



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

Date: April 11, 2011

Members Present: Debora Masten
Herb Hirst
Sharon Wiser

Members Absent: None

Staff Present: Samie Patnode, Policy Analyst
Sinnamon Harris, Board Specialist
Sylvie McMillan, Fiscal Services and Licensing Manager

Guests Present: Mike Snook
Cindy Long

Debora Masten, called the Board of Cosmetology Legislation & Rules Committee meeting to order at 9:07 am, on April 11, 2011 at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon. Roll was called. The purpose of the meeting was to review proposed administrative rules Chapter 817. Discussion was primarily centered on reviewing written public comment and the hearing officer's report. Proposed administrative rules include, but are not limited to, general housekeeping issues, application requirements, general examination information, practical examination evaluation, issuance & renewal requirements, use of formaldehyde and the civil penalty schedule.

Samie Patnode, Policy Analyst, provided the Legislation and Rules Committee the following documents to review, in advance, for preparation for this April 11, 2011, meeting:

- Notice of Proposed Rulemaking
- Statement of Need and Fiscal Impact
- Proposed Rule Language
- Written Public Comment
- Hearing Officer Report

Review of Hearings Officer Comments and Recommendations

- *Issue of High Schools and Community Colleges*

Patnode stated the intent of the rule was to allow the board to accept transcripts from other educational institutions, high schools and community colleges, to align with current business practices. Currently the rule states "an Oregon licensed career school" which prohibits the agency from accepting transcripts from Coffee Creek Correctional Facility which has a beauty school run by Portland Community College, and McLaren Youth Correctional Facility, which has a beauty school under the jurisdiction of high

schools. Patnode stated that the term “career school” had been deleted and “educational institution” had been added under OAR 817-005-0005. The committee concurred with the changes.

- *Repeal of Type of Examinations Rule*

The hearing officer noted one commenter remarked on the agency’s proposal to repeal OAR 817-030-0040 which sets forth the subjects covered by the written examination, covers other testing requirements, and the practical examination. In this section, Patnode stated, unnecessary information was deleted and pertinent information was moved or condensed under OAR 817-030-0030 General Examination Information. Patnode stated the information that was repealed was too detailed, which hinders the boards flexibility to make changes when necessary. The committee concurred with the changes.

- *Written Examination Retake Requirements*

In regards to this section of the hearing officer’s report, Patnode reported the change from "career school" to "educational institution" had already been made. Referring to OAR 817-030-0065(c) verbiage Herb Hirst commented the terms, "additional training" were too vague. The committee reviewed the *Study Guide Report*, which shows which domains were failed, that is generated and printed for the student upon failure of an examination. The committee was also provided with a copy of a *Certificate of Additional Training* form the educational institution is responsible for completing. Sylvie McMillan, Fiscal Services and Licensing Manager, explained the process. After a failed third attempt, the student may take the *Study Guide Report* to the educational institution. The educational institution will review which domains the student failed and the educational institution will decide how many more hours of training the student will be required to take. Once completed the educational institution will send the *Certificate of Additional Training* to the agency. After discussion, the committee recommended changing *Certificate of Additional Training* to *Official Transcript of Additional Training* since the educational institution must send the transcript directly to the agency and not through the student.

- *150 Hours of Safety and Sanitation and 100 Hours in Career Development for Additional Field*

Patnode explained that, originally, agency staff had concerns over a practitioner returning, for example, after hair-cutting for twenty years, and deciding to obtain their nail certificate. Patnode wrote the proposed rule to see what kind of feed-back would result. In review and further discussions staff members came to the consensus that since the practitioner was taking the field-of-practice examination and Oregon laws and rules examination that was sufficient. If expired over three years the practitioner would also be required to take the practical examination. Patnode then removed proposed OAR 817-030-0005(5). The committee concurred with changes.

- *Practical Examination Evaluation*

Patnode read the hearing officer’s report for this section and then explained that the intent of proposed OAR 817-030-0071 may need to have clearer language. Debora Masten pointed out the issue arose from the auditing process issues. Patnode stated the inspectors had been evaluating the school's practical examinations but there were never any clear guidelines on what the school would be required to do to correct deficiencies. After committee discussion, Patnode offered to consult with the agency's assistant attorney general (AAG) for more precise language and bring the proposal back at the next full board meeting for discussion. Patnode noted she and the agency AAG will review the questions under this section posed by the hearing officer.

Patnode asked the committee if everyone was clear that the proposed administrative rules was a "living" document as evidenced by the changes made during the last full board meeting and the board recommendations that she later made. Patnode commented this is how rulemaking normally progresses; changes will continually be made until they have the best product possible.

- *Various Issues*

The hearing officer was concerned with proposed OAR 817-0100065(15) adopting by reference "the most current edition of the American National Standards for Safe Use of Laser (ANSI)," in that it may constitute an improper delegation of rulemaking authority because the Board does not have the ability to control any future revisions made to that standard." Hirst suggested adopting the most current version on ANSI and all future updates. Patnode stated she would present that idea to the agency's AAG.

The hearing officer pointed out in proposed OAR 817-035-0010(6) that "it seemed unnecessary to require an authorization holder to submit proof of current registration of an assumed business name if the entity is not doing business under an assumed business name." Patnode noted that under the working copy of the administrative rules, the committee was currently using, that rule had changed to OAR 817-035-0010(10). She had added a "NOTE" below sub-section (10) which stated, "ABN is not required if business includes the real and true name of each owner. Refer to Secretary of State, Corporations Division under ORS 648.990." The committee asked Patnode to move the "Note" into the rule. Patnode said she would further review the administrative rules for business names and the requirements regarding Department of Consumer and Business Services, Corporations Division.

Hirst made a comment about proposed OAR 817-060-0050 Use of Formaldehyde Products, after the committee reviewed the hearing officer's suggestions on the subject. Herb said since the board was adopting Oregon Occupational and Safety Health Administration (OSHA) rule OAR 437-002-0360(31) by reference and the board should not try to expand upon that rule. Patnode stated the agency is in the process of working with OSHA concerning investigations and an Interagency Agreement. The committee concurred that no expansion upon the proposed rule was necessary.

Review of Agency Staff Comments and Recommendations

- Regarding the addition of proposed OAR 817-0303-0005(B)(c), "Upon passage of all required examinations and before receipt of certificate, the applicant must pay all certification fees," Patnode stated there had been a mechanism in place that was missing from the rule which stated that once we had all your information, you paid your examination fees, etc. Basically, Patnode said, it is two processes: apply and exam, then pay your certification fees. Patnode pointed out that the applicant may apply and if they don't meet the standards they have a right to a hearing. But, if they apply and meet the standards, and the applicant does not pass the examination, they don't have a right to a hearing.
- Regarding proposed OAR 817-035-0010(6), "Independent contractor and freelance authorizations that are not renewed become dormant but do not become inactive and do not expire." McMillan explained the new process to the committee. For example, an independent contractor (IC) applies for a registration, and that registration is "active" for one year. After the year is over and the IC does not renew the registration it becomes "inactive." An IC cannot legally be an IC with an inactive registration. When they come in for another IC registration and pay the registration fee, it is active for one-year from whenever date they came in. The

registration becomes inactive the last day of that same month. There are no more late fees for an IC or a freelance authorization. The IC registration and the freelance authorization may be renewed if so desired. Patnode explained it did not appear to be appropriate for an IC to pay \$350 to renew if they had stopped working as an IC for three years. The agency does not have any other professions that have independent contractors or freelancer authorization holders. Patnode pointed out it was a benefit for the IC and the freelance authorization holders. The committee concurred.

Review of Public Comments

The committee reviewed the public comment provided to make sure that they had addressed all the issues therein.

Patnode made the committee aware that when they are voting members of the board and hold power as such, that is your voice. When you decide to write written comments for the hearing officer you waive your right to participate in board votes regarding adoption of administrative rules during board meetings. Patnode noted Heidi Zuniga will recuse herself from the administrative rules discussion, deliberations, and vote at the next board meeting on April 25, 2011, because she chose to submit comments to the public hearing officer.

Original Transcript Discussion

Patnode explained the Department of Education (DOE) must keep transcripts for 25 years but sometimes the DOE does not receive all the transcripts from an educational institution after they close their doors. Since the original transcripts may not be available for a practitioner who let their certificate lapse more than three years, the agency staff, who reviewed the administrative rules, proposed that if you had submitted your transcripts with your original application, the agency would not need to see those transcripts again when you reapplied. A practical and all the examinations would still be required.

House Bill 2144 Update

Patnode told the committee HB 2144 had gone before the house committee today and Rep. Wingard provided testimony and requested an amendment which would allow any barber who had worked in the profession for over 45 years to have a free certificate for life. The bill is not moving at this time. Patnode said she would keep the board informed of the progress of the bill.

The meeting adjourned at approximately 10:23 am.

Prepared by: Sinnamon Harris, Board Specialist