

**Oregon Health Licensing Agency  
Board of Cosmetology  
Minutes of May 8, 2006  
Phagans' School of Hair Design – Portland, Oregon**

**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  
Cerynthia Murphy, Licensing Supervisor  
Mike Tryon, Chief Enforcement Officer  
Kraig Bohot, Communications Officer  
Angela Allen, Administrative Assistant  
Samantha Patnode, Board Liaison  
Brenda Hoxsey, OHLA Contractor

**GUESTS**

Alice Speight, Image Designers  
Donna Cox, Image Designers  
Dianna Reed, Image Designers  
Cindy Lee Davidson, Beauty First  
Vu, Thi Kim Lien, Practitioner  
Marie Larkins, Practitioner  
Hatlie Porter, Broadway Hairdressers  
Carolyn Slocdanure, Practitioner  
Kimberly Do, Practitioner  
Han Hdao, Practitioner  
Anh Phan, Practitioner  
Kim Nguyen, Practitioner  
Debbie Ethell, Illumination Tans  
Lynn D'Angelo, Mt. Hood Community College  
Shannon Green, Willamette Week  
Cynthia Shaw, NCEA  
Susan Eldridge, Practitioner  
Melanie Hamilton, Practitioner  
Patrick Campbell, Practitioner  
Margaret (megan), Practitioner  
Cindy Long, School Owner  
Heidi Zuniga, School Owner  
Karen Hartman, Practitioner  
Anna Nguyen, Practitioner  
Ky Ly, Practitioner  
Lan Quaul, Practitioner  
Hue My Tran, Practitioner  
Hoa Nguyen, Practitioner  
Bho Climaldi, Phagans'  
Barbara Climaldi, Phagans' School Owner  
Jerry Kalliorinen, Phagans'

## **CALL TO ORDER**

Chairperson Michael Snook called the meeting of the Board of Cosmetology to order at 9:03 a.m. on May 8, 2006, at 9:03 a.m. at the Phagans' School of Hair Design, 1542 NE Weidler, Portland, Oregon.

Mr. Snook requested that staff and board members introduce themselves.

## **APPROVAL OF AGENDA**

### **MOTION**

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

## **APPROVAL OF MINUTES**

### **MOTION**

Ms. Petersen made a motion and Ms. Bergmann seconded to approve the minutes of March 6, 2006. The motion passed with Mr. Snook, Ms. Masten, Ms. Bergmann, Ms. Klarr, Ms. Hall, and Ms. Petersen voting aye.

## Public Comment

Audience members stated that there has been a decrease in sanitation and infection control standards in facilities. They asked if there were currently enough enforcement officers to handle the demand for more inspections. Mr. Peck stated that the Oregon Health Licensing Agency (OHLA) is currently working on a budget policy package to increase the number of enforcement officers and support staff in the Regulatory Operations Division. He explained the qualifications for the Investigator 1 and Investigator 3 positions, which are: Proficient written and verbal communication for reporting, investigatory and evidence-gathering, and an understanding of administrative law and its application in the 15 professions OHLA oversees. Audience member asked if all complaints received were investigated. Mr. Peck stated that all complaints are investigated; however, unlicensed activity and complaints involving potential risk to consumers receive high priority status.

Audience members asked if the esthetics curriculum had changed. Mr. Snook stated that currently the Department of Education (ODE) is proposing changes to the esthetics curriculum. He stated the ODE has a meeting scheduled in Portland on May 11, 2006 which may address the proposed esthetics curriculum. He reminded individuals that all comments on the curriculum must be received by ODE by May 15, 2006.

Audience members asked if an individual who works at a department store and applies makeup has to be licensed. Mr. Snook clarified that a license is not required if the makeup application is done solely for the purpose of product demonstration without a service charge or requirement to purchase products.

## **REPORTS**

### Revenues & Expenditures

In the absence of OHLA Fiscal Officer, Ms. Wilson, Director, reported revenue and spending history used to determine necessary funding levels. She reported that historically the Board of Cosmetology has not been paying the allotted "share" of OHLA expenses. OHLA charges small programs a minimum of 2% of agency expense. For the current 2005-07 biennium, the Board of Cosmetology was assessed 78.4% whereas the actual percentage of OHLA workload is higher at 86.7%. She reported a \$15,315.49 was transferred from cash account to the former "Health Licensing Boards" cash account to correct a 1995 error that occurred during the state's conversion to the State Financial Management System (SFMS). At

that time the Board of Cosmetology was part of the Health Related Licensing Boards accounting process at the Department of Human Services (DHS), so the Board of Cosmetology have assumed the expense of the reconciliation.

Ms. Wilson reported the agency is requesting an increase to the number of enforcement officers and support staff. Ms. Karen Hartman asked if the separation of licenses has affected the budget. Ms. Wilson stated that the separation of licenses had an affect on the budget because only 50% of practitioners are renewing two licenses and only 12% are renewing four licenses.

Ms. Wilson gave an overview of the two-year budget process for 2007-09. Actual data is collected from July 1 to June 30 for two years and serves as historical data to present the biennial budget. Budget development begins by analyzing the historical elements and program performance of the previous biennium. The budget is developed using the inflation factor and price lists approved by the Department of Administrative Services and predetermined instructions from the Governor's office and linked to the OHLA historic usage and assumed policy issues.

In April of 2006, the agency began developing the *Agency Requested Budget* to submit to the Governor. November and December the Health Licensing Agency Budget undergoes scrutiny from the Department of Administrative Services. In January 2007 the *Governor's Recommended Budget* is presented to the legislature. After approval the budget becomes the *Legislatively Approved Budget*.

In response to audience questions, Mr. Snook stated that if a practitioner drops one or more fields of practice and retains only Hair Design, when they move to another state to practice, their Oregon Hair Design license is not being recognized. Mr. John Climaldi asked how the fee for the national examination was determined. Ms. Wilson stated that the National Interstate Council establishes the "cost" per examination charged as a "pass-through" fee and is paid by the candidate – only \$2.50 of the \$25.00 examination fee covers administrative costs. Ms. Marie Larkins asked if there was an open public forum to discuss the separation of licenses. Ms. Wilson stated that there have been numerous opportunities for public comment over the past several years. She provided a history stating that separation of licenses was mandated in 1977 by the legislature and not until 2003 after the agency's Assistant Attorney General reviewed the law was the separate license fee proposed and enacted by the legislature.

#### Enforcement

Mr. Tryon, Chief Enforcement Officer, reported the Board of Cosmetology percentage of complaints received.

#### **January 1 through March 31, 2006:**

- Total Number of Licenses – 78,353
- Total Number of Complaints – 50
- Overall Percent of OHLA Complaints – 70%

Mr. Tryon presented a breakdown of complaints received, the ratio of complaints per licensee base, and proposed orders and final orders for the months of January through March of 2006.

Mr. Tryon reviewed a comparison for 2002 through 2005.

#### **Comparing 2004 and 2005**

- Total Number of Complaints for 2004 – 202
- Total Number of Complaints for 2005 – 166

He clarified questions from the Board. In reference to the report, Mr. Snook stated that complaints are down and there is a smaller percentage of cost in that area.

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.

#### Licensing

Ms. Murphy, Licensing Supervisor, provided the Board with statistics on the total number of active, inactive, and expired status licenses. She presented a four year comparison report from 2003 to date and provided detailed comparison numbers for 2005 and 2006.

#### **Practitioner Certificates – Original Issued:**

- 11% Increase of Original Certificates Issued; increased by 66
- 30% Decrease of Licensees (original issued licenses) 180

#### **Reciprocity**

- 133% Increase of Reciprocity Issued 180
- 36% Increase of Licensees

#### **Practitioner Certification Renewed**

- 80% Increase of Certificates Renewed 2,212

#### **Practitioner Certificate – Late Renewals**

- 45% Increase of Late Renewals 276
- 8% Decrease in Individual Renewals 49

#### **Certificate of Identification**

- 21% Increase of Certificates Issued 8

#### **Facility Licensure:**

- 2% Decrease in Original Licenses Issued 58
- 1% Increase in Licenses Renewed 7
- 19% Increase in Late Renewals 20

#### **Independent Contractor Licensure:**

- 14% Decrease of Original Licenses Issued 14
- 2% Decrease of Licenses Renewed 38
- 1% Decrease of Late Renewals 2

Ms. Murphy explained the next two reports reflect the monthly activity for the 2005 and 2006 comparison numbers provided.

#### Examinations

Ms. Murphy provided a full year and monthly comparison reports from 2003 through March 2006, which indicates the number of examinations conducted and the pass/fail percentages for the following examination categories -- Oregon Laws & Rules, Hair Design, Barber, Esthetics, Nail Technology, and Certificate of Identification.

Ms. Murphy explained on the status of the contract for the national examination. She reported that there has been a 100% failure rate of all applicants tested using the Vietnamese translated national exam, noting that when interpreter-assisted exams were being conducted there was a 95% pass rate.

Ms. Cindy Lee Davidson reported that there are many dialects of languages and when an exam is translated it might not be in the exact dialect. She stated that the government decides what dialects will be used.

Ms. Heidi Zuniga inquired about the duration of the NIC examination contract. Mr. Murphy stated that it is initially a two-year contract and it is renegotiated after five years. Ms. Cindy Long asked about the testing procedure and if someone was testing for all three licenses would they be turned away due to lack of available testing kiosks. Ms. Murphy stated that individuals are processed on a first come basis and that people are not turned away. She pointed out OHLA has recognized Laser Grade as a vendor that will offer the convenience of the Oregon test at other locations throughout the state. Applicants will be able to take the examination off-site at an approved service location and the only drawback is a slight delay in processing test results from a same day license to 7 days due to a time lapse for correcting, recording and mailing results. Ms. Murphy stated that when this service is ready OHLA will notify schools and publish an announcement.

### **Committee Updates**

#### Product Safety/Public Protection:

Ms. Hall stated she had no report at this time.

#### Enforcement:

Mr. Snook stated he had no report at this time.

#### Scholarship/Education:

Ms. Petersen stated she had no report at this time

#### Item Writing/Examination:

Ms. Brenda Hoxsey, OHLA Contractor and Examination Proctor, reported the Board that at the April 17, 2006, Item Writing Committee meeting Kirby Morris, Past President of the National Interstate Council for State Boards of Cosmetology, provided a PowerPoint presentation designed for item writers and reviewers. She gave an overview of the presentation to the Board noting the following:

- Most important aspect of item writing is confidentiality;
- Candidate is the individual taking exam;
- All questions are multiple choice;
- Stem is the question or problem;
- Options are responses to the question;
- Keyed Response is the correct answer; and
- Distractors are the incorrect answers.

Ms. Hoxsey stated that all distractors and keyed responses should be the same length in size and have the same formatting. She noted that it is important to eliminate any kind of "trick question" or goofiness that can be interpreted within a stem or keyed response. Ms. Hoxsey emphasized that minimum competency level was the target range. She added that the questions should be clear, straightforward and linked to the subject matter and the correct response should be accurate. Ms. Cindy Lee Davidson announced that NIC is looking for individuals to be on their Item Writing Committee. She stated to receive more information visit NIC's web site at [NICtesting.org](http://NICtesting.org).

#### Public Comment

An audience member asked whether the Item Writing Committee can develop questions for hair braiding. She stated that she hoped a curriculum could be developed for braiders, because they only braid and wash hair. Mr. Snook responded that currently braiding is under the practice of hair design and has been discussed in the past. He pointed out a change to the practice would require legislative action.

#### Legislation and Rules

The Oregon Health Licensing Agency is not proposing legislation for 2007 Session.

#### Permanent Administrative Rules

Ms. Patnode, Board Liaison, provided the Board with a citation correction to the permanent rule filing effective May 5, 2006. She said that during the 2005 Legislative Session, Legislative Council removed the statutory definition for "agency" changing the numbering of sections within ORS 690.005. Ms. Patnode explained the corrected rule filing that reflects those definition numbering changes.

#### Oregon Department of Education (ODE) – Esthetics Curriculum

Ms. Wilson stated ODE sent notification to OHLA asking for input from staff from the agency. She pointed out OHLA recommendations and stated these changes would be forwarded to ODE. Members in the audience announced they would attend the May 15, 2006 ODE meeting.

#### Outreach and Communications

Mr. Bohot, Communications Officer, provided the Board with the Airbrush Tanning education information, which was sent to more than 700 tanning salons and over 4,000 cosmetology facilities. The goal is to communicate that Oregon certification will be required starting in 2007. He stated that a Q&A on airbrush tanning and a presentation on Federal Drug Administration (FDA) medical device classification system will be given at the August 7, 2006 outreach meeting.

Mr. Bohot provided OHLA Facial Forward campaign which was created to educate consumers and practitioners on regulated skin care services. He said the campaign clarifies which skin care services fall within the scope of practice for esthetics and which do not.

He stated that prior to the rule adoption on March 15, 2006 there were a number of new services/devices being used or proposed for use by estheticians. He stated there is a new rule requirement (OAR 817-010-0065) relating to the FDA's medical device classification system. For illustration, Mr. Bohot stated Thermage treatment is not within the Esthetics scope of practice, because it is classed by the FDA as a "prescription use device". An audience member asked if there was a list of equipment and classifications of equipment available. Ms. Masten stated there is a list of manufacturers for certain equipment, but to find the classification of a device contact the FDA or the manufacturer.

### **ITEMS FOR BOARD ACTION**

#### Airbrush Tanning Position Statement

Mr. Bohot presented the Board with an issue and position statement on airbrush tanning. The position statement will be posted on the Web site. The Board suggested that the last sentence in the fifth paragraph that reads "However, the Board acknowledges that the same public safety concerns are similar for these self-serve booths" be deleted.

MOTION

Ms. Masten made a motion and Ms. Bergmann seconded to accept the airbrush tanning position statement with the proposed changes. The motion passed with Ms. Hall, Ms. Masten, Ms. Bergmann, Mr. Snook, Ms. Petersen, and Ms. Karr voting aye.

Vacuum Massage Position Statement

Mr. Bohot presented the Board with an issue and position statement regarding estheticians using vacuum massage systems for skin care services. Discussion focused on whether reducing the appearance of cellulite was within the scope of practice for estheticians. Following further review and discussion, the board determined that vacuum massage was within the statutory definition and scope of practice in esthetics. Mr. Bohot summarized the requested changes to the position statement made by the Board: delete all brand names; specify FDA Class 1 or Class 2 devices which may be used by estheticians; prohibit Class 3 devices which are for prescription use only; and delete reference to use of a body suit.

MOTION

Ms. Masten made a motion and Ms. Peterson seconded to accept the changes to the Vacuum Massage position statement. The motion passed with Ms. Hall, Ms. Masten, Ms. Bergmann, Mr. Snook, Ms. Petersen, and Ms. Karr voting aye.

Mr. Bohot provided an overview of *OHLA Service* brochure. He provided a draft of the board member orientation handbook and script for a video announcing both will be reviewed by OHLA Customer Connection Committee for comments.

Certificate of Identification Examination Review

Staff reported that the Board of Cosmetology, Item Writing Committee met to review item bank questions for the Certificate of Identification examination and noticed the majority of the questions were not relevant to providing services in a client's home or business, and were duplicated in the safety/sanitation examination. Ms. Klarr stated that individuals providing service in the client's home feel that they will not be inspected because no one is scrutinizing them. Mr. Peck explained that previously when practitioners brought their equipment to the agency for inspection, the machines and filters were dirty and they did not know any of the rule changes. He stated that if practitioners want to continue to work in the client's home, a business should be required to take the examination annually. Ms. Klarr asked in lieu of an inspection how many passed the CID test. Ms. Murphy stated that in 2005 there was an overall 95% passing rate; in 2003 a 98% passing rate. Discussion focused on statutory requirements, administrative rule mandates and no guarantee that CID holders would follow the rules with or without an examination. Mr. Snook stated that there may be a more effective way to regulate this group other than testing each year. Mr. Klarr stated that there were questions on the CID test that have nothing to do with safety and infection control. Ms. Murphy stated she has created an application that includes all the committee recommendations.

MOTION

Ms. Masten made a motion to send the Certificate of Identification Examination back to the Item Writing Committee to review and make recommendations and Ms. Klarr seconded. The motion passed with Ms. Hall, Ms. Masten, Ms. Bergmann, Mr. Snook, Ms. Petersen, and Ms. Karr voting aye.

Public Comment

Ms. Cindy Lee Davidson stated that Oregon is now using the NIC examination, which takes longer to complete. She stated that the test is not developed for each state and suggested that Oregon consider administering an "Oregon Laws and Rules" examination in addition to the NIC exam.

Outreach & Communication

Mr. Bohot stated that OHLA will launch an online renewal feature on its Web site in May 2006. Licensees licensed by OHLA may access the online renewal system 24 hours a day, seven days a week. The new online system will process only "clean document" payments using the latest technology to assure security. In the future online services will be expanded for paying all fees including late fees and civil fines.

Board Interest File

Mr. Snook addressed the Board Interest file.

The Board Meeting adjourned at 1:45 p.m.

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Susan K. Wilson, Director