



**Oregon Health Licensing Agency
BOARD OF COSMETOLOGY**



9:00 am Monday, November 2, 2009
700 Summer Street NE, Suite 320
Salem, Oregon

Minutes

MEMBERS PRESENT

Mike Snook, Chair
Linda Bergmann
Sharon Wisner
Patricia Hall
Herb Hirst
Shelley Couch

MEMBER ABSENT

Debora Masten, Vice-Chair

STAFF PRESENT

Randy Everitt, Director
Samie Patnode, Policy Analyst
Sinnamon Harris, Board Specialist
Kraig Bohot, Public Information Officer
Mike Simpson, Quality and Statistical Analyst
Tim Molloy, Regulatory Operations Manager
Sylvie McMillan, Business Services Manager
Cerynthia Murphy, Licensing Supervisor

GUESTS PRESENT

Heidi Zugina
Lonnie Morse
Angie Terrell

Call to Order

Mike Snook, Chair, called the meeting of the Board of Cosmetology to order at 9:08 am on Monday, November 2, 2009, at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon.

Introduction – Randy Everitt, Director

1. Approval of Agenda

MOTION: Linda Bergmann made a motion to approve the agenda with the change of public comment being added after review/approval of the previous meeting minutes. A second was made by Patricia Hall. The motion passed unanimously.

2. Approval of Minutes

MOTION: Herb Hirst made a motion to approve the May 11, 2009 minutes with a second by Patricia Hall. The motion passed unanimously.

MOTION: Herb Hirst made a motion to approve the September 21, 2009 minutes with a second by Patricia Hall. The motion passed unanimously.

3. Public Comment

Public comment was received from Lonnie Morse in the form of a printed hand-out. Morse talked about his perception of Oregon's cosmetology industry as compared to the rest of the United States. Morse stated the information in his hand-out was pulled from the internet so some of the content may be unreliable. The main point of the hand-out was the separation of the Oregon cosmetology certificate into four practitioner licenses and the hardship Morse felt it placed upon practitioners. A copy of the hand-out will be added to the board materials for retention. Snook stated the board is in the process of reviewing the issues of one certificate versus four.

4. Reports

A. Director's Report

Randy Everitt, Director, remarked that Samantha Patnode has opened up for public comment the fee changes for cosmetology that would go into effect on December 15, 2009.

Everitt updated the board about the National-Interstate Council of State Boards of Cosmetology (NIC) breach of security and requirements for the agency. The agency discontinued testing and brought NIC in to conduct an audit. Everitt stated that since the discontinuation of online testing the agency has been using the standardized NIC written tests with the use of proctors. The agency has purchased new cameras for online testing and established a new security protocol. Everitt believes the agency is close to reestablishing online testing but addressing additional NIC requirements had stalled the process. Everitt stated NIC is requiring additional staff be present to proctor examinations in the computer testing area which is cost prohibitive. If the NIC decides it is not flexible in its requirements, Everitt will come back to the board and discuss the reinstatement of the state-prepared examination.

Everitt remarked the primary goal is to restore this agency's credibility as a business model and the agency's relationships with the boards. Everitt stated that the agency will be absolutely transparent on everything.

Everitt discussed an article published *The Oregonian* concerning the Governor's Reset Cabinet, which will develop options for restructuring state government in order to preserve and improve critical services to Oregonians. Everitt stated the Governor wants to make sure all boards in state government are properly aligned and assigned to the right kinds of agencies. The Reset Cabinet will likely issue a report in July of 2010. Everitt assured the board he would keep them fully informed of any new developments potentially affecting OHLA.

Everitt stated the agency is exploring different scenarios involving going back to a single cosmetology certification. Collaboration with many stakeholders is necessary to move forward with the changes.

In closing, Everitt discussed the agency's use of notebook computers instead of binders to disseminate meeting information to board members. The computers could be quickly updated for each meeting and would save on paper materials. The computers would not have online access and would remain at the agency. The board consensus was positive to the implementation of notebook computers.

B. Outreach and Communication

Kraig Bohot, Public Information Officer, provided information regarding the Department of Consumer Business Services (DCBS) license directory. This portal provides a single information source for Oregon licenses, certifications, permits, and registrations. Bohot also spoke about the quarterly newsletter "What's Up at DAS" (Department of Administrative Services). It featured Oregon's upcoming "Transparency" Web site that provides easy public access to information on state agencies' revenues, expenditures, contracts, staff salaries, etc. Bohot closed by quickly addressing agency closures due to furlough days.

Bohot thanked Sharon Wisner and Phagan's School in N.E. Portland, for inviting OHLA to "Student Day for Success." Bohot stated that the agency offered a Safety and Infection Control (SIC) workshop for about 30 students.

C. Statistical Report

Mike Simpson, Quality and Statistical Analyst, presented an overview of statistics for the 2007-2009 biennium relating to the board. Statistics included were licensing and examination statistics, active license trends, and Web site traffic. Snook asked if the license trends reflected licensees dropping licenses and Simpson stated yes but the trend was in about the same place as July of 2007. If the trend continues, Simpson replied, then the agency should see those license numbers go back up, but it continues on a downward trend then definitely it is from licensees dropping licenses. Simpson provided the board with the report, and a copy was placed in council documents for retention.

D. 2009-2011 Budget

Sylvie McMillan, Business Services Manager, provided the statement of cash flows for the 7/10/2009 to 9/30/2009 period. A copy was placed in board documents for retention. She stated with the impending fee changes the report for the biennium was put on hold.

E. 2009 Annual Performance Report

McMillan presented an annual performance progress report for the fiscal year 2008-2009, and explained key performance measures during the 2009-2011 legislation. Simpson provided the board with these reports, and copies were placed in board documents for retention.

F. Regulatory Operations Division Report

Tim Molloy, Regulatory Operations Manager, reported enforcement activity as of May 1, 2009 through October 19, 2009. Molloy stated that the agency has investigated 91 complaints since the May 11, 2009, board meeting. Twenty-one were classified as critical licensing complaints, thirty-one licensing concerns, and twenty-nine safety and sanitation issues. The board was provided with a more detailed breakdown under each complaint classification.

G. 2009 Legislation

Samie Patnode, Policy Analyst, provided an overview of 2009 legislation.

HB 2058B Passed – Standardizes health profession regulatory boards and removes certain boards from jurisdiction of Department of Human Services (DHS).

HB 2059B Passed – Requires health professional licensees to report prohibited or unprofessional conduct of another licensee to regulatory board responsible for licensee. Punishes failure to report by maximum of \$720 fine. Requires board to report prohibited conduct to law enforcement agency. Requires licensee arrested for felony or convicted of misdemeanor or felony to report conviction or arrest to licensee’s board.

HB 2118C Passed – Requires OHLA to investigate complaint against health regulatory board licensee, applicant or other person alleged to be practicing in violation of law. Requires that public members of health professional licensing boards review investigatory material and report concerning complaint against licensee. Allows health professional regulatory board to obtain fingerprints for purpose of conducting criminal background checks on board employees, volunteers or applicants for employment. Allows board to release or withhold personal electronic information i.e. address, personal telephone number for person licensed by board. Requires release of information if request for information is made for public health or state health planning purpose. Specifies that health professional regulatory board has continuing jurisdiction over person notwithstanding change in licensing status of person. Requires Director of OHLA to prepare periodic reports regarding licensing, monitoring and investigative activities of agency and submit reports to Governor.

HB 2243B Passed – Changes name of Board of Examiners of Nursing Home Administrators to Nursing Home Administrators Board. Establishes OHLA as provider of administrative and regulatory oversight and centralized service for board.

HB 2345C Passed – Directs DHS to establish or contract to establish impaired health professional program. Specifies components of program. Directs DHS to contract with independent third party to establish monitoring entity for impaired professionals. Specifies duties of monitoring entity. Authorizes health profession licensing boards to participate in impaired health professional program. Specifies procedures by which board may refer licensee to program. Prohibits boards from establishing alternate impaired health professional programs. Requires Department of Human Services to report on program to Governor, Legislative Assembly and health profession licensing boards on or before January 31, 2011. Deletes existing impaired professional programs of health profession licensing boards. Applies to licensees identified by health profession licensing boards, and disciplinary proceedings commenced, on or after July 1, 2010.

HB 3232C Passed – Continues to unify the central agency model to maximize the benefits of economies of scale, regulatory consistency among multiple professions, and accountability to Oregon consumers and the agency’s licensees. The measure strengthens the agency’s ability to take appropriate action to ensure consumer protection, improving business practices, setting appropriate educational standards and professional accountability, improving customer service.

HB 2242 - Failed

H. Permanent Administrative Rules

Patnode provided the final filing and permanent administrative rule highlights pages which she stated was mailed to cosmetology schools. The rules clarify requirements for acceptable documentation and personal identification of applicants to strengthen applicant licensure qualification criteria.

I. Proposed Administrative Rules – December 15, 2009

Patnode presented the administrative rulemaking schedule which included December 15, 2009, as the permanent administrative rules effective date. Patnode stated the last day for public comment is November 28, 2009. She encouraged participation during that time noting the permanent rules would be adopted at the December 7 meeting. A board telephonic meeting date is set for December 7, 2009.

J. Fitness to Practice Report

Patnode presented the findings of the Product Safety/Public Protection Committee Meeting which was held on June 11, 2009. The discussion focused on OHLA and the Board of Parole & Post-Prison Supervision and which agency was responsible for determining fitness to practice. Snook explained that the parole officer will determine if the applicant is fit to practice upon release from prison, but, specifically for individuals planning to enroll in prison educational programs, OHLA, in collaboration with the Department of Corrections, will seek guidance from the Board of Parole prior to the individual's enrollment to determine fitness to practice. This pre-authorization or screening is necessary so individuals in prison are not trained in a profession they cannot be qualified to practice in once they are released from prison. The agency will craft a position statement and work with the Department of Corrections and Board of Parole for accuracy and consistency.

K. NIC Strengths and Weakness Report

Cerynthia Murphy, Licensing Supervisor, handed out the National-Interstate Council of State Boards of Cosmetology, Inc. (NIC) esthetics statistics that ranged from 8/1/2009 to 10/31/2009, NIC Written Examination Candidate Information Bulletins for Esthetics and Nails, and a report on esthetics books used by licensed cosmetology career schools. Murphy stated that OHLA contacted 43 licensed cosmetology career schools, listed with the Oregon Department of Education, to obtain information regarding the books being used by each school to teach the esthetics program. Murphy provided the board with the reports, and a copy was placed in board documents for retention.

Larry Peck, Licensing Manager, remarked that NIC had placed questions that were not relevant to the practice of esthetics on the examination. The board discussed the NIC esthetics examination and Peck remarked that the examination has only 110 questions in its bank of questions that are only mixed into different orders and not rephrased. The consensus of the board and OHLA staff was that the esthetics examination did not appear to be very secure.

A discussion of NIC examinations versus a state-prepared examination started with Mike Snook explaining how the Item Writing Committee functioned. Snook talked about a Milady test compact disk that randomly pulls questions from its own database as a tool for formulating questions. Sourcing test questions will be very important in item writing. Molloy asked if any state, in the history of NIC examinations, have ever pulled out of NIC once they were on board. Snook remarked that NIC is a private business, not a government or state agency and pointed out if NIC should become financially unstable Oregon's cosmetology examination process would be affected. If the NIC demands are security based, that is one point, but it may be hard to justify other types of demands. Question banks were discussed at length. Everitt remarked that he understood that the same-day licensing piece is very important to the stakeholders so if NIC continues to hold up the process the agency may come back to the board to discuss moving to state-prepared examinations.

5. Items for Board Action

A. 2010 Board Meeting Dates

MOTION

Herb Hirst made a motion with a second by Sharon Wisner to approve the board meeting dates: January 25, 2010; March 29, 2010; May 10, 2010; and November 8, 2010. The meeting start times will be 9 am. The motion passed unanimously.

B. 2010 Sub-committees

MOTION

Herb Hirst made a motion with a second by Sharon Wisner to approve the 2010 sub-committees as listed below. The motion passed unanimously.

2010 Subcommittees	
Enforcement Committee:	Mike Snook; Patricia Hall; Sharon Wisner
Industry Liaison Committee:	Mike Snook; Linda Bergmann
Item Writing / Examination:	Sharon Wisner; Shelly Couch; Linda Bergmann
Legislative / Rules Committee:	Debora Masten; Mike Snook; Herb Hirst
Product Safety / Public Protection Committee:	Debora Masten; Herb Hirst; Mike Snook Non member-Cynthia Mendoza
Scholarship / Education Committee:	Linda Bergmann; Mike Snook; Sharon Wisner
Customer Connection Committee:	Patricia Hall

C. 2010 Chair and Vice-Chair

MOTION

Herb Hirst made a motion with a second by Linda Bergmann to wait to hold elections until the January 25, 2010 board meeting. The motion passed unanimously.

D. Enforcement Committee – Fine Schedule Review

MOTION

Patricia Hill made a motion with a second by Sharon Wisner to hold a telephonic committee meeting on December 7, 2009 at 9:30 a.m. The motion passed unanimously.

6. More Public Comment

An email had been received from Gale Lasky asking the board to clarify questions of compliance in relation to estheticians performing eyelash perming. After discussion with Samie Patnode the board concluded a licensed esthetician or hair designer may perform eyelash perms provided the product used is specifically designed for that purpose and approved by the U.S. Food and Drug Administration (FDA). Lasky also had questions about eyebrow and eyelash tinting, and eyelash extensions. Bohot stated those issues are already on the OHLA Web site under frequently asked questions (FAQ).

7. Executive Session

Executive session was conducted under ORS 192.660(2)(b) at 1:02 p.m. for the purpose of considering information or records exempt from public inspection. No recommendations were made.

The board meeting was adjourned at approximately 1:25 p.m.

Prepared by Sinnamon Harris, Board Specialist