

Meeting Minutes
SOUTH DAKOTA COSMETOLOGY COMMISSION
Watertown and Sioux Falls, South Dakota
July 14, 2017

A. Call to Order

President Tammy Ugofsky called the meeting to order at 8:30 am on Friday, July 14, 2017 in the Lake Lewis & Clark Room of the Ramkota Hotel located at 920 W Sioux Ave, South Dakota.

B. Roll Call

Secretary-Treasurer Crystal Carlson read the roll.

Members Present: President Tammy Ugofsky, Lori Berreth, Laurie Brandner, Crystal Carlson, Lori Little

Members Absent: N/A

Staff Present: Attorney Graham Oey, Executive Director Kate Boyd, and Program Assistant Kelsey Skoglund

Others Present:

Black Hills Beauty College: Tom Poloncic and Joy Poloncic

Lake Area Technical Institute Cosmetology Program: Shawn Vehjohn,

Stewart School: Angela Taylor and Matt Fiegen

Headlines Academy: Peggy Sproat, via teleconference

Revive Day Spa: Fallon Helm, Jayde Keller, Tara Mortland, Ashley Veen, and Meagan Williams
Tom Brandner

C. May 4 & 5, 2017 Meeting Minutes

Little made a motion to approve the May 4 & 5, 2017 meeting minutes. Brandner seconded the motion. **MOTION PASSED.**

D. Treasurer's Report

Executive Director Kate Boyd reported that as of June, 2017, the available funds balance was \$-17,359.76 and the cash center balance was \$219,912.97. She further reported that the year-end funds was a negative balance due primarily to the purchase of computer tablets for testing and desk scanners to allow for the placement of photos in the database record for each licensee, and for a prorated share of Attorney Graham Oey's salary. Copies of the monthly revenue by income category for FY 17 were also handed out.

Q. Executive Director's Report

Executive Director Kate Boyd reported on the following:

1. Microblading - The South Dakota Medical examiners have rules that in most cases microblading does not fall under the medical board, but rather is the same as tattooing. This is not part of the scope of practice for Cosmetology Commission licensees. Anyone who performs microblading will need to check out their community's laws/rules regarding tattooing. If microblading is performed in a salon licensed by the Cosmetology Commission, the unregulated services sign must be posted alerting potential customers to the fact that the Cosmetology Commission does not regulate that service.

2. Failed Inspections on the Website - Executive Director Kate Board asked for the Commission's guidance on how long failed inspection reports should remain on the Commission's website.

Berreth made a motion to have inspection failures due to expired licenses, or no first aid kit or fire extinguisher remain on the website for 6 months. No second received. **MOTION FAILED.**

Little made a motion inspection failures due to expired licenses, no first aid kit or fire extinguisher to remain on the website for one year and all other inspection failures to remain on the website for two years. Carlson seconded the motion. Motion was debated.

Brandner made a substitute motion to have inspection failures due to expired licenses, no first aid kit or fire extinguisher appear on the website for one year and all other inspections to remain on the website indefinitely. Berreth seconded the substitute motion. **MOTION PASSED.**

3. Facebook Page - Commission members and guests were informed that the Cosmetology Commission now has a Facebook page for important information to be distributed to licensees and the public. The Commission office will be posting information at least twice a week.

4. Nail Safety Press Release - A press release on Nail Safety was issued working in cooperation with the DLR Public Information Office in late June.

5. Wedding Hair/Booth Rental - Two separate licensees have applied for booth licenses with the intent to do wedding hair and other Commission-approved special events. Special event services can only be performing with the licensee running the revenue for the services through a salon license or booth. In these cases the licensees do not plan to work in the physical booth. The consensus of the commission was that the inspectors should meet with these licensees to inspect the kits they use to perform special event services.

6. Administrative Rules & State Laws - Copies of the newly published State Laws & Administrative Rules book were passed out to those present. The natural hair braiding exemption law went into effect July 1 and the recently updated administrative rules became effective July 3, 2017.

7. Policy on Eyelash Extension Certification - At the next meeting the Commission will need to adopt a policy regarding the date of implementation of certification of eyelash extensions for licensees (cosmetologists & estheticians) who already perform eyelash extensions. We will need to notify licensees already providing this service to send proof of 16 hours of training to be certified to continue this practice. Anyone who takes this training in the future will need to prove they had 16 hours of training. Schools and other organizations may apply to the Commission to become a pre-approved provider.

8. State Board Examination & Commission Meeting Calendar for 2017 and 2018 - Copies of the suggested State Board Examination and Commission Meeting Calendar for the remainder of 2017 and for 2018 were included in the Commission meeting packets. The calendar will be finalized in the near future.

F. Disciplinary Actions

1. Case J-2015 - Proposed Consent Agreement

Berreth made a motion to approve the consent agreement for case J-2015 with the following terms:

- a. Ms. Walters license, Lic. #CO-11190, will be suspended for a period of 45 days with 45 days being held in abeyance: Ms. Walters license will have no active suspension due to credit for her not working from October 2016 through December 2016.
- b. The 45 days of suspension for her license will be held in abeyance for a period of 1 year, beginning on the effective date of this agreement, so long as the following conditions are met:
 - 1) Ms. Walters will comply with all laws and regulations relating to her profession under SDCL chapter 36-15 and ARSD article 20:42 for a period of 1 year beginning on the effective date of this Agreement;
 - 2) Ms. Walters will successfully pay for an successfully complete the online course entitled "Infection Control Online Class", sponsored by Milady, found at www.miladypro.com. Ms. Walters must submit to the Commission the Certificate of Completion received after successful completion of the course by June 30, 2017.

Carlson seconded the motion. Violation committee member Brandner abstained. **MOTION PASSED.**

2. Case B-2017 - Proposed Consent Agreement

Little made a motion to approve the consent agreement for case B-2017 with the following terms:

- a. Ms. Kistler's license, Lic. #EO-10812, will be suspended for a period of 5 days with 5 days being held in abeyance: Ms. Kistler's license will not actively be suspended.
- b. The 5 days of suspension for her license will be held in abeyance for a period of 1 year, beginning on the effective date of this agreement, so long as the following conditions are met:
 1. Ms. Kistler will comply with all laws and regulations relating to her profession under SDCL chapter 36-15 and ARSD article 20:42 for a period of 1 year beginning on the effective date of this Agreement;
 2. Pursuant to SDCL 36-15-58.5 the Commission imposes a monetary penalty of \$100.00, as a condition for the immediate reinstatement of her license, to be paid prior to August 31, 2017.
- c. Body Therapy Salon license, Lic. #EP-08349, will be suspended for a period of 5 days with 5 days being held in abeyance; Body Therapy Salon license will not actively be suspended.
- d. The 5 days of suspension for the Salon license will be held in abeyance for a period of 1 year, beginning on the effective date of this agreement, so long as the following conditions are met:

1. Body Therapy Salon will comply with all laws and regulations relating to its profession under SDCL chapter 36-15 and ARSD article 20:42 for a period of 1 year beginning on the effective date of this Agreement;

Berreth seconded the motion. Violation committee member Brandner abstained. **MOTION PASSED.**

3. Case E -2017 - Proposed Consent Agreement

Carlson made a motion to approve the Consent Agreement for Case E-2017 with the following terms:

- a. Ms. Moffitt's license, Lic. #CO-08519, will be suspended for a period of 5 days with 5 days being held in abeyance: Ms. Moffitt's license will not actively be suspended.
- b. The 5 days of suspension for her license will be held in abeyance for a period of 1 year, beginning on the effective date of this agreement, so long as the following conditions are met:
 1. Ms. Moffitt will comply with all laws and regulations relating to her profession under SDCL chapter 36-15 and ARSD article 20:42 for a period of 1 year beginning on the effective date of this Agreement;
 2. Pursuant to SDCL 36-15-58.5 the Commission imposes a monetary penalty of \$100.00, as a condition for the immediate reinstatement of her license, to be paid prior to August 31, 2017.
- c. Justina Moffitt Booth license, Lic. #CP-08464, will be suspended for a period of 5 days with 5 days being held in abeyance; Justina Moffitt Booth license will not actively be suspended.
- d. The 5 days of suspension for the Booth license will be held in abeyance for a period of 1 year, beginning on the effective date of this agreement, so long as the following conditions are met:
 1. Justina Moffitt Booth will comply with all laws and regulations relating to its profession under SDCL chapter 36-15 and ARSD article 20:42 for a period of 1 year beginning on the effective date of this Agreement;

Little seconded the motion. Violation committee member Brandner abstained. **MOTION PASSED.**

4. Case H -2017 - Assurance of Voluntary Compliance

Little made a motion to enter Executive Session to consult with legal counsel about proposed litigation and contractual matters. Carlson seconded the motion. **MOTION PASSED.**

The Executive Session began at 9:45 am.

The Commission went back into regular session at 9:55 am.

Little made a motion to approve the Assurance of Voluntary Compliance for Case H-2017. Carlson seconded the motion. Violation committee member Brandner abstained. **MOTION PASSED.**

5. Case I -2017 - Proposed Consent Agreement

Berreth made a motion to approve the Consent Agreement for Case I-2017 with the following terms:

- a. Mui Luong will voluntarily surrender her personal license, Lic, #NT-11157 by July 31, 2017 and will not be able to reapply for licensure in South Dakota for a period of 5 years.
- b. If Ms. Luong reapplies for reciprocity in South Dakota after the 5 year time frame her license application will be submitted to the Commission for them to accept or deny.
- c. Mui Luong as owner of Pretty Nails Salon license, Lic #NS-06363, will voluntarily surrender the salon license by July 31, 2017 and will not be able to apply for a salon or booth in South Dakota for a period of 5 years.
- d. If Ms. Luong applies for a salon or booth license after the 5 year time frame the application will be submitted to the Commission for them to accept or deny.

Carlson seconded the motion. Violation committee member Brandner abstained. **MOTION PASSED.**

6. Lapsed Case 1-2017 - Proposed Consent Agreement

Little made a motion to approve the Consent Agreement for Lapsed Case 1-2017 with the following terms:

- a. Ms. Wicks license, Lic. #CO-08546, will be suspended for a period of 15 days with 15 days being held in abeyance; Ms. Wicks license will not actively be suspended.
- b. The 15 days of suspension for her license will be held in abeyance for a period of 1 year, beginning on the effective date of this agreement, so long as the following conditions are met:
 1. Ms. Wicks will comply with all laws and regulations relating to her profession under SDCL chapter 36-15 and ARSD article 20:42 for a period of 1 year beginning on the effective date of this Agreement;
 2. Pursuant to SDCL 36-15-58.5 the Commission imposes a monetary penalty of \$300.00, as a condition for the immediate reinstatement of her license, to be paid prior to August 31, 2017.
- c. Salon Eileen's license, Lic. # CS-07751, will be suspended for a period of 10 days with 10 days being held in abeyance; Salon Eileen's license will not actively be suspended.

- d. The 10 days of suspension for the Salon license will be held in abeyance for a period of 1 year, beginning on the effective date of this agreement, so long as the following conditions are met:
1. Salon Eileen will comply with all laws and regulations relating to its profession under SDCL chapter 36-15 and ARSD article 20:42 for a period of 1 year beginning on the effective date of this Agreement;
 2. Pursuant to SDCL 36-15-58.5 the Commission imposes a monetary penalty of \$150.00, as a condition for the immediate reinstatement of her license, to be paid prior to August 31, 2017.

Berreth seconded the motion. Violation committee member Brandner abstained. **MOTION PASSED.**

7. Lapsed Case 3-2017 - Proposed Consent Agreement

Little made a motion to approve the Consent Agreement for Lapsed Case 3-2017 with the following terms:

- a. Ms. Kolousek license, Lic. #CO-10496, will be suspended for a period of 5 days with 5 days being held in abeyance; Ms. Kolousek's license will not actively be suspended.
- b. The 5 days of suspension for her license will be held in abeyance for a period of 1 year, beginning on the effective date of this agreement, so long as the following conditions are met:
 1. Ms. Kolousek will comply with all laws and regulations relating to her profession under SDCL chapter 36-15 and ARSD article 20:42 for a period of 1 year beginning on the effective date of this Agreement;
 2. Pursuant to SDCL 36-15-58.5 the Commission imposes a monetary penalty of \$75.00, as a condition for the immediate reinstatement of her license, to be paid prior to August 31, 2017.
- c. Jens Trendz Salon license, Lic. # CS-06586, will be suspended for a period of 10 days with 10 days being held in abeyance; Jens Trendz Salon license will not actively be suspended.
- d. The 10 days of suspension for the Salon license will be held in abeyance for a period of 1 year, beginning on the effective date of this agreement, so long as the following conditions are met:
 1. Jens Trendz Salon will comply with all laws and regulations relating to its profession under SDCL chapter 36-15 and ARSD article 20:42 for a period of 1 year beginning on the effective date of this Agreement;
 2. Pursuant to SDCL 36-15-58.5 the Commission imposes a monetary penalty of \$200.00, as a condition for the immediate reinstatement of her license, to be paid prior to August 31, 2017.

Berreth seconded the motion. Violation committee member Brandner abstained. **MOTION PASSED.**

Case Y-2015 - Findings of Fact, Conclusions of Law and Order

Brandner made a motion to approve the proposed Findings of Fact, Conclusions of Law and Order, with the following two changes to the Order: (1) cosmetology license is suspended for a period of one year beginning August 14, 2017, with six months being held in abeyance, (2) remove the option for immediate reinstatement of cosmetology license, and require a 16-hour refresher course for proper use of a microdermabrasion machine.

Berreth seconded the motion. Violation committee member Brandner abstained. **MOTION PASSED.**

G. Proposed Legislation

The proposed legislative changes were reviewed, with the following further changes agreed to be consensus:

In order to allow for early state board examination testing with an update in administrative rule to set the percentage of education completion, need to keep in wording regarding completion of education hours and insert the word "or" before "is enrolled" in the following three laws:

36-15-2.3. Application for esthetics examinations--Information required.

36-15-17. Application for cosmetology examination--Information required.

36-15-17.1. Application for nail technician examination--Information required.

36-15-45. Required period of apprenticeship--Transfer to another salon--Continuity of service. Change the hour requirement for cosmetology apprentice to 2150 instead of the proposed 1500 hours and lower the hours of nail apprenticeship to 600 hours.

Change from two-tier Instructor licensing to one-tier system: Delete the 1000 hours of salon experience requirement to pursue an instructors license.

Brandner made a motion to pursue a reduction of cosmetology education hours to 1800 hours instead of the proposed 1500 hours. Carlson seconded the motion. **MOTION FAILED.**

It was noted that we need to draft legislation to allow for substitute instructors in the school.

Little made a motion to approve the proposed legislative package with the additional changes made during this meeting. Carlson seconded the motion. **MOTION PASSED.**

Carlson made a motion to delay implementation of any legislation regarding cosmetology education hours to January 1, 2019, in order for the cosmetology schools to work through school re-accreditation and U.S. Department of Education approval for federal financial aid for students at a lower hour level. Brandner seconded the motion. **MOTION PASSED.**

K. Election of Officers

President – Little made a motion to nominate Tammy Ugofsky as President. Brandner seconded by Laurie Brandner. No other nominations were received. **MOTION PASSED.**

Vice President – Carlson made a motion to nominate Laurie Brandner as Vice President. Ugofsky seconded the motion. No other nominations were received. **MOTION PASSED.**

Secretary-Treasurer – Ugofsky made a motion to nominate and elect Crystal Carlson as Secretary-Treasurer. Brandner seconded the motion. No other nominations were received. **MOTION PASSED.**

H. Proposed Apprenticeships - Revive Day Spa, Aberdeen

Berreth made a motion to approve the two proposed apprenticeships at Revive Day Spa in Aberdeen, with completion of the nail technology portion of the apprenticeships prior to completing the remaining cosmetology and esthetics requirement. Carlson seconded the motion. **MOTION PASSED ON A VOICE VOTE.**

I. Referral of Applications to the Commission

1. Tuan Luc -- Appealed the Commission's denial of reciprocity application. Ugofsky made a motion to reaffirm the Commission's denial of Tuan Luc's reciprocity application. Brandner seconded the motion. **MOTION PASSED.**

2. Raquel Fegueroa -- Request for Approval of Reciprocity Application & enrollment in South Dakota cosmetology school to complete additional hours. Berreth made a motion to approve Raquel Fegueroa's request for approval of her reciprocity application and enrollment in a South Dakota cosmetology school to complete her cosmetology education hours. Carlson seconded the motion. **MOTION PASSED.**

J. School Requests

1. Black Hills Beauty College - Sioux Falls - Request for approval of two Senior Instructor licenses. Ugofsky made a motion to approve senior instructor license applications for Adrian Ness and Adaali Mendez. Brandner seconded the motion. **MOTION PASSED.**

2. Lake Area Technical Institute Cosmetology Program School License Renewal. Carlson made a motion to approve the school license renewal application of Lake Area Technical Institute Cosmetology Program. Brandner seconded the motion. **MOTION PASSED.**

Adjourn

Carlson made a motion to adjourn the meeting at 12:20 p.m. adjourn. Ugofsky seconded the motion. **MOTION PASSED.**

Respectfully submitted,

Kate Boyd, Recording Secretary

Crystal Carlson, Secretary-Treasurer

EXECUTIVE DIRECTOR'S REPORT July 14, 2017

1. MICROBLADING - South Dakota Board of Medical Examiners made a declaratory ruling on the practice of microblading. In most instances microblading is not considered a medical procedure. It falls under the practice of tattooing. A copy of the Medical Board's declaratory ruling is attached for information and review.

2. FAILED INSPECTIONS ON WEBSITE - For the past few years we have been showing failed inspection reports on our website. We have had inquiries from some licensees about how long their failed inspection report will remain on the website. There are two types of failed inspections -- (1) safety & infection control deficiencies, and (2) technical failures, such as one or more license expired at time of inspection, or no first aid kit or fire extinguisher. In the case of the first type of failure, the salon pays a \$50 re-inspection fee and is re-inspected in a few weeks by the inspector. The second kind of failure is normally handled by the office -- if the licenses get renewed or we receive a cash register receipt of purchase of a first aid kit or fire extinguisher, the office passes the salon and sends out the passed inspection card.

We would like some guidance from the Commission if all failed inspections should remain on the website on an on-going basis or if they should be removed after some period of time after they salon gets a passed inspection card? One option might be to take down the technical failures after the licenses are renewed or at the end of the year.

The link to the failed inspection page on the Cosmetology Commission website is shown below.

http://dlr.sd.gov/cosmetology/failed_inspections.aspx

3. FACEBOOK PAGE - We recently received approve from the Department of Labor & Regulation to start a Cosmetology Commission Facebook page. This page is for licensees and the public alike and new information or reminders are posted twice a week. Bradi Stampe from our staff, who fields most of the phone inquiries, suggested that we have a Facebook presence and she is the staff member responsible for posting content, with suggestions from other staff members. If you have not already done so, please go on Facebook and search for South Dakota Cosmetology Commission and Like and Follow our page. Please invite others to Like and Follow us as well. We also welcome suggestions for items to post.

4. NAIL SAFETY PRESS RELEASE - Working in cooperation with the DLR Public Information Officer, we issued a press release about Nail Safety in late June. A copy of the press release is enclosed.

5. WEDDING HAIR/BOOTH RENTAL - We have had two different individuals apply for booth licenses with the intent to do wedding hair and other Commission-approved special events. The law states that the services must be run through a salon or booth. Since they do not actually work in the booth, there is really nothing for the inspector to inspect. Should we develop a policy that they must have a traveling kit available for inspection if they do not otherwise have equipment and supplies at their licensed booth location.

6. ADMINISTRATIVE RULES & STATE LAWS - Our recently updated administrative rules became effective July 3, 2017. The new state law exempting natural hair braiding from the practice of cosmetology became effective July 1, 2017. We are in the process of getting new Laws/Rules books printed. We will have copies available for pick-up at the July 14 meeting.

7. POLICY ON EYELASH EXTENSION CERTIFICATION - One important item that we will need to address in the new administrative rules is how to implement the required 16 hours of education to become certified to perform eyelash extensions. We will include Eyelash Extensions on the application for pre-approved provider status like we have for Electric File and Microdermabrasion providers. For those who are already performing eyelash extensions, do we require licensees to provide proof of the training they received when they started performing eyelash extensions? How long should we allow those already performing this service to provide this proof of training? For any new certifications, we will require proof prior to adding the certification to their license.

8. STATE BOARD EXAMINATION & COMMISSION MEETING CALENDAR FOR 2017 & 2018 - Enclosed with the Commission meeting packets is a proposed State Board exam and Commission meeting calendar for the remainder of 2017 and 2018. We have secured the Becker-Hansen building in Pierre for administration of both the practical and the written (computer-based) exams. The State does not charge us any fees to administer exams in a State office building. We will continue to test two times a year in Watertown.