



Oregon Health Licensing Agency
Board of Cosmetology



9 am, Monday, November 8, 2010
700 Summer Street NE, Suite 320
Salem, Oregon

MINUTES

MEMBERS PRESENT

Debora Masten, Chair
Sharon Wiser, Vice-Chair
Herb Hirst
Shelly Couch
Heidi Zuniga

MEMBERS ABSENT:

None

STAFF PRESENT

Randy Everitt, Director
Sylvie McMillan, Business Services Manager
David Sparks, Regulatory Operations Manager
Kraig Bohot, Public Information Officer
Samie Patnode, Policy Analyst
Nancy Sellers, Senior Policy Analyst
Cerynthia Murphy, Qualification Analyst
Sinnamon Harris, Board Specialist

GUESTS PRESENT:

Jim Markee	Ilene Tamerius
Cynthia Shaw	Steve Prisby
Judith Culp	Ketty Derrick
Deely Klorr	Karen Dieckman
Anita Larsen	Cindy Long

Dede Montgomery

*This meeting was live audio streamed within the Oregon Health Licensing Agency.

Call to Order

Debora Masten, Chair, called the meeting of the Board of Cosmetology to order at 9:01 am, Monday, November 8, 2010, at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon. Roll was called for present board members.

Randy Everitt, Director, acknowledged the passing of long-time board member Linda Bergmann on October 19, 2010 and praised her contributions to the Board of Cosmetology and the profession.

Debora Masten welcomed Heidi Zuniga, new member, to the Board of Cosmetology.

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:

Shelly Couch made a motion with a second by Herb Hirst to approve the minutes for May 10, 2010. Motion passed unanimously.

3. Reports

• Directors Report

Randy Everitt, Director, stated OHLA hosted a “Chair Summit” on September 1, 2010. One designated representative from each OHLA board or council was in attendance with the exception of a representative from the Advisory Council for Electrologists, Permanent Color Technicians and Tattoo Artists. The summit was held to provide information regarding the role of the chairs and vice-chairs as it relates to professions regulated by OHLA, the distinction between regulatory and association mission/functions, the OHLA budget, and new investigative protocols. Everitt presented a PowerPoint that outlined the new investigative protocols established by OHLA. This model is applicable to all professions under the agency model. The following key points were highlighted regarding the new investigative protocols:

- Provides multiple gateways in which to end each investigation within a reasonable amount of time;
- Provides checks and balances to ensure that OHLA, the licensee and the complainant are protected; and
- Allows for the agency to contract with subject matter experts to assist with investigations.

• Executive Session – Hair Smoothing Products

The board entered into executive session at 9:09 am and returned to open board meeting at 10:06 am pursuant to ORS 192.660 (2)(h). No final actions or final decisions were made in executive session.

Masten reconvened regular session and Everitt led the discussion surrounding hair smoothing products that contain formaldehyde. He stated the board reviewed advice from the agency’s assistant attorney general during the executive session. Everitt stated that the agency has been working closely with Oregon Occupational Safety and Health Division (OR-OSHA) and the Oregon Health Authority regarding hair smoothing solutions sold in Oregon and used in cosmetology facilities and by independent contractors. The agency has received information that some products currently in use exceed OR-OSHA limits for formaldehyde, causing concern for the health and safety of both practitioners and the public. Everitt stated the agency recommends adopting temporary rules effective immediately and with proposed permanent rules that would be filed after gathering more information.

Masten stated the rule was necessary for the safety of the public, the safety of practitioners, and so agency investigators can ensure licensees are in compliance with OSHA standards.

MOTION:

Herb Hirst made a motion to adopt by reference current standards under OSHA OAR 437-002-0360(31), relating to formaldehyde with a second by Heidi Zuniga. The motion passed unanimously.

• **Outreach and Communications**

Kraig Bohot, Public Information Officer, stated the hazard alert from OSHA concerning hair smoothing products and formaldehyde was printed in *Northwest Stylist & Salon*, a monthly publication reaching 5,000 facilities and 7,000 independent contractors and also posted on the Board of Cosmetology agency website. Bohot stated the agency is already receiving inquiries from other states about the Board of Cosmetology's intentions in regards to hair smoothing products.

Bohot remarked that an overview of the new investigative protocol was another topic covered in the *Northwest Stylist* publication.

Bohot spoke about the Oregon Collaborative for Healthy Nail Salons (OCHNS), an organization formed to explore toxins in nail products and the nail salon environment in general. OHLA has been a member for three years. A representative from OR-OSHA, who was also an OCHNS member, provided a presentation on toxins to board member Sharon Wisner's Phagan's School of Hair Design in Portland.

Bohot talked about the small internal grant received by the Center for Research on Occupational and Environmental Toxics (CROET) at Oregon Health Sciences University. The grant is to start outreach to the nail salon community.

Bohot reviewed items of board interest, including included a news release from the Boston Public Health Commission announcing its intention to hold a hearing on proposed nail salon regulation, an online article and video by *Oregon Business* publication that stated the business of cosmetology is still growing even during the recession. Bohot remarked that the agency received an inquiry through the governor's office asking about apprenticeship programs for barbers. The person inquiring was referred to the Bureau of Labor and Industries (BOLI).

• **Statistical Report**

Sylvie McMillan, Business Services Manager, presented statistics that included licensing and examination statistics, active license trends, and website traffic.

McMillan stated the reason the number of inspections is higher is due to a new procedure for performing inspections. The agency is focusing more on the education piece to ensure licensees come into compliance. For example, the inspectors go for a week in Bend, Oregon, saturating the area. There are certain infractions, McMillan noted, such as practicing without a license that will receive immediate citations. Otherwise, the inspectors use the inspection sheets for those non-critical infractions and inform the licensee that the inspectors will be performing a follow-up inspection to make sure the licensee comes into compliance. The inspectors then return to those facilities that have had an inspection that was not clean and do another inspection. If the same infraction circled is still not in compliance then a citation is issued. McMillan stated the inspectors have noticed that this procedure strengthens the legal process, takes subjectivity out of issuing citations, and is bringing licensees more quickly into compliance.

Everitt stated the process takes discretion out of the citation process. For example, the inspector's first time out they noted on the inspection slips those violations to be corrected in order to come into compliance. When, in about six weeks, the first day of the inspector's returned to the same area previously inspected almost no one was in compliance. But by the end of the second day of the inspector's return to this area everyone was in compliance. Word had traveled very quickly that the inspector's had actually come back into the area as they had stated they would. Licensees had stated to the inspectors that they did not expect to see them back for two years. Everitt stated that he had wanted to know if the inspections were doing any good, and concluded that the inspections are now taken more seriously by the licensees.

Masten asked if the Regulatory Operations Division had found many facilities that were out of compliance when inspectors returned to conduct follow-up inspections. David Sparks, Regulatory Operations Manager, reported on statistics from September 1 through November 4, 2010. The inspectors performed 142 follow-up inspections and of that number 22 percent were still in non-compliance. Sparks stated that the agency wants the licensee to stay focused on safety and sanitation and the division sees this procedure as a method to help keep that focus. The division will be working to bring the 22 percent non-compliance figure down. Everitt mentioned that over time the inspection model may change as more licensees become better educated in safety and sanitation issues. OHLA also has taken the predictability out of the inspection process. Everitt said that previously, for example, inspectors would be in Medford in October of every other year.

McMillan mentioned that the agency has observed that the request for hearings on citations has dropped dramatically because the inspectors have inspected the facility and given licensees the opportunity to correct minor infractions, such as no trash can lid, and then written the citation(s) only if the violation had not been brought into compliance. Now the licensee has two inspection sheets, making it more difficult for licensees to protest the citations when clearly evidence shows that they had been warned.

McMillan brought up the subject of independent contractor registrations. McMillan mentioned that Sparks had been in contact with the Oregon Department of Employment and the Department of Revenue. The issue is that just because licensees have an independent contractor's license does not necessarily make them an independent contractor. ODE is finding independent contractors filing for unemployment and stating that they are receiving a monthly paycheck. When the facility is contacted the facility owner states that they are independent contractors. In this instance the Oregon Department of Employment has to go into the facility to do an audit to determine the true circumstances. The agency is helping to educate the public by having the inspectors and the agency's customer service staff hand out a flyer developed by WorkSource Oregon Employment Department entitled "Independent Contractors." The flyer provides Oregon Revised Statute (ORS) 670.600 Independent Contractor Statute and a telephone number for people to contact if they have any questions. McMillan stated the employment department is working on a flyer to be printed in Vietnamese. McMillan stated that if a facility owner is making all the practitioners become independent contractors and it is obvious that they are not, and the practitioners are being taken advantage of, the agency may let the employment department know of the circumstances.

- **2009-2011 Budget**

McMillan presented the statement of cash flow for the 7/01/09-9/30/10 period and the projected cash flow statement 7/01/2009 through 6/30/2011. The cost allocation for indirect cost 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 department. The fee changes that happened October 1 are projected in the cash flow and also the fee changes coming up in June 2011 that will reduce the initial license costs are reflected in the projected cash flow.

- **Regulatory Operations Division Report**

Sparks reported on enforcement activity. At the last board meeting on May 10, 2010, the agency had reported 14 complaints of which six were still under review. For current regulatory reporting period of April 23, 2010, through October 29, 2010 there are 85 complaints. The board was provided with a breakdown of the complaints: eight of which were classified as critical licensing concerns, 46 licensing concerns, one critical sanitation concern, 18 sanitation concerns, and 12 service concerns.

- **Decision Making and Referral**

Samie Patnode, Policy Analyst, stated at the summit that she presented a new procedure being implemented across all OHLA professions. The procedure creates a protocol for the agency to follow when inquiries are received from interested parties regarding scope of practice or practice procedures related to specific agency programs. The protocol will allow the board or council the opportunity to review the inquiry and decide on the subsequent action. When reviewing an inquiry the board or council may:

- Determine an answer to the inquiry if the answer is explicitly clear in statute or administrative rule;
- Refer the inquiry to the Scope of Practice, Standards & Procedures Committee for review;
- Refer the inquiry to the assistant attorney general (AAG); or
- Decline to address the inquiry.

Patnode noted that if the AAG is involved there would be a direct cost associated with the advice. She stated a pre-determined limit could be designated for AAG costs. Patnode provided sample inquiries the agency had received and an sample letter to be sent to interested parties in response to an inquiry.

Patnode also stated that all responses to these inquiries are considered public records and may be published by the agency

- **2011 Legislation –LC 524-OHLA**

Patnode provided a brief overview of proposed 2011 legislation. She noted that currently the agency oversees 11 distinct programs, each having its own statutory requirements for licensure, renewal, licensure status, licensure posting requirements and terminology. The new provisions, if approved, would standardize authorization status for all agency programs and define authorization, applying it uniformly throughout agency statutes. The new provisions, if approved, would also consolidate all active, inactive, and expired renewals into agency statutory authority. This would allow the agency to carry out each program renewal process uniformly. It would also consolidate program fee provisions into agency statutes and allows the agency to charge for dormant renewals and educational classes or training.

Patnode explained the concept would also provide OHLA the authority to conduct comprehensive inspections at Oregon Department of Education Private Career Schools (ODE) when it is related to programs listed under OHLA. This will provide OHLA authority to inspect curriculum standards, school/student records, staff/student ratios and state and federal financial records, which would reduce workload for departments and eliminate certificate and financial fraud against state and federal government. The change provides continuity for all agencies that have either a licensing or financial responsibility associated with private career schools.

Patnode provided an overview regarding the proposed “cosmetology” certification. The Board of Cosmetology has four distinct fields of practice under which an individual can be certified: hair design, barbering, esthetics and nail technology. The majority of states offer certification in “cosmetology,” which encompasses hair design, esthetics and nail technology in one. Oregon practitioners often have difficulty moving from state to state without the “cosmetology” certificate. The legislative concept would adopt language to provide the Board of Cosmetology the authority to add an additional field of practice for “cosmetology” with a scope of practice that includes hair design, esthetics and nail technology. This would allow practitioners to be certified in a single field of practice that is recognized in other states facilitating reciprocity easier. Currently practitioners must display all certificates at their work station and OHLA regulatory staff must inspect each certificate to determine compliance.

Patnode explained that any specific criteria for the above legislative concepts, if passed, would be set by rule and follow the rulemaking process.

- **OHLA Permanent Administrative Rules**

Patnode provided a summary of changes made to OHLA administrative rules. The rule defines the different types of affidavit of licensure, which is a document or other approved means of verifying an authorization to practice including status, history, and information disclosing all unresolved or outstanding penalties and/or disciplinary actions. The agency has identified two purposes for affidavits of licensure: “incoming” and “outgoing.” “Incoming” is the circumstance in which OHLA receives an affidavit of licensure from another regulatory authority stating that an individual holds an authorization in that state. “Outgoing” is the circumstance in which OHLA sends an affidavit stating that an individual holds an authorization in Oregon. Patnode explained the rule is necessary to begin to eliminate a potential avenue of licensing fraud in Oregon and other states by requiring protocols when receiving and sending affidavits of licensure. She noted the rule has been implemented for all agency programs.

- **Specialty Certification Report – Esthetics**

Patnode acknowledged the agency had suspended the rulemaking process regarding specialty certification for esthetics temporarily. Patnode stated the agency would like to develop a task force with practitioners and medical personnel as subject matter experts. She said a wide range of knowledge would provide for a more thorough rulemaking.

- **Education/Examination Verbal Report**

Cerynthia Murphy, Qualification Analyst, gave a verbal update to the board regarding the cosmetology fields of practice examinations for esthetics, nail technology and hair design. Murphy explained the agency contracted with an item writing consultant to write questions for the examinations which were then sent for psychometric evaluation; the cost for the evaluation was \$2500. The agency then conducted a final review and reference of the questions which resulted in 47 questions being included in the cosmetology fields of practice examinations; 14 questions were added to esthetics examination,

14 questions were added to nail technology examination, and nineteen questions were added to the hair design examination.

Murphy explained the agency will conduct a preliminary review of questions used in previous item banks for all fields of practice examinations, including the barber examination which will include sourcing the questions. Murphy stated the agency will be scheduling a series of Education/Examination Committee meetings to conduct a final review the examination questions. In the process, Murphy noted, any revisions by the committee will be sent for psychometric evaluation.

Murphy stated the agency is also in the process of updating the testing system, to include a test administrator, in order to monitor the examination more closely, which includes the pass/fail ratios for the overall examination, examination domains and individual questions.

Masten questioned the pass rates, especially for esthetics. She remarked that there is still a huge discrepancy between the state test and the national esthetics test. Murphy stated, ideally, the passing rates should be between 70 – 80 percent for each examination. Currently, esthetics is at 88 percent, hair design is at 83 percent, nail technology is at 69 percent, and barber is way below at 57 percent. Murphy continued stating the agency, with the new test administrator, will be able to monitor and manage the examinations to achieve the appropriate pass/fail ratios for each examination.

Everitt stated that over the last several months the agency has been working with the vendor to have the tools to do this type of review.

5. Items for Board Action

- **2011 Chair/Vice-Chair**

Nominations were held for chair and vice-chair.

Sharon Wisner nominated herself for chair and Shelley Couch nominated Debora Masten. Sharon Wisner withdrew her nomination.

Debora Masten nominated Sharon Wisner for vice-chair. There were no other nominations.

MOTION:

The board voted unanimously for Debora Masten for 2011 chair.

The board voted unanimously for Sharon Wisner for 2011 vice-chair.

• **2011 Committees**

2011 Committees	
Enforcement	Herb Hirst, Sharon Wisner, Alternate: Shelley Couch
Education/Examination	Heidi Zuniga, Shelley Couch, Sharon Wisner
Legislation/Rules	Herb Hirst, Debora Masten, Sharon Wisner
Practice and Procedures	Heidi Zuniga, Debora Masten, Sharon Wisner
Customer Connection	Shelley Couch

Masten noted that because the board is currently short, current board members will try to fill all the spaces until new board members are added.

MOTION:

Herb Hirst made a motion with a second by Sharon Wisner to approve the committees as listed above. The motion passed unanimously.

• **2011 Board Meeting Dates**

The following meeting dates were proposed by the agency for the board to conduct regular board business in 2011: January 24, April 25, July 25 and October 24. All meeting start times are 9 am.

MOTION:

Herb Hirst made a motion with a second by Sharon Wisner to accept January 24, 2011, April 25, 2011, July 25, 2011, and October 24, 2011 meeting dates with a start time of 9 am. The motion passed unanimously.

6. Public Comment/Other Board Business

No public comment was provided at this time.

7. Board Interest

McMillan presented a letter written to the Board of Cosmetology by Timothy Westcott. McMillan had already spoken with Mr. Westcott about his issue. He had renewed his certificate in 4/28/2006. A certificate was printed on 5/18/2006 and the certificate was reprinted on 6/23/06 with an incorrect expiration date of 5/31/2010. The date should have been 5/31/2008. On 7/31/2006 a demand letter was sent for the return of the certificate with the incorrect expiration date. There is no record of the return of the certificate to the agency. Since the original 4/28/2006 date the agency has not received any more payments from Mr. Westcott. McMillan explained to Mr. Westcott the process he would need to go through to renew his certificate because it expired in 2006. McMillan explained to the board that Mr. Westcott wished to also send this letter of complaint to the board and that was why she was presenting the letter. The board asked if Mr. Westcott has since renewed his certificate and McMillan stated that, no, he had not. McMillan thought he may have been retired now.

Another email from Diane Mantia asked for special licensing for retired people so that they could still buy product from beauty wholesale shops for personal use. Masten stated that the board could not make such a license but if independent wholesale stores wanted to still allow retirees that would be wonderful. A letter was received in Vietnamese from students and graduate students of Portland Beauty School asking the board to consider a Vietnamese-language version of the licensing qualification examinations.

Everitt stated the agency's position has been to not offer examinations for any of the boards in any other language than English. Masten remarked that if a translation is done for one group it would have to be done for all groups. Everitt stated that although the agency sympathizes with the Vietnamese population whose first language is not English, it is not feasible for the agency at this time to offer the examinations in any language other than English. Everitt stated a reply would be sent with the agency's and the board's response.

The National Association of Barber Boards of America provided the Board of Cosmetology with its 84th Executive Board Meeting minutes from September 19, 2010. Board members were provided with a copy of the 17-page document to review at its leisure.

The meeting adjourned at approximately 12:44 pm.

Prepared by: Sinnamon Harris, Board Specialist