



**Oregon Health Licensing Agency  
Board of Cosmetology  
Legislation & Rules Committee Meeting**

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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

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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