

COMMONWEALTH OF MASSACHUSETTS

BOARD OF REGISTRATION OF COSMETOLOGY and BARBERING

MINUTES OF THE OCTOBER 5, 2015 BOARD MEETING

TIME: 9:30 a.m.

PLACE: 1000 Washington Street
Room 1 D
Boston, MA 02118

PRESENT: Susan Viens (Chair), Joy Talbot (Vice-Chair), Michael Gayzagian (Secretary),
Marian Saluto, Janice Dorian, Catherine Tool, Nan Pham

ABSENT:

STAFF: Brady Merrigan, Associate Executive Director
Lynn Read, Board Counsel
Sarah Wilkinson, Assistant Chief Investigator
Kelly Puccio, Investigation Supervisor

Observers attended the meeting and a sign-in sheet was circulated.

EXECUTIVE SESSION:

At approximately 9:30 a.m. a motion was made by Ms. Talbot, seconded by Mr. Gayzagian, to enter into Executive Session pursuant to M.G.L. c. 30A, §21(1) and §21(a)(3) to discuss individuals' character rather than competence and discuss confidential information.

The Chair called for a Roll Call Vote:

MEMBER	YEA	NAY	ABSENT	RECUSED	ABSTAINED
Ms. Viens	X				
Mr. Gayzagian	X				
Ms. Dorian	X				
Ms. Toole	X				
Ms. Talbot	X				
Ms. Saluto	X				

See separate minutes.

The public meeting was called back to order at approximately 9:40AM by Ms. Viens, who described emergency exit procedures.

Introduction of Associate Executive Director

Robert Fortes, Deputy Director for Boards and Policy of the Division of Professional Licensure ("DPL"), introduced Ms. Brady Merrigan, who has joined DPL as the Associate Executive Director of the Board of Cosmetology and Barbering, as well as other boards. Ms. Merrigan was welcomed by the Board members.

Board Counsel Report

Ms. Read presented her report and introduced Kevin Scanlon to update the Board.

Update of Supreme Court case, North Carolina Dental Board.

Kevin Scanlon, General Counsel of DPL, explains that the major issue with this case is deciding what "Active State Supervision" means and how it applies to Board's policy making powers. Ms. Dorian asked if the board had immunity from lawsuits when exercising its powers and Mr. Scanlon replied as long as the Board relies on Counsel's advice there should be no problem. Mr. Gayzagian points out existing language in the law that already puts the Board under the supervision of the Director of DPL. Ms. Dorian said she felt comfortable with the advice given by Mr. Scanlon but expressed concern about making policy regarding mobile spas. Mr. Scanlon replied that only actions seen as anti-competitive could become a problem and mobile spa policy would not be viewed as anti-competitive.

A MOTION was made by Ms. Talbot, seconded by Ms. Pham, to table the September minutes and passed unanimously.

Board Meeting Schedule

The members discussed the idea of changing the dates of Board meetings to the first Tuesday of each month. All were in agreement to change the days.

A MOTION was made by Mr. Gayzagian, seconded by Ms. Talbot, to change the dates of Board meetings to the first Tuesday of each month and passed unanimously.

Review of Application for Laser Electrolysis Instructor and Curriculum

Ms. Viens (Chair) opened the floor to discussion regarding an application to teach laser electrolysis in an esthetics school. Faye Jenkins presented a curriculum proposal for an advanced laser electrolysis course to be offered in an existing esthetics school. Members expressed concern over the proposal and the potential for conflict with existing regulations. Ms. Read explained the regulations to the members. Members agreed that a floor plan would be necessary and that one must be submitted before any decision could be made. Members agreed that further clarification was needed and a motion was made to table the proposal until the next meeting.

A MOTION to table the application was made by Ms. Dorian, seconded by Ms. Saluto, and passed unanimously.

Regulation Review and Planning

Ms. Viens (Chair) opened discussion by suggesting the full Board should meet several times prior to the November meeting. Ms. Read spoke about the importance and time sensitive nature of the Governor's Executive Order 562 and that the Board should vote on the amended

regulations by mid-November. Meetings were set for October 21, and 28. Ms. Dorian suggested advisory committees be set up and Mr. Gayzagian agreed. Members discussed the merits and expressed some concerns with respect to time.

Ms. Dorian made a MOTION to allow one industry expert from each discipline to make presentations to the Board at the regulatory meetings. The MOTION was seconded by Mr. Gayzagian, the MOTION passed 4-3.

A MOTION was made by Mr. Gayzagian, seconded by Ms. Tool to break for lunch and passed unanimously. 12:20

The Chair called the meeting back into session at approximately 1:00 pm

Mobile Policy Review and Mobile Salons

Mr. Gayzagian presented a proposal to expand the mobile spa policy to include mobile salons. Most members expressed a desire to do the same but some were concerned there was not enough time to debate the issue. Members and Ms. Read expressed concern over the existing law stating cosmetology and barbering services must be provided in a "fixed place or establishment" and that approving mobile salons may not be possible. Mr. Gayzagian argued that "fixed place" could be interpreted as a "stationary location" and that a mobile salon parked in a lot can be considered to be in a fixed place by that definition and thus could be allowed. Ms. Read agreed to review the proposal to find out if there is a legal way to facilitate mobile salons.

Draft regulations regarding mobile spas were presented and discussed by the Board. Members discussed rules regarding disposable tools. Concerns were raised by Ms. Pham and Ms. Tool over how some tools could be kept sterilized and that all tools should be disposable. Members discussed the merits of this issue and agreed to further discuss modifying the regulations.

The topic of Dual Use rooms for massage and cosmetology was introduced by the Chair and the members discussed the use of one room for all professions licensed by the Board. Ms. Tool made the point that this would be a business friendly idea and Ms. Dorian asked that the rules apply to all disciplines. Ms. Talbot asked that barbers be included. Ms. Saluto expressed concerns about sanitation and pointed out different standards exist for different disciplines. Mr. Gayzagian asked if allowing dual use rooms would make way for large companies to create oversize rooms containing all the disciplines.

A MOTION was made by Ms. Tool and seconded by Mr. Gayzagian to incorporate in the regulations the policy permitting dual use of rooms for cosmetology and massage therapy, and to amend the language to add barbering to cosmetology and massage. The Motion was passed by the Board.

A MOTION was made by Ms. Talbot, seconded by Ms. Pham to table discussion of mobile spa regulations. The Board passed the motion.

Eyelash and Eyebrow Tinting

Ms. Tool presented a proposal to allow eyelash and eyebrow tinting in salons. Members discussed the merits of this issue. A MOTION was made by Ms. Talbot and seconded by Ms. Dorian to table this discussion and discuss it further at an upcoming meeting. The Motion passed unanimously.

Definition of Costs Related to Services in Student Clinic

Ms. Dorian presented a proposal to amend the regulations regarding costs associated with performing services on customers in cosmetology school clinics. Members discussed clinic revenues and how much schools charge and how they offset costs for schools. An email from Pam Hamilton was introduced to the Board requesting clarification on existing rules with respect to policy language that limits the amount clinics can charge. Ms. Dorian expressed concern that schools were being sued over this issue in other states.

Elimination of Instructor Practical Exam

The Chair opened the discussion of eliminating the practical exam for Instructors. Ms Dorian expressed the desire to have the exam eliminated. Members discussed different options for elimination of the exam and no action was taken.

CORI Policies

A MOTION was made by Ms. Talbot (Vice-Chair), seconded by Ms. Tool to table discussion of the policies regarding Criminal Offender Record Information (CORI) until after regulation reviews are completed. The Motion passed unanimously.

Topics Not Reasonably Anticipated by the Chair

None.

Public Comment

Mr. Montrez Williams of Mobile Cuts, a mobile barber shop in a specially-outfitted vehicle, requested that the Board consider licensing mobile barbershops. He stated that in establishing Mobile Cuts, he obtained insurance and is ready to operate when the Board gives its approval.

QUASI JUDICIAL SESSION Pursuant to G.L. c. 30A, §18

At approximately 3:40 p.m., a MOTION was made by Ms. Pham, seconded by Ms. Saluto, to suspend the open meeting and enter into Quasi-Judicial Session pursuant to G.L. c. 30A, §18 to review and vote on Final Decisions and Orders in Docket Nos. HD-14-069 and HS-14-478. The Motion passed unanimously.

The Board meeting reconvened in Open session.

INVESTIGATIVE CONFERENCE PURSUANT TO M.G.L. C. 112, § 65C (CLOSED SESSION)

A MOTION was made by Mr. Gayzagian (Secretary) , seconded by Ms. Talbot (Vice-Chair) to go into a closed Investigative Conference pursuant to M.G.L. C. 112, § 65C. The Motion passed unanimously.

The Board meeting reconvened in Open Session. For the Record, the Board decided during the Investigative Conference to take the following actions:

Settlement Offers and Counteroffers

BS-15-018 Guidance Provided to Prosecutor
HS-15-331 Guidance Provided to Prosecutor

Review of Cases and Staff Assignments

HS-16-471: Dismissed
HD-15-240: Dismissed
HS-15-509: Guidance Provided to Prosecutor
HS-16-051: Guidance Provided to Prosecutor
HS-16-009: Guidance Provided to Prosecutor
HS-15-472: Dismissed
HS-16-011: Dismissed
HD-16-021: Dismissed
HS-16-087: Guidance Provided to Prosecutor
HS-16-053: Dismissed
SA-HD-16-003: Dismissed
SA-HS-16-030: Dismissed

The Board meeting reconvened in Open session.

Adjournment

A MOTION was made by Mr. Gayzagian (Secretary) and seconded by Ms. Talbot (Vice-Chair), to adjourn the meeting. The Motion passed and the meeting was adjourned at approximately 4:50 P.M.

List of Documents Used in Open Session:

Agenda
Request for Approval of Laser Electrolysis Instructor and Course
Sign-In Sheet
Draft Regulations 240 CMR 2.00 – 11.00

The above Minutes were approved at the December 8, 2015 Meeting.



Robert Fortes, Deputy Director for Policy and Boards