

**Oregon Health Licensing Agency  
Board of Cosmetology  
Minutes of March 5, 2007**

**MEMBERS PRESENT**

Mike Snook, Chairperson  
Deely Klarr, Vice-Chairperson  
Linda Bergmann, Practitioner  
Debora Masten, Practitioner  
Judith Petersen, Practitioner  
George Robb, Public Member

**STAFF PRESENT**

Susan Wilson, Director  
Larry Peck, Regulatory Operations Manager  
Angela Allen, Administrative Assistant  
Samantha Patnode, Board Liaison

**MEMBER ABSENT**

Patricia Hall, Practitioner

**GUESTS**

Heidi Zuniga, Springfield College of Beauty

**CALL TO ORDER**

Michael Snook, Chairperson called the meeting of the Board of Cosmetology to order on March 5, 2007, at 9:04 a.m. at the Oregon Health Licensing Agency in the Rhoades Conference Room, 700 Summer Street NE, Suite 320, Salem, Oregon.

**APPROVAL OF AGENDA**

**MOTION**

Ms. Bergmann made a motion and Ms. Masten seconded to approve the agenda. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, and Ms. Petersen voting aye.

**APPROVAL OF MINUTES**

**MOTION**

Ms. Klarr made a motion and Mr. Robb seconded to approve the minutes of January 8, 2007 with recommended changes. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, and Ms. Petersen voting aye.

**REPORTS**

Revenues & Expenditures (tape 1, counter number 32)

Ronald Riggs, Fiscal Services Division Manager, reported on the budget the Board's budget status including revenue and expenditures and referenced its overall standing with regard with regard to the agency budget for July 1, 2005 – January 31, 2007, reporting a \$297,379 cash balance. He reiterated the board isn't paying the appropriate amount of overall costs and adjustments in fees will need to take place in the next biennium.

Online Renewals (tape 1, counter number 42)

Mr. Riggs stated there were a total of 4,138 online renewals from December 2006 through January 2007 for all fields of practices in cosmetology. Mr. Riggs stated there is a possibility the agency will offer incentive for renewing online next biennium. Currently, practitioners have the capability to renew only, and this will be expanded to late renewal of licenses and payment of other charges using the online (electronic payment) service.

Enforcement (tape 1, counter number 67)

Mike Tryon, Chief Enforcement Officer, reported the Board of Cosmetology percentage of overall OHLA complaints received for 2006.

**January 1 through December 31, 2006:**

- Total Number of Licenses – 68,282
- Total Number of Complaints – 155
- Overall Percent of OHLA Complaints – 63%

Mr. Robb asked for explanation regarding a decrease in the number of the licenses in certain fields. Mr. Tryon explained individuals may not be renewing *a//* fields of practice. Mr. Snook pointed out that most individuals specialize in one field of practice and are not renewing all licenses. Ms. Wilson stated that the actual number of new licenses issued, (people entering the practice) has increased.

Ms. Peterson requested a percentage of cosmetologist total licenses compared to all OHLA licenses. Mr. Tryon stated that he will supply the information at the next meeting.

Mr. Tryon presented statistical complaint information for January 1, 2006 through December 31, 2006;

**January 1, 2006 to December 31, 2006**

- Complaints received – 155
- Proposed Orders – 1,120
- Final Orders – 1,262

Mike Tryon, Chief Enforcement Officer, reported the Board of Cosmetology percentage of overall OHLA complaints received for 2007 to date.

**January 1, 2007 through January 31, 2007**

- Total Number of Licenses – 67,854
- Total Number of Complaints – 8
- Overall Percent of OHLA Complaints – 80%

He provided statistics for January 1, 2007 to date which reflects totals for the following areas.

**January 1, 2007 to Date**

- Complaints received – 8
- Proposed Orders – 59
- Final Orders – 39

Mr. Tryon presented a four year comparison report detailing the increase and decrease in complaints received, the ratio of complaints per licensee base, and orders written for 2003 to 2006.

Mr. Tryon drew the Board's attention to a summary of enforcement actions noting there were 16 complaint files closed since the last board meeting.

- Support Enforcement Suspension - 1
- Licensing Issues – 7
- Safety and Infection Control – 8

Mr. Snook inquired if enforcement investigators test wax containers for contamination. Staff stated that enforcement does not test the contents. Mr. Snook inquired whether complaints were received on this issue. Mr. Tryon stated it was minimal, but not uncommon.

Licensing (tape 1, counter number 143)

Cerynthia Murphy, Licensing Supervisor, provided the Board with statistics from February 15, 2007 which included a breakdown for each field of practice;

- Total number of **active** – 67,854
- Total number of **inactive** – 28,243
- Total number of **expired** – 64,035

Mr. Snook inquired on how long a practitioner could remain in an "inactive" status before they are removed from the report. Ms. Murphy explained that it depends on the license type, business, or practitioner. A practitioner has two years and an independent contractor one year. Mr. Snook asked how long a practitioner's license could remain in an "expired" status. Ms. Wilson stated the record retention schedule mandated by the State of Oregon is 25 years.

Ms. Murphy, OHLA Licensing Manager, reported on statistics for January 1, 2006 through December 31, 2006 which reflects the licensing total for the following areas.

**January 1, 2006 to December 31, 2006**

**Practitioner Certification:**

- Original Certificates Issued – 2,518
- Certificates Renewed – 24,106
- Late Renewals – 3,436
- Certificates of Identification – 183

**Facility Licensure:**

- Original Licenses Issued – 809
- Licenses Renewed – 3,810
- Late Renewals – 435

**Independent Contractor Licensure:**

- Original Licenses Issued – 1,247
- Licenses Renewed – 5,566
- Late Renewals – 874

Ms. Murphy reported statistics for January 1, 2007 to date which reflects the licensing total for the following areas:

**January 1, 2007 to Date**

**Practitioner Certification:**

- Original Certificates Issued – 200
- Certificates Renewed – 2,007
- Late Renewals – 348
- Certificates of Identification – 10

**Facility Licensure:**

- Original Licenses Issued – 73
- Licenses Renewed – 335
- Late Renewals – 36

**Independent Contractor Licensure:**

- Original Licenses Issued – 132
- Licenses Renewed – 474
- Late Renewals – 72

Ms. Murphy presented a four year comparison report detailing the increase and decrease in licensing transactions from 2003 to 2006.

She provided the Board with two licensing statistics graphs noting certificates issued, reciprocity, certificates renewed, CID issued, facility issued, facility renewed, independent issued and independent renewed.

**Examinations** (tape 1, counter number 220)

Ms. Murphy presented a four year comparison report detailing the increase and decrease in pass/fail rates including the number of examinations administered and the percent passing from 2003 to 2006.

She reported the examination results for January 1, 2006 through December 31, 2006:

- Oregon Laws and Rules  
Number Conducted – 1,620  
Percent Passing – 85%
- Hairdresser Exam  
Number Conducted – 1,015  
Percent Passing – 74%
- Barber Exam  
Number Conducted – 15  
Percent Passing – 80%
- Esthetics Exam  
Number Conducted – 1,273  
Percent Passing – 56%
- Nail Technology Exam  
Number Conducted – 1,087  
Percent Passing – 66%
- Certificate of Identification Exam  
Number Conducted – 191  
Percent Passing – 92%

Ms. Murphy reported the examination results for January 1, 2007 to date:

- Oregon Laws and Rules  
Number Conducted – 128  
Percent Passing – 86%
- Hairdresser Exam  
Number Conducted – 80  
Percent Passing – 76%
- Barber Exam  
Number Conducted – 1  
Percent Passing – 100%
- Esthetics Exam  
Number Conducted – 133  
Percent Passing – 44%
- Nail Technology Exam  
Number Conducted – 77  
Percent Passing – 75%
- Certificate of Identification Exam  
Number Conducted – 12  
Percent Passing – 50%

Mr. Snook asked if the Certificate of Identification is still an open book test. Staff replied that it is an open book test with a 50 percent passing rate. Ms. Murphy pointed out the Practical Examination Evaluation Schedule for 2005-2007. Ms. Klarr asked if there was a report to show those schools with high pass and fail ratios. Ms. Murphy explained that a biennial report is produced by the agency will be released in October 2007. Ms. Klarr inquired if this report is sent to schools; Ms. Murphy replied the report is sent to all schools and will be made available to all board members.

Public Comment (tape 1, counter number 285)

Audience member Ms. Heidi Zuniga, owner of Springfield College of Beauty, asked if reciprocity is tracked to show how many licensees come from which state. Ms. Murphy stated that information is not currently being tracked, but the information could be compiled for the next meeting.

Ms. Klarr asked if the agency tracks which states use the National Interstate Council (NIC) exam and asked for a list. Staff stated the information is listed on the NIC Web site, which can be accessed from a link on the OHLA Web site. Mr. Snook stressed Oregon recognizes other states license-for-license, but some states using the National Examination do not accept the Oregon sanctioned practical examination that is administered by the career schools. There was discussion on why other states are reluctant to accept Oregon's practical exam when it is sanctioned and audited by the board. Mr. Snook stated Oregon's practical examination standards are being met, but this may still affect Oregon practitioners moving to other states. Ms. Wilson stated even with outreach and other communication at national conferences there is still a lack of understanding. She said that Oregon's model is a cost effective way to administer clinical exams and doesn't delay practitioner's ability to begin working.

Outreach and Communication (tape 1, counter number 341)

Kraig Bohot, OHLA Communications Officer, presented the OHLA board and council orientation video. He explained that the volunteer citizens that serve on eight different boards and councils are invaluable regulatory resources, providing professional knowledge and a consumer perspective. Mr. Bohot stated that the video and handbook highlights the roles and responsibilities of volunteer citizen boards and council members, the OHLA regulatory model and professions, and legislation and administrative rulemaking, and additional resources.

Mr. Bohot thanked members of OHLA's Customer Connection Committee for reviewing the handbook.

2007 Legislation (tape 1, counter number 460)

Ms. Wilson explained that she presented an OHLA Agency Profile to the Ways and Means Subcommittee on Education on January 22, 2007, to acquaint members with the agency model and answer questions, as a precursor to the official budget hearing held February 14, 2007. Ms. Wilson noted that although both presentations went well she was surprised the Legislative Fiscal recommendation denied Personnel Package 101 entirely as well as the Revenue Package 201 uniform fee package. During the February 15<sup>th</sup> Work Session, the subcommittee approved the OHLA budget without the addition of five full time employee positions.

Ms. Wilson stated she has learned the LFO Analyst did not receive critical information requested, and the lack of response from OHLA staff seriously hampered understanding the agency's staffing needs. She reported OHLA took action to correct the issue and noted LFO may amend the recommendation to the full Ways and Means Committee. She stated efforts are focused on providing information to secure approval of the agency's budget and policy packages. Ms. Wilson answered questions and noted for the record meetings held during 2006 and 2007 with key stakeholders in advance of presenting the personnel package and uniform fee proposal. Ms. Wilson provided the agency's testimony and background information.

- HB 5027 – Oregon Health Licensing Agency appropriation bill.
  - HB 5028 – Approves certain fees:
  - Cosmetology examination \$25
  - Cosmetology Practitioner License – Original \$33
  - Cosmetology Practitioner License – Renewal \$33
- Denture fees were also includes within HB 5028

Esthetics Taskforce 2007 (tape 1, counter number 576)

Ms. Wilson stated that the Esthetics Taskforce recommended adding an additional field of practice called "Clinical Esthetician" which would encompass different, more advanced training, and is patterned after the National Coalition of Estheticians, Manufacturers/Distributors and Associations advanced esthetics blueprint. Mr. Snook stated the idea is to grant credit for anyone who has a current esthetician license as proof of skin care experience and training and it can be used to meet course hours in the new field of practice requirements. He cautioned that getting certified through the manufacturer is not adequate training. Ms. Wilson explained when the law changes, practitioners currently certified in Oregon as estheticians with documented proof of practice in skin care would have an opportunity to be grandfathered, after taking and passing an examination for clinical estheticians. Mr. Snook explained that the intent is to establish a training program and test for clinical estheticians to work safely on the public with devices like lasers. Ms. Wilson pointed out the need for the plan to include corresponding advanced clinical esthetics training approved by the Department of Education, Private Career Schools.

Ms. Wilson stressed that the new field cannot be enacted in law until 2009. She explained that the Boards' Esthetics Taskforce recommended practitioners have liability insurance, and OHLA's legal counsel has reviewed the liability insurance option and believes that neither the agency nor the Board has statutory authority to impose such a requirement. The agency will continue to work with the AG and possibly consider a "surety bond". Ms. Masten pointed out a surety bond will not protect the public and are an "after-the-fact" settlement on consumer claims. She recommended reviewing the Board of Medical Examiners Use of Laser statement, and the need for more regulation of laser hair removal to protect the public. Ms. Allbritton stated that the OHLA's legal counsel discussed the BME laser statement with the BME legal counsel, to determine a position and the BME doesn't comment or speak to the cosmetic use of lasers. The Board reviewed the BME's use of laser statement which includes only the medical use of lasers not cosmetic use of lasers.

Ms. Masten suggested requiring additional training in the technical area on application of lasers. Mr. Snook asked if there was anyway to control manufacture training. Ms. Masten stated that the manufacturer training is focused on "in service" training only. Ms. Wilson stated that one of the requirements could be a two-hour course from the manufacture. Mr. Robb asked if the FDA defines a licensed practitioner. Ms. Allbritton stated that the FDA defers to the individual professional license to determine if the practitioner is working within their scope of practice. Ms. Masten pointed out that there is a lot of new and improved equipment coming from the laser industry and she's a member of the Clinical and Medical Hair Removal Society and noted that electrologists may be using lasers for hair removal and not estheticians. Mr. Snook asked if electrology is moving toward laser hair removal. Ms. Wilson explained that electrology is permanent hair removal and laser hair removal isn't defined as permanent. Electrology scope of practice is defined as insertion of the probe into the hair follicle, which is outside the training of light therapy and lasers.

#### **MOTION**

Ms. Klarr made a motion and Ms. Masten seconded to notify the Department of Education Private Career Schools indicating the agency/board will pursue legislation in 2009 regarding another field of practice in "Clinical Esthetics". The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, and Ms. Petersen voting aye.

The agency will continue to work with legal counsel regarding the liability issues and any issues related to training and report findings to the Rules Committee.

#### **MOTION**

Ms. Klarr made a motion and Ms. Masten seconded to send the issues around public safety related to lasers, training, and insurance to the Rules Committee for continued study. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Mr. Robb, Ms. Bergmann, and Ms. Petersen voting aye.

Ms. Bergmann raised the question if a consumer could take action against an individual who did not have adequate training from the manufacturer. Ms. Masten stated manufacturers issue a disclaimer on all of their equipment that says, "The manufacture training does not substitute for training." She emphasized that manufacturer training does not substitute for technical education or training and suggested if individuals are using lasers under the supervision of someone else, they must prove that they have had training in addition to the manufacturer training. Mr. Snook stated that when an individual is getting a procedure and something goes wrong, the practitioner not the manufacturer will be held accountable. He asked if clients sign a release form for laser hair removal. Ms. Masten explained that a release form is already being used. Mr. Peck stated that he informs practitioners that if

lasers are used for hair removal the practitioner must be trained, and if someone is injured, the practitioner must prove that the manufacture provided the training needed to safeguard the public.

The Board inquired if the agency has received any complaints on laser hair removal services. Mr. Tryon reported very few, but there was one case involving a burn that ended up in court and as a result, the individual sold their salon and moved to Arizona. Ms. Wilson stated that complaints are likely to increase, because manufacturers have focused sales to estheticians in Oregon. Ms. Masten recommended development of a training benchmark during the interim, because manufacturer training is insufficient and practitioners should be supervised if not adequately trained until the new "clinical esthetics" field of practice is implemented in 2009. The board concluded additional training is necessary.

### **ITEMS FOR BOARD ACTION**

Public Comment (tape 1, counter number 107)

Ms. Patnode pointed out two letters to the Board involving esthetics curriculum and scope of practice.

Board Interest File

Mr. Snook addressed the Board Interest file.

The Board Meeting adjourned at 11:52 a.m.

I attest that the Board of Cosmetology minutes of March 5, 2007, are a true and accurate reflection of the matters discussed and the views of the participants.

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Samantha Patnode, Board Liaison