter or adjust examination dates, times and locations as it deems necessary to meet emergency situations and will notify applicants and schools in advance whenever possible.
- (2) Applicants may request special examination accommodation according to requirements of OAR 817-030-0080. Special examinations will be scheduled at a date and time determined by the Oregon Health Licensing Agency Director.
- (3) Applicants will qualify for examination upon compliance with relevant provisions of OAR 331-030-0000, 817-030-0005 and 817-030-0015. Applicants will not be allowed to take the examination until all requirements for examination have been met. If documentation is incomplete or incorrect, applicants will not be allowed to sit for the examination.

~~(4) An applicant must meet identification requirements listed under OAR 331-030-0000.~~

Stat. Auth.: ORS 676.615, 690.065 & 690.165
Stat. Implemented: ORS 676.615, 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02, cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2008, f. 9-15-08, cert. ef. 10-1-08; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0030

~~General Information about the Examination~~ General Examination Information

- (1) **Practical Examination: The board recognizes and sanctions the practical examination conducted by an educational institution in accordance with the Department of Education's regulations, provisions, criteria and protocols.**
- (2) **Written Examination: The board approved written examination consists of one or more fields of practice and the Oregon laws and rules examination.**
- (3) **The written examination is administered in English only, unless an agency approved testing contractor or vendor provides the written examination in languages other than English.**
- (4) **Written examination candidates may be electronically monitored during the course of testing.**
- (5) **Each section of the written examination will be scored individually. The passing score for each section is 75 percent or better.**
- (6) **The Board will establish by policy a maximum time allowance for each section of the written examination.**
- ~~(4) (7) Taking notes, textbooks or notebooks into the **written** examination area is prohibited.~~
- ~~(2) (8) Electronic equipment and communication devices, such as personal computers, pagers and cellular telephones or any other devices deemed inappropriate by the agency staff, are prohibited in the **written** examination area. Taking such items into the examination area will invalidate the examination and result in forfeiture of the examination fees.~~
- ~~(3) An applicant will be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:~~

- ~~(a) Giving or receiving aid, directly or indirectly during the examination process;~~
- ~~(b) Obtaining help or information from notes, books, or other individuals or sources to answer questions;~~
- ~~(c) Removing or attempting to remove any secure examination-related information, notes or materials from the examination site;~~
- ~~(d) Failing to follow directions relative to the conduct of the examination;~~
- ~~(e) Endangering the health of a person involved in the examination; and~~
- ~~(f) Exhibiting behavior, which impedes the normal progress of the examination.~~

(9) A candidate may be immediately disqualified during or after the examination for conduct that interferes with the written examination. The examination may be invalidated and written examination fees may be forfeited. Such conduct includes but is not limited to:

- (a) Directly or indirectly giving, receiving, soliciting, attempting to give, receive or solicit aid during the written examination process;**
- (b) Taking items including but not limited to items listed in subsection (7) and (8) of this rule into the written examination area;**
- (c) Removing or attempting to remove any examination-related information, notes or materials from the written examination site;**
- (d) Failing to follow directions relative to the conduct of the written examination; and**
- (e) Exhibiting behavior that impedes the normal progress of the written examination.**

(10) The applicant may be required to reapply, submit additional examination fees, and request in writing to schedule another examination if applicant is disqualified from taking the examination for reasons under subsection (7)(8) and (9) of this rule.

~~(4) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. The applicant will be required to reapply, submit additional examination fees, and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following date of disqualification. Reexamination will be conducted at the agency office.~~

Stat. Auth.: ORS 676.615, 690.065 & 690.165
Stats. Implemented: ORS 676.615, 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; Renumbered from 817-030-0025; BH 33-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0040

Type of Examination

~~(1) The written examination consists of the following sections: Oregon Laws and Rules, Barbering, Hair Design, Esthetics and Nail Technology. Examinations test the applicant's knowledge of the following subjects:~~

~~(a) The basic principals of safety and infection control;~~

~~(b) The safety and infection control rules of the Board of Cosmetology;~~

~~(c) Chemical use and storage;~~

~~(d) Diseases and disorders;~~

~~(e) Equipment and tools/implements;~~

~~(f) Licensure requirements and regulations;~~

~~(g) Standards of practice;~~

~~(h) Definitions; and~~

~~(i) Practical applications and procedures.~~

~~(2) Each section will be scored individually. The passing score for each section is 75 percent or better.~~

~~(3) The Board will establish by policy a maximum examination time allowance for each examination section, listed in section (1) of this rule. Maximum examination time allowances shall be published and included in the application for certification packet, posted in the agency Web site and made available upon request.~~

~~(4) The examination may be administered using a computerized testing system with touch screen functionality for selecting the candidate's response to multiple-choice question.~~

~~(5) The examination is administered in English only, unless an agency approved testing contractor or vendor provides the examination in languages other than~~

English. Examination candidates may be electronically monitored during the course of testing.

(6) ~~The practical examination is a final examination conducted at an Oregon licensed career school of barbering, hair design, esthetics or nail technology, administered at the direction of and in accordance with criteria established by the Department of Education, Private Career Schools. The examination must be documented according to provisions set forth by the Department of Education, Private Career Schools. The Board of Cosmetology recognizes and sanctions the practical examination conducted by licensed career schools in accordance with the Department of Education's criteria and protocols, as its practical competency examination.~~

(7) ~~In collaboration with the Department of Education, Private Career Schools, the Board or designated staff may periodically review any career school's practical examination procedures and conduct to determine compliance with Department of Education's criteria and to maintain Board recognition of the practical examination.~~

Stat. Auth.: ORS 676.615, 690.065 & 690.165
Stats. Implemented: ORS 676.615, 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1983(Temp), f. & ef. 10-4-83; BH 1-1984, f. & ef. 2-13-84; BH 4-1984, f. & ef. 12-7-84; BH 2-1990, f. & cert. ef. 10-29-90; Renumbered from 817-030-0060; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0045

Sections Which the Applicant Must Pass

(1) ~~An applicant who is a graduate of an Oregon Licensed Career School or applying for certification based on equivalency according to OAR 817-030-0005(1) and (2) must pass the Oregon Laws and Rules section of the examination and one or more of the following fields of practice:~~

~~(a) Barbering;~~

~~(b) Hair Design;~~

~~(c) Esthetics;~~

~~(d) Nail Technology.~~

(2) ~~An applicant who is applying for certification through reciprocity according to OAR 817-030-0005(3) must pass the Oregon Laws and Rules section of the examination~~

(3) Applicants failing to successfully complete the examination process and thus failing to obtain a certificate within two years from the date of their most recent examination attempt, will be required to:

(a) Reapply for examination according to OAR 817-030-0015;

(b) Pay the application, examination and original certificate fees; and

(c) Retake all written and practical examination sections qualified for, regardless of a previously passing score.

(4) Applicants for certification who fail any part of the examination may apply to retake the failed section(s) twice before being required to obtain recertification of training through an Oregon career school licensed under ORS 345.010 to 345.450.

Stat. Auth.: ORS 676.615, 690.065 & 690.165

Stats. Implemented: ORS 676.615, 690.065 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0055

Notification of the Examination Results

Examination results will be issued following completion of each examination section as part of the agency's automated testing system. Applicants taking examinations conducted under special accommodation will be given results by mail within seven calendar days following the date of examination.

Stat. Auth.: ORS 690.065 & 690.165

Stats. Implemented: ORS 690.065 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0065

Procedure if the Applicant Fails

(1) Failed sections of the examination may be retaken at the next available date and time, determined by the agency, as scheduling allows. Retaking a failed examination requires registration and payment of the required fees.

(2) Opportunity to review failed sections of the examination, are provided at the conclusion of each examination question/answer selection, or immediately following conclusion of the entire examination. Review of failed examination sections at a later time or date is prohibited.

~~(3) Applicants retaking the examination must meet the requirements under OAR 331-030-0000 and 817-030-0020.~~

817-030-0065

Written Examination Retake Requirements

(1) Failed sections of a written examination may be retaken as follows:

(a) After first failed attempt – applicant may not retake for seven business days;

(b) After second failed attempt – applicant may not retake for seven business days;

(c) After third failed attempt – applicant may not retake for 30 business days, must submit an official transcript certifying additional training from an educational institution on a form prescribed by the agency, and must pay application fee;

(d) After fourth failed attempt – applicant may not retake for seven business days;

(e) After fifth failed attempt – applicant may not retake for seven business days;

(f) After sixth failed attempt – applicant may not retake for 30 business days, must submit an official transcript certifying additional training from an educational institution on a form prescribed by the agency, and must pay application fee;

(g) After seventh failed attempt – ability to retake, requirements for retake, or both will be determined by the Board by a case-by-case basis.

(2) Applicants retaking the examination must meet the requirements under OAR 331-030-0000.

Stat. Auth.: ORS 690.065 & 690.165

Stats. Implemented: ORS 690.065 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1983(Temp), f. & ef. 10-4-83; BH 1-1984, f. & ef. 2-13-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1 1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0071

Practical Examination Evaluation

The purposes of the practical examination evaluation are to allow the Board to decide which practical examinations they will approve as certifying examinations and how the Board will be able to determine whether or not an individual practical examination is one the board approves.

(1) In accordance with ORS 690.046 all educational institutions must submit to an evaluation of the practical examination once every two years in at least one field of practice under ORS 690.005 to have practical examination approved.

(2) A practical examination being evaluated for approval must be performed in a continual eight hour period.

(3) If the practical examination does not meet evaluation standards set forth by the Department of Education, the examination must be corrected or will not be approved.

(4) To correct a practical examination that is not approved, the educational institution must schedule a new practical examination evaluation and meet the Department of Education evaluation standards within 30 days from the date of the practical examination evaluation.

(5) If the educational institution fails the practical examination evaluation, the educational institution must correct the deficiencies before the practical examination is approved.

(6) When a practical examination is not approved and not corrected, a subsequent practical examination evaluation may be granted:

(a) Upon successful completion of agency prescribed training by the practical examination instructors; or

(b) After 90 days from the date of the last practical examination evaluation.

(7) A student whose educational institution's practical examination has not been approved may take the practical examination at another educational institution.

NOTE: A student is responsible for any charges or fees for a practical examination administered by another educational institution.

Comment [s1]: Have the board decide the consequence.

DIVISION 35
CERTIFICATION/LICENSING

817-035-0010

Issuance and Renewal of Certificates, Licenses and/or Registrations, or Freelance Authorizations

(1) An individual holding an authorization as defined in OAR 331-010-0000 is subject to the provisions of OAR Chapter 331, division 30 regarding the issuance and renewal of an authorization and provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate authorization.

(2) An individual holding an authorization as defined in OAR 331-010-0000 is subject to the provisions of ORS 690.046, 690.055, 690.057, 690.085, 690.123 and for issuance and renewal of an authorization.

(3) AUTHORIZATION RENEWAL: Authorization renewal, other than independent contractor registration or freelance authorization, must be made prior to the authorization entering inactive status. The authorization holder must submit the following:

(a) Renewal application form;

(b) Payment of required renewal fee pursuant to OAR 817-040-0003;

(4) INACTIVE AUTHORIZATION RENEWAL: An authorization, other than independent contractor registration or freelance authorization, may be inactive for up to three years. The authorization holder must submit the following:

(a) Renewal application form; and

(b) Payment of delinquency and authorization fees pursuant to OAR 817-040-0003.

(5) EXPIRED AUTHORIZATION: An authorization, other than independent contractor registration or freelance authorization, that has been inactive for more than three years, is expired and the authorization holder must meet the requirements listed in OAR 817-030-0005 or 817-020-0006.

(6) Independent contractor registrations and freelance authorizations that are not renewed become dormant, but do not become inactive and do not expire;

(7) To reactivate a dormant independent contractor registration or freelance authorization, the holder must contact the agency.

(8) For freelance authorization renewal or reactivation, the freelance authorization holder must also submit proof of having passed the board approved Oregon Laws and Rules examination or completion of the agency's Safety and Infection Control Training within two years before the date of renewal or reactivation.

(9) Independent contractor registration and freelance authorizations that are in dormant status are not valid for practice.

(10) In addition to other requirements of this rule, to renew a facility license submit proof of:

(a) A current registration as required by Secretary of State, Corporations Division pursuant to ORS 648.007; and

(b) A current copy of the Assumed Business Name (ABN) filing if applicant is operating under an assumed business name prior to renewing a facility license.

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of State, Corporations Division under ORS 648.005 through 648.990.

(11) In addition to other requirements of this rule, to renew or reactivate an independent contractor registration or freelance authorization, the registrant or authorization holder must submit proof of:

(a) A current registration as required by Secretary of State, Corporations Division pursuant to ORS 648.007 if the independent contractor or the freelance authorization holder is licensed as a business and not as an individual before renewal or reactivation; and

(b) A current copy of the Assumed Business Name (ABN) filing if the independent contractor or the freelance authorization holder is operating under an assumed business name prior to renewal or reactivation.

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of State, Corporations Division under ORS 648.005 through 648.990.

~~(1) Individuals will be subject to the provisions of ORS 690.046, 690.055, 690.057, 690.085 and for issuance and renewal of certificates, licenses and registrations.~~

~~(2) An applicant whose renewal payment is received by the agency, or is postmarked, after the expiration date will be assessed a delinquency (late) fee, as specified in ORS 690.085 and OAR 817-040-0003.~~

~~(3) Practitioners who fail to renew a certificate within two years from the expiration date must reapply and meet requirements of ORS 690.085 and OAR 331-030-0000.~~

~~(4) Independent contractors who fail to renew their registration within one year from the date of expiration must meet the requirements of OAR 817-035-0070.~~

~~(5) The agency, at its discretion, may also request that authorization holders provide their Social Security number at the time of application for renewal.~~

~~(6) Renewal — Practitioner Certificates. When renewing a certificate, applicants must provide the following information to the agency:~~

~~(a) Name and current residential or mailing address;~~

~~(b) Certificate number and expiration date;~~

~~(c) Residence area code and telephone number;~~

~~(d) Selection of field(s) of practice for renewal to maintain active certification;~~

~~(e) The name, address, telephone number and facility license or independent contractor registration number where services are being performed, or other work location where service is performed;~~

~~(7) Renewal — Independent Contractor Registration. When renewing an independent contractor registration, applicants must provide the following information to the agency:~~

~~(a) Independent contractor registration number and expiration date;~~

~~(b) A copy of any change to the "Assumed Business Name" filed with the Secretary of State, Corporation Division. Refer to OAR 331-010-0040 and 817-035-0070;~~

~~(c) Name, address and license number of facility where working under lease agreement, or business mailing address;~~

~~(d) Residential address;~~

~~(e) Business area code and telephone number; and~~

~~(f) Information regarding whether actively engaged in performing services within a field(s) of practice.~~

~~(8) Renewal — Facility Licenses. When renewing a facility license, applicants will be subject to requirements of ORS 690.085. Applicants must provide the following information to the agency at the time of renewal;~~

~~(a) Facility license number and expiration date;~~

~~(b) Name and place of business, or business mailing address;~~

~~(c) Business area code and telephone number; and~~

~~(d) A copy of any change to the "Assumed Business Name" filed with the Secretary of State, Corporation Division. Refer to OAR 331-010-0040 and 817-020-0006;~~

~~(e) Whether regulated services outside the scope of ORS 690.005 to 690.235 are being performed within the premises of the facility. Such services include but are not limited to electrology, tanning, ear and body piercing, or tattooing, i.e. permanent makeup.~~

Stat. Auth.: ORS 676.605, 676.615, 690.085 & 690.165

Stats. Implemented: ORS 676.605, 676.615, 690.085 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 2-1994(Temp), f. 2-15-94, cert. ef. 3-1-94 thru 8-28-94; Renumbered from 817-040-0008, BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-040-0015, BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2008, f. 9-15-08 cert. ef. 10-1-08; BOC 1-2009, f. & cert. ef. 6-1-09

817-035-0030

Document Issuance

~~(1) Subject to ORS 690.048 and OAR 331-030-0010, the agency will issue an individual a certificate authorizing the holder to practice barbering, hair design, esthetics or nail technology upon passage of the qualifying examination(s) required in OAR 817-030-0045 and payment of the required fees for each field of practice.~~

~~(2) Certificate, license and registration holders are subject to provisions of OAR 331-030-0010 regarding issuance and renewal of an authorization, and to provisions of OAR 331-030-0020 regarding authorization to practice and requirements for issuance of a replacement authorization.~~

Stat. Auth.: ORS 676.615, 690.048, 690.123 & 690.165
Stats. Implemented: ORS 676.615, 690.048, 690.123 & 690.165
Hist.: BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94;
Renumbered from 817-030-0095; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC
1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-
2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-
09

817-035-0050

Application and Criteria for ~~Certificate of Identification~~ Freelance Authorization

(1) Pursuant to ORS 690.123, a practitioner who provides services outside of a licensed facility must hold a ~~certificate of identification~~ **freelance authorization**.

(2) The applicant for a ~~certificate of identification~~ **freelance authorization** must:

(a) Submit a completed application prescribed by the agency, ~~indicating applicant's name, current residential address (and mailing address if applicable), telephone number, and certificate number;~~

(b) Pay required application, examination and ~~certificate of identification~~ fees pursuant to **OAR 817-040-0003**;

(c) Pass the Oregon Laws and Rules examination. Completion of the examination is not required if the applicant passed the Oregon Laws & Rules examination within two years before the date of application for a ~~certificate of identification~~ **freelance authorization**.

~~(d) Has registered as required by Secretary of State, Corporations Division pursuant to ORS 648.007, an "Assumed Business Name" (ABN) defined under ORS 648.005 prior to applying for a certificate of identification, and submits with certificate of identification application a current copy of the ABN filing.;~~

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of States, Corporations Division under ORS 648.005 through 648.990.

(d) Submits proof of:

(i) A current registration as required by Secretary of State, Corporations Division pursuant to ORS 648.007 if applicant is applying as a business and not as an individual; and

(ii) A current copy of the Assumed Business Name (ABN) filing if applicant is operating under an assumed business name prior to applying for a freelance authorization,

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of State, Corporations Division under ORS 648.005 through 648.990.

(3) Subject to ORS 676.612 and OAR 331-030-0000, upon qualification, the agency will issue a ~~certificate of identification~~ **freelance authorization** indicating the fields of practice the practitioner is certified to perform outside of a licensed facility.

(4) The ~~certificate of identification~~ **freelance authorization** is issued as a separate document from the certificate authorizing the holder to perform services, ~~for a period of two years and expires on the last date of the month two years from the date all qualifications were met. .~~

~~(5) A certificate of identification may be renewed upon submission of an application for renewal, payment of required fees and passage of the Oregon Laws and Rules examination or completion of the agency's Safety & Infection Control class.~~

~~(6)~~ **(5)** A holder of **freelance authorization** must ~~a certificate of identification~~ shall:

(a) Provide each client with the agency's name, address and telephone number, for comment on any of the services received or on any of the sanitary procedures followed while performing services;

(b) Display the practitioner's certificate number and ~~certificate of identification~~ **freelance authorization** number on all advertising when soliciting business;

(c) Comply with the Board's health, safety, and infection control rules and regulations; and

(d) Be subject to random audit to verify compliance with safety, infection control and licensing requirements.

~~(7) The certificate of identification may be suspended or revoked by the Board if the certificate holder:~~

~~(a) Practices or performs services at the practitioner's residence when the residence is not licensed as a facility under OAR 817-020-0005;~~

~~(b) Practices or performs services on clients other than those who either reside at or are employed at the residence, office or business where services are provided; or~~

~~(c) Both practices and resides outside the state of Oregon.~~

~~(8)~~ **(6)** The ~~certificate of identification~~ **freelance authorization** may be suspended or revoked by the agency if the Board has taken action to refuse to issue or renew, or has suspended or revoked the practitioner's certificate.

Stat. Auth.: ORS 676.615, 690.048, 690.123 & 690.165
Stats. Implemented: ORS 676.615, 690.048, 690.123 & 690.165
Hist.: BH 4-1984, f. & cert. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, f. & cert. ef. 7-1-94; Renumbered from 817-020-0040; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 2-2008, f. 9-15-08 cert. ef. 10-1-08; BOC 1-2009, f. & cert. ef. 6-1-09

817-035-0070

Independent Contractor Registration Eligibility

An independent contractor registration may be issued if the applicant:

- (1) Holds a current, valid practitioner's certificate;
- (2) Is at least 18 years of age as required in ORS 690.057;
- (3) Meets the criteria for independent contractor status in accordance with ORS 690.035, 690.057, 670.600, and 657.040;
- (4) Applies on forms provided by the agency and pays the required application and registration fees;
- ~~(5) Has registered as required by Secretary of State, Corporations Division pursuant to ORS 648.007, an "Assumed Business Name" (ABN) defined under ORS 648.005 prior to applying for a independent contractor registration, and submits with independent contractor application a current copy of the ABN filing;~~

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of States, Corporations Division under ORS 648.005 through 648.990.

(5) Submits proof of:

(a) A current registration as required by Secretary of State, Corporations Division pursuant to ORS 648.007 if applicant is applying as a business and not as an individual; and

(b) A current copy of the Assumed Business Name (ABN) filing if applicant is operating under an assumed business name prior to applying for an independent contractor registration,

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of State, Corporations Division under ORS 648.005 through 648.990.

(6) Complies with all applicable rules and regulations of the Board and other state agencies; and

(7) Attests that application information is correct.

Stat. Auth.: ORS 676.615, 690.055, 690.057 & 690.165
Stats. Implemented: ORS 676.615, 690.055, 690.057 & 690.165
Hist.: BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2009, f. & cert. ef. 6-1-09

817-035-0110

Posting Requirements

Freelance authorization, certificate Certificate, license, permit and registration holders are subject to the requirements of OAR 331-030-0020. ~~in addition to the following posting requirements:~~

- (1) Facility licenses must be posted in public view.
- (2) Independent contractor registrations must be posted at the registration holder's workstation in public view.
- (3) Practitioner certificates must be posted in public view. ~~The practitioner's address printed on the certificate may be blocked from public view.~~ **A certificate holder may temporarily conceal the address printed on the certificate document with a covering that is removable.**
- (4) Demonstration and temporary authorizations must be posted in public view.
- (5) ~~Certification of identification~~ **Freelance authorization** holders must show the authorization to practice upon request of the client. **A freelance authorization holder may temporarily conceal the address printed on the freelance authorization document with a covering that is removable.**
- (6) Holders of a facility license or an independent contractor registration must maintain the most recent inspection certificate on the facility premises or at the designated work station and allow access to the record upon request by the agency's inspector or representative.

(7) Facilities and independent contractors must post the most recent inspection certificate in public view in the facility or at the independent contractors work station.

Stat. Auth.: ORS 676.615, 690.095 & 690.165

Stats. Implemented: ORS 676.615, 690.095 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; Renumbered from 817-010-0120; BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; Renumbered from 817-020-0013; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2009, f. & cert. ef. 6-1-09

DIVISION 40

FEES

817-040-0003

Fees

(1) Applicants and authorization holders are subject to provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency, in consultation with the Board, are as follows:

(a) Application:

(A) Practitioner certificate: \$25 per field of practice.

(B) Practitioner certificate by reciprocity: \$100 per field of practice.

(C) Independent contractor registration: \$50.

(D) Freelance authorization: \$25.

(E) Facility license: \$100.

(F) Temporary facility permit: \$50.

(G) Demonstration permit: \$25.

(b) Examination:

(A) Oregon laws & rules: \$50.

(B) Barbering: \$50.

(C) Hair design: \$50.

(D) Esthetics: \$50.

(E) Nail technology: \$50.

(F) Freelance authorization: \$25

(c) Original issuance of authorization to practice:

- (A) Practitioner certificate: \$40 for two years.
- (B) Practitioner certificate by reciprocity: \$45 for two years.
- (C) Independent contractor registration: \$100 for one year.
- (D) Freelance authorization: \$100 for one year.
- (E) Facility license: \$110 for one year.
- (d) Permits:
 - (A) Temporary facility: \$100.
 - (B) Demonstration: \$50.
- (e) Renewal of authorization to practice:
 - (A) Practitioner certificate: \$45 for two years.
 - (B) Practitioner certificate: on-line payment: \$40 for two years.
 - (C) Independent contractor registration: \$100 for one year.
 - (D) Freelance authorization: \$100 for one year.
 - (E) Facility license: \$110 for one year.
- (f) Other administrative fees:
 - (A) Delinquency fee: \$30 for each year in expired status up to ~~two~~ **three** years.
 - (B) Replacement of **freelance authorization**, certificate, license or registration, including name change: \$25.
 - (C) Duplicate **freelance authorization**, certificate, license or registration document: \$25 per copy with maximum of three.
 - (D) Affidavit of licensure: \$50.
 - (E) An additional \$25 administrative processing fee will be assessed if a NSF or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.
- (F) Information packets: \$10

Stat. Auth.: ORS 676.605, 676.606, 676.615 & 690.235
Stat. Implemented: ORS 676.605, 676.615, 690.235 & 30.701
Hist.: BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 1-1990(Temp), f. 4-20-90 & cert. ef. 6-1-90; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2008, f. 9-15-08 cert. ef. 10-1-08; BOC 2-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 12-25-09; BOC 3-2009(Temp), f. 12-21-09, cert. ef. 12-26-09 thru 5-31-10; BOC 1-2010, f. 3-31-10, cert. ef. 4-1-10; BOC 2-2010, f. & cert. ef. 10-1-10

DIVISION 60
CHEMICAL USE AND STORAGE

817-060-0050

Use of Formaldehyde Products

(1) In addition to and not in lieu of, any other city, county, state or federal laws, rules, codes and regulations, the agency and board adopt by reference OAR 437-002-0360(31).

(2) For the purpose of this rule:

(a) When employer is referenced under OAR 437-002-0360(31) employer means a facility license holder, temporary facility permit holder, demonstration permit holder working outside of a licensed facility, a practitioner working outside of a licensed facility, and an independent contractor.

(b) When employee is referenced under OAR 437-002-0360(31) employee means practitioner working in a licensed facility, individual working under the direction of an independent contractor or facility license holder, and demonstration permit holder working in a licensed facility.

DIVISION 90
CIVIL PENALTIES

817-090-0025 Schedule of Penalties for Facility and Independent Contractor Registration Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following facility license and independent contractor registration **laws and** rules.

~~The following~~ **This** schedule shall apply **applies**, except **at the discretion of the agency** as the agency otherwise determines in consideration of the factors referred to in **pursuant to** OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 ~~will~~ apply.

~~(1) Operating a facility without first filing a facility application, paying the fees, and receiving a license~~ **Operating or purporting to operate a facility without a valid facility license** is a violation of ORS 690.015(2)(b) and (2)(e) ~~and shall incur the following penalties:~~

~~(a) For 1st offense: \$200~~ **500**;

~~(b) For 2nd offense: \$500~~ **1000**;

~~(c) For 3rd offense: The facility owner/operator shall be subject to the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate and/or a facility license.~~ **\$2500**

~~(2) Operating~~ **or purporting to operate** as an independent contractor without first **a valid** filing an independent contractor registration application, paying the fees, and receiving a registration is a violation of ORS 690.015 (2)(d) and (2)(e) ~~and shall incur the following penalties:~~

~~(a) For 1st offense: \$200~~

~~(b) For 2nd offense: \$500~~

~~(c) For 3rd offense: The independent contractor shall be subject to the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate, license, registration and/or permit.~~ **\$1,000**

~~(3) Operating a facility or as an independent contractor with an expired license or registration is a violation of ORS 690.015(2)(b) or (2)(d) and OAR 331-030-0010(4)~~ **676.612 (2)(r)** and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$200;

(b) ~~For~~ 2nd offense: \$500;

(c) ~~For~~ 3rd offense: ~~The independent contractor shall be subject to the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate, license registration and/or permit.~~ **\$1,000**

(4) Allowing an uncertified person to practice **in a field of practice as an employee** is a violation of ORS 690.015(2)(g) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$500;

(b) ~~For~~ 2nd offense: \$1,000;

(c) ~~For~~ 3rd offense: ~~The person shall be subject to the assessment of a penalty and/or the proposed revocation, suspension or refusal to issue a license.~~ **\$2,500**

(5) ~~Failing to notify the Agency of a work location change as an independent contractor as required by pursuant OAR 331-010-0040(3) shall incur the following penalties:~~

(a) ~~For~~ 1st offense: \$200;

(b) ~~For~~ 2nd offense: \$500;

(c) ~~For~~ 3rd offense: ~~The independent contractor shall be subject to the assessment of a penalty and/or the proposed revocation, suspension or refusal to issue an independent contractor registration.~~

(6) **(5)** Failing to allow the Agency to inspect the premises when the facility is open or obstructing or hindering the normal progress of the inspection, threatening or exerting physical harm, or enabling another individual to impede the inspection progress is a violation of OAR 817-020-0042(1) and ~~(2)~~ **0006(9)** and shall incur the following penalties: and will result in **monetary penalties and any other actions allowed by law.**

(a) ~~For~~ 1st offense: \$500;

(b) ~~For~~ 2nd offense: \$1,000;

(c) ~~For~~ 3rd offense: ~~The facility owner/operator or practitioner shall be subject to the assessment of a penalty and/or the proposed revocation, suspension or refusal to issue a certificate, license, registration and/or permit.~~

~~(7)~~ **(6)** Allowing an employee to practice with an expired practitioner certificate is a violation of ORS ~~690.015(7)~~ **676.612(2)(h)** and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$200

(b) ~~For~~ 2nd offense: \$500

(c) ~~For~~ 3rd offense: ~~The facility owner shall be subject to the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a facility license.~~ **\$1000**

~~(8)~~ **(7)** Failing to meet the specifications and standards required under OAR 817-010-0007 in a facility is a violation of OAR ~~817-020-0011(1)(b)~~ 817-020-0006 (1)(e) and shall **may result in an emergency** incur the following penalty for any offense: ~~Immediate~~ suspension of the facility license until the violation is corrected.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165 & 690.167
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165 & 690.167
Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0020; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0035 Schedule of Penalties for Practitioner Violations

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following practitioner licensing rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.~~

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of practitioner licensing laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Operating with an expired practitioner certificate is a violation of ORS ~~690.015(2)(a)~~ and OAR ~~331-030-0010(4)~~ **676.612(2)(r)** and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$200;

(b) ~~For~~ 2nd offense: \$500;

~~(c) For 3rd offense: The practitioner shall be subject to the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate, license, registration and/or permit. **\$1000**~~

~~(2) Practicing barbering, hair design, esthetics or nail technology without a certificate, with a certificate issued to another person, or a suspended certificate is a violation of ORS 690.015(2)(a), 676.612(4) and/or 676.612(1) (d) and shall incur the following penalties:~~

~~(a) For 1st offense: \$500;~~

~~(b) For 2nd offense: \$1,000;~~

(2) Practicing or purporting to practice in a field of practice without a certificate, is a violation of ORS 690.015(2)(a)

(a) 1st offense: \$1,000;

(b) 2nd offense: \$2,500;

(c) 3rd offense \$5,000

~~(3) Performing services as a practitioner while working as an employee in a field of practice in an unlicensed facility is a violation of ORS 690.015(2)(c) (e) and shall incur the following penalties:~~

~~(a) For 1st offense: \$200;~~

~~(b) For 2nd offense: \$500;~~

~~(c) For 3rd offense: \$1,000~~

~~(4) Failing as a practitioner to inform the Agency within 30 calendar days of a change of employment with a facility is a violation of OAR 331-010-0040 and shall incur the following penalties:~~

~~(a) For 1st offense: \$50;~~

~~(b) For 2nd offense: \$100;~~

~~(c) For 3rd offense: \$200.~~

~~(5) Failing to notify the Agency of a move or a change of home address within 30 calendar days of the change is a violation of OAR 331-010-0040 and shall incur the following penalties:~~

- ~~(a) For 1st offense: \$50;~~
- ~~(b) For 2nd offense: \$100;~~
- ~~(c) For 3rd offense: \$200.~~

(4) Practicing or purporting to practice in a field of practice with a suspended certificate is a violation of 676.612 (4)

- (a) 1st offense: \$2,500;**
- (b) 2nd offense: \$5,000;**

(c) 3rd offense: Monetary penalty and any other actions allowed by law including refusal to issue an authorization to practice

~~(6)~~ **(5) Performing barbering, hair design, esthetics and/or nail technology services in a field of practice** by a student when not on the premises of the ~~career school~~ **an educational institution** in which he or she is enrolled is a violation of OAR 817-100-0005~~(3)~~ and shall incur the following penalties:

- ~~(a) For 1st offense: \$150;~~ **500;**
- ~~(b) For 2nd offense: \$300;~~ **1,000;**
- ~~(c) For 3rd offense: \$500.~~ **\$2,500.**

Stat. Auth: ORS 676.605, 676.615, 676.992, 690.165 & 690.167
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165 & 690.167
Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96, Renumbered from 817-090-0020; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0045 Schedule of Penalties for Certificate/License/Registration/Permit Violations

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following certificate/license/registration/permit rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply:~~

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of certificate/license/registration/permit laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Altering **with fraudulent intent or fraudulent use of** a license, certificate, registration ~~or permit or authorization~~ issued by the agency is a violation of ORS 690.015(2)(j) **or ORS 690.015(2)(k)** and shall incur the following penalties:

(a) ~~For 1st offense: \$500;~~ **1,500;**

(b) ~~For 2nd offense: \$1,000;~~ **3,500;**

(c) ~~For 3rd offense: The person shall be subject to the assessment of a penalty and/or the proposed revocation, suspension or refusal to issue a certificate, license, registration, permit or authorization.~~ **\$5,000.**

(2) Failing to post a **valid** facility license, independent contractor registration, practitioner certificate and/or, permit **or authorization issued by the agency in public view** a publicly visible place within a facility or at the independent contractor's work station is a violation of ORS 690.095 and OAR 817-035-0110 and shall incur the following penalties:

(a) ~~For 1st offense: \$50;~~ **100**

(b) ~~For 2nd offense: \$500~~ **300**

(c) ~~For 3rd offense: The practitioner and/or facility owner/independent contractor shall be subject to the assessment of a penalty and/or probation, revocation, suspension or refusal to issue a certificate, facility license and/or independent contractor registration. Posting of photocopies, reproductions, and pocket identification cards will be cited as failure to post.~~ **\$500**

(3) Failing to **maintain post** the most recent inspection certificate **in public view** on the in the facility premises or at the work station of an independent contractor, or to make the document available upon request **within the facility** is a violation of OAR 817-035-0110(5) and shall incur the following penalties:

(a) ~~For 1st offense: \$50.~~ **100;**

(b) ~~For 2nd offense: \$100;~~ **300;**

(c) ~~For 3rd offense: \$200.~~ **500.**

(4) Failing to return or surrender a certificate, license, registration and/or, permit **or authorization** upon demand by the Agency is a violation of OAR 331-030-0020(5) and shall incur the following penalties:

(a) ~~For 1st offense: \$100~~ **1,000;**

(b) ~~For~~ 2nd offense: ~~\$300~~ **2,500**;

(c) ~~For~~ 3rd offense: ~~\$500~~ **5,000**.

(5) Failing to provide appropriate photographic identification upon request by the Agency is a violation of OAR 331-030-0020(4) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: ~~\$300~~ **500**;

(b) ~~For~~ 2nd offense: ~~\$500~~ **1,000**;

(c) ~~For~~ 3rd offense: ~~\$1,000~~ **\$2500**.

(6) Failing to inform the Agency within 30 calendar days of a change work location, home or mailing address, or other notification requirement listed in OAR 331-010-0040 is a violation of OAR 331-010-0040

(a) 1st offense: \$100;

(b) 2nd offense: \$200;

(c) 3rd offense: \$500.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165 & 690.167

Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165 & 690.167

Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0020; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0050 Schedule of Penalties for ~~Certificate of Identification~~ **Freelance Authorization Violations**

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following certificate of identification licensing rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.~~

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of Freelance Authorization laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Working with an expired **Freelance Authorization** certificate of identification is a violation of **ORS 676.612(2)(r)** ~~ORS 690.015(2)(a)~~ and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$400; **200**;

(b) ~~For~~ 2nd offense: \$500;

(c) ~~For~~ 3rd offense: The practitioner shall be subject to the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate. **\$1000**

(2) Failing to display the practitioner certificate number and **Freelance Authorization number** when advertising or soliciting business; and/or, failing to provide required card under a certificate of identification **Freelance Authorization** is a violation of OAR 817-035-0050 ~~(7)~~ **(5)(a)** and/or (b) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$50; **100**;

(b) ~~For~~ 2nd offense: \$400; **200**;

(c) ~~For~~ 3rd offense: \$200. **500**.

(3) Practicing outside a licensed facility without Agency authorization to do so a **valid Freelance Authorization** is a violation of ORS 690.123 and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$300; **500**;

(b) ~~For~~ 2nd offense: \$500; **1,000**;

(c) ~~For~~ 3rd offense: The practitioner shall be subject to the assessment of a penalty and/or the proposed suspension or refusal to issue a certificate. **\$2,500**

Stat. Auth: ORS 676.605, 676.615, 676.992, 690.165 & 690.167
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165 & 690.167
Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96, Renumbered from 817-090-0020; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0055 Schedule of Penalties for Home Facility Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following home facility licensing rules. The following schedule shall apply except as the agency otherwise determines in consideration

of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of home facility laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to identify a facility located in a residence by means of a house number or a sign easily visible from the street is a violation of OAR 817-020-0011(2)(a) **0006(9)** and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$50; **100**;

(b) ~~For~~ 2nd offense: \$400; **200**;

(c) ~~For~~ 3rd offense: \$200. **500**.

(2) Failing to **provide an entrance to the facility that is separate from the entrance to residential living areas or maintain separation between the facility and the residential living areas** ~~have a separate entry to the living area of the residence for a facility located in a residence or to properly separate the facility from the living area of the residence~~ is a violation of OAR 817-020-0011(2)(d), (e) **0006(9)(b) or (c)** and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$50; **100**;

(b) ~~For~~ 2nd offense: \$400; **200**;

(c) ~~For~~ 3rd offense: \$200. **500**.

Stat. Auth: ORS 676.605, 676.615, 676.992, 690.165 & 690.167
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165 & 690.167
Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96, Renumbered from 817-090-0020; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0065 Schedule of Penalties for Water Supply and Disposal Violations

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.~~

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to have immediate access to hot and cold running water in the working area of a facility, or **in the location where a Freelance Authorization holder is providing services**, ~~as a practitioner working under a certificate of identification~~ is a violation of OAR 817-010-0014(4) and 817-035-0050(7)-(5)(c) ~~and shall incur the following penalties:~~

(a) For 1st offense: ~~\$400~~; **300**;

(b) For 2nd offense: ~~\$300~~; **500**;

(c) For 3rd offense: ~~\$500~~. **1,000**.

(2) Failing to have a facility water supply which meets state pressure and purity requirements is a violation of OAR 817-010-0014(1) and (2) ~~and shall incur the following penalty for any offense: Referral of the violation to the State Plumbing Board and immediate suspension of the facility license until the violation is corrected~~ **may result in an emergency suspension of the facility license until the violation is corrected.**

(3) Improperly disposing of liquid waste from a facility is a violation of OAR 817-010-0021(3) ~~and shall incur the following penalty for any offense: Referral of the violation to the State Plumbing Board and immediate suspension of the facility license until the violation is corrected~~ **may result in an emergency suspension of the facility license until the violation is corrected.**

Stat. Auth: ORS 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96, Renumbered from 817-090-0030; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0070 Schedule of Penalties for Towels and Linens Violations

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.~~

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency

pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to use clean towels or linens for each client is a violation of OAR 817-010-0035(1) and failing to launder towels and linens as required is a violation of OAR 817-010-0035(5), ~~and shall incur the following penalties for each violation:~~

- (a) ~~For~~ 1st offense: ~~\$50;~~ **300;**
- (b) ~~For~~ 2nd offense: ~~\$100;~~ **500;**
- (c) ~~For~~ 3rd offense: ~~\$200.~~ **1,000.**

(2) Failing to store clean towels and linens in a clean area is a violation of OAR 817-010-0035(3) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: ~~\$50;~~ **300;**
- (b) ~~For~~ 2nd offense: ~~\$100;~~ **500;**
- (c) ~~For~~ 3rd offense: ~~\$200.~~ **1,000.**

(3) Failing to immediately deposit all used towels with chemical residue in a closed, fire retardant container is a violation of OAR 817-010-0035(4) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: ~~\$100;~~ **300;**
- (b) ~~For~~ 2nd offense: ~~\$300;~~ **500;**
- (c) ~~For~~ 3rd offense: ~~\$500.~~ **1,000.**

(4) Failing to deposit soiled towels in a covered container is a violation of OAR 817-010-0035(4) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: ~~\$50;~~ **100;**
- (b) ~~For~~ 2nd offense: ~~\$100;~~ **200;**
- (c) ~~For~~ 3rd offense: ~~\$200.~~ **500.**

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0075 Schedule of Penalties for Waste Disposal Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to immediately deposit all chemical waste materials in a closed container at the conclusion of each service, or a fire-retardant container at the close of each business day is a violation of OAR 817-010-0060(1) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: \$400; **300**;
- (b) ~~For~~ 2nd offense: \$300; **500**;
- (c) ~~For~~ 3rd offense: \$500. **1000**.

(2) Failing to immediately deposit all waste and refuse in covered containers is a violation of OAR 817-010-0060(2) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: \$50; **100**;
- (b) ~~For~~ 2nd offense: \$400; **200**;
- (c) ~~For~~ 3rd offense: \$200. **500**.

(3) Failing to store cigarette ashes, butts, etc. in a fire-retardant container is a violation of OAR 817-010-0060(4) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: \$50; **300**;
- (b) ~~For~~ 2nd offense: \$400; **500**;
- (c) ~~For~~ 3rd offense: \$200. **1000**.

(4) Failing to keep the outer surface of a waste disposal container clean is a violation of OAR 817-010-0060(5) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: \$50; **100**;

(b) ~~For~~ 2nd offense: \$400; **200**;

(c) ~~For~~ 3rd offense: \$200. **500**.

(5) Failing to dispose of disposable material coming into contact with blood or other bodily fluids in a sealable plastic bag is a violation of OAR 817-010-0060(6) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1,000**.

(6) Failing to dispose of disposable sharp-edged material coming into contact with blood or other bodily fluids in a sealable rigid container is a violation of OAR 817-010-0060(7) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$50; **300**;

(b) ~~For~~ 2nd offense: \$400; **500**;

(c) ~~For~~ 3rd offense: \$200. **1,000**.

(7) Failing to have sealable plastic bags and sealable rigid containers available for use at all times services are being performed is a violation of OAR 817-010-0060(8) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$50; **300**;

(b) ~~For~~ 2nd offense: \$400; **500**;

(c) ~~For~~ 3rd offense: \$200. **1,000**.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0080 Schedule of Fines for Dispensing of Cosmetic Preparations Violations

~~(1) In accordance with OAR 817-090-0015, the Agency has adopted the following fine schedule for the 1st, 2nd, and 3rd violations of the following safety and~~

sanitation rules. For the 4th and subsequent offenses, the provisions of OAR 817-090-0005 will apply:

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

~~(2)~~ **(1)** Failing to properly dispense powders, liquids, wave solutions, creams, semi-solid substances or other materials which come in contact with a client is a violation of OAR 817-010-0055 and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1,000**.

Stat. Auth.: ORS 690.165, 690.205 & 690.995 \\
Stats. Implemented: ORS 690.165, 690.205 & 690.995
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2007, f. 10-31-07, cert. ef. 11-1-07

817-090-0085 Schedule of Penalties for Sanitation or Disinfectant Violations

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.~~

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to use a high-level disinfectant or failing to totally immerse **in high-level disinfectant**, all tools and implements with sharp edges or points, **or foot spa equipment** according to disinfectant manufacturer's instructions is a violation of either OAR 817-010-0068(3) or OAR 817-010-0101(5) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: ~~\$300~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$500~~. **1,000**.

(2) Failing to keep disinfecting solutions at adequate strength, free of foreign material, and/or available for immediate use at all times the facility is open for business is a violation of OAR 817-010-0065(6) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: ~~\$400~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$300~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$500~~. **1,000**.

(3) Failing as a facility license holder, an independent contractor or ~~a practitioner working under a certificate of identification~~ **Freelance authorization holder** to provide and maintain adequate disinfecting **solutions and or** sterilizing equipment to the number of practitioners, usage requirements or volume of business is a violation of OAR 817-010-0065(3) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: ~~\$400~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$300~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$500~~. **1000**.

(4) Failing to use a low-level disinfectant or failing to totally immerse all tools and implements, without sharp edges or points according to disinfectant manufacturers instructions is a violation of OAR 817-010-0068(2) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: ~~\$400~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$300~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$500~~. **1000**.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0090 Schedule of Penalties for Disinfecting Requirements of Tools and Implements Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to cleanse and disinfect, **with a high-level disinfectant**, electrical or mechanical hair clipper blades after use on each client is a violation of OAR 817-010-0069(2) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1,000**.

~~(2) Failing as a facility license holder, independent contractor, or practitioner working under a certificate of identification to disinfect tools and implements in a sanitizing pan or, alternatively, to use pre-disinfected packets or containers of tools and implements, prepared in advance for each client, is a violation of OAR 817-010-0065(3) and shall incur the following penalties:~~

~~(a) For 1st offense: \$100;~~

~~(b) For 2nd offense: \$300;~~

~~(c) For 3rd offense: \$500.~~

~~(3)~~ **(2)** Failing to store new, disinfected or cleaned tools and implements separately from all others is a violation of OAR 817-010-0075(1) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1000**.

~~(4)~~ **(3)** Failing to ensure that **any tool or implement; or article** ~~articles~~ which comes in contact with a client's are disinfected, cleaned or disposed of is a violation of **OAR 817-010-0065(1); or OAR 817-010-0040(2) and/or OAR 817-010-0040(3)** and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1000**.

~~(5)~~ **(4)** Failing to discard **or give to the client** any ~~a~~ disposable nail file, cosmetic sponge, buffer block, sanding band or sleeve, orangewood stick, or nail bits designed for single use after use on a client, ~~or to give the nail file, cosmetic sponge, buffer block, sanding band or sleeve, orangewood stick or nail bit to the client~~ is a violation of OAR 817-010-0065(7) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1000**.

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0095 Schedule of Penalties for Cleanable/Non-Absorbent Surfaces Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to have cleanable, non-absorbent surfaces on all equipment in all areas of a facility where services are performed is a violation of OAR 817-010-0101(1) and shall incur the following penalties:

(a) ~~For~~ 1st offense: ~~\$50~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$400~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$200~~. **1000**.

(2) Failing to keep equipment in a facility, including upholstery fabrics, clean and in good repair is a violation of OAR 817-010-0101(3) and shall incur the following penalties:

(a) ~~For~~ 1st offense: ~~\$50~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$400~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$200~~. **1000**.

(3) Failing to have cleanable, non-absorbent floor surfaces in good repair in the area(s) of a facility where services are performed is a violation of OAR 817-010-0106(1) and shall incur the following penalties:

(a) ~~For~~ 1st offense: ~~\$50~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$400~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$200~~. **1000**.

Stat. Auth: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205

Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205

Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96, Renumbered from 817-090-0030; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0100 Schedule of Penalties for Clean Conditions Violations

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.~~

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency

pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to keep a restroom located on the premises of a facility clean and sanitary is a violation of OAR 817-010-0021(2) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: ~~\$50;~~ **300;**
- (b) ~~For~~ 2nd offense: ~~\$100;~~ **500;**
- (c) ~~For~~ 3rd offense: ~~\$200.~~ **1000.**

(2) Failing to keep a facility shampoo bowl or sink clean is a violation of OAR 817-010-0101(2) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: ~~\$50;~~ **300;**
- (b) ~~For~~ 2nd offense: ~~\$100;~~ **500;**
- (c) ~~For~~ 3rd offense: ~~\$200.~~ **1000.**

(3) Failing to keep roller-storage receptacles and their contents clean and free of foreign material is a violation of OAR 817-010-0075(2) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: ~~\$50;~~ **300;**
- (b) ~~For~~ 2nd offense: ~~\$100;~~ **500;**
- (c) ~~For~~ 3rd offense: ~~\$200.~~ **1000**

(4) Failing to keep storage drawers for clean tools and implements clean and to use such drawers only for clean tools and implements is a violation of OAR 817-010-0075(3) ~~and shall incur the following penalties:~~

- (a) ~~For~~ 1st offense: ~~\$50;~~ **300;**
- (b) ~~For~~ 2nd offense: ~~\$100;~~ **500;**
- (c) ~~For~~ 3rd offense: ~~\$200.~~ **1000.**

(5) Failing to keep storage cabinets, work stations, vanities and backbars or other such equipment clean is a violation of OAR 817-010-0075(4) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: ~~\$50;~~ **300;**

(b) ~~For~~ 2nd offense: ~~\$400;~~ **500;**

(c) ~~For~~ 3rd offense: ~~\$200.~~ **1000.**

(6) Allowing hair clippings to accumulate on a facility floor or failing to dispose of hair clippings in a covered container is a violation of OAR 817-010-0106(3) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: ~~\$50;~~ **300;**

(b) ~~For~~ 2nd offense: ~~\$400;~~ **500;**

(c) ~~For~~ 3rd offense: ~~\$200.~~ **1000.**

(7) Failing to keep facility walls and ceiling clean and free of excessive spots, mildew, condensation or peeling paint is a violation of OAR 817-010-0110 ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: ~~\$50;~~ **300;**

(b) ~~For~~ 2nd offense: ~~\$400;~~ **500;**

(c) ~~For~~ 3rd offense: ~~\$200.~~ **1000.**

(8) Failing to properly clean and disinfect foot spa equipment as required is a violation of OAR 817-010-0101(5) ~~and shall incur the following penalty:~~

(a) ~~For~~ 1st offense: ~~\$400;~~ **300;**

(b) ~~For~~ 2nd offense: ~~\$300;~~ **500;**

(c) ~~For~~ 3rd offense: ~~\$500.~~ **1000.**

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0105 Schedule of Fines for Client Health and Safety Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to use a neck strip or a towel to prevent contact between the skin of a client's neck and a hair cloth or cape is a violation of OAR 817-010-0040(1) ~~and shall incur the following penalties:~~

- (a) ~~For 1st offense: \$50;~~ **300;**
- (b) ~~For 2nd offense: \$100;~~ **500;**
- (c) ~~For 3rd offense: \$200.~~ **1000.**

(2) Failing to use a disposable cover on the head of a client who is trying on a hairpiece or to clean and label used hair goods as "used" prior to resale is a violation of OAR 817-010-0085 ~~and shall incur the following penalties:~~

- (a) ~~For 1st offense: \$50;~~ **300;**
- (b) ~~For 2nd offense: \$100;~~ **500;**
- (c) ~~For 3rd offense: \$200.~~ **1000.**

~~(3) Failing to provide disposable drinking cups when beverages are served in a facility is a violation of OAR 817-010-0090 and shall incur the following penalties:~~

- ~~(a) For 1st offense: \$50;~~
- ~~(b) For 2nd offense: \$100;~~
- ~~(c) For 3rd offense: \$200.~~

~~(4)~~ **(3)** Failing to wear single-use disposable protective gloves while having open sores or skin lesions during any performance of service on a client is a violation of OAR 817-015-0030(2) ~~and shall incur the following penalties:~~

- (a) ~~For 1st offense: \$50;~~ **300;**
- (b) ~~For 2nd offense: \$100;~~ **500;**
- (c) ~~For 3rd offense: \$200.~~ **1000.**

~~(5)~~ **(4)** Performing services while diagnosed with a communicable disease or condition in a transmittable form is a violation of OAR 817-120-0005(4) and (5) and shall incur the following penalty for any violation: ~~Immediate-Emergency~~ **Immediate-Emergency** suspension until the disease or condition is no longer communicable.

~~(6)~~ **(5)** Treating any disease or knowingly serving any client having a communicable disease or condition except head lice is a violation of OAR 817-120-0005(4) and (5) and shall incur the following penalties:

(a) ~~For~~ 1st offense: ~~\$250~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$500~~; **500**;

(c) ~~For~~ 3rd offense: ~~Suspension or revocation of practitioner certificate.~~ **\$1000.**

~~(7)~~ **(6)** Performing services without washing one's hands immediately before and after serving each client is a violation of OAR 817-015-0030(1) and shall incur the following penalties:

(a) ~~For~~ 1st offense: ~~\$50~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$100~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$200~~. **1000.**

~~(8)~~ **(7)** Failing to maintain client records for each client receiving esthetics or nail technology services, maintain client records on the premises of the facility or allow an enforcement officer access to review client records upon request is a violation of OAR 817-015-0065 or **OAR 817-015-0070** and shall incur the following penalties:

(a) ~~For~~ 1st offense: ~~\$50~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$100~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$200~~. **1000.**

~~(9)~~ **(8)** Failing to maintain required documentation of an FDA Class I or Class II manual or mechanical device or equipment, or to provide required documentation upon request is a violation of OAR 817-010-0065(10) or (14) and shall incur the following penalties:

(a) ~~For~~ 1st offense: ~~\$400~~; **300**;

(b) ~~For~~ 2nd offense: ~~\$300~~; **500**;

(c) ~~For~~ 3rd offense: ~~\$500.~~ **1000.**

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0110 Schedule of Penalties for Safe Working Conditions Violations

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.~~

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to meet the requirements of the Oregon Indoor Clean Air Act is a violation of OAR 817-010-0009 ~~and will be referred to the Department of Human Services, Health Services~~ **may result in an emergency suspension of the facility license until the violation is corrected.**

(2) Having frayed electrical wiring or overloading the electrical circuits in a facility is a violation of ORS 690.055(1)(C), 690.055(4)(F) and OAR 817-010-0007(1) ~~and shall be referred to the appropriate authority~~ **may result in an emergency suspension of the facility license until the violation is corrected.**

(3) Having pets in facilities, other than fish in an aquarium, is a violation of OAR 817-010-0095 ~~and shall incur the following penalties.~~

(a) ~~For~~ 1st offense: ~~\$50;~~ **300;**

(b) ~~For~~ 2nd offense: ~~\$100;~~ **500;**

(c) ~~For~~ 3rd offense: ~~\$200.~~ **1000.**

(4) Failing to wear single-use disposable protective gloves while performing a service on a client whose skin shows signs of excretion of any body fluids is a violation of OAR 817-015-0030(3) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: ~~\$50;~~ **300;**

(b) ~~For~~ 2nd offense: \$100; **500**;

(c) ~~For~~ 3rd offense: \$200. **1000**.

(5) Failing to wear eye goggles, shields or mask in performing services on a client where the likelihood of splattering is present is a violation of OAR 817-015-0030(4) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$50; **300**;

(b) ~~For~~ 2nd offense: \$100; **500**;

(c) ~~For~~ 3rd offense: \$200. **1000**.

(6) Failing to have a restroom available which is "reasonably accessible" for facility employees is a violation of OAR 817-010-0021(1) and shall incur the following penalties:

(a) ~~For~~ 1st offense: \$50; **300**;

(b) ~~For~~ 2nd offense: \$100; **500**;

(c) ~~For~~ 3rd offense: \$200. **1000**.

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

817-090-0115 Schedule of Penalties for Chemical Use and Storage Violations

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following chemical use and storage rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.~~

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of chemical use and storage laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to store chemicals safely to avoid fire, explosion and/or bodily harm to clients and practitioners is a violation of OAR 817-060-0020(3) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1000**.

(2) Failing to mix chemicals in a dispensing area is a violation of OAR 817-060-0030(1) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1000**.

(3) Mixing or using chemicals near an open flame or other potential source of ignition is a violation of OAR 817-060-0030(1) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1000**.

(4) Smoking, or allowing a client to smoke, or having an open flame at the workstation, during any phase of chemical service, i.e. mixing, application, processing, or use of any potentially explosive or flammable chemical, in relation to performing services is a violation of OAR 817-060-0030(7) ~~and shall incur the following penalties:~~

(a) ~~For~~ 1st offense: \$400; **300**;

(b) ~~For~~ 2nd offense: \$300; **500**;

(c) ~~For~~ 3rd offense: \$500. **1000**.

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0040; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06

1 BEFORE THE HEALTH LICENSING AGENCY
2 OF THE STATE OF OREGON
3

4 **In the Matter of the**)

5 *Amendment of Oregon Administrative Rules:*)

6 Proposed Adoptions: 817-030-0071, 817-060-0050)

7 Proposed Amendments: 817-005-0005, 817-010-0065,)
8 817-020-0006, 817-030-0005, 817-030-0030, 817-030-0065,)
9 817-035-0010, 817-035-0050, 817-035-0070, 817-035-0110,)
10 817-040-0003, 817-090-0025, 817-090-0035, 817-090-0045,)
11 817-090-0050, 817-090-0055, 817-090-0065, 817-090-0070,)
12 817-090-0075, 817-090-0080, 817-090-0085, 817-090-0090,)
13 817-090-0095, 817-090-0100, 817-090-0105, 817-090-0110,)
14 817-090-0115)

15 Proposed Repeals: 817-010-0090, 817-030-0015,)
16 817-030-0018, 817-030-0020, 817-030-0040, 817-030-0045,)
17 817-030-0055, 817-035-0030, 817-060-0050(T),)
18 817-035-0050(T))

) SUMMARY OF PUBLIC
) HEARING TESTIMONY
) WITH RECOMMENDATIONS
) OF HEARINGS OFFICER

) PUBLIC HEARING HELD ON:
) March 28, 2011

14 **BACKGROUND**

15 Concurrent public hearing were held for the purpose of receiving comments about the adoption,
16 repeal and amendments to proposed rules in OAR 817 to address issues related to the program under
17 the Board of Cosmetology (“Board”). The proposed rules are intended to accomplish the following:

- 18 (1) streamline definitions, (2) amend requirements for facilities, independent contractors and
19 freelance authorization holders to have a current business registration as required by Secretary of
20 State Corporations Division, (3) clarify and streamline application requirements and processes, (4)
21 remove the current Pathway Two for certification to align with the statutory authority of the Board,
22 (5) require that individuals seeking certification in an additional field of practice must obtain 150
23 hours of safety and sanitation and 100 hours in career development if they have been certified for
24 more than two years, (6) amend examination requirements to include all information related to
25 examinations be streamlined into one administrative rule, (7) adopt retake examination requirements
26 to conform with board policy, (8) adopt practical examination evaluation requirements to ensure they
27

1 meet the standards set by the Department of Education under ORS 345, (9) align renewals with
2 agency standards and protocols, (10) amend the freelance authorization to align with statutory
3 requirements regarding where services can be provided, (11) amend posting requirements for
4 authorizations and inspection certificates, (12) reduce fees for initial certification, (13) adopt the use
5 of formaldehyde products rule permanently, and (14) align the civil penalty schedule with agency
6 protocols and standards.

7 Prior to the hearings, the Health Licensing Agency (“Agency”) filed Notices of Proposed
8 Rulemaking Hearing and a Statement of Need and Fiscal Impact with the Secretary of State which
9 were published on March 1, 2011 in the *Oregon Bulletin*. Interested persons were invited to offer
10 oral testimony and written comment on the proposed amendments. The Notices provide that the last
11 day to submit written comments is March 28, 2011. The public hearing was conducted on March 28,
12 2011 beginning at 9:02 A.M. and ending at 9:20 A.M. in the Rhoades Conference Room on the third
13 floor of the Veterans Affairs Building located at 700 Summer Street, NE, Salem, Oregon. The
14 hearing was conducted by Bert P. Krages, attorney, who served as the Hearings Officer.

15 **REASONS FOR PROPOSED CHANGES**

16 The purposes of the proposed changes to OAR Chapter 817 are to set forth certification
17 processes, amend certification requirements, reduce the financial cost to prospective licenses, and
18 improve health and safety.

19 **SUMMARY OF PROPOSED RULES**

20 Summaries of the changes applicable to each program can be found in the attached Notice of
21 Proposed Rulemaking and the Proposed Rules.

22 **WRITTEN COMMENTS AND DOCUMENTS**

23 The Agency received three written submissions commenting on the proposed rules prior to the
24 preparation of the recommendations of the hearings officer.

25 Teresa Greene, Director of the Private Career Schools Licensing, Oregon Department of
26 Education (“Department”), noted that the Health Licensing Agency has the authority to administer

1 examinations, waive educational requirements, and establish the subject and form of examinations.
2 However, the Department would appreciate being included in discussions to formulate rules that may
3 affect the private career school sector which is regulated by the Department.

4 With respect to OAR 817-030-0005(3)(a), the Department expressed concern that the Board is
5 proposing that high schools may offer full cosmetology programs. Specific concerns were that
6 offering such a program could jeopardize Carl Perkins grant funds received by high schools to fund
7 career and technical programs of study and that fulfilling the requirements for a field of practice may
8 be incompatible with timely fulfilling the requirements for high school graduation. Concern was also
9 expressed that allowing all community colleges to offer cosmetology would adversely affect private
10 career schools.

11 With regard to OAR 817-030-0005(4), the Department noted that there are no criteria or
12 rationales specified for why a student coming from a competency-based school would need to
13 provide additional information. The commenter suggested that the Board describe what information
14 might be required and the reasons why.

15 With regard to OAR 817-030-0005(5), the Department requested an explanation for why a
16 person would have to retake the entire sections of safety and sanitation and career development
17 training if they have already been in the field for two or more years. The concern was that this
18 constitutes an unnecessary cost to the applicant and a burden to the schools. It was noted that private
19 career schools would likely be the only institutions able to provide retraining.

20 With regard to OAR 817-030-0030(1), the Department questions why the administration of the
21 practical examination would be limited to high schools, career schools, and community colleges and
22 not extended to correctional institutions. The commenter questioned how the Board can require
23 institutions regulated by one agency to comply with regulations promulgated by another agency with
24 respect to different classes of institutions (e.g., community colleges and career schools).

25 With regard to OAR 817-030-0065(1)(c), the Department notes that requiring retraining to be
26 done at a career school would be problematic for high school students who are not eighteen, students
27

1 who are incarcerated, and students who graduated from a community college. The Department also
2 noted that this rule references OAR 817-030-0045(3) which is being proposed for repeal.

3 With regard to OAR 817-030-0071 the Department stated that this rule pertains to practical
4 examinations that are governed by Department regulations. The Department further stated that it was
5 unclear as to how ORS 690.046 gives the Board authority to regulate this activity at private career
6 schools and that the Board should work with the Department to resolve any concerns it has with
7 respect to the administration and formulation of the practical examination. The Department felt that
8 it was unclear what was meant by “agency standards” and “evaluation standards.”

9 With regard to OAR 817-0030-0071(7), the Department expressed concern that “school” was
10 defined in a manner contrary to the definition set forth in ORS chapter 690 and that the Board does
11 not have the authority to redefine statutes.

12 The Department requested that this rule be stricken from the final adoption schedule pending
13 conversation and agreement between the Department and the Board.

14 Cindy Long, administrator of the College of Hair Design Careers, expressed concern that via
15 proposed OAR 807-030-0005(3)(a), the Board was proposing that high schools may offer
16 cosmetology programs but was even more concerned the rule opens the door for community colleges
17 to offer such programs. This would have a huge effect on private career schools. She questioned the
18 need to have community colleges offer such programs considering that the demand is already
19 accommodated by private career schools. With regard to proposed OAR 807-030-0030(1), she
20 stated that there is no reason not to recognize a practical examination administered at a correctional
21 institution. She noted that not allowing such examinations would likely preclude students at
22 correctional institutions from taking a practical examination. With regard to OAR 807-030-0005(5),
23 she stated that she saw no need for a licensee seeking an additional license to complete 150 hours of
24 safety and sanitation when such course work was previously completed prior to obtaining the
25 existing license. She expressed hope that the Agency would work together with the Oregon
26 Department of Education to ensure that everyone was successful.

1 Heidi Zuniga provided comments in her capacity as a member of the public. She stated that the
2 proposed rules filed with the Secretary of State on March 1, 2011 are not the same as the proposed
3 rules agreed to by the Board at its meeting on January 24, 2011. She stated that the following
4 proposed changes were not in the text of the Board-approved rules:

5 OAR 817-005-005

(6) definition of career schools deleted

6 (47) definition of official transcript rewritten

7 OAR 817-030-0005

(3)(a, c & d) certification pathway no. 1

8 ((5) retake 150 hour, 100 hours

9 OAR 817-030-0030

(1) practical examination

10 OAR 817-030-040

(1)(a-I), (2-7) deleted

12 OAR 817-030-0065

(1)(a-h) & (2)

13 OAR 817-030-0071

(7) practical examination evaluation

15 She specifically noted that these proposed rules include schools that do not have programs
16 approved by the Oregon Department of Education and at the same time give career schools the
17 responsibility for retraining students who have attended other schools and failed the examination.
18 She feels that these rules raise unanswered questions, address areas in which a need has not been
19 established, and questions whether a fiscal impact study has been done. She is opposed to the
20 proposed rules.

21 **ORAL TESTIMONY**

22 Three persons testified at the public hearing.

23 Micheal Snook, owner of the Academy of Hair Design, testified that the proposed rules had
24 changed since the Board's meeting in January 2011. He was concerned about the deletions of the
25 definitions for career schools and official transcript. He was also concerned that the proposed rules
26 add high schools and community colleges as schools at which cosmetology programs can be
27

1 implemented. He also was concerned about the proposed repeal of Oar 817-030-0040 which pertains
2 to type of examination for licensing and the retake provisions of proposed OAR 807-030-0065.

3 **HEARING OFFICER’S COMMENTS AND RECOMMENDATIONS**

4 The recommendations of the hearings officer are set forth below regarding the areas in which
5 comments were provided. In addition, some general recommendations applicable to other issues are
6 provided at the end of this section.

7 ***Issue of High Schools and Community Colleges***

8 The commenters raised concerns that the Board was authorizing high schools and community
9 colleges to implement cosmetology programs. A review of the proposed rules that encompass high
10 schools and community colleges indicates that the only thing these proposed rules do is recognize
11 that the Board is able to accept transcripts from such schools if they have been approved by the
12 Oregon Department of Education to offer a cosmetology program. It is the hearings officer’s
13 understanding that no high schools and only a single community college currently offer cosmetology
14 programs. The authority to approve cosmetology programs appears to be vested by statute solely to
15 the Oregon Department of Education. *See* ORS 336.035 (school boards may establish supplemental
16 courses that are not inconsistent with the prescribed courses and may adopt courses of study in lieu
17 of state courses of study only upon approval by the Superintendent of Public Instruction); ORS
18 336.145 (school board may establish vocational classes for adult education only as the State Board of
19 Education may authorize); ORS 341.425 (before an educational program is commenced at any
20 community college, the board of a community college district shall apply to the State Board of
21 Education for permission to commence the program).

22 Because it is the hearings officer’s understanding that the proposed rules will not have the effect
23 of authorizing high schools and community colleges to offer cosmetology programs without the
24 authorization of the Oregon Department of Education, he sees no real problem with adopting those
25 rules as proposed. If the Board believes otherwise, the hearings officer recommends that it consult
26 with its legal counsel regarding whether it has the requisite statutory authority, The Board might
27

1 want to take note that communicating with the Oregon Department of Education regarding proposed
2 rules that pertain to schools may reduce confusion in the future.

3 ***Changes to Definitions***

4 Two of the commenters expressed concern about the deletion of OAR 817-005-0005(9) (career
5 schools) and the amendment of OAR 807-005-0005(47) (official transcript). The hearings officer
6 does not see any problems with the proposed changes to the definitions. Under the current definition
7 of “career school,” the term means a school licensed under ORS 345 to teach barbering, hair design,
8 esthetics, or nail technology. When the term “career schools” is used in the proposed rules, it is used
9 in conjunction with “ORS 345.” Therefore, the meaning of the term has not changed. The proposed
10 definition of “official transcript” does not change the substantive meaning but merely expands the
11 definition to encompass high schools and community colleges. As currently drafted, the definition
12 may be inconsistent with OAR 817-030-0005(3)(a)(D) which specifies that applicants can submit an
13 official transcript from courses at an Oregon correctional facility. The hearings officer is unclear as
14 to whether programs held at correctional facilities are encompassed by the proposed definition. It is
15 recommended that the Board ascertain whether such programs are intended to be covered by the
16 proposed definition and revise the proposed definition accordingly if necessary.

17 ***Repeal of Type of Examinations Rule***

18 One commenter noted that the Agency is proposing to repeal OAR 817-030-0040 which sets
19 forth the subjects covered by the written examination and covers other testing requirements and the
20 practical examination. The commenter was not very specific regarding his concerns. Except for the
21 specifying specific subject areas for the written examination, other proposed rules appear to cover
22 the matters regulated by OAR 817-030-0040 (e.g., proposed OAR 817-030-0035). Therefore, the
23 hearings officer see no problems with regard to repealing OAR 817-030-0040.

24 ***Written Examination Retake Requirements***

25 Three of the commenters expressed concern over the examination retake requirements set forth in
26 proposed OAR 817-030-0065. It was noted that after the third failed attempt, the applicant is
27

1 required to obtain a certificate of additional training from a career school. The commenters
2 questioned why retraining was limited to career schools. The hearings officer agrees with the
3 commenters that there is no apparent reason why high schools, community colleges, and correctional
4 facilities cannot provide retraining if they maintain a cosmetology program and recommends that
5 OAR 817-030-0065 be further amended to add these kinds of educational institutions.

6 One of the commenters noted that OAR 817-030-0065(1)(c) refers to OAR 817-030-0045(3)
7 which is being proposed for repeal. In addition, the hearings officer notes that OAR 817-030-0065(2)
8 refers to OAR 817-030-0000 which is a nonexistent provision. The hearings officer recommends that
9 these issues be addressed to ensure that the OAR 817-030-0065 does not end up referencing
10 nonexistent rules. In addition, the rules do not describe what is meant by “additional training” or
11 “recertification.” The Board may want to consider clarifying what is meant by these terms.

12 ***150 Hours of Safety and Sanitation and 100 Hours in Career Development for Additional Field***

13 Regarding OAR 817-030-0005(5), the commenters stated that they saw no substantive reason
14 why an applicant currently certified in a field would need to take 150 hours of safety and sanitation
15 and 100 hours in career development to become certified in another field just because the applicant
16 had been certified for two years or more. Considering that the requirement to take 150 hours of safety
17 and sanitation and 100 hours in career development is a requirement for all the fields of practice, the
18 hearings officer agrees that this requirement appears to be unduly burdensome to applicants and
19 unlikely to provide much, if any, benefit to consumers. The hearings officer further notes that ORS
20 345.400(3)(B) states that a student is only required to successfully complete the safety and sanitation
21 (150) hours and career development (100 hours) requirement once. Therefore, the hearings officer
22 recommends that proposed OAR 817-030-0005(5) not be adopted.

23 ***Practical Examination***

24 The comments regarding the practical examination described at OAR 817-030-0071 expressed
25 concern that the Board was overstepping its authority to regulate practical examinations and that it
26 was excluding correctional facilities from administering the examination. The hearings officer
27

1 reviewed the rules promulgated by the Oregon Department of Education and found little in the way
2 that sets forth the specific requirements of a practical examination. The hearings officer did not find
3 any statutory authority authorizing the Board to set forth educational and testing requirements of
4 schools although it does have the authority to approve, administer, and recognize certification
5 examinations under ORS 690.046. The hearings officer is concerned that the issue of practical
6 examinations may fall within a gap with respect to the regulatory authority granted by the Oregon
7 Legislature to the Board and the Oregon Department of Education. Specifically, ORS 690.046 gives
8 the Board authority to regulate practitioners but does not give the Board authority to regulate
9 schools. The hearings officer recommends that the Board evaluate the following issues in
10 consultation with legal counsel advising the Board, and preferably in conjunction with the Oregon
11 Department of Education:

- 12 1. May the Board mandate that a cosmetology program such as a career school administer a
13 practical examination as a certification examination?
- 14 2. If the Board cannot mandate the administration of a practical examination by a school, what
15 options does it have with respect to using practical examinations as certification
16 examinations?
- 17 3. Should the Board and Oregon Department of Education set up some sort of inter-agency
18 agreement to address this issue?
- 19 4. Is this an issue that should be addressed by the legislature?

20 The hearings officer recommends that the Board and Department of Education work cooperatively in
21 addressing these issues to avoid unwarranted hardships on cosmetology students, applicants, and
22 schools.

23 *Various Issues*

24 During his review of the proposed rules, the hearings officer noted a few issues that were not
25 addressed by public comments. These issues are raised for the benefit of the Board to consider at its
26 discretion.

1 Proposed OAR 817-010-0065(15) adopts by reference “the most current edition of the American
2 National Standards for Safe Use of Lasers (ANSI).” The hearings officer is concerned that
3 referencing “the most current edition” of a standard drafted by a private organization may constitute
4 an improper delegation of rulemaking authority because the Board does not have the ability to
5 control any future revisions made to the that standard. In addition, The hearings officer recommends
6 that the Board specifically set forth the identification number of the standards associated with the
7 American National Standard for Safe Use of Lasers because this standard encompasses several
8 substandards, several of which would not apply to cosmetology practices.¹

9 Regarding proposed OAR 817-030-0030(8)(b) which states that a candidate may be disqualified
10 for taking “such items” into the examination area, it could be clearer as to what is meant by “such
11 items.” The Board might want to consider revising the text to clarify that items that may provide or
12 facilitate aid during the examination, such as those described in subsections (6) and (7), are the ones
13 that may subject the candidate to disqualification.

14 Regarding proposed OAR 817-030-0030(9), which states that the applicant may be required to
15 reapply, submit additional examination fees, and request in writing to reschedule, this subsection is
16 unclear to the hearings officer with respect to its purpose and the circumstances under which an
17 applicant might be required to do these things. The hearings officer suggests that the Board consider
18 clarifying the intent and meaning of this provision.

19 Regarding proposed OAR 817-035-0010(6), pertaining to renewing registrations, licenses, and
20 authorizations, it seems unnecessary to require an authorization holder to submit proof of current
21 registration of an assumed business name if the entity is not doing business under an assumed
22 business name. It might enhance the clarity of this provision if it were explicitly limited to those
23 entities doing business under an assumed business name.

24 The hearings officer also suggests that the Board consider how proposed OAR 817-060-0050

25
26 ¹ The primary standard is ANSI Z136.1-2007. The Board should consider the other standards
27 in the Z136 series for safe use of lasers that may apply to devices used in cosmetology (*e.g.*,
28 ANSI Z136.3-2005).

1 would work in practice to implement the federal occupational formaldehyde standard adopted by
2 reference by OAR 437-002-0360(31).² The standard is very complex and is drafted in the context of
3 regulating entities that have employees. Among its requirements are provisions which require
4 employers to train, provide hazard communication, and monitor their employees. The specific
5 concern by the hearings officer is that some provisions of the federal standard are not well drafted
6 when applied to the context of businesses that consist solely of self-employed individuals. The
7 hearings officer understands the need for enhanced attention to formaldehyde issues with respect to
8 practicing cosmetologists but is concerned that adopting OAR 817-030-0071 in the manner proposed
9 by the Board could be problematic from the perspective of regulatory interpretation and
10 enforcement. The Board may want to consider limiting the adoption by reference to specific
11 provisions in the federal rules such as action levels, permissible exposure levels, and short term
12 exposure levels. A better approach might be to commence new rulemaking which establishes a
13 framework whereby the Agency may regulate the use of products containing potentially-harmful
14 substances in a manner that does not require the extensive expertise in industrial hygiene to regulate
15 that is required by regulations such as federal occupational formaldehyde standard. The Board may
16 want to consider further expanding formaldehyde regulation beyond the scope of OAR 434-002-
17 0360(1) and consider promulgating rules that are directed towards protecting consumers such as
18 requirements for warnings or consumer exposure levels.

19 **CONCLUSION**

20 Wherefore, the testimony having been considered, the Hearings Officer recommends that the
21 Board give further consideration to the specific issues that have been identified and discussed above.
22 Otherwise, the proposed amendments are recommended to be adopted.

23
24
25
26 _____
27 ² The federal standard is codified at 29 C.F.R. § 1910.1048 and Appendices A, B, C, D and E
as published in the *Federal Register* on December 12, 2008.

1 Dated: April 7, 2011

2

Respectfully submitted,

3

4

s/Bert P. Krages II/
Bert P. Krages II

5

6

Attached as exhibits:

7

Proposed Rules

8

Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact

9

CD Recording of Hearing

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27



OREGON DEPARTMENT OF EDUCATION
Public Service Building, 255 Capitol Street NE, Salem, Oregon 97310
Phone (503) 947-5600 • Fax (503) 378-5156 • www.ode.state.or.us

March 28th, 2011

TO: The Board of Cosmetology, OHLA staff, and the OHLA Hearings Officer

RE: Proposed rule revisions relating to cosmetology

The Oregon Department of Education (ODE) recognizes the Board of Cosmetology's authority (the Board), as defined in Chapter 690 of the Oregon Revised Statutes to:

- Determine which applicants are qualified to take certification exams (ORS 690.165);
- Approve or recognize certification exams (ORS 690.046 & 690.165);
- Impose additional certification requirements on applicants (ORS 690.046);
- Waive educational requirements for certain applicants (ORS 690.047);
- Determine when and where exams shall be given (ORS 609.065);
- Set the subjects, scope, and form of those exams (ORS 690.065); and
- Establish qualifications for retaking exams (ORS 690.065).

However, when the Board of Cosmetology proposes to make rules to fulfill these obligations that impact the private career school sector, which ODE regulates, or which will have a potential impact on other areas of responsibility of the ODE, we would appreciate being included in discussions to formulate those rules before they are filed with the Secretary of State's Office. It is also our opinion that the private schools and all associations that have advocacy relationships with the schools should also be offered the chance for input before rules are filed for a public hearing. In fact, the collaborative rule making process envisioned in OAR 137-001-0008 and 137-001-0009 suggests a collaborative process occurring both before and after periods of public comment.

We understand from staff at the Oregon Health Licensing Agency (OHLA) that a collaboration meeting is planned for mid-April. We look forward to that meeting and hope that these comments, submitted as part of the public record, will be informative and contribute to a productive exchange between our agencies.

Our comments are as follows:

817-030-0005 (3)(a)

We are concerned that the Board is proposing that high schools may offer full cosmetology programs. There are numerous considerations to be taken under advisement before making this move, not the least of which is that if a high school were to offer a full cosmetology program, it is possible they may unwittingly jeopardize the Carl Perkins grant funds they received to implement Career and Technical Education (CTE) programs of study. The ODE is responsible for administration of these funds and a brief consultation with the Director of the CTE unit revealed this concern. Moreover, the hours required for a high school student to complete a full program in a field of practice may be prohibitive to that student fulfilling requirements for graduation, or may encourage the student to forestall or forego graduation in favor of completing the cosmetology program, since, under this

model, a student could have their entire program of postsecondary education paid for with public dollars. High school students should be encouraged to complete high school and transition to postsecondary study at a postsecondary institution.

We are also concerned that the proposed formulation of this rule opens the door to any community college to offer a cosmetology program. Currently, only one community college is able to offer cosmetology, and the private sector would be severely impacted should all community colleges be allowed to offer a cosmetology program funded by public dollars.

817-030-0005 (4)

There are no criteria or rationales specified for why a student coming from a competency based school would need to provide additional information. What information would be required, and why?

817-030-0005 (5)

What is the rationale for having a person retake the entire sections of safety and sanitation and career development training if they have already been in the field for more than two years? This represents an unnecessary cost to the applicant, and a burden for the schools. Furthermore, it is unlikely that any of the institutions listed other than the private career schools would have the processes in place for a student to return to take that portion of training. Once graduated, a high school student would not return to high school, much less two years later. Once released from a correctional institution, a student would not be allowed to return for additional training.

817-030-0030 (1)

Why would the Board's recognition of the practical exam not extend to correctional facilities, consistent with previous rules? Furthermore, it is unclear as to whether this rule requires high schools and community colleges to meet the requirements for the practical exam as outlined by ODE's private career school rules. How can the Board require institutions regulated by one agency (community colleges) to adhere to the regulations of another agency (ODE)?

817—030-0065 (1)(c)

The Board is proposing multiple educational outlets for training in cosmetology, yet, should an applicant fail an exam, that applicant must return to a private career school for retraining. This may be problematic for high school students who are not 18, students still incarcerated, or students who graduated from a community college program.

Additionally, this rule refers to 817-030-0045(3), which these rule revisions propose to repeal.

817-030-0071

This rule appears to be a new rule regarding the practical examination. In 817-030-0030 (1), the Board recognizes the practical exam conducted by educational institutions in accordance with ODE regulations. The Board should work with the ODE to resolve any concerns they have with the administration and formulation of the practical, not implement an additional layer of regulation for the schools.

Further, we are unclear as to how 690.046 gives the Board the authority to regulate this activity of the private career schools. The Board has already recognized the practical exam.

817-030-0071 (4) references the "agency's standards"—are these OHLA's standards? ODE's standards? The Board's standards? The "evaluation standards" are not spelled out in rule anywhere.

We are also concerned about 817-030-0071 (7), in that it defines a school as something contrary to the statutory definition set forth in ORS Chapter 690. The Board does not have the authority to redefine statute.

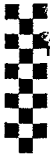
We respectfully request this rule be struck from the final adoption schedule pending conversation and agreement between our agencies.

It is our hope that these comments are instructive for revising the proposed rules before they are submitted to the Board for adoption. We welcome and look forward to the opportunity to discuss these concerns and work with the Board and with OHLA staff to find common ground that satisfies all purposes and concerns regarding the education, examination, and licensing of cosmetology professionals in the state of Oregon.

Sincerely,

A handwritten signature in cursive script that reads "Teresa M. Greene".

Teresa M. Greene, Director
Private Career Schools Licensing
Office of Educational Improvement and Innovation
Oregon Department of Education
503-947-5915



FAX COVER SHEET

SEND TO Company name	OREGON HEALTH LICENSING AGENCY	From	HEIDI ZUNIGA
Attention	BERT Krages, HEARING OFFICER	Date	3-28-11
Office location		Office location	307 Q ST.
Fax number	503 370 9004	Phone number	541 746 4473

*

- HOME FAX 541 895 5833
- Urgent
 Reply ASAP
 Please comment
 Please review
 For your information

Total pages, including cover: 3

COMMENTS

Comments on Proposed Administrative Rules

Comments on Proposed Administrative Rules

So:

March 28, 2011
Oregon Health Licensing Agency, Cosmetology
Bert Krages, Hearing Officer

Re: Proposed Rule Revisions

At the public hearing this morning I was told I could not comment because I am a member of the Board of Cosmetology.

As a member of the public these are the comments I would like on record.

"Laws and Rules for Cosmetology, Proposed Administrative rules" on OHLA's website states that the board approved proposed Oregon Administrative Rules on January 24, 2011. The proposed rules approved at that meeting are not the same as that which was filed with the Secretary of State and filed in the Oregon Bulletin March 1, 2011. The rules

that are of great concern to me and a very brief description of each are:

817-005-0005

#9 "Career School" deleted

#47 "Official Transcript" rewritten

817-030-0005

3(a), (A), (C), (D) Certification Pathway #1, Graduation...

3(a), (A), (C), (D) Certification Pathway #1, Graduation [?].
5 Retake 150 hours, 100 hours
817-030-0030
#1 Practical Examination

#(2)

817-030-0071 Practical Examination Evaluation

#7

All of the above mentioned proposed rule changes were not in the text of the "Board approved" rules on January 24, 2011.

The above mentioned rules include "schools" that do not have programs approved by the Oregon Dept. of Education; yet in parts "Oregon licensed career schools" (whose definition was deleted) are given the responsibility for retraining students that have attended other schools and failed examinations.

Too many unanswered questions remain. Have needs been established?, a fiscal impact study done?...

At this time and in its present state I do not support this bill.

I'm sorry for a late hand written submission - I had planned to comment at the hearing this morning.

Respectfully,
Wendi Tuniga
Springfield College of Business



817-030-0040 "Type of Examination"

(1) (a), (b), (c), (d), (e), (f), (g), (h), (i); 2, 3, 4, 5, 6, 7. All deleted

817-030-0065 "Written Examination Retakes"

(1) (a), (b), (c), (d), (e), (f), (g), (h)

(2)



COLLEGE OF HAIR DESIGN CAREERS

Where education and dreams meet.

03/28/2011

To Oregon Health Licensing Agency and the OHLA Hearings Officer

RE: Proposed rule revisions relating to Cosmetology

As an Oregon Cosmetology school owner I am VERY concerned with some of the proposed rule changes, they were said to be discussed during OHLA's board meetings, however I know that this is not a true statement because I attended those meetings and many of the proposed rules were NEVER discussed, at least not during the open meetings.

Where did they come from?

My comments are as follows:

817-030-0005 (3) (a)

I am extremely concerned the Board is proposing high schools may offer Cosmetology, but more concerning is this rule opens the door for community colleges to offer the Cosmetology program. As I would like to reiterate if this were ever talked about at a Cosmetology board meeting I would have questioned the suggestion then, and also remembered. This would have a huge impact on the private sector of existing schools. Why do you feel it is necessary for a community college to offer these programs, as they are already being accommodated through the private sector?

817-030-0030 (1)

There is no reason to not recognize a practical exam given at a correctional facility, when it is required that the instructor be licensed just like any other Cosmetology school, who has the right to administer the practical exam. And if the exam were not allowed to be given by the instructor how, when, and where would these people take a practical exam?

817-030-0005 (5)

If a person has already completed the 150 hours of safety and sanitation and the 100 hour of career development and hold a current license why would they be required to complete it again when seeking an additional license that requires the same program?

It is my hope that the two entities involved in governing our industry (OHLA and the Department of Education) would be able to work together for everyone to be successful.

It is my hope that these comments are helpful for revising the proposed rules before being submitted to the Board for adoption.

Sincerely,



Cindy Long
Administrator
College of Hair Design Careers



**Oregon Health Licensing Agency
Board of Cosmetology
Legislation & Rules Committee Meeting**

Date: January 13, 2011

Members Present: Debora Masten
Tiffany Galvan
Herb Hirst

Members Absent: None

Staff Present: Samie Patnode, Policy Analyst
Sinnamon Harris, Board Specialist
Tina McCallister, Investigator

Guests Present: None

Debora Masten called the Board of Cosmetology Legislation & Rules Committee meeting to order at 9 am, January 13, 2011 at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon. The purpose of the meeting is to review Oregon Administrative Rules (OAR) Chapter 817, Divisions 5 through 120.

Samie Patnode, Policy Analyst, provided an overview of the meeting materials including a PowerPoint titled "Making Rules in Oregon." Patnode asked members to review the information, noting she would answer questions individually and if requested could provide the training at the next full board meeting. Patnode stated areas of which discussion would be focused: Use of formaldehyde, civil penalty schedule, fees and the practical examination evaluation.

OAR 817-060-0050

Use of Formaldehyde in Products - Temporary Rule (effective 11/15/11 – 5/10/11)

Patnode gave the committee an update on the Regulatory Operations Division procedures concerning investigations related to the use of formaldehyde. OHLA is collaborating with Oregon Occupational Safety and Health Administration (OR-OSHA) on an interagency agreement. The agreement will address the procedures regarding OHLA receipt of complaints or if OHLA inspectors find a hair-smoothing product in the field that may contain formaldehyde. Patnode stated she will have David Sparks, Regulatory Operations Division Manager, provide a report at the next full board meeting

Herb Hirst stated he understood the federal government may be making specific rules in relation to formaldehyde. Patnode stated the temporary rule adopts by reference current standards under OR-OSHA, and states "in addition to and not in lieu of, any other city, county, state or federal laws, rule codes and regulations, the agency and board adopt by reference OAR 437-002-0360(31)." The committee recommended the temporary rule related to the use of formaldehyde be made permanent with no revisions.

Civil Penalty Schedule

Patnode stated she did not have any documentation today to present to the board concerning the alignment of civil penalties. Patnode reminded the committee the full board had approved the civil penalty changes approximately a year ago. It is unclear, Patnode continued, how some of the civil penalties were allocated. Regulatory Operations Division is reviewing the civil penalty schedule to ensure accurate alignment with all administrative rule and revised statute references. Patnode proposed the full board review the schedule at the next board meeting.

OAR 817-840-0003

Reduce Fees for Initial Certification

Patnode stated the Board of Cosmetology had been discussing current fee adjustments since 2008. She reviewed the proposed changes the Legislation and Rules Committee had made to the fees and what she would be presenting to the full board. The purpose of the changes is to lower fees related to initial certification, change delinquency to up to three years, add a fee amount for safety and infection control training, and address reactivation. The changes also align with the statutory changes made during the 2009 Legislation Session that revised the name of Certificate of Identification holder to Freelance Authorization. Below is a copy of the new proposed fee schedule:

Fee Schedule	Fees Effective 6/1/2011	
	Description of Fee	Fee Amount
Practitioner Application - per FOP	\$	20
Facility Application	\$	100
Temporary Application	\$	50
Independent Contractor Application	\$	50
Certificate of Identification Application	\$	25
Demonstration Permit Application	\$	25
Practitioner Application by Reciprocity - per FOP	\$	100
Examinations - per FOP	\$	35
Original Practitioner Certifications - per FOP	\$	25
Original Practitioner Certification by Reciprocity - per FOP	\$	45
Original Facility License	\$	110
Original Independent Contractor Registration	\$	100
Certificate of Identification Certificate	\$	100
Online Practitioner Renewal - per FOP	\$	40
Practitioner Renewal - per FOP	\$	45
Facility Licenses Renewal	\$	110
Independent Contractor Registration Renewal	\$	100
Certificate of Identification Certificate Renewal	\$	100
Independent Contractor IC expired > 1yr	\$	100
Replacement Authorizations	\$	25
Delinquency - per year up to two years	\$	30
Affidavit of Licensure	\$	50
Temporary Facility Permit	\$	100
Demonstration Permit	\$	50
Information Packets	\$	10
Administrative Processing for NSF	\$	25
Oregon Laws and Rules Class	\$	25

Practical Examination Procedures

Patnode provided the committee with the report from the Legislation and Rules Committee dated April 19, 2010, and excerpts from the May 10, 2010, full board meeting regarding practical examination procedures. Patnode introduced Tina McCallister, OHLA Investigator, who had previously performed the career school practical examination evaluations. Patnode invited McCallister to the committee meeting to help give insight to formulate rules regarding practical examination evaluations.

McCallister stated the best approach would be after the career school has set its practical examination schedule (for a six-month time period), OHLA investigators could conduct a random audit. In the past, the practical examination, just for one field of practice, could last up to two or three days. The agency prefers the practical examination for one field of practice be done in one eight-hour period. Otherwise it is time restrictive for the evaluator. Committee members asked if it is possible for a field of practice to be completed in one day. McCallister provided an example, for esthetics, in which a school may have students performing make-up one day and facials the next instead of both in the same eight-hour period. Masten said as it is a workload issue also for inspectors that it made sense to keep the audits to only one

field of practice. McCallister suggested auditing at least one field of practice every two years. While in the field, if investigators observed that the examination was not being proctored correctly they could come back and audit another field of practice at that same school.

After discussion regarding facilities such as Coffee Creek Correctional Facility, Mt. Hood Community College, and MacLaren Youth Correctional Facility, Patnode noted she would check with the Department of Justice (DOJ), to verify if the agency has the authority to evaluate the practical examinations at these institutions as the Department of Education, Private Career Schools, (ODE) does not have jurisdiction.

Masten called upon Jim Markee, of Markee and Associates, who offered some history on the board's authority concerning the practical examinations administered within the career schools. Markee stated the board has the authority to sanction a written and practical examination. Currently the board has sanctioned the school-administered practical examination.

Markee pointed out that under OAR 817-030-0005(1) a student must pass a written and practical examination approved by the board. Markee suggested the Board of Cosmetology work with ODE to set standards for the practical examination. He noted that the board has the final authority over certification and who meets qualifications for certification. Patnode concurred that sanctioning the practical examination by the Board of Cosmetology needed to be clearly delineated in administrative rule.

Competency-Based School Discussion

McCallister mentioned some of the transcripts received from the schools do not show the correct amount of hours required. Patnode stated the agency can require in rule what the agency requires to see on a transcript. The ODE does have authority over how many hours are required to graduate and that is what will be required on the transcript received or the agency will not accept the transcript. The issue may be with competency based schools.

Markee was asked for comments on competency-based schools. Markee stated that as long as the persons attending are students the Board of Cosmetology cannot prescribe curriculum; that authority belongs to the ODE. Markee suggested the Board of Cosmetology collaborate with ODE to determine best practices related to competency-based schools including evaluations. Markee stated the ODE may not be able to do so in the near future because it does not have the staffing to conduct the evaluation at this time.

McCallister stated she would like the agency to have the authority to pull student files for evaluation at a school and verify if students actually obtained the training as stated on transcripts. Patnode noted in House Bill 2144 there is language that states that OHLA may enter into agreements with other agencies, such as ODE and Oregon Employment Department, to have the authority to do that type of work.

Patnode stated she would submit some of these policy questions to the agency's AAG but it may not be finished in time for the February 24, 2011, Board of Cosmetology meeting.

Patnode reiterated those items from today's discussion she would have for the full board meeting on February 24, 2011:

1. Use of Formaldehyde rule
2. Certificate of Identification rule
3. Reduce fees for initial certification
4. General rule maintenance to ensure consistency with agency and other program rules
5. May have the alignment of the civil penalty schedule

The meeting adjourned at approximately 11:11 am.

Prepared by: Sinnamon Harris, Board Specialist



**Oregon Health Licensing Agency
Board of Cosmetology
Legislation & Rules Committee Meeting**

Date: March 14, 2011

Members Present: Debora Masten
Herb Hirst

Members Absent: Sharon Wiser

Staff Present: Samie Patnode, Policy Analyst
Amanda Perkins, Board Specialist

Guests Present: None

Debora Masten called the Board of Cosmetology Legislation & Rules Committee meeting to order at 12:07 pm, March 14, 2011, at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon. The purpose of the meeting is to review proposed administrative rules Chapter 817, Divisions 5 through 120. Discussion focused on application requirements, examination procedures, use of formaldehyde, fee decrease, practical examination evaluation requirements, civil penalty schedule and general maintenance to ensure consistency with agency and other program rules.

Samie Patnode, Policy Analyst, provided a brief overview of the amendments made to proposed administrative rules since the last board meeting. She asked for input regarding the following issues:

- **817-005-0005 Definitions:** Consolidate the terms related to career schools, high schools and community colleges into one definition for referencing purposes;
- **817-010-0065 Requirements and Standards:** Revise American National Standards for Safe Use of Lasers to be the current edition;
- **817-030-0005 Application Requirements:** Allow certificate holders who have let their certificate lapse for more than three years to utilize transcripts on file with the agency. Non-credentialed applicants have been removed during temporary rulemaking as the board does not have the authority to waive education requirements for individuals outside of the parameters on the law (ORS 690.047).
- **817-030-0065 Written Examination Retake Requirements:** Add requirements for failed sections of the examination including limits and requirements;
- **817-035-0010 Issuance and Renewal of Certificates, Licenses, Registrations or Freelance Authorizations:** Standardize to align with other agency programs including renewal, inactive

renewal up to three years and expired after three years must reapply.

- **817-035-0050 Application and Criteria for Freelance Authorization:** Make permanent temporary rule, including where a freelance authorization holder can work.
- **817-060-0050 Use of Formaldehyde:** An overview was provided regarding the first joint investigation between the Oregon Health Licensing Agency and Oregon-OSHA related to the use of formaldehyde. Further reporting on outcomes will be provided at the next board meeting.
- **Civil Penalty Schedule:** Revisions will be made to the civil penalty schedule as related to language, noting the amounts for civil penalties should remain similar to the proposed rules.

Committee members concurred with the changes noted above. Patnode stated that agency staff and legal counsel will be reviewing the proposed administrative rules for legal sufficiency as well as agency business practices. She stated the April 11, 2011, Legislation & Rules Committee may be cancelled depending on the amount of public comment received at the hearing on March 28, 2011.

The meeting adjourned at approximately 1:14 pm.

Prepared by: Sinnamon Harris, Board Specialist



700 Summer St NE • Suite 320
 Salem, Oregon 97301-1287
Phone (503) 378-8667
Fax (503) 370-9004
Web site www.oregon.gov/OHLA
E-mail ohla.info@state.or.us



Board of Cosmetology

Administrative Rulemaking Schedule

Please note schedule is subject to change.

- Athletic Trainers
 - Barbers
 - Body Piercing Technicians
 - Denturists
 - Direct Entry Midwives
 - Electrologists
 - Environmental Health Specialists
 - Estheticians
 - Hair Designers
 - Hearing Aid Specialists
 - Nail Technicians
 - Nursing Home Administrators
 - Permanent Color Technicians
 - Respiratory Therapists
 - Sex Offender Therapists
 - Tattoo Artists
 - Waste Water Specialists
-
- Board of Athletic Trainers
 - Board of Cosmetology**
 - Board of Direct Entry Midwifery
 - Board of Denture Technology
 - Environmental Health Registration Board
 - Nursing Home Administrators Board
 - Respiratory Therapist Licensing Board
 - Sex Offender Treatment Board
 - Advisory Council on Hearing Aids
 - Advisory Council for Electrologists, Permanent Color Technicians & Tattoo Artists

November 8, 2010	Adopt Temporary Administrative Rule & approve schedule
November 15, 2010	Temporary administrative rules effective CID & Use of Formaldehyde
December 16, 2010	Agency Staff Rules Committee 9 am
January 13, 2011	Legislative & Rules Committee 9 am
January 24, 2011	Board Meeting to approve proposed rules & fiscal impact
March 1, 2011	Temporary administrative rules effective CID, Non-credentialed, Fees & reinstatement
March 1, 2011	Notice of Proposed Rules - Oregon Bulletin
March 14, 2011	Legislative & Rules Committee 9 am
March 28, 2011	Public Hearing & Final Day for Public Comment
April 11, 2011	Legislative & Rules Committee 9 am
April 25, 2011	Board Meeting adopt permanent rule
May 5, 2011	Permanent Administrative Rules effective ALL rules
May 10, 2011	Temporary Administrative Rules expire CID & Use of Formaldehyde
June 1, 2011	Permanent Administrative Rules effective Fee decrease for new practitioners
July 1, 2011	Permanent Administrative Rules effective Reactivation fee
August 10, 2011	Temporary administrative rules expire CID, Non-credentialed, Fees & reinstatement



Esthetics Scope Of Practice



ISSUE

Address questions by interested parties related to estheticians performing skin/micro needling services.

DISCUSSION

The agency has received several inquiries regarding estheticians performing skin/micro needling services. The statutory definition of esthetics is ORS 690.005

(6) "Esthetics" means any of the following skin care practices performed on the human body for the purpose of keeping the skin healthy and attractive and not for medical diagnosis or treatment of disease or physical or mental ailments:

- (a) The use of the hands or mechanical or electrical apparatuses or appliances for cleansing, stimulating, manipulating, exfoliating or applying lotions or creams.
- (b) Temporary removal of hair.
- (c) Makeup artistry.
- (d) Facial and body wrapping.
- (e) Facial and body waxing.

Skin/micro needling is a process carried out with a roller that is covered with numerous tiny needles. These needles penetrate the upper layers of skin. The depth may vary (depending on the needle length used). Micro needling creates a very minor (almost microscopic) trauma which lasts for a short period of time and does not result in bruising or swelling or bleeding in the treated area in the way that chemical peels, laser therapy or microdermabrasion do.

The act of skin needling appears to be intended for use to stimulate collagen formation at the same time as providing a clear channel for topical gels and creams to be absorbed more effectively through the top layer (epidermis) of skin. Other intended uses appear to be smoothing wrinkles, improving depressed acne scarring as well as reduce the appearance of stretch marks.

Although, little scientific or reliable data could be found regarding skin/micro needling devices it appears that these devices are home or professional use, depending on the type of devices and the depth in which the needles penetrate the skin.

QUESTION

Is skin/micro needling within an esthetician's scope of practice?

Using the *Public Advice Protocols* the board must consider each question and determine the best course of action. The board should consider the following questions:

- Can the board or agency determine answer without legal advice?
- Should the board refer the questions to the Scope of Practice, Standards & Procedures Committee?
- Should the board refer the questions to agency Assistant Attorney General (AAG) and if so should a Scope of Practice & Procedures Standards Committee be scheduled for question and answer with the agency and legal counsel? Or
- Should the board decline to address?

The board should also consider cost for legal advice and how much time may be necessary to obtain official advice from legal counsel.

RECOMMENDATION

Determine next course of action regarding questions scope of practice for estheticians regarding skin needling.

Public Comment

Other Board Business



Board Interest File

Subject: FW:

Subject:

Dear Ms. Key:

I received your inquiry to the Oregon Health Licensing Agency, below. I believe I understand your question and your issue.

The legal requirement of holding a license in barbering or hair design for the styling of hair is written in Oregon Law, and cannot be changed by the Health Licensing Agency or by the Board of Cosmetology. This means that there is no benefit from presenting to the agency or the board, because we have no authority to make a change to the law.

There also is no method in Oregon law to “challenge” a licensing or other law, except through the courts on constitutional grounds. However, anyone may speak to a legislator about amending or abolishing current laws, including adding new exemptions to licensing laws including those governing cosmetology.

I have excerpted below the relevant statutes for you. If you wish to contact your legislator, please go to www.leg.state.or.us/citizenguide

There, you will be able to find contact information for your local Senator and Representative, as well as excellent overviews of the legislative process and how to participate.

Many law changes happen because one citizen started the idea going. I wish you well in your efforts.

Please feel free to contact me directly if you have any further questions.

Sincerely,

Nancy Sellers
Senior Policy Analyst
Oregon Health Licensing Agency
(503) 373-1904
nancy.sellers@state.or.us

Oregon Revised Statutes 690.005 (10) reads:

“Hair design” means any of the following practices, when done upon the human body for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Shaving, trimming or cutting of the beard or mustache.

(b) Styling, permanent waving, relaxing, cutting, singeing, bleaching, coloring, shampooing, conditioning, applying hair products or similar work upon the hair of an individual.

(c) Massaging the scalp and neck when performed in conjunction with activities in paragraph (a) or (b) of this subsection.

And, 690.015 Prohibited acts:(1) This section establishes prohibitions relating to the practice of hair design, barbering, esthetics and nail technology. The prohibitions under this section are subject to the exemptions under ORS 690.025. A person who commits an act prohibited under this section is subject to the penalties under ORS 690.992 in addition to any administrative action taken by or any civil penalty imposed by the Oregon Health Licensing Agency under ORS 676.612.

(2) A person may not:

(a) Perform or attempt to perform services in a field of practice without a certificate, demonstration permit, registration or freelance authorization.

(b) Operate a facility without a license or temporary facility permit.

(c) Perform or attempt to perform services in a field of practice in a facility that does not have a license or temporary facility permit.

(d) Practice hair design, barbering, esthetics or nail technology as an independent contractor without a registration.

(e) Display a sign or in any way advertise or purport to offer services in a field of practice without first obtaining a permit, certificate, independent contractor registration or facility license.

(f) Knowingly make a false statement on an application to obtain or renew a certificate, registration, license or permit or to obtain a freelance authorization.

(g) Allow an individual in the employ or under the supervision or control of the person to perform in a field of practice without a certificate or permit.

(h) Sell, barter or offer to sell or barter a document evidencing a certificate, registration, license, permit or freelance authorization.

(i) Purchase or procure by barter a document evidencing a certificate with intent to use it as evidence of the person's qualification as a practitioner.

(j) Materially alter with fraudulent intent a document evidencing a certificate, registration, license, permit or freelance authorization.

(k) Use or attempt to use as valid a fraudulently obtained, counterfeited or materially altered document evidencing a certificate, registration, license, permit or freelance authorization.

Subject: procedure question

hello, this is a follow-up to the message i left for you this afternoon.

i am looking for information for the process of challenging a ruling of the board for cosmetology and barbering licensure.

specifically i am wanting to get licensed to do hairstyling that does not require chemicals or cutting of the natural hair. i am looking to do hair braiding, weaving extensions and dreadlocks. the technique is native to my culture and has never been taught in cosmetology or barber college.

how do i get information on presenting a case before the board to challenge the licensing law? or what is the procedure to challenge health laws?

please let me know. thank you, yvette key

BOHOT Kraig * OHLA DIR

Subject: FW: Question

From: BOHOT Kraig * OHLA DIR
Sent: Thursday, February 24, 2011 8:40 AM

Subject: RE: Question

Hi Carrie – Good questions, but unfortunately the answer to both is no, unless “services are provided only to persons who are related by blood, marriage, or domestic partnership” under OAR 817-100-0005(8).

Regards,

Kraig Bohot
OHLA Communications
www.oregon.gov/OHLA
503-373-1939

Sent: Wednesday, February 23, 2011 5:43 PM
To: kraig.bohot@state.or.us
Subject: Question

Hello Kraig,

If this is not something you would advise someone on please just let me know and I'm out of your hair. I'm looking for as much advise as I can get. Long story short, I've been a hair stylist for 14 years and I'm looking to retire. I would like to find a way to still do some close friends/family and not in my kitchen :-). I am wanting to do things legally but am finding it is not cost effective to put a salon area in my home as a registered business. Here are my questions:

1. Is it possible to have a salon area and not charge clients but they would be able to tip??
2. Is it possible to get a facility license if you are not a registered business??

Any help or information as to whom to contact would be greatly appreciated. Thanks for taking the time to read this!!

With warm regards,
Carrie



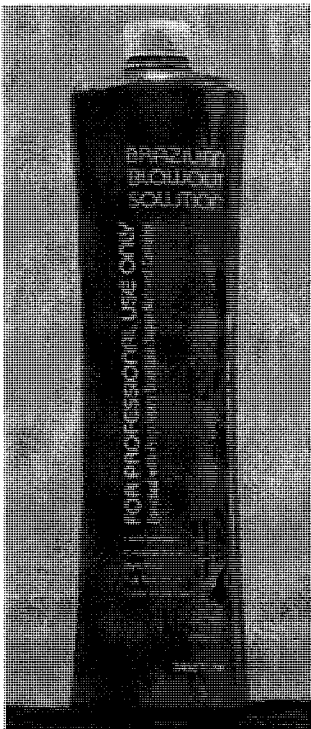
Brazilian Blowout drops lawsuit against Oregon OSHA and OHSU

Published: Wednesday, March 02, 2011, 5:40 PM Updated: Thursday, March 03, 2011, 9:47 AM

Katy Muldoon, The Oregonian



By



[View full size](#)

Randy L. Rasmussen/The Oregonian

Samples of Brazilian Blowout tested in Oregon contained high formaldehyde levels.

The company that makes the spendy salon hair straightener **Brazilian Blowout** has dropped its lawsuit against the Oregon agency and scientists who found the product heavily laced with **formaldehyde**, even though it was labeled formaldehyde-free.

The findings late last year caused a stir in the beauty industry, led some countries to pull the solution, pushed U.S. officials to investigate and prompted lawsuits against GIB, the product's California manufacturer.

In December, GIB asked for an injunction to force the **Oregon Occupational Safety & Health division** and **Oregon Health & Science University's Center for Research on Occupational and Environmental Toxicology**, known as CROET, to stop

They tested 105 samples of hair smoothers from 54 salons, finding

More The Oregonian's continuing coverage of Brazilian Blowout

significant formaldehyde levels. More than one-third came from

Brazilian Blowout Acai Professional Smoothing Solution bottles labeled "formaldehyde-free," though formaldehyde content ranged from 6.8 percent to 11.8 percent, averaging more than 8 percent.

In its lawsuit, the company called the results false and misleading. It claimed that publicity surrounding the formaldehyde findings damaged the company's name and caused irreparable harm. It also accused Oregon OSHA of overstepping its bounds as the state's workplace safety watchdog.

The Brazilian Blowout brouhaha began in late 2009, when two stylists at Platform Artistic Salon in Portland's Pearl District wondered whether the reason they felt lousy might be the hair straightening treatments they'd given clients. Platform was among the first area salons to offer Brazilian, and it was a huge hit. Customers paid \$250 to \$350 for the 90-minute treatment that turned frizzy or damaged hair into lustrous, smooth locks.

Stylist Molly Scrutton had the first nosebleed of her life about a month after she started using Brazilian on clients. When sore throats and chest pain followed, Scrutton quit offering it.

Research led her to frightening facts: Exposure to large amounts of formaldehyde can cause serious health problems, including cancer, according to the U.S. Centers for Disease Control and Prevention.



She contacted CROET. Dede Montgomery, an occupational safety and health specialist there collected samples of Brazilian Blowout from the salon where Scrutton works and from other area hair shops. She collaborated with Oregon OSHA, which tested samples and issued alerts warning the state's more than 21,000 licensed stylists about high formaldehyde levels.

No one from the company that makes Brazilian returned The

View

full size

RANDY L.
RASMUSSEN/
Oregonian

Stylist Molly
Scrutton worried
Brazilian
Blowout was
making her ill.

Oregonian's calls Wednesday.

The company, however, does have news: It recently launched a new product, Brazilian Blowout Zero, which, according to its Web site, is formulated with a bonding system that releases no formaldehyde.

Melanie Mesaros, Oregon OSHA's public information officer, says lots of stylists who've heard about it have called her agency.

"They want to know if we're going to test it," she said. "They're asking us before they buy it."

OSHA has not tested the new product.

-- **Katy Muldoon**

© 2011 OregonLive.com. All rights reserved.

Return To School With A Grant

See If You Qualify

APR 2011 - You may qualify for a financial aid package which can help you return to school. Grants and scholarships can also help you pay for your degree.

See Degrees Now [classesUSA™](#)

Select Your Age:

Under 25	▲
25	
26	
27	▼

Select Your State:

Alabama	▲
Alaska	
Arizona	
Arkansas	▼



PRINT THIS

Powered by Clickability

New health hazards at salons and spas

(Health.com) -- When Alexandra Spunt went for a keratin hair treatment at a Los Angeles salon two years ago, she hoped to walk out with two months' worth of silky-straight locks.

What she didn't expect: two hours of burning eyes and a sore throat.

"The stylist offered me goggles because my eyes stung and I couldn't stop coughing," says Spunt, 32.

She was shocked to learn that the treatment likely contained formaldehyde -- deemed a possible human carcinogen by the Environmental Protection Agency (EPA).

You've heard that pedicure tubs are teeming with fungus. And you probably know that your waxer shouldn't double-dip. But new dangers have been popping up at salons, and it's hard for clients, regulators, and even salon owners to keep up.

Health.com: 7 salon no-no's

The U.S. Food and Drug Administration (FDA) has a limited ability to regulate cosmetic ingredients, says Claudia Polsky, a deputy attorney general in California's Environment Law section. For instance, "the FDA cannot require ingredient labeling on products intended for salon use only," she says.

And there's no federal body overseeing the safety of salons, or how well-trained employees are. That means it's up to you to get informed. Here's what you need to know to stay safe.

Great hair can be dangerous

Walk into a salon offering a keratin treatment, and you may see stylists in masks with fans pointed their way. And with good reason: Formaldehyde has been ID'd as the key active ingredient in many hair-straightening treatments currently offered in salons.

Recently, Oregon's Occupational Health and Safety Administration found the chemical in samples of nine different products -- one of which was actually labeled "formaldehyde-free." Some epidemiological studies have linked exposure to formaldehyde over several months with certain forms of cancer, such as leukemia.

In the short term, it can cause scalp rashes when it comes into contact with the head; when inhaled (whether you're receiving the treatment or sitting next to someone who is), it can lead to burning eyes, nose, and throat, and even asthma attacks if you're prone to them, says Julia Quint, PhD, a retired toxicologist from the California Department of Public Health.

Health.com: 15 ways to be a natural beauty

While it may be possible to get a safe keratin treatment if the salon is properly ventilated, "we're advising that consumers steer clear altogether," says environmental scientist Alexandra Gorman Scranton, who directs science and research for Women's Voices for the Earth, a nonprofit organization that works to eliminate toxic chemicals that have an impact on women's health.

"Formaldehyde sensitivity can vary from person to person, but you won't know you have a problem with it until you get sick."

Some side effects can be as tough as nails

Manicures and pedicures are perhaps the most common salon treatments, but they're not necessarily the safest. A University of Texas study published in the Archives of Dermatology in 2009 reported on two women who'd developed skin cancers on the backs of their hands.

Both frequently used nail dryers that emit UV light. It's unclear how much the dryers might increase your cancer risk, since lesions take years to develop. What we do know is that they've become a fixture in salons everywhere. So until more research is conducted, many dermatologists advise that you slather on sunscreen before your nail tech applies polish, or stick to fan-based dryers, especially if you get your nails done weekly or monthly.

"I will never use a UV light again," says Carolyn Jacob, MD, a spokeswoman for the American Academy of Dermatology and dermatologist in private practice in Chicago. "Yes, this report was only on two patients. But the UV lights drying your nails are primarily made from UVA light, which means there is potential for cell damage, wrinkling, and skin cancer. Go with the fan dryers instead."

Health.com: 7 ways you're aging your skin

Peels aren't always so appealing

There's no denying that they work: Chemical peels can brighten and lighten skin to dramatic effect, and help reduce the appearance of fine lines, wrinkles, and age spots.

But some of these formulas are so powerful that they can cause burns and even scarring if handled incorrectly -- and since they're being used more frequently these days, and in more casual settings (like spas rather than a dermatologist's office), the potential for danger is multiplied.

Nia Terezakis, MD, a clinical professor of dermatology at Tulane University Medical Center and dermatologist in private practice in New Orleans, has seen patients come in with white doughnut shapes around their mouths after getting peels from inexperienced salon technicians who left the solution on for too long, permanently damaging the pigment there.

"There's nothing in the world that will put the color back in your skin after that," Dr. Terezakis says.

Health.com: 8 steps to healthy skin at every age

So if you're at the salon or spa, stick to "light" peels (such as glycolic peels), which have an alpha-hydroxy acid content under 10 percent and pH level above 3.5, per FDA rules.

"Medium or deep peels should only be performed by a dermatologist with experience in giving them," Dr. Terezakis says.

But know that even a light peel can cause a bad reaction if it isn't done properly.

"Glycolic acid peels have to be neutralized after several minutes with a neutralizing solution or water," Dr. Jacob says. "If they're left on too long, they can burn the skin, leaving blisters, scabs, and sometimes permanent redness."

And even beta-hydroxy peels, which self-neutralize -- eliminating the risk of keeping them on too long -- can burn you if the acidic content is higher than it should be, she adds.

Consider the price of beauty

While the experts we spoke with agreed that it's worth minimizing your exposure to salon hazards, nobody recommended going cold turkey on every spa service you love.

But to stay safe, you must do your homework first. Before you try any new treatment -- even if it's just new to you -- "look for any clinical studies on the active ingredients," Dr. Jacob says.

Not comfortable combing through scientific research? Skin Deep has compiled thousands of reports on ingredient safety, and the FDA issues readable consumer warnings on ingredients.

Ask your doctor if she's heard any reports about the dangers of a device or product, or has any specific concerns about its safety or its effects on you. When in doubt, it can't hurt to wait it out until more has been learned about the service in question.

"Don't be a guinea pig!" Dr. Jacob says.

Health.com: 14 health products you probably don't need

And if you have made the educated decision to go in for a treatment, investigate the place you're getting it just as carefully.

"Find out if you know anyone who's been to the salon you're planning to visit" and can report on safety precautions it takes, Dr. Terezakis says. "Check with the Better Business Bureau to see if there have been any complaints. If you're going to a place with a good reputation, they are going to want to conduct business in a way that's safe."

For facial treatments, "trust your dermatologist over anyone else," Dr. Jacob says. Yes, you may have to pay a few bucks more -- but you'll be glad to have someone on hand with years of medical training and experience if something does go wrong.

Copyright Health Magazine 2010

Find this article at:

<http://www.cnn.com/2011/HEALTH/03/23/salon.spa.hazards>

Check the box to include the list of links referenced in the article.

© 2008 Cable News Network

The information below can be found at the following link: <http://www.redken.com/product-information-and-recall/>

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs Washington, D.C. 20207

For Immediate Release

Firm's Recall Hotline: (888) 241-9504

April 12, 2011

CPSC Recall Hotline: (800) 638-2772

Release #11-FOR CLEARANCE CPSC Media Contact: (301) 504-7908

Redken 5th Avenue NYC Recalls Guts Spray Mousse Foam Due to Risk of Rupture

WASHINGTON, D.C. – The U.S. Consumer Product Safety Commission, in cooperation with the firm named below, today announced a voluntary recall of the following consumer product. Consumers should stop using recalled products immediately unless otherwise instructed. It is illegal to resell or attempt to resell a recalled consumer product.

Name of product: Spray Mousse Foam Cans

Units: About 1 million

Manufacturer: Redken 5th Avenue NYC, New York, NY

Hazard: The aerosol container's liner can corrode over time, posing a risk of the cans rupturing and expelling its contents.

Incidents/Injuries: Redken has received 41 reports of cans rupturing. No injuries have been reported.

Description: This recall involves Redken Guts 10 Volume Spray Mousse Foam sold in 10.58- and 2-ounce size cans. The hair styling product was sold in a silver container with black writing. "Redken and "10" are printed on the front of the product. The product can be identified by a lot code printed on the bottom of the can. Lot codes included in this recall include:

- Any can with lot codes that does not contain a G or H as the third digit
- Any can with the following lot codes: 32G10Y, 32G11Y, 32G20Y, 32G21Y, 32G23Y, 32G40Y, 32G41Y, 32G60Y, 32G61Y, 32G62Y, 32G70Y

Sold at: Hair salons and beauty supply stores nationwide from January 1998 through February 2011 for between \$4 and \$16. Manufactured in: USA

Remedy: Consumers should immediately stop using the recalled mousse, record the product's lot code then discard the contents by spraying it into a waste container in a well ventilated area. Consumers should obtain the lot code from the container and contact Redken, prior to disposing of the can, for information on receiving a refund of the purchase price.

Consumer Contact: For additional information, contact the Redken toll-free at (888) 241-9504 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit the firm's website at www.redken.com.

CPSC is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. Please tell us about it by visiting <https://www.cpsc.gov/cgibin/incident.aspx>

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of consumer products under the agency's jurisdiction. Deaths, injuries and property damage from consumer product incidents cost the nation more than \$800 billion annually. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard. CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters, and household chemicals - contributed to a significant decline in the rate of deaths and injuries associated with consumer products over the past 30 years.

Under federal law, it is illegal to attempt to sell or re-sell this or any other recalled product.

To report a dangerous product or a product-related injury, call CPSC's Hotline at (800) 638-2772, teletypewriter at (800) 638-8270, or visit www.cpsc.gov/talk.html. Consumers can obtain this press release and recall information at www.cpsc.gov. To join a free e-mail subscription list, please go to www.cpsc.gov/cpsclist.aspx.

Nurses vs Manicurist

My Back ground: Nail Tech licensed since 1984/current – Facilities est. 1986/current – CID 2009/I am here to renew for another 2 years today. 3 years ago I excepted a position at Willamalanes foot care clinic...this is when I got interested in doing more senior foot care clinics outside of the WPRC Clinic (Facility license). I phoned and complete the requirements spelled out to me by a Compliance Officer; take the test and pay the fees for a CID/traveling license.

As I got into the business I soon discovered Nurses, as well as some people who had no license, and Nail Tech with expired licenses which are obvious violation. I questioned the nurse's crossing over into our area of practice by call the compliance officers to inquire and I was directed to the Nursing Board. Phoning them, I was informed they can cut nails for **health reasons only** and need a business license. They can take a 3 hour seminar in Portland but it is not required under the Nursing Board.

While we must attend school for 600 hours, take our state boards, pay fees, comply with all the rules and regulation of this board, be subject to inspection, etc...

THE FACTS ARE:

No one is watching or inspecting the nurses, as per their board officer.

No one is checking their license type or status – they could be 'care givers with no actual license'.

- Nurses operate foot care clinics and services at Senior Centers, Retirement Residences, Assisted living and private residences. Everything from cut and go to full Mani and pedi's with spa treatments and polish.
- I have seen many violations, use of common files, not sanitizing properly, cutting nail improperly as well as cutting into nail bed/skin exposing the elderly to contamination and possible infection...not gloving...just to mention just a few areas of concern.
- This is not allowed under rules at Peace Health River Bend Hospital? The hospital staffed informed me of this when my 91 year old father was hospitalized. The staff was excited to know that I had my CID and wanted me to come in to provide the service in house.
- If a hospital does not allow their nurses to cut nail saying it is not in their area of expertise why can they provide the service out in public?

My proposal, if you are going to look the other way:

***They bring in their nursing license, take the same test I have to, pay all the fees and be subject to inspection. ** There is enough work out there for everyone -Make it an even playing field for those of us who thought we were taking the proper steps required by the State of Oregon to perform hand and foot care. Please protect our industry and the integrity of all practitioners under the Cosmetology Board.**

One positive is they would be allowed to shop at the Beauty Supply Houses and would have access to the required sanitizers and disinfectants, as well as current regulations and information. Thank you for your time in this matter! Mary C. DeCuman

Nurses vs Manicurist

My Back ground: Nail Tech licensed since 1984/current – Facilities est. 1986/current – CID 2009/I am here to renew for another 2 years today. 3 years ago I excepted a position at Willamalanes foot care clinic...this is when I got interested in doing more senior foot care clinics outside of the WPRC Clinic (Facility license). I phoned and complete the requirements spelled out to me by a Compliance Officer; take the test and pay the fees for a CID/traveling license.

As I got into the business I soon discovered Nurses, as well as some people who had no license, and Nail Tech with expired licenses which are obvious violation. I questioned the nurse's crossing over into our area of practice by call the compliance officers to inquire and I was directed to the Nursing Board. Phoning them, I was informed they can cut nails for **health reasons only** and need a business license. They can take a 3 hour seminar in Portland but it is not required under the Nursing Board.

While we must attend school for 600 hours, take our state boards, pay fees, comply with all the rules and regulation of this board, be subject to inspection, etc...

THE FACTS ARE:

No one is watching or inspecting the nurses, as per their board officer.

No one is checking their license type or status – they could be 'care givers with no actual license'.

- Nurses operate foot care clinics and services at Senior Centers, Retirement Residences, Assisted living and private residences. Everything from cut and go to full Mani and pedi's with spa treatments and polish.
- I have seen many violations, use of common files, not sanitizing properly, cutting nail improperly as well as cutting into nail bed/skin exposing the elderly to contamination and possible infection...not gloving...just to mention just a few areas of concern.
- This is not allowed under rules at Peace Health River Bend Hospital? The hospital staffed informed me of this when my 91 year old father was hospitalized. The staff was excited to know that I had my CID and wanted me to come in to provide the service in house.
- If a hospital does not allow their nurses to cut nail saying it is not in their area of expertise why can they provide the service out in public?

My proposal, if you are going to look the other way:

***They bring in their nursing license, take the same test I have to, pay all the fees and be subject to inspection. ** There is enough work out there for everyone -Make it an even playing field for those of us who thought we were taking the proper steps required by the State of Oregon to perform hand and foot care. Please protect our industry and the integrity of all practitioners under the Cosmetology Board.**

One positive is they would be allowed to shop at the Beauty Supply Houses and would have access to the required sanitizers and disinfectants, as well as current regulations and information. Thank you for your time in this matter! Mary C. DeCuman

Nurses vs Manicurist

My Back ground: Nail Tech licensed since 1984/current – Facilities est. 1986/current – CID 2009/I am here to renew for another 2 years today. 3 years ago I excepted a position at Willamalanes foot care clinic...this is when I got interested in doing more senior foot care clinics outside of the WPRC Clinic (Facility license). I phoned and complete the requirements spelled out to me by a Compliance Officer; take the test and pay the fees for a CID/traveling license.

As I got into the business I soon discovered Nurses, as well as some people who had no license, and Nail Tech with expired licenses which are obvious violation. I questioned the nurse's crossing over into our area of practice by call the compliance officers to inquire and I was directed to the Nursing Board. Phoning them, I was informed they can cut nails for **health reasons only** and need a business license. They can take a 3 hour seminar in Portland but it is not required under the Nursing Board.

While we must attend school for 600 hours, take our state boards, pay fees, comply with all the rules and regulation of this board, be subject to inspection, etc...

THE FACTS ARE:

No one is watching or inspecting the nurses, as per their board officer.

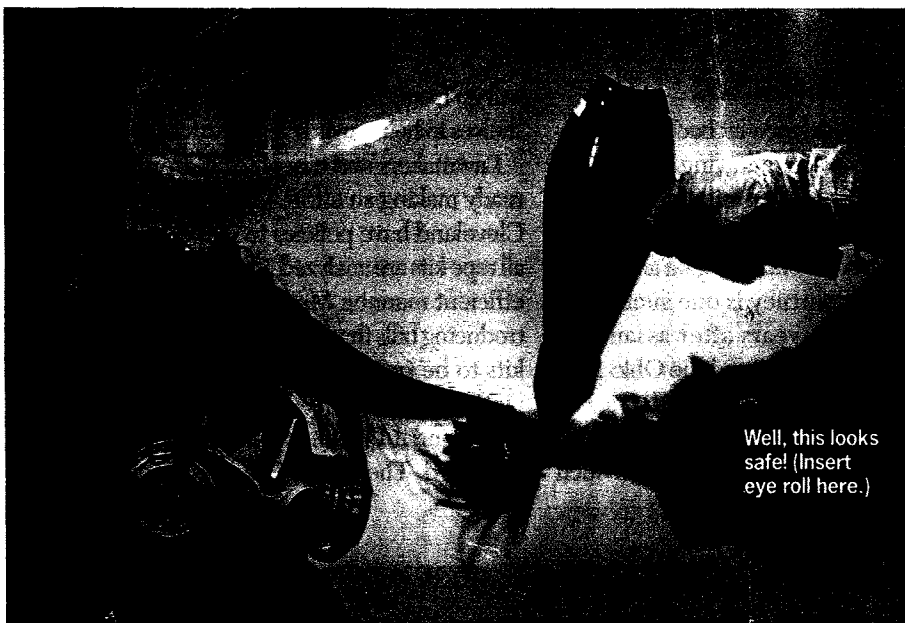
No one is checking their license type or status – they could be 'care givers with no actual license'.

- Nurses operate foot care clinics and services at Senior Centers, Retirement Residences, Assisted living and private residences. Everything from cut and go to full Mani and pedi's with spa treatments and polish.
- I have seen many violations, use of common files, not sanitizing properly, cutting nail improperly as well as cutting into nail bed/skin exposing the elderly to contamination and possible infection...not gloving...just to mention just a few areas of concern.
- This is not allowed under rules at Peace Health River Bend Hospital? The hospital staffed informed me of this when my 91 year old father was hospitalized. The staff was excited to know that I had my CID and wanted me to come in to provide the service in house.
- If a hospital does not allow their nurses to cut nail saying it is not in their area of expertise why can they provide the service out in public?

My proposal, if you are going to look the other way:

***They bring in their nursing license, take the same test I have to, pay all the fees and be subject to inspection. ** There is enough work out there for everyone -Make it an even playing field for those of us who thought we were taking the proper steps required by the State of Oregon to perform hand and foot care. Please protect our industry and the integrity of all practitioners under the Cosmetology Board.**

One positive is they would be allowed to shop at the Beauty Supply Houses and would have access to the required sanitizers and disinfectants, as well as current regulations and information. Thank you for your time in this matter! Mary C. DeCuman



Well, this looks safe! (Insert eye roll here.)

► “The best part of getting the Brazilian Blowout wasn’t just having perfect hair every day for three months,” says Moira, 34. “It was the liberation: I didn’t have to choose between a workout and maintaining my blowout, I could get caught in the rain and not care, and it shaved 40 minutes off my morning routine.”

As thrilled as Moira was with the popular hair-straightening treatment, she couldn’t ignore that while she was having it done, her eyes watered and her nose and throat burned—all symptoms of exposure to formaldehyde, a chemical that, while common in beauty products (albeit in extremely low concentrations), is recognized by the International Agency for Research on Cancer as a human carcinogen at certain levels. In addition to being linked to leukemia and nose and throat cancers, formaldehyde exposure has been associated with Lou Gehrig’s disease.

Moira’s salon used Brazilian Blowout products, which are advertised and labeled as formaldehyde-free—despite recent reports showing that not to be true. To be clear, Brazilian Blowout is just one brand name for a new type of keratin-based straightening treatment.

Is Your Hair Treatment Toxic?

Everyone loves a good blowout, but there’s a scary secret behind the current straightening craze. Don’t make another trip to the salon without reading this!

By Jessica Knoll

Other brands exist, but none are as popular. If you’re considering throwing down for one of these treatments—or even if you’re not, but your salon is one of thousands in the U.S. that performs them—your health could be at risk.

Flat-Out Lying

In July 2010, a Portland, Oregon, hairstylist complained that she was experiencing difficulty breathing, eye

irritation, and nosebleeds after using Brazilian Blowout products. The Oregon branch of the Occupational Safety and Health Administration (OSHA), a federal agency responsible for ensuring healthy conditions for workers, got involved and discovered that not only did Brazilian Blowout products contain formaldehyde but the levels ranged from 6.8 percent to 11.8 percent. To give you a sense of how high that is, the recommended safety limit for formaldehyde in beauty products is 0.2 percent.

Oregon’s OSHA published the test results on its Website and issued a state-wide warning to salons. In response, Brazilian Blowout publicly disputed the test methodology and filed a lawsuit. Even so, the OSHA alert brought national attention to the issue: The State of California has sued the North Hollywood company, alleging that it sold its solution on false claims that it’s

safe and formaldehyde-free. Yet Brazilian Blowout products are still used in salons across the country, and the Website

continues to advertise that its treatment “contains no formaldehyde.”

When we reached out to the company for comment, we were told that any questions we had could be answered by visiting its Website.

Escaping the Fumes

Just sitting next to a chick whose head is coated in this cancer-causing goo can be dangerous. “Because these treatments are heated by a blow-dryer and flatiron, they release formaldehyde fumes that everyone in the room is at risk of inhaling,” says Dede Montgomery, an industrial hygienist at the Center for Research on Occupational and Environmental Toxicology. To protect your pipes, call in advance of your appointment and ask if they’ll be giving any Brazilian Blowouts at that time. If the answer is yes, reschedule... and be sure to tell them why. ■

