

**Oregon Health Licensing Agency  
Board of Cosmetology  
Minutes of May 14, 2007**

**MEMBERS PRESENT**

Mike Snook, Chairperson  
Deely Klarr, Vice-Chairperson  
Linda Bergmann, Practitioner  
Debora Masten, Practitioner  
Judith Petersen, Practitioner  
Patricia Hall, Practitioner

**STAFF PRESENT**

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

**MEMBER ABSENT**

George Robb, Public Member

**GUESTS**

Heidi Zuniga, Springfield College of Beauty  
Cynthia Shaw, Cosmetology Instructor  
Judith Culp, NW Institute of Esthetics  
Robbie Buckley, Oregon Dermal Academy

**CALL TO ORDER**

Michael Snook, Chairperson called the meeting of the Board of Cosmetology to order on May 14, 2007, at 9:05 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 for May 14, 2007. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Ms. Bergmann, and Ms. Petersen voting aye.

**APPROVAL OF MINUTES**

**MOTION**

Ms. Klarr made a motion and Ms. Bergmann seconded to approve the minutes of March 5, 2007. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Ms. Bergmann, and Ms. Petersen voting aye.

**REPORTS**

Revenues & Expenditures

Ms. Wilson explained the two main categories of interest. **Personal Services** are employee compensation and related benefits. **Services and Supplies** are non-personnel expenses for agency operations. Charges are divided into two types – direct and indirect – for each program. Indirect costs for agency operation include office supplies, rent, telephones, data processing hardware and software, etc. and costs are distributed by a prorate. Direct charges include attorney general counsel, postage, instate travel or investigative costs, and are distributed at actual rates. She reported the beginning balance as on July 1, 2005 \$387,038 and the cash balance as of March 31, 2007, \$298,901. Ms. Wilson clarified questions from the Board regarding line item expenditures included within the report.

Ms. Wilson reported for the past decade, cosmetologists have been paying less in fees and smaller agency programs are paying more because of a 2% formula as a minimum charge imposed on each program. As the agency has grown, the 2% minimum has had a disproportionate affect on the cosmetologist's rate; reducing it to 70% rather than an actual 86% usage charge.

Ms. Wilson stated that the Board of Cosmetology licensee pool is steadily increasing; however the board has not been paying appropriate fees to support the workload. A fee increase will be initiated after the 2007 Legislature closes. Ms. Wilson reminded the board that 12,000 of Oregon's 28,000 individual practitioners that chose to be certified in one field of practice received a \$17 price break in the past two years in their licensing fee. This coupled with workload increases will influence the amount of fee increase. She reminded the board that during the 2005 Session the legislature moved cosmetology to individual fields of practice to align license to practice with the existing law requiring individual education, training and testing in each field of practice and to provide a more accurate picture of the number of licensees actually providing services in their trained field of practice.

#### Online Renewals

Ms. Wilson stated there were a total of 4,629 online renewals from December 2006 through March 2007 for all fields of practices in cosmetology. Currently, practitioners have the capability to renew only; this will be expanded to late renewals, civil penalties and payments for other charges using the online system in approximately September 2007.

#### Enforcement

The Oregon Health Licensing Agency's ***Complaints and Enforcement Section*** conducts statewide, onsite inspections for licensed facilities and responds to and investigates complaints. Onsite facility inspections include surveillance and monitoring businesses, independent contractors and practitioners. Special Investigations are based on the result of citizen complaints or cases involving critical issues – both civil and criminal, such as bacterial/viral infection outbreaks, unlicensed or illegal practice, prohibited acts, fraud or trade practice violations, incompetence or violations of practice standards and other critical issues involving the health and safety of consumers. The ***Complaints and Enforcement Section*** is responsible for taking disciplinary action against licensees who are found in violation / non-compliance of state law.

Mike Tryon, Chief Enforcement Officer, reported the Board of Cosmetology percentage of overall OHLA complaints received for January 1, 2007 through March 31, 2007.

#### **January 1 through March 31, 2007:**

- Total Number of Licenses – 67,010
- Total Number of Complaints – 21
- Overall Percent of OHLA Complaints – 75%

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

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

**January 1, 2007 to Date**

- Complaints received – 21
- Inspections conducted – 1,790
- Proposed Orders – 257
- Final Orders – 214

Mr. Peck drew the Board's attention to the new item, which shows the number of inspections conducted. He stated that this information will be reported at all future meetings. Mr. Tryon stated that the Enforcement Section recently hired two inspectors and purchased Global Positioning Systems for each inspector to increase efficiency and the number of inspections conducted.

Mr. Peck reported that inspectors are using "notebooks" in the field to record inspections and violations at the time of inspection. He stated that the original concept had the inspectors giving citations at the time of inspection; however the "notebooks" were not interfacing with the system. The interface issues have been resolved and inspectors should be issuing citations during inspection in the very near future, rather than having the citations mailed from the office. The onsite citations are similar to a parking ticket.

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 17 complaint files closed since the last board meeting.

- Support Enforcement Suspension – 2
- NSF Files - 1
- Licensing Issues – 2
- Safety and Infection Control – 10
- Examination Disqualification – 2

He stated that currently there are 17 complaints under investigation for the Board of Cosmetology.

**Licensing**

Cerynthia Murphy, Licensing Supervisor, provided the Board with statistics from April 11, 2007, which included a breakdown for each field of practice;

- Total number of **active** – 67,0140
- Total number of **inactive** – 30,469
- Total number of **expired** – 63,608

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 – 13,436
- Certificates of Identification – 183
- Reciprocity - 1308

**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 – 697
- Reciprocity - 357
- Certificates Renewed – 5,347
- Late Renewals – 1,013
- Certificates of Identification – 27

Board members commented on the decrease in Certificate of Identification holders since the open book examination was introduced in March 2007. They discussed the fee for a Certificate of Identification license and what practitioners are charging in the salons and to provide in home services.

**Facility Licensure:**

- Original Licenses Issued – 203
- Licenses Renewed – 1,000
- Late Renewals – 113

**Independent Contractor Licensure:**

- Original Licenses Issued – 326
- Licenses Renewed – 1,519
- Late Renewals – 220

Ms. Murphy presented a four year comparison report detailing transactions from 2003 to 2006.

Ms. Hall asked if an instructor had to be licensed in all fields of practice they are teaching. Mr. Snook stated that in order for an instructor to teach a field to practice they have to be licensed in that specific area. He said that the Oregon Department of Education rules are clear about being licensed in all fields of practice the licensee is teaching.

Ms. Murphy provided the Board with a report which lists the number of licensees from each state who have been certified in Oregon through "Endorsement". She provided reports for 2005-07 and clarified questions from the Board. Ms. Murphy pointed out that California – 561, Washington – 249 and Florida – 61 were the states with the highest number of endorsed licenses. She stated that there has been a significant increase of requests for endorsements from Florida with the same address. The agency referred the license applications and affidavit of licensures from other states to the Enforcement Section.

### Examinations

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%

Board members focused on the number of 50% passing score for the Certificate of Identification Exam, noting the examination is an open book test. They commented on the slight increase in the pass rate for the esthetics examination and Ms. Murphy said a breakdown would be reported later in the meeting.

Ms. Murphy drew the board's attention to the United States map which shows which states provide the National Interstate Council for State Boards of Cosmetology (NIC) written and practical examination and that 17 states use both examinations and 16 states use one of the examinations. Staff noted that the three largest populated states in the country do not use the NIC examination – New York, Texas and California.

Mr. Snook questioned how many states accept Oregon's hair design certification. He stated that in the past he had heard complaints that Oregon's license would not be accepted in states that have a full cosmetology license. Ms. Wilson stated that many states, such as Wyoming and Montana have added a separate hair design license category. Board members requested information regarding the states that accept Oregon licenses and states that require the NIC practical examination and the amount of licensing fees be reported at the next meeting

Ms. Murphy highlighted the esthetics examination breakdown by Oregon Career School, noting that the pass/fail ratio for each school is represented. She stated that the Board would be reviewing specific esthetics examination questions under Executive Session. Ms. Murphy stated that many of the schools have higher failure rates than pass rates. She noted the schools that only offer one field of practice, esthetics have a better passing rate. Mr. Snook reported that students who take all fields of practice focus more on hair design rather than esthetics, which puts them at a disadvantage. He also speculated students take the esthetics examination last, which may put them at a disadvantage; whereas, students taking only esthetics would have all of their focus on the one examination. Mr. Snook stated that he has been encouraged students to wait and take the esthetics examination on a different day than the other examinations, which seems to improve their scores. Board members recommended the esthetics examination be given first when all fields of practice are being taken.

Ms. Murphy provided a letter from the Oregon Department of Education, Private Career School to Paul Mitchell, The School, stating that they had been removed from probationary status. Ms. Wilson stated OHLA staff assisted ODE in the original investigation of the school. Ms. Murphy presented a report from the National Accrediting Commission of Cosmetology Arts & Sciences, Inc. which shows that Paul Mitchell, The School, voluntarily relinquished its accreditation. Board members stated that if a school is not accredited then it will not receive federal financial aid. Ms. Murphy clarified students currently enrolled will continue to receive their federal financial aid until they graduate; however, new students will not be eligible for aid.

### Outreach and Communication

Mr. Bohot reported that the "Safe Salons" public education campaign is being launched on the Website and to the Media. He stated that the five columns that originally appeared in *Northwest Stylist & Salon* earlier this year and at the end of 2006 is being "repackaged" into a public education campaign to provide practitioners and consumers with tips on how to stay safe and healthy in the salon setting. Campaign components include:

- A special Web page on [www.oregon.gov/OHLA/COS](http://www.oregon.gov/OHLA/COS) featuring the series of columns from *Northwest Stylist & Salon*
- A press release focusing on the main points of the *Stylist* columns distributed to statewide media
- Updated and revised nail salon safety and health brochures

Mr. Bohot requested feedback regarding the "Nail Salon" brochure regarding buyer beware as it relates to cheaper nail salons. Board members agreed the information should be removed from the brochure. Board members stated that the best communication is the news media. Discussion focused on previous news campaigns related to nail salons, noting that a summer campaign related to "pedicure safety" would be a great consumer education piece, along with updating the "footbath safety" campaign.

Mr. Bohot provided a tour of the new 3.0 version of the Oregon.gov Web site, which added features that are compliant with the Americans with Disabilities Act. He highlighted some of the new features, such as scrolling topics, navigation panes and other details. Mr. Bohot pointed out that the OHLA Web site "*License Inquiry*" had been updated to add the current disciplinary status of a license and removed personal address information from being disclosed. He clarified questions from the Board.

Board members discussed disciplinary action for licensees who are "fired" for stealing. Mr. Peck stated that if a licensee is convicted for stealing from a salon then their license could be revoked. He provided an example of a licensee who was convicted of child molestation in a criminal court and mandated that he not perform cosmetology services. The agency permanently revoked his license based on the court's action. Mr. Peck answered questions from the Board, noting that if a person is convicted of a crime within a salon or the cosmetology field the agency would not necessarily revoke the license. The salon owner would have to notify the agency of the court action because the court does not automatically notify the agency.

Mr. Bohot reported that OHLA is collaborating with the Oregon Department of Environmental Quality (DEQ) to address concerns over the quality of indoor air in nail salons. He reported that DEQ and the Environmental Protection Agency (EPA) Region X Indoor Air Quality will focus on best management practices, hazardous waste disposal, ventilation and air quality, worker health and safety, and other topics of concern. He said that grant funding has yet to materialize for the project; the issue will be addressed in a special workshop tentatively scheduled for August 1 in Portland.

Board members discussed the odor which is produced from nail salons, noting that usually the odor is not harmful to people; members provided examples of persons who have experienced reactions.

Mr. Bohot noted that the Governor's Web page has a weekly feature story, which highlighted OHLA's Board and Council Orientation Video. He stated that the video focuses on a theme of Oregon's pioneer spirit and the contributions volunteer citizens make on the 200 boards and councils in Oregon.

Mr. Bohot stated that as a benefit to board membership each member will receive a preview of the Northwest Stylist each month.

Mr. Bohot provided the Board with an article relating to lidocaine, a numbing agent used in some practices licensed under OHLA. He said that the article warned that lidocaine should not be used on large portions of the body due to possibility of death. The article will be linked to the cosmetology website. Discussion focused on topical anesthetics which can be used by estheticians. Ms. Masten stated that there are varying degrees of percentages of lidocaine; cosmetologists should be using over the counter topical anesthetics.

#### 2007 Legislation

Ms. Wilson updated the Board on the 2007 Legislative Session, noting that she had previously reported the agency's revenue package on uniform fees and personnel package were not approved. She said that LFO has since received the critical information requested regarding workload and staffing needs for the personnel package. On April 5, 2007 the Full Ways and Means Committee held a Work Session, and recommended a do pass which included the five enforcement and licensing positions as limited duration positions, with a stipulation the agency request permanent position financing in the 2009-11 budget request. The agency's budget has been passed through both the House and Senate Chambers with an operating budget for the agency of \$5.9 million.

Ms. Wilson reported on SB 326, which creates an Orthotics and Prosthetics Board of Examiners in the Oregon Health Licensing Agency (OHLA), and requires persons practicing orthotics/prosthetics in Oregon to be licensed. She reported on the action to date:

- April 4, 2007 - Senate Health and Human Services Committee conducted a Public Hearing, took testimony and reviewed proposed amendments;
- April 23, 2007 - Senate HHS Committee held a Work Session and recommended a do pass with amendments and referral to the Joint Ways and Means Committee

Ms. Wilson reported on HB 3233, which creates a Sex Offender Treatment Board in OHLA. She noted the bill is a "title act" and authorizes certification for persons using the title certified clinical sex offender treatment specialists. She provided an overview of the bill including, licensing requirements, evidence based training, opposition and proponents of the bill and national trends related to the profession. She reported on the action to date:

- April 11, 2007 House Judiciary Committee conducted a Public Hearing, took testimony and reviewed proposed amendments;
- April 24, 2007 House Judiciary Committee held a Work Session, took additional clarifying comments, and recommended a do pass with amendments and referral to the Joint Ways and Means Committee.

Mr. Peck distributed a copy of Senate Bill 717, which requires the Board of Medical Examiners (BME) to appoint a scope of practice review committee for regulated health profession when requested to review proposed changes to the scope of practice of health care profession. It also requires the committee to report results of proposal review to the BME and requires the BME to forward the committee report and the board's position on the recommendations to the legislature and the governor. If this bill passes, OHLA may be able to get responses regarding issues such as the use of lasers. Board members reviewed the bill in depth and staff clarified questions. They discussed the composition of the committee and the reporting requirements to the BME, legislature and the governor.

Ms. Wilson explained SB 874, proposed establishment of a Task Force on Regulation of the Practice of Cosmetology and requires the governor to appoint members and instructs the task force to consider specific issues related to options for regulation of cosmetology and to report findings and recommendations for legislation to the appropriate interim legislative committee by October 1, 2008. The bill was requested by a Willamette law Student as a project for the semester and focuses on the number of hours to attain a cosmetology license in Oregon, apprenticeship and self regulation. Senate Bill 874 died in committee and did not receive a hearing.

Mr. Peck reported that SB 170 related to the Oregon Board of Massage Therapy passed the Senate Health and Human Services Committee with amendments and was sent to the Senate Floor and placed on the consent calendar for five days, and was re-referred to the Senate Health and Human Services Committee. He explained that the bill contained some language that was of concern regarding aiding and abetting. If a person allowed or had knowledge of someone performing massage without a license then the person with the knowledge could be subject to investigation and civil penalty, which could include a consumer. Mr. Peck stated that while amendments were approved to protect the consumer, but not a facility owner, landlord or any other persons may still be affected. Board members stressed that if SB 170 passes facility owners would need to be notified of the potential interpretation and application of the bill's provisions.

Mr. Bohot stated that SB 390 exempts reflexology from the practice of massage therapy. The bill has gone through the Senate Chamber and is on the House side for a floor vote. Currently the Board of Massage Therapy regulates reflexology as part of massage based on their interpretation of the law; this bill would specifically exempt reflexology from regulation by the Oregon Board of Massage Therapy.

#### Esthetics Taskforce Update

Ms. Wilson stated she had received a response from Ray Lindley, Director ODE Private Career Schools to the letter sent by OHLA informing them that the OHLA and the Board of Cosmetology would be pursuing legislation in 2009 regarding the field of practice of Clinical Esthetician, based on recommendations from the Esthetics Taskforce meetings in October 2006 and February 2007. Mr. Lindley volunteered Lin Fleming to represent the ODE on the Esthetics Taskforce.

Ms. Wilson highlighted a report from Brenda Hoxsey, OHLA Contractor, referencing her attendance at the Association of Cosmetology Colleges (AOCC). The report indicated that the AOCC members did not support the proposal of a Clinical Esthetician license because none of the members would be teaching the curriculum within their schools. She said that the Esthetics Taskforce met in October 2006 and again in February 2007 at which time the Esthetics Taskforce agreed and recommended at the March 2007 Board of Cosmetology meeting that a letter be sent to notifying ODE.

Mr. Snook explained that AOCC members believe that the advanced training should be on specific equipment or machines that do not involve the manufacturer but rather how the machine affects the body, including contraindications. He said that the association is not sure that an additional field of practice to use a specific machine is necessary. Ms. Wilson stated that the agency is not an opponent of specific training; however the law governing the practice must be changed to allow for advanced training. Consumers are requesting advanced services from practitioners who lack training and it is our responsibility to ensure practitioners providing these services are trained to provide them safely or prohibit the activity and make the current law more restrictive, and not allow estheticians to provide these services. The ultimate decision on scope of practice issues is generally in the legislature's hands.

Mr. Snook stated that physicians get their basic training to be a medical doctor then they get additional training in specific areas. He said that estheticians could do the same. Ms. Wilson stated that the difference is the baseline level of education; the basic medical education offers a higher degree of education mastery before specializing. Esthetics need to receive education from recognized providers relative to the proposed expansion of the scope and then demonstrate that skill level in an assessment of ability through a test.

Mr. Snook stated that putting in place a Clinical Esthetician field of practice will be very difficult. He noted that many factors have to be looked at including grandfathering licensees already providing advanced services and students currently receiving education in basic esthetics programs. Ms. Wilson agreed and pointed out that there are already five schools in Oregon ready to teach the advanced curriculum.

Ms. Wilson reiterated the decision is to either specify what advanced services an esthetician can provide with appropriate training or restrict the services an esthetician can provide with the current baseline training. She said that currently estheticians are providing advanced services and that the agency and the Board must find means of ensuring practitioners are providing them safely. The Board has all the pieces in place to establish a clinical esthetics licensing category including a national examination, curriculum and schools to teach the program.

Mr. Snook said the AOCC would like specific information on how the clinical esthetics program would work before they will support it.

#### **ITEMS FOR BOARD ACTION**

##### 2007 NIC Annual Conference – Rapid City, South Dakota

Ms. Patnode stated that the 2007 NIC Annual Conference is August 24 – 27, 2007 and that the director and a board member attend the meeting. She explained the content and value of attendance is focused on emerging technologies and commonalities among states nationwide regarding rules and regulation. With regard to travel, staff explained from the day of departure through the day of return when attending business meetings a payment of \$30 per day, registration, lodging fees, transportation and mileage to and from the hotel are reimbursed from the receipts received by the agency and meals will be reimbursed at the host state's recognized government rate. The meal reimbursement for Rapid City, South Dakota is \$44.00 per day. OHLA Director authorizes all out-of-state travel and approves expenditures in advance of travel. Ms. Masten expressed interest in attending the NIC conference as Oregon's Board representative.

#### **MOTION**

Ms. Hall made a motion and Ms. Petersen seconded that Ms. Masten attend the 2007 NIC Conference in Rapid City, South Dakota. The motion passed with Mr. Snook, Ms. Masten, Ms. Klarr, Ms. Bergmann, and Ms. Petersen voting aye.

It was pointed out that Mr. Bohot would be providing an *Outreach and Communication 101* class at the Board Administrators meeting.

Mr. Snook drew the board's attention to the Chemeketa Community College (CCC) memorandum that indicates they are currently recruiting for a Medical Esthetician. Ms. Wilson stated staff would contact CCC to determine the purpose of the memorandum.

Board Interest File

Mr. Snook addressed the Board Interest file.

**EXECUTIVE SESSION – Examinations ORS 192.660(2)(f)**

Chairperson Mike Snook called for the Board of Cosmetology to enter Executive Session under ORS 192.660(2)(f) at 12:32 p.m. for the purpose of considering information or records exempt from public inspection. She stated that the Board would be reviewing the esthetics examination. No recommendations will be made during Executive Session.

Executive Session concluded at 12:58 p.m. no recommendations were made or actions taken.

**PUBLIC COMMENT**

Mr. Peck stated that Mike Tryon, Chief Enforcement Officer is retiring at the end of the month, however, OHLA will hire him for approximately three months for training purposes to ensure a smooth transition and successful orientation for his successor.

Mr. Peck said that the agency recently hired a new inspector, Michael Bui who speaks Vietnamese, which will be helpful during inspections.

The Board Meeting adjourned at 1:28 p.m.

I attest that the Board of Cosmetology minutes of May 14, 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