

**Oregon Health Licensing Agency (OHLA)  
Board of Cosmetology  
Minutes of September 22, 2008**

**MEMBERS PRESENT**

Mike Snook, Chairperson  
Linda Bergmann, Practitioner  
Deely Klarr, Practitioner  
Judith Petersen, Practitioner  
Debora Masten, Practitioner

**STAFF PRESENT**

Susan K. Wilson, Director  
Richard McNew, Administrative Service Manager  
Tim Molloy, Regulation Manager  
Dixie Bryant, Program Operations Manager  
Sarah Hoggatt, Board & Qualifications Specialist  
Sammie Patnode, Examination & Qualification Analyst  
Kraig Bohot, Communications Coordinator

**MEMBER ABSENT**

Patricia Hall, Practitioner  
Herb Hirst, Public Member

**GUESTS**

Brandi Newman  
Heidi Luniga  
Judy Culp  
Cynthia Shaw  
Laurie Morn  
Deborah Coddens

**CALL TO ORDER**

Mr. Snook, Chair, called the meeting of the Board of Cosmetology to order at 9:07 a.m. on September 22, 2008, at the Oregon Health Licensing Agency, Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon.

**APPROVAL OF AGENDA**

**MOTION**

Ms. Klarr made a motion with a second by Ms. Bergman to approve the agenda with the addition of adding a space for public comment after the approval of minutes for September 22, 2008. Aye: Mr. Snook, Ms. Klarr, Ms. Petersen, Ms. Masten, and Ms. Bergmann. Nay: None. The motion passed.

**APPROVAL OF MINUTES**

**MOTION**

Ms. Masten made a motion with a second by Ms. Bergman to approve the minutes for May 12, 2008. Aye: Mr. Snook, Ms. Klarr, Ms. Petersen, Ms. Masten, and Ms. Bergmann. Nay: None. The motion passed.

## **MOTION**

Ms. Klarr made a motion with a second by Ms. Masten to approve the minutes for August 13, 2008. Aye: Mr. Snook, Ms. Klarr, Ms. Petersen, Ms. Masten, and Ms. Bergmann. Nay: None. The motion passed.

## **BUSINESS**

Judy Culp from Esthetics Institute in Eugene, Oregon, introduced herself and stated her opposition to double dipping during waxing and her interest in laser hair removal.

## **REPORTS**

### **DIRECTOR'S REPORT**

Ms. Wilson provided an overview of the agency-wide legislation LC 831. LC 831 continues to conform and streamline agency standards, regulation and requirements for programs and professions regulated by the agency. The legislation makes program changes, technical adjustments and corrections, maximizes the benefits of economies of scale, regulatory consistency and accountability to continue to achieve solutions and outcomes for consumer protection. The legislation establishes consistent term limits (two consecutive four year terms) and stipulates at least one public member be appointed to all boards. The legislation proposes professional development through prescribed education or training and identifies practice standards, testing and oversight as determined by agency rule.

Ms. Wilson stated that OHLA's proposed legislation encompasses some of the topics reviewed by the Interim Committee on Health Care chaired by Representative Greenlick. Representative Greenlick's interim committee revealed board membership and the appointment process are not uniform nor is the number of public members serving on these boards. Representative Greenlick's interim study may recommend to the 2009 Legislature an increase in public members on boards to 50%. The recommendation may also include other improvements and changes in board specific areas.

Mr. Markee of Markee and Associates commented there was general opposition among professional association representatives at the interim committee public hearing to the proposal to increase the number of public members on boards to 50%. Ms. Wilson stated since the role of boards is public protection, it is logical at least one public member serve. She stated board members will have an opportunity to review both agency legislation and any other legislation after the bills are drafted by legislative counsel. The Legislature begins Monday, January 12, 2009.

Ms. Wilson reported the legislature is considering a committee to review scope or practice issues. Governor Kulongoski has requested a study of Oregon's preparedness for a shortage in health care providers during the next decade. The study will identify areas with projected shortfalls and recommend solutions.

### **ADMINISTRATIVE SERVICES DIVISION**

Mr. Simpson, Program Analyst, discussed the statistics and graphs for the number of tests taken, passing scores, percentage of new licenses issued and renewals completed. He also

explained all statistics for complaints, inspections, enforcement, and website traffic. It was noted the air brush tanning page has been visited a great deal.

- Current Active Licenses: 67,702
- Page hits: 35,622
- Average hits a day: 1,149
- Visitors to the Cosmetology web site: 5,759

Ms. Bergman gave a report on the Esthetician test she took before the meeting. She stated most of what she learned 40 years ago in school was on the exam. The test itself is not difficult but she had to study. She believes a recent graduate who knows the material and has studied should be able to pass the test. One of the audience members commented the book Ms. Bergman studied was more advanced than the book students typically use in the cosmetology schools.

### **REGULATORY OPERATIONS DIVISION**

Mr. Molloy reviewed the Complaint Flow Chart he created which breaks down the process of disciplinary action. The agency will establish a Disciplinary Action Page on the web which will also link to each program to help licensees understand the disciplinary process including the reduction of civil penalties, hearings, and settlement agreements. A link to the Central Hearing Panel will also be located on the page. This page will be located on the left hand navigation bar of each program site.

Mr. Molloy summarized a case, 08-5215, involving an emergency suspension. The Emergency Suspension order was sent on August 24, 2008, by certified mail. Jeff Dover assisted with the emergency suspension.

Mr. Snook inquired whether a criminal history would affect an applicant's ability to obtain a license. Mr. Molloy replied they can obtain a license as long as there are no restrictions on the licensee's ability to work with the public. He stated this is the second time the Agency has used an emergency suspension since he has been in his position.

### **PROGRAM OPERATIONS DIVISION**

Ms. Patnode discussed the Oregon Administrative Rules, noting changes to all practitioner fees will stay the same until July 1, 2009 and the first phase of implementing the permanent rule adoption was deferred from September 1, 2008 to October 1, 2008 to allow for technical change-over. A letter has been mailed to the schools discussing the rules, new forms, and the NIC Written examinations. As of January 1, 2009, the new candidate information bulletin goes into effect. Ms. Allbritton added all practitioner fees will be phased in by July 1, 2009, as well as the increase in application and exam fees. She stated the cost allocation methodology showed the need for fees to pay for the services provided. The phase-in was set up to help students and license holders prepare for these costs while not placing undo hardship upon them.

### **OUTREACH AND COMMUNICATIONS**

Mr. Bohot, Communications Coordinator, gave the outreach and communications report. He noted the Board had previously decided laser tattoo removal is not within the esthetician's scope of practice. Mr. Snook commented on what we can and cannot allow people to practice as estheticians and that qualifications and training need to be taken into account. Mr. Snook made an observation laser skin resurfacing is the same as laser derma-abrasion, thus this issue will be sent

to the Product Safety Committee to decide whether it is safe, if it is within the scope of practice, and who can use the procedure.

The Product Safety Committee will examine if there is a liability to the licensed facility for promoting clients use products like whitening strips.

Ms. Patnode notified the Board about the upcoming Product Safety Committee meeting to be held on October 10, 2008, at 10 a.m. They will be discussing Dr. Fish pedicures and facials, laser hair enhancement, the aqua-chi machine, laser skin resurfacing, and ear candling. Ms. Klarr inquired what ear candling was. It is removing wax from the inner ear by burning a candle with the bottom of the candle in the ear. A recent study stated the material that comes out of the ear is actually created by the candling itself, not material already there. The Aqua-Chi is a machine with water and an electrical current you put your feet into to remove the toxins from your skin though this has not been scientifically proven to work. Mr. Molloy mentioned the practice is not for beautification and therefore questions whether it is in an esthetician's scope of practice. Mr. Snook says as long as they disinfect the container, he believes it would be fine, but referred the aqua-chi to the Product Safety Committee.

Mr. Bohot suggested the Agency write a general statement to make buyers beware of unregulated practices in a licensed facility. Judy Culp, an audience member, suggested each facility post a sheet stating which services are unregulated.

Mr. Bohot discussed collaborative work between agencies and associations, the Oregon Collaborative for Healthy Nail Salons, to assure worker's safety in nail salons. Of particular concern are product formulas and nail salon air ventilation. Ms. Klarr related a story about someone she knew working next to a nail salon in a strip mall who had to change jobs due to an allergic reaction to the acrylics in the air. Mr. Snook noted we can call Air Quality Control but cannot control allergic reactions. It was noted worker safety is part of the curriculum for estheticians and nail technicians so practitioners are aware of the risks of toxic chemicals in nail salons.

## **2009 SUBCOMMITTEES**

Ms. Klarr informed the board she was resigning from the board and not requesting a second term appointment.

Subcommittees provide review and discussion of specific issues, which usually require more in-depth fact-finding and deliberation than can be scheduled at periodic board meetings. It was noted at the first meeting in the fall, new standing committee members are voted upon who will review and respond to ongoing issues and questions.

<b>2009 Subcommittees</b>	
Enforcement Committee	Mike Snook; Patricia Hall
Industry Liaison Committee	Mike Snook; Linda Bergmann
Item Writing / Examination Committee	Debora Masten
Legislative / Rules Committee	Debora Masten; Mike Snook; Herb Hirst
Product Safety / Public Protection Committee	Debora Masten; Herb Hirst; Mike Snook
Scholarship / Education Committee	Judith Petersen; Linda Bergmann; Mike Snook
Customer Connection Committee	Patricia Hall

**MOTION**

Ms. Bergman made a motion with a second by Ms. Masten to approve the subcommittee appointments for 2009. Aye: Mr. Snook, Ms. Klarr, Ms. Petersen, Ms. Masten, and Ms. Bergmann. Nay: None. The motion passed.

**2009 BOARD MEETING DATES**

The Board of Cosmetology meets on a quarterly basis. All meeting have been schedule on a Monday.

**MOTION**

Ms. Masten made a motion with a second by Ms. Bergman to approve the board meeting dates for 2009: January 12<sup>th</sup>, March 16<sup>th</sup>, May 11<sup>th</sup>, and November 2<sup>nd</sup> with each meeting starting at 9 a.m. Aye: Mr. Snook, Ms. Klarr, Ms. Petersen, Ms. Masten, and Ms. Bergmann. Nay: None. The motion passed.

**2009 CHAIR AND VICE CHAIR**

The Board of Cosmetology shall elect a chairperson and vice-chairperson for 2009.

**MOTION**

Ms. Petersen made a motion with a second by Ms. Klarr to approve the chair and vice chair appointments for 2009: Michael Snook for chair and Debora Masten for vice chair. Aye: Mr. Snook, Ms. Klarr, Ms. Petersen, Ms. Masten, and Ms. Bergmann. Nay: None. The motion passed.

**RETAKE EXAMINATION POLICY**

The Agency is continually turning applicants away due to confusion regarding the number of “business days” they are required to wait to retake the examination. With holidays and weekends often being inconsistent among professions, private sector employment and government applicants, applicants are often uncertain of the length of the waiting period. Therefore, the Agency wants to utilize calendar days to remove barriers to licensure by simplifying the process.

**MOTION**

Ms. Masten made a motion with a second by Ms. Petersen to approve the subcommittee retake examination policy. Aye: Mr. Snook, Ms. Klarr, Ms. Petersen, Ms. Masten, and Ms. Bergmann. Nay: None. The motion passed.

**REVISED ROLL-ON WAX POSITION STATEMENT**

On May 12, 2008, the Board reviewed the roll-on wax position statement which stated roll-on wax applicators may not be re-used unless they have a built-in mechanism that prevents ‘flow-back’. It was pointed out some applicators can be disinfected between clients if immersed in a high level disinfectant according to OAR 871-010-0068. The Agency requested the position statement be revised to reflect the change.

It was decided that we would wait to vote on this position statement until after we hear public comment from the guest coming at 12:30 pm.

### **LASER TATTOO REMOVAL POSITION STATEMENT**

The Board met on May 12, 2008, to discuss concerns regarding laser tattoo removal being performed by estheticians. Discussion focused on if the procedure is within the scope of practice of an esthetician. It was determined that Oregon Revised Statute 690.005 (6) does not allow an esthetician to perform laser tattoo removal and is therefore prohibited. Currently, estheticians in Oregon are allowed to use lasers and other devices for hair removal, skin rejuvenation and any other service within the esthetics scope of practice and whose intended use is specifically for services within their professional scope. The Agency has therefore drafted a position statement to be presented to the Board.

Ms. Masten noted a new ink has been developed in the tattoo field called encapsulated ink that is much easier to remove with a laser. Ms. Wilson suggested outreach on the OHLA website on this new type of ink would be appropriate as well as collaborating with the tattooing board. This ink is now patented and will be sold on the open market sometime in the near future.

### **MOTION**

Ms. Bergman made a motion with a second by Ms. Petersen to approve the laser tattoo removal position statement. Aye: Mr. Snook, Ms. Klarr, Ms. Petersen, Ms. Masten, and Ms. Bergmann. Nay: None. The motion passed.

### **DR. FISH PEDICURES**

The Board discussed the Dr. Fish pedicures. They watched two videos on the website, [www.youtube.com](http://www.youtube.com). Mr. Snook said the biggest issue is sanitation and the service not being provided by a licensed practitioner. Ms. Wilson suggested we not allow the practice as it is a huge grey area and we are not able to regulate it. It was noted regulations are answering calls daily on this topic. After discussion, Mr. Snook suggested simply saying no, Dr. Fish pedicures are outside of Cosmetology's scope of practice.

### **MOTION**

Ms. Masten made a motion with a second by Ms. Klarr that Dr. Fish pedicures are not within our scope of practice in the state of Oregon. Aye: Mr. Snook, Ms. Klarr, Ms. Petersen, Ms. Masten, and Ms. Bergmann. Nay: None. The motion passed.

### **PUBLIC COMMENT**

Deborah Coddens from Satin Smooth, a company owned by Conair, gave a presentation on the roll-on wax system. The board focused attention on the sheets in the information packet Ms. Coddens gave to the board including a letter from Conair Microbiology Lab stating bacteria could not enter the wax container. Ms. Coddens stated many practitioners are concerned this system is illegal in Oregon.

Ms. Wilson noted we are concerned about cross-contamination, how wax could be pulled back into the unit. Ms. Coddens shared the wax that touches the skin stays on the skin and since there is no water in the wax, bacteria cannot grow. Ms. Coddens demonstrated the system on her arm.

Mr. Molloy asked about things like glitter or hair on the skin getting into the wax. Ms. Coddens explained they cleaned the skin and trimmed the hair first. Mr. Molloy also brought up a concern that Conair, the owner of the waxing system, were the ones conducting the test. Ms. Coddens explained the company used their own lab due to the cost of an independent test.

Mr. Snook expressed concern about contaminants such as blood being passed through the system onto other clients. Ms. Coddens answered the roller heads are sanitized each time they are used on a new client and that you're only as safe as the person doing the waxing. Mr. Snook suggested each person could take their wax home and bring it back with them the next time. Ms. Coddens explained her own practice of doing that with several clients. She asked what it would take to approve the roll-on wax system and the Board stated test results from an independent lab with bacteria on the roller to see if it infects the wax along with an explanation on how the test was conducted. Ms. Coddens asked if we had talked with other states concerning their regulation guidelines of the roll-on waxing system. Mr. Snook stated it is the manufacturer's responsibility to present evidence of no cross-contamination and if another state has results, Oregon will review it. Ms. Coddens stated she would report to the head of the company while restating having the roll-on wax system in Oregon illegal is hurting the beauty supply store Maly's.

The Agency will develop a roll-on wax position statement and present it at the November 3<sup>rd</sup> board meeting. It was clarified people can use the roll-on wax system if the client takes the wax home and brings it back the next time for service but use from client to client is not approved.

The meeting was adjourned at 1:44 pm.

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*I attest that the Board of Cosmetology minutes of September 22, 2008, are a true and accurate reflection of the matters discussed and the views of the participants.*

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Sarah K. Hoggatt, Board Specialist

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Date