

SOUTH DAKOTA COSMETOLOGY COMMISSION MEETING MINUTES

March 11, 2016

Call Meeting to Order

A meeting of the Cosmetology Commission was called to order by President Tammy Ugofsky on Friday, March 11, 2016 at 8:40 am. The meeting was held at the Department of Labor and Regulation office located at 811 East 10th Street, Sioux Falls, South Dakota.

Roll Call

Attendance was taken by Secretary-Treasurer Laurie Brandner, with the following members present: Lori Berreth, Laurie Brandner, Crystal Carlson, Lori Little, and Tammy Ugofsky. Members Absent: N/A. Staff present: Attorney Aaron Arnold, Executive Director Kate Boyd and Beth Marnell. Others present for the morning portion of the meeting: Liz Lloyd, Rachael Maag, Talia Frederick, Stephanie Mortimore, Eileen Donley, Angela Taylor, Penny Thompson, Cori Rozeboom, Tom Poloncic, Joy Poloncic, Shawn Venjohn, Angela Larson, Diane Lorang. Hung Tuan Le was present for the D N Nails hearing in the afternoon.

2. Minutes of the January 21, 2016 Meeting

IT WAS MOVED BY LAURIE BRANDNER, SECONDED BY CRYSTAL CARLSON, TO APPROVE THE MINUTES OF THE JANUARY 21, 2016 MEETING AS WRITTEN. THE MOTION PREVAILED ON A VOICE VOTE.

3. Treasurer's Report

Secretary-Treasurer Laurie Brandner reported that as of February 29, 2016 the available budget was \$29,908.70 and the cash center balance was \$269,643.18.

IT WAS MOVED BY LORI BERRETH SECONDED BY CRYSTAL CARLSON, TO APPROVE THE TREASURER'S REPORT AS PRESENTED. THE MOTION PREVAILED ON A VOICE VOTE.

4. Executive Director's Report

Executive Director Kate Boyd reported on three subjects, including: (1) a salon in Vermillion is now offering fire haircuts, (2) explained some possible changes to administration of the safety and infection control course/exam, and (3) NIC has revised the cosmetology practical exam effective May 1, 2016. States can request an extension of time to implement the new exam. She suggested that the Commission request an extension until after our annual NIC Examiner Training in late September, and possibly until January 1, 2017. Besides the need to train our examiners on the new exam, it will also give the schools time to prepare their current students for the newly revised exam. Copies of the new Cosmetology Practical and Theory Candidate Information Bulletins (CIB) were provided to the members, as well as any school representatives who were present. The new CIB's will be mailed to all schools in the near future.

IT WAS MOVED BY LAURIE BRANDNER, SECONDED BY LORI BERRETH, TO REQUEST A DELAY OF IMPLEMENTATION OF THE NEW NIC COSMETOLOGY PRACTICAL EXAMINATION UNTIL JANUARY 1, 2017. THE MOTION PREVAILED ON A VOICE VOTE.

5. Disciplinary Actions - N/A

6. Referral of License Applications to Commission

The Commission reviewed a Student License Application for Mary Jenness who would like to attend cosmetology school in South Dakota. She currently is under the Court's supervision for a felony drug conviction. Ms. Jenness's application included her written statement, information from her parole officer, and pertinent copies of her court record. She is scheduled to be released from parole in 2018.

IT WAS MOVED BY CRYSTAL CARLSON, SECONDED BY LORI LITTLE, TO APPROVE THE STUDENT LICENSE APPLICATION OF MARY JENNESS. THE MOTION PREVAILED ON A VOICE VOTE.

The Commission also reviewed a Reciprocity application from Tuan Lam. Mr. Lam had submitted two different applications for reciprocity with discrepancies in the dates that he attended nail technology school and on both applications he stated he had only been licensed in one state, even though the Cosmetology Commission office staff had researched and were able to confirm that he had been licensed in at least two other states.

IT WAS MOVED BY CRYSTAL CARLSON, SECONDED BY LORI BRANDNER, TO INVITE TUAN LAM TO ATTEND THE NEXT COMMISSION MEETING TO ADDRESS THE COMMISSION ABOUT THE DISCREPANCY BETWEEN THE TWO APPLICATIONS AND THE OMISSION OF STATES WHERE HE HAD BEEN LICENSED. THE MOTION PREVAILED ON A VOICE VOTE.

7. Continuing Education for Licensees

The South Dakota Cosmetology Club had sent a request to the Commission requesting that the Commission implement continuing education for licensees. Members of the Cosmetology Club addressed the Commission as did some of the cosmetology school representatives. The Commission had been mailed the results of a survey that Executive Director Kate Boyd had completed showing that 14 states currently require continuing education for licensees, 30 states do not require continuing education, and no response from the other six states. The general consensus of those in attendance was that continuing education is a worthwhile thing, but there are obstacles to overcome, such as number of required hours, allowable kinds of courses, and verification of the continuing education. It was noted that current law allows the Cosmetology Commission can pursue continuing education through adoption of an administrative rule. Following a lengthy discussion, IT WAS MOVED BY CRYSTAL CARLSON, SECONDED BY LAURIE BRANDNER, TO CREATE A CONTINUING EDUCATION TASK FORCE WITH REPRESENTATION FROM THE SOUTH DAKOTA COSMETOLOGY CLUB, COSMETOLOGY SCHOOLS AND TWO COMMISSION MEMBERS. THE PURPOSE OF THE TASK FORCE IS TO FURTHER RESEARCH CONTINUING EDUCATION OPTIONS AND TO COME TO COMMISSION MEETING IN THE FUTURE TO REPORT ON THE TASK FORCE'S RECOMMENDATION. THE MOTION PREVAILED ON A VOICE VOTE.

The meeting recessed for a ten-minute break at 9:50 am. The meeting was called back to order at 10:00 am.

8. Proposed Legislative Changes to Cosmetology Education Hours/Curriculum

During the past year there had been discussion about proposing legislation to reduce the required cosmetology education hours/curriculum to get South Dakota more in line with other states across the country. South Dakota currently requires 2100 hours for a full cosmetology license, being one of the highest hour requirements across the country. The average required hours across the country is about 1600 hours. An effort is being undertaken nationally to get the education hour requirements to a more uniform level. One option would be to add in a separate hair design license and also keep a cosmetology license that would require more hours. A couple of draft proposals were handed out, as well as a report of the education hours required in each state for cosmetology, hair stylist, nail technician and esthetician. Two other subjects that have been discussed in recent years are the development of a two-tier esthetics license and developing a separate license for natural hair braiding. It was generally agreed that these are all important subjects and that if we are going to try to introduce legislation in 2017, we will need to have a draft legislative bill for the commission's approval at the July 11 meeting.

IT WAS MOVED BY LORI LITTLE, SECONDED BY LAURIE BRANDNER, TO CREATE A TASK FORCE COMPRISED OF TWO COMMISSION MEMBERS, REPRESENTATIVES OF THE COSMETOLOGY SCHOOLS TO COME TO THE MAY 24 MEETING WITH A PROPOSAL FOR THE COMMISSION'S CONSIDERATION. THE MOTION PREVAILED ON A VOICE VOTE.

9. Administrative Rules

The Commission was presented a list of possible administrative rules changes, possible law changes and policy items for the commission's consideration in the near future. The Commission was reminded that one of the Cosmetology schools had previously submitted a letter to the Commission to change the current administrative rule that requires completion of education hours to certification of graduation from a licensed cosmetology school in order to apply for State Board examinations. Currently the wording to qualify for a temporary license states that a "certificate of graduation from a licensed school" is a requirement. The school requested that the same wording be applied to qualification for licensure so that both rules state the same thing. It was agreed that this should be dealt with when the commission is dealing with other administrative rules changes currently being discussed.

10. School Requests

a. Black Hills Beauty College-Sioux Falls - School License Renewal Application

IT WAS MOVED BY LORI BERRETH, SECONDED BY LAURIE BRANDNER, TO APPROVE THE SCHOOL LICENSE RENEWAL APPLICATION OF BLACK HILLS BEAUTY COLLEGE-SIOUX FALLS. THE MOTION PREVAILED ON A VOICE VOTE.

b. Stewart School - License Renewal Application

IT WAS MOVED BY LORI BERRETH, SECONDED BY LORI LITTLE TO APPROVE THE SCHOOL LICENSE RENEWAL APPLICATION OF STEWART SCHOOL. THE MOTION PREVAILED ON A VOICE VOTE.

c. Stewart School Request for Pre-Graduation Testing

Stewart School submitted a request for the Commission to allow cosmetology students to take their State Board examinations when they have completed 1900 of the 2100 required education hours. The reasons for the early testing are that the student can then seek employment to begin their work career immediately after completing their education. The school indicated that they spend a great deal of the last 200 hours of education working with the students on business development, state laws, and other subjects they need to know in order to be successful in their chosen career. Also, if a student fails one or more of the three exams that comprise the State Board examinations, the school would have 200 more hours to work intensively with the student in their areas of deficiency so that they can pass the test the next time.

Attorney Aaron Arnold informed the Commission that this would require adoption of an administrative rule to allow students to take their State Board examinations with 1900 hours of education. There was discussion regarding the fact that the Commission will likely be proposing legislation to change the education hour requirements. It was suggested that an administrative rule be worded in percentage of hours of completion instead of stating an actual number. Following some calculations, it was suggested that allowing a student to test when they have completed 90% of education would be very similar to 1900 of 2100 hours.

IT WAS MOVED BY LORI LITTLE, SECONDED BY LORI LITTLE, TO PURSUE AN ADMINISTRATIVE RULE TO ALLOW STATE BOARD EXAMINATION TESTING WHEN A STUDENT HAS COMPLETED 90% OF THE REQUIRED HOURS FOR THE LICENSE THEY ARE PURSUING. THE MOTION PREVAILED ON A VOICE VOTE.

d. Headlines Academy - Electric File Provider Application

IT WAS MOVED BY LORI BERRETH, SECONDED BY CRYSTAL CARLSON, TO APPROVE THE ELECTRIC FILE PROVIDER APPLICATION OF HEADLINES ACADEMY. THE MOTION PREVAILED ON A VOICE VOTE.

e. Headlines Academy - Microdermabrasion Provider Application

IT WAS MOVED BY LAURIE BRANDNER, SECONDED BY LORI LITTLE, TO APPROVE THE MICRODERMABRASION PROVIDER APPLICATION OF HEADLINES ACADEMY. THE MOTION PREVAILED ON A VOICE VOTE.

11. Instructor Requests for Waiver of Junior Instructor Program

a. Marissa Frazier - Headlines Academy

Marissa Frazier, a junior instructor at Headlines Academy and school representatives requested that Marissa be granted a Senior Instructor License based on her past experience and qualifications. IT WAS MOVED BY LAURIE BRANDNER, SECONDED BY LORI BERRETH, TO APPROVE MARISSA FRAZIER AS A SENIOR INSTRUCTOR WITH THE CONDITION THAT

SHE ALSO COMPLETE THE 1000 HOURS OF THE JUNIOR INSTRUCTOR PROGRAM. THE MOTION PREVAILED ON A VOICE VOTE.

b. Stephanie Holscher - The Salon Professional Academy

Stephanie Holscher submitted an independent study plan to become licensed as a senior instructor. It was noted that when an individual seeks to do an independent study plan to pursue a senior instructor license, the individual must first have their study plan approved by the commission and then when they are thru with the education requirements they must take the Instructor State Board examinations.

IT WAS MOVED BY LORI BERRETH, SECONDED BY CRYSTAL CARLSON, TO APPROVE THE SENIOR INSTRUCTOR INDEPENDENT STUDY PLAN SUBMITTED BY STEPHANIE HOLSCHER. THE MOTION PREVAILED ON A VOICE VOTE.

b. Tara Mortland - The Salon Professional Academy

Tara Mortland submitted an independent study plan to become licensed as a senior instructor.

IT WAS MOVED BY CRYSTAL CARLSON, SECONDED BY LORI LITTLE, TO APPROVE THE SENIOR INSTRUCTOR INDEPENDENT STUDY PLAN SUBMITTED BY TARA MORTLAND. THE MOTION PREVAILED ON A VOICE VOTE.

12. Request for Approval of Apprenticeship at Leo Thomas Salon in Rapid City

Holly Ringo, owner of Leo Thomas Salon submitted an application to mentor an apprentice, Shaylen Hannanh at her salon in Rapid City. Holly Ringo is a licensed senior instructor. Commission member Lori Little stated that she and Inspector Georgia Linn had recently conducted the interview of both the Ms Ringo and Ms Hannanh and completed an inspection of the salon. Lori Little stated that the interview and inspection went well and it was her recommendation that the Commission approve the proposed apprenticeship. It was noted that in the past when apprenticeships have been approved, there is a three-month probationary period. At the end of the probationary period, the Commission can terminate the apprenticeship if the weekly timesheets or the monthly inspections show that the senior instructor and apprentice are not appropriately pursuing the education. Indications of an apprenticeship that should be terminated include, among other things, not submitting the required weekly timesheets, or failing the monthly inspections.

IT WAS MOVED BY LORI LITTLE, SECONDED BY LORI BERRETH, TO APPROVE THE PROPOSED APPRENTICESHIP OF SHAYLEN HANNANH AT LEO THOMAS SALON IN RAPID CITY UNDER THE MENTORSHIP OF SENIOR INSTRUCTOR HOLLY RINGO, WITH RECONSIDERATION BY THE COMMISSION AT THE END OF THE 90-DAY PROBATIONARY PERIOD. THE MOTION PREVAILED ON A VOICE VOTE.

13. Other Business

Commission member Crystal Carlson requested that we use a proctor to read the verbal instructors during the practical examinations and to run the time clock. This will be implemented starting with the April 30 examinations.

Commission member Carlson also suggested that smocks be purchased and worn during the administration of State Board examinations. This would clearly indicate to the candidates who the test administrators are and present a uniform presence at the exams. It was suggested and she agreed to come to the next meeting with a recommendation of the type of smock to be purchased.

14. Upcoming Meeting Dates

- March 31-April 1, 2016 - State Board Administrators Meeting - Nashville (Kate Attending)
- NIC Region Meeting - Nashville (Kate, Crystal and Lori Little Attending)
- April 30, 2016 State Board Exams - Watertown
- May 22-24, 2016 - School Visits, State Board Exams, Commission Meeting - Rapid City & Sturgis

Recess for Lunch

IT WAS MOVED BY CRYSTAL CARLSON, SECONDED BY LORI LITTLE TO RECESS FOR LUNCH. THE MOTION PREVAILED ON A VOICE VOTE.

The meeting was recessed at 12:00 Noon and reconvened at 1:30 pm.

Disciplinary Action Hearings

1:30 pm - Case G-2014 - Dawn Jones

Notice of Hearing for Case G-2014 - Dawn Jones had been mailed to Ms. Jones at her last known address. She was not present for the hearing. Attorney Aaron Arnold swore in Executive Director Kate Boyd as a witness. Ms. Boyd testified that the salon application had been received with conflicting start date and date the application was signed. Ms. Boyd stated she phoned the salon and talked to Dawn Jones about it, told her to stop working, but was found not to have stopped performing services.

Attorney Arnold submitted Exhibit A--Salon application and violation investigative report, which was admitted into evidence with no objections.

IT WAS MOVED BY LORI LITTLE, SECONDED BY LAURIE BRANDNER, TO GO INTO EXECUTIVE SESSION FOR PURPOSES OF DELIBERATION. THE MOTION PREVAILED ON A VOICE VOTE. The five commission members remained in the meeting room and all others left the room.

The meeting reconvened in regular session at 2:00 pm.

IT WAS MOVED BY LAURIE BRANDNER, SECONDED BY CRYSTAL CARLSON, TO REVOKE DAWN JONES ABILITY TO BECOME LICENSED IN SOUTH DAKOTA FOR A PERIOD OF FIVE YEARS. THE MOTION PREVAILED ON A VOICE VOTE.

2:30 pm - Case X-2015 - D N Nails Salon

Notice of Hearing in Case X-2015 - D N Nails Salon had been mailed to salon owner Hung Tuan Le. Mr. Le was present for the hearing.

Attorney Aaron Arnold swore in potential witnesses, Elisabeth Marnell of the Cosmetology Commission staff, Commission Inspectors Mary Rasmussen and Karen Dossett, and Hung Tuan Le.

Attorney Arnold first questioned witness Elisabeth Marnell about this case. Ms. Marnell stated she had received a phone call from a woman who said that she had suffered injuries on both feet during a pedicure at D N Nails Salon. That led to Commission Inspectors Mary Rasmussen and Karen Dossett being asked to inspect D N Nails Salon in Sioux Falls.

The next witness was Inspector Mary Rasmussen who stated the inspection showed numerous deficiencies in the salon's disinfection and infection control procedures. As a result of these deficiencies, the salon was not protecting the public's health. The most serious issue was that the pedicure tubs were not properly draining and there was standing water in the drains. Standing water in the drains can result in contaminated water recirculating in the pedicure tub with the fresh water for the next customer. Inspector Rasmussen had taken photos of the deficient areas where the salon failed the inspection and these were presented to the Commission, together with a copy of the inspection report.

Attorney Arnold submitted Exhibit A--Inspection Report, photos of safety and infection control violations and failed inspection letter, which was admitted into evidence with no objections.

Hung Tuan Le addressed the commission and apologized for the deficiencies in the operation of the salon during his three-month absence due to a trip to Vietnam.

Following completion of testimony, IT WAS MOVED BY LORI LITTLE, SECONDED BY LAURIE BRANDNER, TO GO INTO EXECUTIVE SESSION FOR PURPOSES OF DELIBERATION. THE MOTION PREVAILED ON A VOICE VOTE.

The meeting reconvened in regular session at 3:40 pm.

IT WAS MOVED BY LORI LITTLE, SECONDED BY CRYSTAL CARLSON, TO:

- (1) suspend the D N Nails Salon license for 90 days, with credit for the days of closure from the commission's emergency closing of the salon on December 31, 2015 until their reopening in early March, with the remainder of the 90 days being held in abeyance for one year so long as the following conditions are met:
 - (2) the salon will receive monthly inspections for the next six month, with the salon paying for the extra inspections;
 - (3) three of the inspections will include education and training of the salon staff by commission inspectors on proper disinfection and infection control procedures;
 - (4) the salon shall reimburse the Commission for its expenses for the administrative hearing.
- THE MOTION PREVAILED ON A VOICE VOTE.

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There being no further business, IT WAS MOVED BY CRYSTAL CARLSON, SECONDED BY LAURIE BRANDNER, TO ADJOURN. THE MOTION PREVAILED ON A VOICE VOTE.

The meeting was adjourned at 3:55 pm.

Respectfully submitted,

Kate Boyd, Recording Secretary

Laurie Brandner, Secretary-Treasurer

EXECUTIVE DIRECTOR'S REPORT

March 11, 2016

1. **Fire Haircuts** - One of our inspectors inspected a new salon that offers fire haircuts. You may want to go online to watch some You-tube videos on fire haircuts.
2. **Safety & Infection Control Course/Exam** - I would like some input regarding the administration of the course and exam. Shown below is the current Commission policies and suggestions for changes to the policy.

Lapsed Licenses:

Current Commission policy states that an individual seeking reinstatement of their South Dakota license after more than five years of a lapsed license must meet with an inspector to take the two-hour safety and infection control course and open-book exam.

Since this is an open-book test, I would like to suggest that we mail the laws/rules book and exam to the individual to complete and mail back to our office. (We currently do this when an individual is seeking reinstatement of their South Dakota license so that they can apply for reciprocity in another state.)

Disciplinary Actions:

When the Commission enters into a consent agreement or where there is a commission order regarding disciplinary actions, one of the standard requirements is that the individual(s) must come to Pierre to take the safety and infection control course and open-book exam.

I would like to suggest that we have the inspectors teach the course and administer the exam. This eliminates the cost of driving to/from Pierre and frees up office staff time for other areas of work.

3. **NIC Cosmetology Practical Exam Changes** - NIC has finished the revision of the Cosmetology Practical Examination. They have finalized new Candidate Information Bulletins for both the Practical and Theory exams. They plan to implement the new practical exam May 1, 2016. However, States can request a delayed implementation of the new exam. I have indicated to NIC that South Dakota will want to delay using the new exam and that I will provide them with a proposed start date following the Commission's March 11, 2016 meeting.