

COMMONWEALTH OF MASSACHUSETTS

BOARD OF REGISTRATION OF COSMETOLOGY and BARBERING

MINUTES OF THE July 21, 2015 BOARD MEETING

TIME: 10:00 a.m.

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

PRESENT: Susan Viens, Michael Gayzagian, Marian Saluto, Janice Dorian, Joy Talbot,
Catherine Tool

ABSENT:

STAFF: Bianca Hoffman, Executive Director
Lynn Read, Board Counsel
Sarah Wilkinson, Assistant Chief Investigator
Casey Yebba, Board Administrator
Kelly Puccio, Investigation Supervisor

Observers attended the meeting and an attendance roster was circulated.

The meeting was called to order at 10:03 a.m. by Executive Director Bianca K. Hoffman.

Emergency Exit procedures

Ms. Hoffman reviewed the emergency exit procedures

Introductions of Board Members, Staff, and Robert Fortes, Deputy Director for Boards and Policy

Board members and staff introduced themselves, and Deputy Director Robert Fortes said a few words of welcome.

Board Counsel Update: Executive Order 562, Medical Spas

Board Counsel Read stated that Executive Order 562 requires all boards to review their regulations to ensure that they are not duplicative or overly burdensome and serve an important public purpose. She described the inventory of regulations by all board counsel in the Division of Professional Licensure ("DPL") and she described next steps, including the scheduling of a listening session to encourage public comment on current regulations. The deadline to complete the review is March 2016.

Ms. Read also gave an update on medical spas. She stated that a meeting was called by the Department of Public Health ("DPH") regarding spas that offer a mix of traditional salon services like hairdressing and aesthetics with other services like laser hair removal, which was

formerly outside the scope of Electrolysis and within the jurisdiction of the Department of Public Health and the Board of Registration in Medicine. She reviewed the new law that updated the DPL statutes and expanded the definition of electrolysis so that it now encompasses laser hair removal. She said she will continue to clarify for other agencies the scope of practice under the jurisdiction of this Board. Ms. Dorian noted that the medical spa discussions will intersect with the Board's review of its regulations.

Upcoming Policy Issue: Mobile Cosmetology

Ms. Hoffman stated that recently in Massachusetts, there has been a push from the business community to integrate mobile services into the Board's existing regulatory scheme, which currently does not provide for mobile services. She said given the business community's interest in this type of service and the Baker Administration's interest in promoting business growth in Massachusetts, DPL will assist the Board in finding the best way to permit and regulate mobile services in Massachusetts. Ms. Hoffman explained that the best way to pursue this in the immediate future given the regulatory pause is through a Board-approved policy, and this is an opportunity for the Board to provide input on this issue and make suggestions as to what they believe should be included in such policy.

Ms. Wilkinson stated that from an enforcement standpoint, mobile cosmetology and barbering services are already being performed in Massachusetts, and the Board receives complaints about them. She said that allowing these types of businesses in the commonwealth would allow for easier regulation and enforcement. She said she recognized the for consumer protection, especially when such services are provided in private homes. She suggested that if mobile business were permitted to operate in Massachusetts, the Board should require them to provide a fixed location where the Office of Investigation can inspect records, and individual licensees should be required to get each customer to sign a disclosure statement and each party would retain a copy. This would allow the Office of Investigations to inspect the licensee's records after any complaint. Investigators would also perform unannounced inspections.

Board Members discussed whether states allow for mobile spa services if they attach to a brick and mortar shop, and the need to prevent unlicensed practice.

The Board recognized Mr. Jack Morrissey, who expressed opposition to mobile services. Board members discussed that licensed shops have overhead expenses, and whether mobile providers should be required to be associated with a brick and mortar shop, and that some mobile service providers would be very small businesses. Ms. Puccio, Supervisor of Investigations, suggested the Board consider requiring that certain disposable tools be used in mobile services. She said most mobile services being offered now are basic services like hair styling and basic polish manicures, and not many complaints are received for these services.

At the conclusion of the discussion, Executive Director Hoffman asked the Board members to send written input on this issue, which will be used by Board Counsel to draft a policy for consideration at the next board meeting in August.

Laser Electrolysis Policy

Executive Director Hoffman described the Laser Electrolysis Policy approved by the former Board of Registration of Electrologists, and said there were two pending applications from licensed electrologists who would like to practice laser electrolysis. She explained the proposed administrative process and asked the Board for delegated authority to handle and process all incoming applications in consultation with Ms. Saluto, the Board member who is an electrologist.

Motion Made by Ms. Dorian, Seconded by Ms. Viens, to delegate authority to the DPL staff to process all incoming electrology applications without full board approval in consultation with Ms. Saluto, Board member.

DISCUSSION:

The members present and Ms. Read discussed the new DPL law, which expanded the definition of electrolysis to include laser hair removal, and that the Policy on Laser Electrolysis was crafted with the help of stakeholders prior to the dissolution of the former board.

IN FAVOR: 6 OPPOSED: 0 ABSTAINED: 0 RECUSED: n/a
ABSENT:

Schedule Listening Sessions for Public Comment on Regulations

After brief discussion, a Motion Made by Ms. Viens, seconded by Ms. Tool to schedule a listening session in compliance with Executive Order 562 for August 27, 2015.

IN FAVOR: 6 OPPOSED: 0 ABSTAINED: 0 RECUSED: n/a
ABSENT: 0

Correspondence Review: Letter from Jolie Hair and Beauty Academy

Ms. Dorian recused herself from this discussion and left the room.

Ms. Hoffman briefly outlined this request for a waiver of the equipment requirement for the opening of a barbering school, and said current regulations require 25 barber chairs and are not flexible. She said the Board will review all its regulations, including this requirement. Ms. Viens stated that waivers were not granted in the past.

Motion Made by Ms. Viens, Seconded by Mr. Gayzagian to deny the request by Pioneer Education LLC but invite them to comment about the regulations, including this requirement, by attending the Listening Session to be held August 27, 2015, or in writing.

IN FAVOR: 5 OPPOSED: 0 ABSTAINED: 0 RECUSED: 1
ABSENT:

Audit of Electrologists' Continuing Education Requirements Pending Renewal

Executive Director Hoffman explained that historically, the former Electrology Board reviewed the Continuing Education Unit requirements (CEU) and helped the staff determine their validity. Ms. Hoffman asked the Board to delegate authority to Ms. Saluto, the Board member with expertise in Electrolysis, to review the CEUs with staff at the DPL and make determinations whether requirements were met.

Motion Made by Ms. Viens, Seconded by Mr. Gayzagian to delegate authority to Ms. Saluto to review CEUs bi-annually as part of the electrologists audit upon renewal.

IN FAVOR: 6 OPPOSED: 0 ABSTAINED: 0 RECUSED: n/a
ABSENT:

Request for Reinstatement – Sharon Powell

The Board tabled this matter until later in the meeting.

Process for Review of Cases and Delegation of Authority to Staff for Routine Determinations

Ms. Read described the process for the Board's review of case investigations to determine whether complaints should be referred to prosecution. She suggested that the Board consider creating a subcommittee of two members and an alternate, to consider cases in all the Board's professions.

Motion Made by Ms. Dorian, Seconded by Mr. Gayzagian to create a subcommittee for review of cases to meet on a date separate from that of the Board Meeting, which subcommittee shall be composed of 2 members of the board and an alternate which members shall rotate every 2 months.

IN FAVOR: 6 OPPOSED: 0 ABSTAINED: 0 RECUSED: n/a
ABSENT:

State Authorization – Board Certification of Post-Secondary Institutions

Ms. Read and Ms. Hoffman described the process that the staff and Board counsel have followed for responding to requests from schools for certification as post-secondary schools to the U.S. Department of Education (DOE), pursuant to a delegation of authority by vote of the former Board on April 14, 2015. That delegation was to last until the first meeting of this new Board, and they asked the Board for authority to continue to handle all future requests to avoid delays in processing requests. Ms. Dorian stated that this issue of state authorization of post-secondary schools is happening all over the country and thanked counsel for her work on this issue.

Motion Made by Ms. Dorian, Seconded by Ms. Viens to delegate authority to the Board staff to review, approve and process all requests for state authorization from cosmetology barbering and electrology schools for purposes of allowing them to re-certify their eligibility with DOE as a post-secondary institution with the exception of any school with programs exceeding 150 percent the hours required by statute for specific programs.

IN FAVOR: 6 OPPOSED: 0 ABSTAINED: 0 RECUSED: n/a
ABSENT

2015-2016 Board Meeting Schedule

The Board discussed the 2015-2016 schedule of meetings.

Motion Made by Ms. Viens, Seconded by Ms. Talbot to approve the schedule presented at the meeting.

IN FAVOR: 6 OPPOSED: 0 ABSTAINED: 0 RECUSED: n/a
ABSENT: 0

Public Comment

Mr. Jack Morrissey stated that the Board's mission is to protect the public and mobile cosmetology may be contrary to that mission.

David Veator, Attorney for the Manicube company, stated that now 16 states permit mobile services, and the Board also should hear from consumers who want this service.

At approximately 12:30 pm the Board returned to the request for reinstatement, previously tabled.

MOTION to reinstate licensee's personal license with two years probation made by Ms. Viens, seconded by Ms. Dorian.

IN FAVOR: 6 OPPOSED: 0 ABSTAINED: 0 RECUSED: n/a
ABSENT

Topics not reasonably anticipated by the Chair- None

At approximately 12:40 p.m. a Motion was made by Ms. Dorian seconded by Mr. Gayzagian to take a lunch break.

IN FAVOR: 6 OPPOSED: 0 ABSTAINED: 0 RECUSED: n/a
ABSENT

The Board took a lunch break.

EXECUTIVE SESSION:

At approximately 1:15 p.m., the Board reconvened and a motion was made by Ms. Viens, seconded by Ms. Dorian, 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 Executive Director 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.

QUASI JUDICIAL SESSION

The Board returned to the open meeting and a motion was made and seconded to enter into quasi judicial session pursuant to M.G.L. c. 30A, §18, for the purpose of issuing final orders in adjudicatory proceedings.

IN FAVOR: 6 OPPOSED: 0 ABSTAINED: 0 RECUSED: n/a
 ABSENT

Upon concluding the quasi-judicial session, the following was reported for the record:

BR-15-081 Final Decision and Order Issued

Default Decisions – Delegation of Authority

Board Counsel Read asked the Board to delegate authority to the staff to find Respondents in default based on failure to respond to Orders to Show Cause, and to impose sanctions and issue final decisions and orders consistent with the practices of the predecessor boards to revoke licenses and uphold fines for license violations, and fine for unlicensed practice.

Motion made by Ms. Dorian seconded by Mr. Gayzagian to delegate authority to Board staff at DPL to find Cosmetology and Barbering Respondents in default based on failure to respond to Orders to Show Cause and to impose sanctions and issue final decisions and order consistent with the Board's usual guidelines: revoking licenses, uphold fines; or fining for unlicensed practice.

IN FAVOR: 6 OPPOSED: ABSTAINED: RECUSED:
ABSENT:

Delegation for New Default Procedure for TICKETS

MOTION made by Ms. Talbot, seconded by Ms Tool to delegate authority to the to the Executive Director to issue default decisions revoking Cosmetology licenses, and suspending Barber licenses, when violators fail to respond to tickets issued to them for their violation and repeated attempts have been made to facilitate their payment, without bringing each unpaid ticket case to the Board for referral to a prosecutor, in order to streamline the process the process for handling the numerous unpaid tickets and issuing default decisions.

IN FAVOR: 6 OPPOSED: ABSTAINED: RECUSED:
ABSENT: 0

Members also discussed whether to hold hearings during the Board meetings for appeals of tickets, as they did in previous years, or whether this would give Respondents double appeals, first to the Board and second, if Respondent objected to the Board's decision, an adjudicatory hearing before a hearing officer. Members decided to consider this issue at a future meeting.

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

MOTION TO ENTER INVESTIGATIVE CONFERENCE VIA A PUBLIC SESSION
pursuant to M.G.L. c. 112, §65C to review complaints prior to the issuance of an Order to Show Cause or to evaluate settlement offers. **by Ms. Talbot, seconded by Ms. Viens**

IN FAVOR: 6 OPPOSED: ABSTAINED: RECUSED: n/a
ABSENT:

Upon concluding the investigative conference, the following was reported for the record:

Settlement/Counteroffers, Guidance given to prosecutors:

BS-15-132
BS-15-004
BR-14-080

Cases Referred to the Office of Prosecutions:

HS-15-270
HS-15-280
HS-15-281
HD-15-209
HS-15-327
HS-15-355
Hs-15-352
HS-15-0208

HS-15-374
HS-15-259
HS-125-407
BR-15-107
BR-15-103
HS-15-445

Cases Dismissed:

HD 15 127
HS-15-251
HS-15-285
HD-15-228
HS-15-229
Hs-15-253
HS-15-415

HS-15-472 Tabled

HD-15-288 Probation removed and reinstatement granted

Staff Assignments Dismissed:

SA-HS-15-067
SA-HS-15-074
SA-HS-15-077
SA-HS-15-032
SA-HS-15-036
SA-HS-15-086
SA-BS-15-022
SA-HS-15-104
SA-HS-15-113
SA-HS-15-111

Adjournment

A motion was made by Mr. Gayzagian and seconded by Ms. Toole to adjourn the meeting at approximately 4:35 p.m.

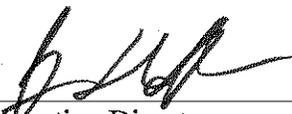
The Chair called for a Roll Call Vote:

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

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The meeting was adjourned at approximately 4:45 P.M.

Respectfully submitted,



Executive Director

List of Documents Used in Open Session:

Agenda
Attendance Roster
Correspondence from Jolie Academy
Copy of post secondary education institution attestation
Policy: Licensure Requirements for Laser Hair Removal
Proposed Schedule for Board meetings
Copy of Executive Order 562