

SOUTH DAKOTA COSMETOLOGY COMMISSION MEETING MINUTES

January 11, 2011

Call Meeting to Order

The regular meeting of the Cosmetology Commission was called to order by President Nora Slykhuis on Tuesday, January 11, 2011 at 4:30 p.m. in the Cosmetology Commission Office, Pierre, South Dakota.

1. Roll Call

Attendance was taken by Secretary-Treasurer Pat Clark, with the following members present: Pat Clark, Ila Davis, Kory McKay, Lois Porch, and Nora Slykhuis. Guest Present: Attorney Brad Gordon. Staff present: Administrator Todd Kolden, Attorney Aaron Arnold, and Executive Director Kate Boyd.

2. Minutes of November 14, 2010 Long-Range Planning Meeting and the November 16, 2010 Regular Meeting

IT WAS MOVED BY ILA DAVIS, SECONDED BY PAT CLARK, TO APPROVE THE MINUTES OF THE NOVEMBER 14, 2010 LONG-RANGE PLANNING MEETING AS WRITTEN. THE MOTION PREVAILED ON A VOICE VOTE.

IT WAS MOVED BY LOIS PORCH, SECONDED BY KORY MCKAY, TO APPROVE THE MINUTES OF THE NOVEMBER 16, 2010 REGULAR MEETING. THE MOTION PREVAILED ON A VOICE VOTE.

3. Treasurer's Report

Secretary-Treasurer Pat Clark reported that as of December 31, 2010 the available budget was \$116,858.25, and the cash center balance was \$160,485.85.

IT WAS MOVED BY KORY MCKAY, SECONDED BY LOIS PORCH, TO APPROVE THE TREASURER'S REPORT AS PRESENTED. THE MOTION PREVAILED ON A VOICE VOTE.

5. Disciplinary Actions

5.a. November 16, 2010 AM Hearing - 2010-Case L

Attorney Brad Gordon, appeared to speak on behalf of Da-Vi Nails, Spearfish. Following Mr. Gordon's remarks, the Commission went into Executive Session to discuss case 2010-Case L.

IT WAS MOVED BY ILA DAVIS, SECONDED BY PAT CLARK, TO COME OUT OF EXECUTIVE SESSION. THE MOTION PREVAILED ON A VOICE VOTE.

IT WAS MOVED BY PAT CLARK, SECONDED BY ILA DAVIS, TO ADOPT THE FINDING OF FACTS AND CONCLUSIONS OF LAW SUBMITTED BY THE OFFICE OF HEARING EXAMINERS WITH REGARD TO 2010-CASE L, DA-VI NAILS, SPEARFISH. THE MOTION PREVAILED ON A VOICE VOTE WITH VIOLATIONS COMMITTEE MEMBER LOIS PORCH ABSTAINING.

IT WAS MOVED BY KORY MCKAY, SECONDED BY PAT CLARK, TO ADOPT THE FOLLOWING ORDER WITH REGARD TO THE SALON LICENSE OF DA-VI NAILS, SPEARFISH:

It is hereby ordered that the charges against Star Nails, license number NS-03444-2011, are dismissed;

Ordered that license number NS-05657-2011 of Da-Vi Nails, Spearfish, is suspended for 88 days. Fourteen days of the suspension will be in effect from February 6-19, 2011. The second amount of fourteen days will be in effect August 28 - September 10, 2011. The remaining sixty days of suspension will be held in abeyance upon the following conditions:

1. That, from the date of the order to suspend license until February 1, 2012, Da-Vi nails has no further violations of SDCL Ch. 36-15 or any administrative regulations adopted pursuant to said chapter; and
2. That Da-Vi Nails be subject to any number of random inspections from the date of the order to suspend license until December 1, 2011, and pay a one-time fee of \$350.00 for the total expenses of the inspections.

THE MOTION REGARDING SUSPENSION OF DA-VI NAILS SALON LICENSE PREVAILED ON A ROLL CALL VOTE WITH VIOLATIONS COMMITTEE MEMBER LOIS PORCH ABSTAINING.

IT WAS MOVED BY KORY MCKAY, SECONDED BY PAT CLARK, TO ADOPT THE FOLLOWING ORDER WITH REGARD TO THE PERSONAL LICENSE OF LY DO:

It is hereby ordered that license number NT-07455-2011 of Ly Do is suspended for eighty-eight days. Fourteen days of the suspension will be in effect February 6-19, 2011. A second amount of fourteen days will be in effect August 28 - September 10, 2011. The remaining sixty days of suspension will be held in abeyance upon the following conditions:

1. That, from the date of the Order to Suspend License until February 1, 2012, Ly Do has no further violations of SDCL Ch. 36-15 or any administrative regulations adopted pursuant to said chapter;
2. That, pursuant to SDCL 1-26-29.1, Ly Do reimburse the Cosmetology Commission, within thirty days of the date of the Order to Suspend License, for its actual expenses of \$870 related to this proceeding; and,
3. That Ly Do take the South Dakota Laws and Administrative Rules course, which is provided by the Cosmetology Commission, and pay the \$50 fee for said course.

THE MOTION REGARDING SUSPENSION OF LY DO'S NAIL TECHNICIAN LICENSE PREVAILED ON A ROLL CALL VOTE WITH VIOLATIONS COMMITTEE MEMBER LOIS PORCH ABSTAINING.

5.b. November 16, 2010 PM Hearing - 2010-Case E & F

At this time, the Commission went back into Executive Session to discuss 2010-Case E & F.

IT WAS MOVED BY PAT CLARK, SECONDED BY KORY MCKAY, COME OUT OF EXECUTIVE SESSION. THE MOTION PREVAILED ON A VOICE VOTE.

IT WAS MOVED BY PAT CLARK, SECONDED BY KORY MCKAY, TO ADOPT THE OFFICE OF HEARING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH REGARD TO 2010-CASE E & F, PRO NAILS BY VU, SIOUX FALLS, SOUTH DAKOTA. THE MOTION PREVAILED ON A VOICE VOTE WITH VIOLATIONS COMMITTEE MEMBER NORA SLYKHUIS ABSTAINING.

IT WAS MOVED BY ILA DAVIS, SECONDED BY LOIS PORCH, TO REVOKE LICENSE NUMBER CS-03988-2011 OF PRO NAILS BY VU, EFFECTIVE IMMEDIATELY. THE MOTION PREVAILED ON A ROLL CALL VOTING, WITH VIOLATIONS COMMITTEE MEMBER NORA SLYKHUIS ABSTAINING.

5.c. December 6, 2010 Hearing - 2010-Case G

The Commission was informed that action on the December 6, 2010 hearing - 2010-Case G, will be delayed to the March, 2011 Commission meeting.

Colorful Nails - Watertown

The Commission was also informed that their order regarding Colorful Nails, Watertown, voted on at the October 18, 2010 meeting, is being appealed to Circuit Court.

4. Executive Director's Report

The Executive Director's Report had previously been mailed to Commission members and is included with these Minutes as Attachment 1. One important subject on the report was an update of our inspectors and tentative plans to expand the inspection territories of the 4 current inspectors and to not hire a fifth inspector at this time. No Commission action was required to make this change and it can be re-evaluated in the future.

OLD BUSINESS

7. Application for Renewal of School License - Black Hills Beauty College-Rapid City

Education Committee member Kory McKay had reviewed the application for renewal of school license received from Black Hills Beauty College - Rapid City, including their proposed field trips.

IT WAS MOVED BY KORY MCKAY, SECONDED BY LOIS PORCH, TO APPROVE THE APPLICATION FOR RENEWAL OF THE SCHOOL LICENSE OF BLACK HILLS BEAUTY COLLEGE - RAPID CITY, INCLUDING THEIR PROPOSED FIELD TRIPS. THE MOTION PREVAILED ON A VOICE VOTE.

6. On-Line Renewal of Licenses Using Credit/Debit Cards

During the November 14, 2010 Long-Range Planning Meeting and the November 16, 2011 regular meeting, the Commission had identified their number one priority as pursuing the steps necessary to allow licensees to renew their licenses on-line through the use of a credit or debit card.

Administrator Todd Kolden informed the Commission that the Department of Labor Management Team had recently reviewed this subject and an estimate of approximately \$40,000 to accomplish this goal. The Management Team will pursue a Request for Proposal with private vendors who do this kind of computer programming.

8. Status of NIC Administration of State Laws Exam

Executive Director Kate Boyd reported on the status of having NIC administer our State Laws Exam. The 25 questions identified by the Commission have been submitted to Schroeder Measurement Technologies (SMT) for their review and development of a South Dakota test booklet. Applicants for licensure in South Dakota will take the State Laws exam using a separate answer sheet and test booklet. It is anticipated that we will be able to use the NIC-administered State laws exam in March or May, 2011.

The next step in the process would be to have SMT translate our State Laws Exam into Vietnamese so that we can offer the written exams, both NIC theory and State Laws, in English or Vietnamese. We will be required to pay for the translation services, but there is no additional cost to offer the exam booklets in Vietnamese.

NEW BUSINESS

9.a. Survey of Other States Regarding Certification of Education Hours

The Commission meeting hand-outs had included the results of a survey sent to other states that use NIC exams, to determine if they accept education from schools outside their state. This survey had been sent due to the fact that increasingly the Commission office is receiving requests for individuals, whose education was earned in another state, who want to take their State Board exam in South Dakota instead of completing their licensure in the state where they received their education. This is causing a problem with verifying some of these individual's education, since many other states will only certify actual licenses, not education hours if the individual did not take that State's State Board examination and obtain licensure. It is difficult for South Dakota to verify the credibility of schools located in other states.

IT WAS MOVED BY LOIS PORCH, SECONDED BY ILA DAVIS, TO ADOPT A POLICY EFFECTIVE JANUARY 12, 2011, STATING THAT FOR THOSE INDIVIDUALS WHO GRADUATE OUTSIDE OF SOUTH DAKOTA, WE WILL NOT ACCEPT CERTIFICATION OF EDUCATION HOURS DIRECTLY FROM AN OUT-OF-STATE SCHOOLS. WE WILL ONLY ACCEPT CERTIFICATION OF EDUCATION HOURS FROM ANOTHER STATE'S BOARD OF COSMETOLOGY. IF THE STATE BOARD OF COSMETOLOGY WILL NOT CERTIFY EDUCATION HOURS EARNED IN THEIR STATE, THE INDIVIDUAL WILL BE REQUIRED TO OBTAIN THEIR COSMETOLOGY, NAIL TECHNICIAN, OR ESTHETICIAN LICENSE IN THE STATE IN WHICH THEY RECEIVED THEIR EDUCATION AND THEN APPLY FOR RECIPROCITY IN SOUTH DAKOTA. THE MOTION PREVAILED ON A VOICE VOTE.

9.b. Request from Ashlee Horn for Acceptance of Cosmetology Education Hours Certified by a California School

The Commission reviewed Ashlee Horn's request for acceptance of her 1600 cosmetology education hours from Victor Valley Beauty College, California. The hours were certified by her school, not the California Board of Cosmetology. Ashlee recently attended Stewart School to earn the 500 hours that she was lacking to meet South Dakota's 2100 hour requirement. IT WAS MOVED BY PAT CLARK, SECONDED BY ILA DAVIS, TO ACCEPT THE 1600 HOURS OF COSMETOLOGY EDUCATION FOR ASHLEE HORN CERTIFIED BY VICTOR VALLEY BEAUTY COLLEGE, CALIFORNIA. THE MOTION PREVAILED ON A VOICE VOTE.

9.c. Request from Thanh Bich Thi Nguyen for Acceptance of Nail Technician Education Hours Certified by a Utah School

The Commission reviewed Thanh Bich Thi Nguyen's request for accept of her 600 hours of nail technician education hours from Top Nails & Hair Beauty School, located in Utah. The hours were certified by the school, not the Utah Board of Cosmetology. IT WAS MOVED BY LOIS PORCH, SECONDED BY ILA DAVIS, TO ACCEPT THANH BICH THI NGUYEN'S 600 HOURS OF NAIL TECHNOLOGY EDUCATION CERTIFIED BY TOP NAILS & BEAUTY SCHOOL, UTAH. THE MOTION PREVAILED ON A VOICE VOTE.

10. Request for Approval of a Student License from Individual with Past Felony Conviction

The Commission reviewed a request from an individual who wants to pursue cosmetology education and licensure in South Dakota. This individual previously had a felony drug conviction in another state, served probation, and has been released from probation. IT WAS MOVED BY ILA DAVIS, SECONDED BY PAT CLARK, TO ALLOW THIS INDIVIDUAL TO PURSUE EDUCATION AS A COSMETOLOGIST AT A SOUTH DAKOTA SCHOOL AND LICENSURE AS A COSMETOLOGIST IN SOUTH DAKOTA UPON COMPLETION OF THE REQUIRED EDUCATION HOURS AND PASSAGE OF THE SOUTH DAKOTA STATE BOARD EXAMINATIONS. THE MOTION PREVAILED ON A VOICE VOTE.

11. Proposed Administrative Rules Change Regarding LED Lights

Vice President Lois Porch recommended a change in our Administrative Rules to clarify that cosmetologists and estheticians may use an FDA Class 1 LED light.

IT WAS MOVED BY LOIS PORCH, SECONDED BY ILA DAVIS, TO PROPOSE CHANGES TO ADMINISTRATIVE RULES 20:42:04:04.03 (2) AND 20:42:06:22 (2) TO READ:

(2) Any procedure in which human tissue is cut or altered by any ~~mechanical or energy form, including electrical or laser energy or ionizing radiation~~ FDA Class 2 or above mechanical or energy devices.

THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

12. State Board Exam Testing Locations

Administrator Todd Kolden informed the Commission that at some point they may be asked by the Department of Labor to pursue holding State Board Examinations in other cities besides Pierre.

13. General Duties of Commission Members as Outlined in SDCL 36-15-11

Administrator Todd Kolden directed the Commission's attention to SDCL 36-15-11, outlined general duties of Commission members.

14. NIC Region Meeting - April 2 & 3, 2011 - Nashville, TN - Who Should Attend?

The Commission discussed the upcoming NIC Region Meeting scheduled for April 2 & 3, 2011 in Nashville, Tennessee. The consensus was to request out-of-state travel approval for President Nora Slykhuis and Executive Director Kate Boyd to attend this meeting.

15. Other Business - N/A

16. Upcoming Meeting Dates

The Commission was reminded of the following upcoming meeting dates:

March 7 & 8, 2011 - State Board Exams & Commission Meeting - Pierre
April 2 & 3, 2011 NIC Region Meeting - Nashville, Tennessee

Adjournment

IT WAS MOVED BY PAT CLARK, SECONDED BY ILA DAVIS, TO ADJOURN. THE MOTION PREVAILED ON A VOICE VOTE.

The meeting adjourned at 8:30 p.m.

Respectfully submitted by:

Kate Boyd, Recording Secretary

and _____
Pat Clark, Secretary-Treasurer

Attachment 1

Executive Director's Report - January 11, 2011

1. STEWART SCHOOL INSTRUCTOR CONTINUING EDUCATION REQUEST

Stewart School has decided to have their instructors complete one of the pre-approved Milady on-line courses for their 2010 instructor continuing education requirement.

2. INSPECTOR UPDATE

Inspector Karen Dossett is recovering from her recent surgery. She plans to be back to work the regularly scheduled time to begin 2011 inspections.

We currently have 4 inspectors. The Central Area inspector position is vacant, as of December 16, 2010.

I suggest the Commission consider not filling the open inspector position at this time. Instead, inspection territories could be reassigned. At the November 16, 2010 meeting, the Commission approved increasing our office secretary's hours from 28 hours per week to 40 hours per week. This was to be accomplished by reducing the inspectors hours and lengthening the time between inspections for salons that have not failed inspections in recent years.

With the secretarial position now occupying 1 FTE (full-time equivalent) or 2080 hours annually, that leaves 1 FTE (2080 hours) for the inspectors to share. The chart below shows past and possible annual work hours for inspectors.

Inspector Annual Work Hours In Recent Years

1.3 FTE = 2704 Hours

2704 Hours Divided by 5 Inspectors = 540 Hours Each

Proposed Inspector Annual Work Hours 2011

1 FTE = 2080 Hours

2080 Hours Divided by 5 Inspectors = 416 Hours Each

2080 Hours Divided by 4 Inspectors = 520 Hours Each

If we work with 4 inspectors instead of 5, they will each only have a 20 hour annual reduction in their hours, versus a 124 hour annual work hour reduction if we continue with 5 inspectors. I suggest we try working with 4 inspectors during 2011, knowing that we can always hire a fifth inspector in the future and readjust inspection territories and work hours.

3. NEW LICENSE PAPER

The security paper used to print 2011 licenses has a light grey-blue tint. Use of this paper will increase the security of the licenses and ensure that licenses cannot be photocopied.

4. ON-LINE RENEWAL OF LICENSES USING CREDIT/DEBIT CARDS

An estimate of computer programming costs to allow licensees to renew their licenses on-line through the use of credit or debit cards will be available at the January 11 meeting.

5. NIC ADMINISTRATION OF STATE LAWS EXAM

A report on the status of NIC administration of the South Dakota State Laws/Rules exam will be given at the January 1, 2011 meeting.

6. AGENDA ITEMS #12 - STATE BOARD TESTING LOCATIONS & #13 – GENERAL DUTIES OF COMMISSION MEMBERS AS OUTLINED IN SDCL 36-15-11

Agenda Items #12 & #13 were placed on the agenda at the request of the Department of Labor.

7. 2011 NEWSLETTER

A copy of the 2011 Newsletter is included with the meeting handouts for information and review by the Commission members.