

MINUTES

**BOARD OF COSMETOLOGY
Department of Business and Professional Regulation
Marriott Tampa Westshore
1001 North Westshore Boulevard
Tampa, Florida 33607**

Sunday, July 25, 2004

The Board of Cosmetology meeting was called to order at approximately 9:05 a.m., by Ms. Mary Blanco, Chair.

Board Members Present

Mary Blanco, Chair
Joseph Caetano, Vice Chair
Donna Osborne
Laura Brown
Laurel Ritenbaugh
Monica Smith
Anthony White

Board Members Absent

None

Other Persons Present

Julie Malone, Executive Director, DBPR
Diane Guillemette, Assistant Attorney General, Department of Legal Affairs
Susan Wilkinson, Assistant General Counsel, Office of the General Counsel, DBPR
Drew Winters, Assistant General Counsel, Office of the General Counsel, DBPR
Robyn Barineau, Government Analyst, DBPR

Interested Parties Present

Patricia Gough, Court Reporter
Nadine Forbes, Steiner Education Group
John Conley, The Hairwraps Company, Inc.
Jackie Mercer, South Technical Charter High School
Rena Wood, Withlacoochee Technical Institute
Arlen Black, Hillsborough County School District
Myra Jowers, FCCJ
M. Jaimangal, Academy of Beauty and Business
Katina R. Johnson, JKJ Concepts
Elisa Barnwell, BARDA Enterprises
Lynette Beuligmann, Puttin on the Ritz Salon
Rocco DiBernardo
Nick DiBernardo

Peter Bitzer
Dianne Lakeman
Akrute Patel, Student at Institute for Creative Enhancement
Melissa Benyola, Student at Institute for Creative Enhancement
Melanie Pennell, Respondent
Florence Smith, Endorsement Applicant

The meeting was opened with a roll call and a quorum was established. Chair Blanco welcomed Ms. Laurel Ritenbaugh, new member to the Board of Cosmetology.

Approval of Minutes: April 18, 2004

Vice Chair Joseph Caetano moved to accept the minutes from the April 18, 2004, board meeting. Ms. Donna Osborne seconded the motion to accept the minutes and the motion passed unanimously.

Disciplinary Matters

Ms. Diane Guillemette, Assistant Attorney General, inquired if all the board members had received their board meeting materials, if the materials were legible, and if the members had reviewed all the materials. All members responded in the affirmative to these questions. Ms. Guillemette mentioned the illegibility of agenda page 225.

Informal Hearings

Regarding Case No. 2003-070819 against Marcie West Bishop of Belle Glade, Ms. Susan Wilkinson, Assistant General Counsel, presented the department's case in this matter. Ms. Osborne moved that the board find the Respondent was properly served with the Administrative Complaint, that there was competent substantial evidence to support the allegations as set forth in the Administrative Complaint, that the Respondent committed the offenses as outlined in the Administrative Complaint, and impose a fine of \$2,250, costs of \$144.03, a six month license suspension, and allowing the Respondent to pay the fine and costs in six equal monthly installments. Vice Chair Caetano seconded the motion and the motion passed unanimously.

Regarding Case No. 2003-072078 against Belinda Cardenas of Winter Garden, Ms. Wilkinson presented the department's case in this matter. Vice Chair Caetano moved that the board find the Respondent was properly served with the Administrative Complaint, that there was competent substantial evidence to support the allegations as set forth in the Administrative Complaint, that the Respondent committed the offenses as outlined in the Administrative Complaint, and impose a fine of \$500 and costs of \$238.35. Mr. Anthony White seconded the motion and the motion passed unanimously.

Regarding Case No. 2003-080170 against Lisa Long of Port St. Lucie, Ms. Wilkinson asked that this case be considered with the Settlement Stipulation matters as the

Respondent forwarded a signed Settlement Stipulation to the department subsequent to the preparation of the agenda.

Regarding Case No. 2003-044547 against Susan Marie Addea of Jupiter, Ms. Wilkinson presented the department's case in this matter. Ms. Osborne moved that the board find the Respondent was properly served with the Administrative Complaint, that there was competent substantial evidence to support the allegations as set forth in the Administrative Complaint, that the Respondent committed the offenses as outlined in the Administrative Complaint, and impose a fine of \$500 and costs of \$245.02. Ms. Monica Smith seconded the motion and the motion passed unanimously.

Regarding Case No. 2003-004936 against Lisa Taylor of Lake Worth, Ms. Wilkinson asked that this case be considered with the Settlement Stipulation matters as the Respondent forwarded a signed Settlement Stipulation to the department subsequent to the preparation of the agenda.

Regarding Case No. 2003-045249 against Divine Touch Hair & Nail Salon of Hollywood, Ms. Wilkinson presented the department's case in this matter. Ms. Osborne moved that the board find the Respondent was properly served with the Administrative Complaint, that there was competent substantial evidence to support the allegations as set forth in the Administrative Complaint, that the Respondent committed the offenses as outlined in the Administrative Complaint, and impose a fine of \$500, costs of \$165.55, and allowing the Respondent to pay the fine and costs in six equal monthly installments. Vice Chair Caetano seconded the motion and the motion passed unanimously.

Regarding Case No. 2003-052548 against Melanie Pennell of Palm Beach Gardens, Ms. Wilkinson presented the department's case in this matter. Ms. Pennell was present and offered mitigation in this matter. Ms. Osborne moved that the board find the Respondent was properly served with the Administrative Complaint, that there was competent substantial evidence to support the allegations as set forth in the Administrative Complaint, that the Respondent committed the offenses as outlined in the Administrative Complaint, and impose a fine of \$550 and costs of \$122.22. Vice Chair Caetano seconded the motion and the motion passed unanimously.

Motions for Waiver of Rights and Final Order

Regarding Case No. 2003-074644 against Lap of Luxury Corporation of Pembroke Pines, Ms. Wilkinson asked that this case be considered with the Settlement Stipulation matters as the Respondent forwarded a signed Settlement Stipulation to the department subsequent to the preparation of the agenda.

Regarding Case No. 2003-066289 against Erich W. Roa of West Palm Beach, Ms. Wilkinson asked that this case be pulled from the agenda to be considered at a later date.

Unless otherwise stated, by appropriate motion the board found that the Respondent was properly served with the Administrative Complaint, the Respondent failed to respond within 21 days thereby waiving their right to elect a hearing in this matter, the board accepted the

allegations as stated in the Administrative Complaint and adopted them as the findings of fact and conclusions of law of the board, and imposed the penalties shown below:

- Minnesota Regis Corporation, d/b/a Mastercuts #6482; Wellington
Case No. 2003-058091
\$750 fine and \$118.73 costs
- Francoise Louis-Jacques; Lake Worth
Case No. 2003-089299
\$500 fine and \$114.41 costs
- Jose Guzman, d/b/a Tiki Hair Designs; Opalocka
Case No. 2003-079596
\$500 fine and \$36.18 costs
- Cyrena Leshal Middleton; Marietta, Georgia
Case No. 2003-052510
\$200 fine and \$302.03 costs
- Rosa Fina; Hialeah
Case No. 2003-079589
\$500 fine and \$36.18 costs
- Unisex Nail Salon; Ft. Lauderdale
Case No. 2003-048613
\$200 fine and \$308.48 costs
- Gardens of Eden Salon; Hollywood
Case No. 2003-089073
\$500 fine and \$171.32 costs
- Angel's Touch; West Palm Beach
Case No. 2002-014264
\$1,100 fine and \$308.85 costs

Stipulations

Unless otherwise stated, by appropriate motion the board found the Respondent to have committed the offenses as alleged in the Administrative Complaint and adopted the Stipulation of the parties as the board's final action regarding a penalty to be imposed on the Respondent as follows:

- Suite 104 Hair Salon; Weston
Case No. 2003-085473
\$500 fine and \$82.83 costs

- Carmel Hair Design, Inc.; Miami
Case No. 2003-066591
\$750 fine and \$110.91 costs
- Lisa Long; Port St. Lucie
Case No. 2003-080170
\$500 fine and \$104.59 costs
- Lisa Taylor; Lake Worth
Case No. 2003-004936
\$200 fine and \$119.76 costs
- Lap of Luxury Corporation; Pembroke Pines
Case No. 2003-074644
\$350 fine and \$170.58 costs

Department Attorney Report

Ms. Wilkinson informed the board that there are currently 115 open cosmetology cases in the legal section.

Applications

Applications for Endorsement

- Josephine Carter/Massachusetts
Ms. Julie Malone, Executive Director, informed the board that Ms. Carter was attempting to obtain a Florida cosmetology license by endorsement from the Commonwealth of Massachusetts. The Commonwealth of Massachusetts certified that Ms. Carter obtained a license with 1,000 hours. Her school, however, verified that she completed 1,380 hours of shop (346 days/4 hours per day). Based on the school information, Vice Chair Caetano moved to approve Ms. Carter's application for endorsement. Ms. Ritenbaugh seconded the motion and the motion passed unanimously.
- Florence Smith/Arizona
Ms. Malone informed the board that Ms. Smith originally obtained a license in New York and based on her cosmetology school transfer record, she only received 1,000 hours of education. Ms. Smith, who was present, informed the board that she did, in fact, only obtain 1,000 school hours but that she passed the state board examination in New York and subsequently obtained an Arizona cosmetology license. She added that Arizona requires 1,800 hours of education and passage of a state board examination. Ms. Smith asked the board for a continuance of her application process so that she can move her endorsement application to an examination application. Ms. Osborne moved to continue Ms. Smith's application process. Mrs. Brown seconded the motion and the motion passed unanimously.

Hair Braiding Course Applications

- Braid It Up
Ms. Malone informed the board that she contacted the provider prior to the board meeting and the provider has amended the course completion certificate to include “Braid It Up” as the course title; the blow drying service has been eliminated on the fee schedule; and bullet four of Section 5 of the outline referencing hair extensions has been removed. Ms. Osborne moved to continue this matter asking that the provider expand the rules and regulations portion of the course application and that the course be brought back before the board for an additional review. Mr. White seconded the motion and the motion passed unanimously. After further discussion, Ms. Osborne moved to reconsider this matter. Vice Chair Caetano seconded the motion and the motion passed unanimously. Ms. Osborne moved to deny this course application as the course materials do not include information relating to rules 61G5-31.004(1)(d)1., 61G5-31.004(1)(d)3., and 61G5-31.004(1)(d)5., F.A.C. Mr. White seconded the motion and the motion passed unanimously.
- JKJ Concepts
Ms. Osborne moved to approve this course application. Mr. White seconded the motion and the motion passed unanimously.

Hair Wrapping Course Application

- JKJ Concepts
Ms. Osborne moved to approve this course application. Ms. Smith seconded the motion and the motion passed unanimously.

Applications for HIV/AIDS Initial Licensure Course

- International Humanistic Society
Ms. Osborne moved to deny this course application as pages 1 through 22 need to be translated into English and the course outline does not evidence 4 hours of HIV/AIDS instruction. Mrs. Brown seconded the motion and the motion passed unanimously.
- Broward Career Institute, Inc.
Ms. Osborne moved to approve this course application. Vice Chair Caetano seconded the motion and the motion passed unanimously.

Committee Reports

Continuing Education Committee – Mary Blanco, Chair

There was no Continuing Education Committee report.

Rules Committee – Donna Osborne, Chair

- **Nail Specialty Requirements, Facial Specialty Requirements, and Booth Rental Licensure**

Ms. Osborne briefly read the information she prepared regarding definition changes to section 477.13, F.S. Ms. Guillemette informed the board that the medical boards would need to be consulted regarding these changes because they reference possible medical machines, products and techniques. Ms. Osborne expressed her opinion that facial specialists do not call themselves facial specialists but call themselves estheticians. Ms. Osborne indicated she contacted professionals in the esthetic industry including Dr. Markley, Susanne Warfield of National Coalition of Esthetics and Related Associations (NCEA), and David Suzuki while drafting this information. Ms. Osborne explained exercising (facial toning), threading and sugaring. She added that the draft allows current cosmetologists to perform facials but cosmetologists would be required to pass an esthetics examination to obtain an esthetics license allowing them to perform esthetic services other than facials. Mrs. Brown suggested that “massaging” be substituted with “manipulation” so as not to cross into the massage therapy practice. She also suggested substituting “make-up” with “cosmetic products” which is already defined by rule. Ms. Osborne suggested eliminating “sponges” from skin care services as sponges cannot be sanitized in between uses. Ms. Myra Jowers of FCCJ informed the board that her students support increasing facial specialty hours and changing the title of “facial specialist” to “esthetician”. Ms. Osborne added that if approved, the facial specialty programs would be eliminated and esthetics programs would take their place. Mrs. Brown suggested creating a hair stylist license for those individuals who only want to work with hair and increasing the cosmetology hours. Ms. Malone indicated that she believes the department will only sponsor legislation effecting the entire department in 2005 and that the board should consider soliciting outside sponsorship to carry this legislation. Ms. Jowers informed the board that she believes the Florida Cosmetology Association may be moving legislation during the 2005 legislative session to increase the facial specialty hours and the cosmetology hours. Ms. Smith suggested substituting “exfoliation” for “peels” in the drafted language. Ms. Osborne further stated that the esthetics examination would be a two-part examination including a written portion and a practical portion. Ms. Guillemette suggested contacting the Florida Cosmetology Association to determine what, if any, legislation they might be considering for the 2005 legislative session. Vice Chair Caetano informed the board that the Florida Beauty Federation intends to hire a lobbyist in the future. Ms. Osborne suggested increasing the nail specialty hours from 240 hours to 500 hours. Ms. Osborne also referenced the materials relating to booth rental in Florida. She supports licensing booth renters to protect the public’s health, safety and welfare in determining responsibility in a work environment, specifically, liability and sanitation issues. Mrs. Brown indicated she believes the salon owner should be responsible for their employees regardless of whether or not a booth rental situation exists. Vice Chair Caetano mentioned that Texas requires a booth rental salon to post information at their front door indicating they are a booth rental salon. He also stated that the Florida Beauty Federation will probably put booth rental legislation before the 2005 Legislature as the state is losing tax revenue with booth renters. Mr. Rocco DiBernardo addressed the board regarding booth rental and indicated he has researched this matter for over five years. He currently owns a booth rental salon and

employs 16 workers who are all independent contractors. He feels the industry should follow suit and mentioned his website where booth rental salons can download a booth renter contract for their use (FloridaSOS.com). Mr. DiBernardo added that he is currently assisting the Department of Revenue reclaim due sales tax in booth rental situations. Ms. Osborne added that some states are outlawing booth rental because of safety concerns. Vice Chair Caetano mentioned that HR2133 will assist with booth renting. Ms. Osborne and Ms. Guillemette agreed to work together on these legislative issues and bring additional information back to the board for further discussion.

Other Business

Executive Director Report

Follow up on MMA

Ms. Malone reported that the department is in the process of implementing the new law prohibiting the use of MMA in salons. She added that confiscated samples will be provided to Severn Trent Lab in Tallahassee for testing. The cost per test will be \$250 and should MMA be found present in the sample, the testing cost will be borne by the salon owner. She added that, to date, one possible case of MMA has been detected by Regulation.

U.S. Food and Drug Administration's List of Prohibited Ingredients and Related Safety Issues

Ms. Malone referred board members to this list included in supplemental information. She added that she confirmed with the U.S.F.D.A. that this is the most current list they have available.

Operating and Unlicensed Activity Accounts for Periods March 31, 2003 and 2004

Ms. Malone reminded the board that this report does not include the transfer of \$900,000 from the unlicensed activity account on June 30, 2004. Ms. Malone hopes to have the report for the year-end close out of June 30, 2004, available at the next board meeting.

Ms. Malone distributed two documents showing board revenue and expense projections through June 30, 2009. She added that one document shows capping out all fees and the other does not cap out all fees. Mrs. Brown asked how the board can control the board's financial situation. Ms. Malone informed the board that to increase revenue, they can consider capping out all the fees. In addition, the board can consider amending their rules to have salon inspections occur every other year rather than annually and this measure would save on expenses. Ms. Guillemette suggested the possibility of the department amending Chapter 455, F.S., to allow for the collection of attorney's fees in disciplinary matters. She added that the Department of Health boards amended their law to allow for collection of attorney's fees in disciplinary matters. Ms. Malone will relay this suggestion. Mrs. Brown asked about the number

of fines paid in disciplinary matters. Ms. Malone will research Mrs. Brown's inquiry and report her findings to the board.

HR2133, Cosmetology Tax Fairness and Compliance Act of 2003

Ms. Malone informed the board that this bill was included in the agenda for informational purposes.

Inspection/Inspector Information

Ms. Malone reported that the department employs 17 inspectors and that as of July 8, 2004, 17,950 salon inspections were completed.

National-Interstate Council (NIC) of State Boards of Cosmetology, Inc., Letter Dated June 7, 2004, Regarding Honorary Membership Committee

Ms. Malone informed the board that this letter was included in the agenda for informational purposes.

NIC 49th Annual Conference Information

Chair Blanco moved that the board send Ms. Osborne to the NIC 49th Annual Conference. Mrs. Brown seconded the motion and the motion passed unanimously. Ms. Osborne asked about providing Florida pins to conference attendees. Ms. Malone will research this proposal and forward her findings to Ms. Osborne.

NCEA Information Relating to 14-Hour Microdermabrasion Curriculum

Ms. Malone informed the board that this material was distributed to board members at the board meeting for informational purposes.

Committee Reports (continued)

Legislative Committee – Laura Brown, Chair

▪ Cosmetology Definitions

Ms. Osborne will provide the last draft of cosmetology definitions to Ms. Malone for inclusion in the next board meeting agenda. Ms. Guillemette suggested adding these definitions to the definitions she prepared relating to esthetics.

▪ Reciprocity

Mrs. Brown suggested that the Florida Beauty Federation possibly consider sponsoring the drafted reciprocity legislation.

- License Number in Advertisements

Ms. Guillemette informed the board that there is currently no statutory authority to require license numbers in advertisements.

Other Business (continued)

Chair Blanco inquired about Florida utilizing the NIC examination. Ms. Osborne added that the NIC exam is a good examination. Ms. Guillemette will research this issue. Ms. Osborne will inquire at the NIC Conference if they would be available to make an examination presentation to the board at a future board meeting.

Board Attorney Report

Rules Report

Ms. Guillemette mentioned the Rules Report included in the agenda. She added that the reexamination fee rule will be effective August 8, 2004.

Hair Braiding, Hair Wrapping, and Body Wrapping Courses/Outlines

Ms. Guillemette suggested that since the board currently is working on numerous other more important legislative and rule change matters, they consider tabling this matter. The board agreed to postpone this issue until further notice.

Disciplinary Guidelines

Ms. Guillemette informed the board that she and Ms. Wilkinson have been working on putting the disciplinary guidelines into a more logical format. She hopes to have a draft ready for the board's consideration at the next board meeting.

Regulation Report

Complaints and Investigative Statistics for Fiscal Year 2003-2004

Ms. Malone informed the board that this report was included in the agenda for informational purposes.

Bureau of Education and Testing

There was no report from the Bureau of Education and Testing.

Board Member Comments

There were no additional board member comments.

Chairperson Comments

Chair Blanco had no additional comments.

Approval of Minutes: June 30, 2004, Conference Call

Vice Chair Caetano moved to accept the minutes from the June 30, 2004, board meeting conducted by telephone conference call. Mrs. Brown seconded the motion to accept the minutes and the motion passed unanimously.

Other Business (continued)

Correspondence

Letter From Jeff Hudnall Dated April 15, 2004

The board instructed Ms. Malone to send Mr. Hudnall a letter wishing him the best in his new venture.

Letter to Ernisa Barnwell Dated May 26, 2004

Ms. Guillemette will send a letter to Ms. Barnwell informing her the board has no authority to approve a hair braiding course offered via the Internet.

Letter to Gerardo Schlossberg Dated June 1, 2004

Letter to Van Cao Dated June 1, 2004

Letter to Mark Bateh Dated June 1, 2004

Ms. informed the board that these letters were included in the agenda for informational purposes.

Email from Hannelore Leavy Dated June 21, 2004

The board agreed that no further action was necessary in this matter as Ms. Leavy has not responded to Ms. Malone's request for additional information.

Letter to Claus Lang Dated July 1, 2004

Ms. Guillemette informed the board that a copy of a national examination must be certified by the department before it can be utilized.

Email from the Florida Board of Medicine Regarding Lasers

The board referred the writer to the Electrolysis Council for information.

Old Business

There was no old business for discussion.

New Business

There was no new business for discussion.

Other Business (continued)

Public Comments

Mr. M. Jaimangal of the Academy of Beauty and Business gave his support of the initiative to examine estheticians in Florida. He added that the board may want to consider increasing cosmetology hours to 1,500 to incorporate esthetics. He added that nail technicians should also take a state examination and should be required to complete at least 400 hours of education.

Dates and Locations of Future Board Meetings

The board agreed to conduct its next meeting on Monday, October 11, 2004, in either St. Augustine, Florida, or Orlando, Florida.

There being no further business, the meeting was adjourned at approximately 3:15 p.m.

JM/rb