



**Oregon Health Licensing Agency
BOARD OF COSMETOLOGY**



9:00 am Monday, May 10, 2010
700 Summer Street NE, Suite 320
Salem, Oregon

Minutes

MEMBERS PRESENT

Debora Masten - Chair
Sharon Wisner, Vice-Chair
Mike Snook
Linda Bergmann
Shelley Couch
Patricia Hall

MEMBER ABSENT

Herb Hirst

STAFF PRESENT

Randall Everitt, Director
Sinnamon Harris, Board Specialist
Kraig Bohot, Public Information Officer
Tim Molloy, Regulatory Operations Manager
Sylvie McMillan, Business Services Manager
Mike Simpson, Budget & Statistical Analyst
Cerynthia Murphy, Qualification Analyst
Samantha Patnode, Policy Analyst
Janet Bartel, Investigator
Tina McCallister, Investigator

GUESTS PRESENT

Jim Markee Larry Hughes
Cynthia Shaw Vicki Hughes
Judith Culp Robbie Buckley
Heidi Luniga

Call to Order

Debora Masten, Chair, called the meeting of the Board of Cosmetology to order at 9:04 am on Monday, May 10, 2010, at the Oregon Health Licensing Agency (OHLA), Rhoades Conference room 700 Summer Street NE, Salem, Oregon.

1. Approval of Agenda

MOTION:

Linda Bergmann made a motion to approve the agenda with a second by Sharon Wisner. The motion passed unanimously.

2. Approval of Minutes

MOTION:

Linda Bergmann made a motion to approve the March 29, 2010 minutes with a second by Patricia Hall. The motion passed unanimously.

3. Reports

○ **Director's Report**

Randall Everitt, Director, updated the board regarding remote testing mechanisms for applicants living in outlying areas of the state such as Medford, Bend and Baker City. The agency has been working with a vendor known as PSI, formerly LaserGrade, although the agency has yet to determine the cost and how the testing will take place. The contract will go out for bid to various vendors. Everitt noted the theory is to have the agency qualify the applicant and issue some type of authorization for the applicant to make an appointment to go in for testing for various fields of practice and Oregon Laws and Rules. Everitt emphasized that this is a customer service piece and that there are approximately 14 cosmetology schools more than a three-hour drive from Salem.

○ **Regulatory Operations Division Report**

Tim Molloy, Regulatory Operations Manager, reported enforcement activity for the dates March 6, 2010 through April 22, 2010. Molloy broke down complaints into four categories: two Critical Licensing Concerns, three Licensing Concerns, six Safety and Sanitation Concerns, and three Service Concerns. Of these 14 complaints, five were determined to have no violations, three were found to have violations and were issued a Notice of Assessing a Civil Penalty, and six are still under investigation and have not been completed at this time.

Molloy informed the board that the reports would be further broken down into fields of practice (FOP) for the next regular board meeting so the board would have an idea of where the concentration of violations stemmed from.

○ **Outreach and Communication**

Kraig Bohot, Public Information Officer, presented a sneak preview of "Taking License, What They Are Asking, News You Can Use, and FAQ Answers" columns which will appear in the May issue of *Northwest Stylist & Salon*.

"What They Are Asking" is a new feature that highlights inquiries for other states with Oregon's responses.

Bohot pointed out the new link on the OHLA home page under "related links" to *Northwest Stylist & Salon*.

One of "News You Can Use" subjects is concerning fraudulent social security cards. Everitt commended the agency's front line staff in their diligence and observations in the recent catching of fraudulent social security cards that had been presented for identification. Molloy assured the board members that such cards are reported to the Social Security Administration and to the Department of Motor Vehicles (DMV).

○ **Statistical Report**

Mike Simpson, Budget & Statistics Analyst, presented statistics that included licensing and examination statistics, active license trends, and website traffic.

The board questioned the statistics concerning the state esthetics examination versus the esthetics examination given by the National-Interstate Council of State Boards of Cosmetology (NIC) and why it appears that the state esthetics examination is much easier to pass. Cerynthia Murphy, Qualification Analyst, stated the NIC esthetic test requires 82 questions answered correctly, because of the manner in which the questions are weighted, to pass by 75 percent while the state esthetics examination is the standard 75 percent or one point per question. It was also mentioned that perhaps the NIC examination had more anatomy and physiology questions, and therefore, was harder to pass the first time.

The board concurred that a review of the esthetic examination questions needs to be done by the Item Writing Committee.

○ **2009-11 Budget**

Simpson began the discussion by presenting the proposed fee schedule worked out in conjunction with the Legislation and Rules Committee at the April 29, 2010 meeting in order to stabilize the board's revenue streams. (Please see Legislation and Rules Committee Report, April 29, 2010).

Simpson also evaluated the late fees that are charged per field of practice. If licensees are even one day late renewing the late fee assessed is currently 111% over the renewal fee. Simpson voiced concern over depending on late fee revenues and explained examples of how the ending revenue balance would be affected in conjunction with the proposed fee schedule if the late fees were lowered to \$25 and \$35 respectively. The revenues would see a loss of approximately \$81, 675 in 2009-2011 and a loss of \$299,475 in the 2011-2013 biennium. Late fees lowered to \$35 would produce a loss of \$49,005 for 2009-2011 and \$179,685 loss for 2011-2013. Simpson went on to explain that in order to lower the exorbitant late fees an increase adjustment of another fee in the proposed fee schedule would have to be implemented. The board asked Simpson for his recommendation to resolve the late fee problem. Simpson proposed a small increase to the business licenses with a small decrease to the late fees. Mike Snook remarked that the current late fee is more than the actual license fee itself and that is too much. Everitt remarked that the fees should be fair and equitable. Masten stated that since the board is considering fee changes right now it would be a good time to juggle some fees around so that the fees do not become a hardship on anyone. McMillan pointed out that none of the fee changes would take place until October, 2010.

MOTION:

Linda Bergmann made a motion with a second by Shelley Couch to place the proposed fee schedule back into the Legislation and Rules Committee so the late fee can be discussed and reviewed. The motion passed unanimously.

○ **Administrative Rules**

Everitt went over the committee reports from the April 12, 2010, and April 29, 2010, Legislation and Rules Committees. Everitt remarked that adding the Cosmetology field of practice (FOP) was not a safety issue but an issue that was popular with stakeholders. McMillan stated it is the same amount of work for the agency that can be easily handled if the board decides to move forward with the Cosmetology field of practice. McMillan also noted the Oregon field of practices is generally more advanced procedures than other states.

○ **Examination Committee Report 4/19/2010**

Cerynthia Murphy, Qualification Analyst, reported on the recommendations by the Examination Committee regarding the final practical examinations for cosmetology fields of practice (FOP).

To insure the career schools are conducting the practical examinations correctly each and every time, the committee moved to schedule random evaluations. Below are criteria which the committee recommended:

- Performing one random audit per school within a biennium
- Requiring each career school to provide an annual projected practical examination schedule
- Requiring each school to notify the agency of a cancelled practical examination within 72 hours

Regarding the scoring criteria, Murphy discussed the need for a baseline objective model, including the student completing the entire procedure to receive points. The committee felt this would reduce subjectivity, the ability for favoritism, or personal judgment by the proctor. The recommendation was to send a letter to the Oregon Department of Education (ODE) to suggest an objective model for scoring be established. The letter would reflect the committee's willingness to work with ODE to establish the model.

Murphy stated the committee discussed alternatives to the current proctors and reviewed three Evaluation Comparison Reports for the 2003-05, 2005-07, and 2007-09 biennia. The committee recommended both issues be deferred and discussed at a later date once results from the random evaluations are reviewed.

4. Items for Board Action

○ **Cosmetology Field of Practice**

Samantha Patnode, Policy Analyst, addressed the issue statement regarding implementation of a "cosmetology" field of practice (FOP). Patnode stated the Board of Cosmetology has discussed reinstating a "cosmetology" certification in Oregon over the past several years which would include hair design, nail technology and esthetics. The agency and the board have heard concerns from stakeholders regarding the need for a cosmetology certificate. During the January, 2010, board meeting, the board deferred the issue to the Legislation and Rules Committee to further review the issue and make recommendations to the full board. Currently, there is a placeholder for proposed legislation for 2011. The discussion held by the Legislation and Rules Committee that met on April 12 and 29, 2010, focused on two diverse opinions and the committee were unable to reach a consensus. So the issue was brought before the full Board of Cosmetology to discuss both the intrinsic worth and the demerits of a cosmetology field of practice.

Debora Masten stated her concern and why she had raised questions concerning the COS FOP issue. She questioned why the fields of practice were separated in the first place. No definitive record could be found and the agency's recollection of the issue is varied. Masten is concerned about "undoing" something until the reason could be found why the agency and the assistant attorney general at the time, felt that the fields of practice needed to be separated out. Masten acknowledged there was a not good record kept by the legal counsel of the agency so she has not been able to receive a clear answer yet and most likely will not be able to do so. Masten stated that as in previous discussions, the cosmetology field of practice may not be valid for reciprocity purposes. In Masten's opinion more people in the field are specializing in hair, nails, etc. and therefore, she does not find the COS FOP necessary. Masten asked what the benefit would be to the public and this agency to move forward with the legislative concept.

Patricia Hall expressed the opinion that as a cosmetologist she preferred a “Cosmetology” license as she is proud to be a cosmetologist; that’s who she is. Hall also expressed what she believes the cosmetology field of practice states to the public: “I do everything; I have the knowledge, the training, the background and the license to do everything.”

Mike Snook remarked that cosmetology is nationally recognized as a field except in Oregon. Snook also remarked that the cosmetology field of practice would not change what is taught in the career schools nor how the board does business at this point. Snook pointed to the definitions in Oregon Revised Statutes that defines “Cosmetology” as the art or science of beautifying and improving the skin, nails and hair and the study of cosmetics and their application. ORS 690.005(4) Snook stated we are the Board of Cosmetology and should therefore have a cosmetology license.

Sharon Wisner mentioned she has worked in 16 states and Oregon is the only one that has segmented licenses; the other states have “cosmetologist” licenses.

Linda Bergmann weighed in by remarking if the current singular field of practices are kept, then it would not hurt to also have the cosmetology field of practice encompassing the hair, nail technology and esthetics.

Everitt stated that reciprocity is so varied from state to state if a state has NIC testing, then the applicant may still have to take that states’ examination. It is difficult to gauge if having a COS FOP will make any difference for Oregon licensees moving to another state, Everitt added.

Everitt asked if there was an advantage to career school owners to have the COS FOP. Snook answered there is no advantage, currently students are enrolled in all three fields of practice under one contract for 2300 hours. Financially, it makes no difference but reporting-wise having the cosmetology license will make it easier to fill out the career school required reports. Curriculum, and for financial aid purposes there would be no change in the system, but instead of calling the fields of practice hair, nail technology, and esthetics, the schools could just call it “Cosmetology” Snook continued.

Patnode stated that the recent past “cosmetology” license was in reality one license with all three fields of practice on the license. There has not been a “true” cosmetology license issued since 1978, even though it felt like there was a cosmetology license. Patnode questioned if the ODE would create a curriculum for a new COS FOP and stated the ODE would need to be involved. Patnode reminded the board that implementation of a COS FOP is probably two years out with all the work to be done in the Legislation/Rules Committee, Examination Committee, and more.

MOTION:

Mike Snook made a motion with a second by Sharon Wisner to approve a cosmetology field of practice for 2011 legislation. Mike Snook, Sharon Wisner, Shelley Couch, Patricia Hall, and Linda Bergmann voted aye. Debora Masten voted nay. The motion passed.

○ **Reciprocity**

The agency has found a need to modify the reciprocity criteria for issuing a practitioner’s certification in all fields of practice related to the Board of Cosmetology. This change will streamline licensing requirements, eliminate confusion that currently exists with our neighboring states and provide public protection. Current rules related to the practical examination have not been changed. McMillan offered that study guides and information packets are located on the agency Web site for applicants to use.

MOTION:

Linda Bergmann made a motion with a second by Patricia Hall to approve the agency's implementation of field of practice examinations in addition to Oregon Laws and Rules examination for applicants seeking reciprocity in Oregon effective immediately.

○ **Sanctioned Practical Examinations**

MOTION:

Linda Bergmann made a motion with a second by Sharon Wiser to approve changing the process of conducting practical examination evaluations from scheduled to random, and include sanctions for non-compliance. The motion passed unanimously.

MOTION:

Shelley Couch made a motion with a second by Linda Bergmann to send a letter to the Department of Education suggesting an objective model for scoring be established. The motion passed unanimously.

MOTION:

Shelley Couch made a motion with a second by Sharon Wiser that the administration of the practical examination remains in the career schools. The motion passed unanimously.

○ **Appoint Alternate Board Member to Legislation/Rules Committee**

MOTION:

Patricia Hall made a motion with a second by Mike Snook to appoint Shelley Couch as an alternate to the Legislation and Rules Committee. The motion passed unanimously.

○ **Revised Rulemaking Schedule**

MOTION:

Linda Bergmann made a motion with a second by Sharon Wiser to approve the revised rulemaking schedule. The motion passed unanimously.

5. Public Comment

Masten and Snook encouraged stakeholders to come to the Legislation and Rules Committee meetings that are currently taking place and offered a short overview of the process so far.

Sinnamon Harris, Board Specialist, provided Masten with letters of concern that the agency had received regarding examinations in Spanish and the request that examinations in Spanish be brought back as soon as possible. Everitt addressed the issue of having examinations in any other language than English. Everitt stated that the agency is in the process of evaluating if additional tests in foreign languages such as Spanish, Vietnamese, or any other language which represents our population, should be offered. There is some risk in offering other languages so the agency is not offering the tests in any other language other than English at this time. Everitt noted that the state statute requires the agency to offer the test in English only. The agency assistant attorney general is researching the issue and Everitt will bring the issue before the board most likely at the next board meeting. The agency will respond back to the letters and let the applicants know the status of test taking in any other language than English.

An e-mail from a licensee expressed concerns over fees and Masten read some of the e-mail out loud. Masten stated that while the board realizes that there is some hardship with fees there are also budget concerns that must be addressed. The agency will also respond to this e-mail.

Judy Culp made a comment about “needling” with just an esthetics license. Her concern was that the only place that “needling” is taught is through a permanent cosmetics program. Culp described the process stating that some of the devices may fall within the esthetics scope of practice because they don’t penetrate the epidermis but cautioned that some needling procedures draw blood. Culp remarked that the Legislation and Rules Committee may wish to review to see if needling should be under any level of esthetics. Masten responded that this is an issue under advanced esthetics that the committee will consider. Snook remarked it would depend on how deep the needle is going; if it is going beyond the esthetics scope of practice then this agency would not allow it. Tina McCallister, Investigator, gave an example of a roller with small needles being used to penetrate product. Molloy contributed that he would be concerned with sanitation issues. McCallister stated that the device she observed was disposable. Masten stated the committee would like the inspectors’ input when the issue comes up in committee.

Robbie Buckley commented that she was very pleased with the board’s reinstatement of the requirement of field of practice examinations for reciprocity applicants.

Cynthia Shaw commented she had moved from Oregon to California and had held her license for 15 years and is internationally certified. California required her to take a practical.

6. Executive Session

No executive session was held.

7. Other Board Business

There was no other board business.

The board meeting was adjourned at approximately 11:50 am.

Prepared by Sinnamon Harris, Board Specialist