



Oregon Health Licensing Agency
Board of Cosmetology



9 am, Monday, October 24, 2011
700 Summer Street NE, Suite 320
Salem, Oregon

MINUTES

MEMBERS PRESENT

Sharon Wisner, Vice-Chair
Herb Hirst
Shelly Couch
Tiffany Galvan
Peggy Zepp
Lisa Bonner Brown
Heidi Zuniga

STAFF PRESENT

Randy Everitt, Director
Sylvie McMillan, Fiscal Services and Licensing Manager
David Sparks, Regulatory Operations Manager
Samie Patnode, Policy Analyst
Amanda Perkins, Board Specialist

MEMBERS ABSENT:

None

GUESTS PRESENT:

Karen Dieckman
Cindy Long
Cynthia R. Martinez
Monique R.
Raquel Schalck

*This meeting was live video streamed.

Call to Order

Sharon Wisner, Vice-Chair, called the meeting of the Board of Cosmetology to order at 9:05 am, Monday, October 24, 2011, at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon. Roll was called.

Introduction of New Board Member – Peggy Zepp

Randy Everitt, Director, introduced Peggy Zepp to the board. Zepp said she has been in the Cosmetology field over 16 years and a licensed Esthetician for three years.

1. Approval of Agenda

MOTION:

Heidi Zuniga made a motion with a second by Shelly Couch to approve the agenda. Motion passed

unanimously.

2. Approval of Minutes

MOTION:

Tiffany Galvan made a motion with a second by Shelly Couch to approve the minutes for July 25, 2011. Motion passed unanimously.

3. Reports

◆ Directors Report

-2013 Legislative Concepts Discussion

Randy Everitt, Director, explained that a legislative concept is a formal idea that the agency vets with its boards or councils to determine if a statute (or law) needs to be revised. It is a lengthy process and Everitt further explained that the Legislative Concepts need to be submitted by early April of 2012 for the 2013 Legislation Session. Everitt discussed possible legislative concepts for the Board of Cosmetology. He noted that by the next January board meeting the agency would need to know which legislative concepts ideas to move forward. Below are ideas recommended by the agency:

- Add work performed on the “face” in relation to esthetics.

OHLA “housekeeping” legislative concepts:

- Streamline public records confidentiality regarding complaints (ORS 690.195(2)); and
- Clarify authority to assess civil penalty to the Board (ORS 690.992) for violations of (ORS 676.612)

-2012 Chair Summit

Everitt announced a Chair Summit will take place on January 20, 2012, for all the Boards and Councils for a business meeting. The purpose of the meeting is for the boards/councils to let the agency know how it can improve on its services and for the agency to let the boards/councils know where the business of regulation is headed. For example, Everitt stated, at the last Chair Summit the agency introduced the 28-point Investigatory Protocols. One of the concerns at the last meeting was customer service and as a result the agency increased staff in the front lobby service area and added a position who answers the phone. This meeting will also explore the political part of Oregon Health Licensing Agency as a state entity and how it relates to each profession.

◆ Statistical Report and Budget

Sylvie McMillan, Fiscal Services and Licensing Manager, presented the statistics that included licensing, examination and regulatory statistics, authorization volume, complaints, and website traffic. McMillan also introduced a chart which outlined how the agency assesses for any indirect costs for all the boards. These plans were developed by fiscal to allocate the shared (indirect) service rates for each board or council under Oregon Health Licensing Agency. The chart shows which board is using what functions of the agency and the costs are based on those services the boards are actually using. Full-Time Equivalent (FTE) Allocation represents all the agency’s employee positions. Shared cost categories are divided into three agency divisions: Administrative Services, Fiscal Services/Licensing, and Regulatory Operations. Each board was placed into a Gold, Silver, or Bronze Plan based on the services used while Cosmetology has its own separate plan. The board will pay a percentage of each of the shared costs, such as, management, rules and legislation, qualifications and licensing, etc. McMillan noted the Silver and Bronze Plans does not include inspections as the agency only performs inspections on those boards with facility licenses. The Investigators keep a detailed log of which board they work on

and those hours/ payroll costs are divided out at the end of the month for each board/council.

McMillan discussed the projected statement of cash flow for the 2011-2013 biennium. She noted the line which read, "Projected to reach goal on approximately July 2012" and the \$660,000 dollar amount. McMillan explained when the tiered fees were established, which have made it less expensive for student's right out of school to obtain licensure, the facility licenses were increased to offset that decrease. The board also needed to have at least three months in reserve. The projection shows the board may meet that goal in July of 2012. The agency's plan then would be to lower the facility licenses by approximately \$10 and also offer a discount for business licenses renewed online. Those business licenses are facility, independent contractor and free-lance authorizations. The reason behind the changes would be to stabilize the revenues.

Board of Cosmetology Statement of Cash Flow 2011-2013 Biennium

OREGON HEALTH LICENSING AGENCY COSMETOLOGY FUND 7520 STATEMENT OF CASH FLOW FOR THE PERIOD 07/01/11- 09/30/11	
11-13' Beginning Cash Balance <i>as of 9/30/2011</i>	\$ 198,678.26
Revenues	\$ 775,119.00
Dept of Education Transfers In	\$ -
Expenditures	\$ 630,210.52
Less: Accrued Expenditures	\$ (5,768.06)
Less: Total Expenditures	\$ (624,442.46)
Subtotal: Resources Available	\$ 349,354.80
Change in (Current Assets)/Liabilities	\$ 273.16
Ending Cash Balance (Actual)	\$ 349,627.96
Ending Cash Balance Goal, Projected to reach goal approx. July 2012	\$ 660,000.00
Platinum Allocation, 07/1/11 - 12/31/11	
Shared Services Rate	85.95%
Educational Services Rate	26.32%
Frontline and Customer Support Rate	91.95%
Inspections	93.24%
Direct Cost	100.00%

◆ Regulatory Operations Division Report

David Sparks, Regulatory Operations Manager, reported on enforcement activity. Sparks mentioned that the open inspector position was filled and now the agency is fully staffed. Sparks said the productivity of the inspectors is up approximately 30 per cent and the inspectors perform about 200 inspections each per month. Sparks said between July 2009 and June 2011 387 complaints were received by the agency. Of those 387 complaints 24 remain open. Between July 1, 2011, and October 17, 2011, 58 complaints were received by the agency of which 40 remain open. Everitt clarified, in answer to a question by Herb Hirst, that civil penalties are not part of the budget for the Board of Cosmetology. McMillan stated that they are part of revenues.

-Interagency Agreement with Oregon Occupational Safety & Health Division (OSHA)

The Board of Cosmetology has adopted by reference in rule OSHA's OAR 437-002-0360(31). {See OAR 817-060-0050 regarding the use of formaldehyde products.} Sparks explained that Oregon OSHA function is to protect Oregon workers while OHLA function is to protect the public. The two agencies have come together and crafted an interagency agreement where the jurisdictions overlap and that agreement is now in effect. {Please see a copy of the agreement in the board meeting materials on the web site}.

Sparks referred the board to the two documents provided in the meeting materials packets. One was a warning letter from the U.S. Food and Drug Administration (FDA) to Mike Brady, CEO of GIB, LLC dba Brazilian Blowout and the other an announcement from the Cosmetic Ingredient Review Expert Panel 119th Meeting (June 27-28, 2011) – Findings, dated June 30, 2011, regarding adulterated cosmetic.

-Nail Technicians and Dangerous Solvents Discussion

Lisa Bonner Brown asked if, in the future, OHLA would be testing nail products with similar safety problems. Sparks replied there is a group in Portland concerned with healthy nails, (Oregon Collaborative for Healthy Nail Salons (OCHNS), that has printed a brochure about the solvents used in the nail industry. {NOTE: a link to OCHNS may be found on the Cosmetology web site}. Patnode provided some OHLA history surrounding the controversy. Patnode stated in the mid-1990s OHLA and the Health Division performed a study on methyl methacrylate (MMA) and found many nail technicians were using it. But FDA would not ban the product for use on nails but only “recommended” not using products with MMA. The agency at that time did not pursue any further. Everitt offered that when he worked in another state he had performed a full-work up study on MMA for the Board of Cosmetology and had recommended to that state's board that it be banned. That board elected not to ban MMA. Everitt stated he was, therefore, very interested in having the conversations surrounding MMA and in the future see what the agency's legal authority is along with what the health risks are.

◆ **Policy, Legislation & Administrative Rules**

-OHLA Permanent Administrative Rules

Samie Patnode, Policy Analyst, discussed OAR 331-010-005 regarding allowing authorization holders in active military status waiver of renewal, fees and continuing education requirements, as well as protocols for restoration of former authorization status. The rule defines and clarifies what constitutes an appearance before the agency during investigations of alleged violations of statutes or rules under the authority of OHLA. The rule also defines and clarifies the terms incompetence and negligence used in ORS 676.612 in regulation to the boards or councils under OHLA.

4. Executive Session

Executive Session was held at 10:45 am pursuant to ORS 192.660 (2) (f) “for the purpose of considering information or records exempt from public inspection.”

Upon returning to open session at 10:56 am Patnode stated the board discussed legal counsel advice. The advice that has been released to the public by the agency and legal counsel will be posted to the Board of Cosmetology web site in an issue response or board alert format in the near future. Briefly Patnode explained the following questions and responses provided by Katharine Lozano, AAG, regarding micro-skin needling:

1. Is skin needling in the practice of esthetics?

"Likely, yes. The skin roller is a mechanical appliance used to stimulate and manipulate the skin. There is little risk of damage to the skin using this method. However, estheticians must have obtained appropriate training in the safe and effective use of skin rollers."

2. If so, is it the practice of esthetics regardless of the method used, i.e. skin roller, sewing needle, or tattoo gun?

"Likely not. Although skin rollers appear to be devices that fall within the practice of esthetics, sewing needles appear to present a high risk of permanent damage to the skin when used for skin needling, thereby violating OAR 817-015-0050(2), and tattoo guns are designed for tattoo artistry, not for skin care, so their use by estheticians appears to be a violation of OAR 817-015-0050(1)."

3. Is there an appropriate method available to ensure proper sanitation and sterilization of skin rollers?

"There appear to be a variety of lawful methods available for sterilization of skin rollers."

Patnode also noted that permanent removal of tattoos by laser or ElimInk are not within the scope of practice for Estheticians.

5. Items for Board Action

◆ Approve Administrative Rulemaking Schedule and Proposed Administrative Rules

Patnode stated that on September 13, 2011, the Agency filed temporary administrative rules related to civil penalties and prohibitions.

Temporary administrative rules are used in situations which warrant immediate action and are only good for 180 days (approximately 6 months).

During a review of the Board of Cosmetology's (Board) Oregon Administrative Rules (OAR) it was determined that temporary rules be filed to amend the following OARs:

OAR 817-090-0025, 817-090-0035, and 817-090-0045 because the Oregon Health Licensing Agency (Agency) and the Board do not have statutory authority to assess civil penalties for violations of ORS Chapter 676 or OAR Chapter 331 under OAR Chapter 817.

OAR 817-090-0105 and 817-120-0005 because it is unlawful under the ADA for a state to prevent an individual from practicing cosmetology based on that individual's HIV/AIDS (communicable disease) status.

Other administrative rules to be revised include facility application requirements allowing only a natural person to apply for a facility license. This will allow the Agency to track facilities by "one" individual rather than a "corporation" which is easily dissolved or changed.

MOTION:

Herb Hirst made a motion with a second by Heidi Zuniga to approve the proposed administrative rules. The motion passed unanimously.

◆ 2012 Chair/Vice-Chair

Nominations for Chair were opened and Sharon Wisner nominated Herb Hirst for Chair and Heidi Zuniga nominated Sharon Wisner for Chair. There were no further nominations so nominations were closed and Herb Hirst was elected 2012 Chair by an unanimous vote.

Nominations for Vice-Chair were opened and Herb Hirst nominated Sharon Wisner for Vice-Chair. There were no further nominations and so nominations were closed. Sharon Wisner was elected 2012 Vice-Chair by an unanimous vote.

◆ 2012 Committees

MOTION:

Herb Hirst made a motion with a second by Heidi Zuniga to approve the nominated committee members for 2012. The motion passed unanimously.

2012 Committees	
Enforcement	Herb Hirst, Sharon Wisner, Alternate: Lisa Bonner Brown
Education & Examination	Sharon Wisner, Heidi Zuniga, Tiffany Galvan,
Legislation & Rules	Herb Hirst, Heidi Zuniga, Tiffany Galvan, Alternate: Peggy Zepp
Practice & Procedures Standards	Heidi Zuniga, Peggy Zepp, Lisa Bonner Brown
Customer Connection	Herb Hirst

◆ 2012 Board Meeting Dates

The agency proposed meeting dates for the Board of Cosmetology were: January 23, April 23, July 23, and October 1, 2012. The board meeting start times are 9 am.

MOTION:

Herb Hirst made a motion with a second by Tiffany Galvan to approve the 2012 Board of Cosmetology meeting dates as presented.

6. Public Comment

Karen Dieckman thanked the board for continually placing the grades on the web site under "Tools for Schools." She stated that she wanted to be sure that when the examinations are sourced that the source books included Salon Fundamentals, Cosmetology Fundamentals, Milady books and any other books being used. Dieckman stated the cosmetology schools are teaching OAR Chapter 817 for the Oregon Laws & Rules examination and asked if the examination was updated with the new administrative rules.

7. Other Board Business/Board Interest

Everitt stated that recent administrative rules under the Department of Education (DOE) states that career schools are not required to give practical examinations. Everitt stated that Oregon Health Licensing Agency does require a practical examination to qualify for licensure and the agency will not

change that requirement. One of the big questions the agency has been concerned about is the practical not being standardized and applied the same way across every school. The agency is not certain of that answer at this point. Wisner responded that the practical needs to remain within the career schools. Zuniga agreed and stated that within the pros and cons of where the practical is administered are the potential costs involved for the Board of Cosmetology and the student within the career school.

Patnode weighed in and commented that the DOE had been requiring that the career schools give the examination which was not their place to do so. Patnode felt it may be that the DOE was removing from administrative rule what they statutorily are not required to do. It was just a deletion from their rules. It is for the agency to require a practical. Zuniga agreed that the DOE did not oversee the practical examinations like OHLA does. Everitt stated the agency is in a better position to develop a plan to go in and monitor the practical examinations and discussions have begun within the agency.

Wisner recognized Cindy Long, from the public audience, who stated that the practical examination criteria currently used was set forth by the DOE. She asked if the board would still accept that criteria or could the practical examination be updated where needed. Everitt stated that the Education & Examination Committee could look at revising and updating the practical examination but the agency needed to look at the agency's scheduling first before committing to a time frame. Patnode remarked the Board of Cosmetology is scheduled for rulemaking in July 2012.

The meeting adjourned at approximately 12:29 pm.

Prepared by: Sinnamon Harris, Board Specialist