

MINUTES OF THE MEETING OF
THE BOARD OF COSMETOLOGY, ELECTROLOGY, ESTHETICS,
NAIL TECHNOLOGY, AND BODY ART

September 14, 2015

1. ROLL CALL

The meeting of the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art was called to order by the Chairperson, Lyra Faltys, at 10:30 a.m., Lower Level Conference Room A, Nebraska State Office Building, Lincoln, Nebraska. Copies of the agenda were mailed to the Board members and other interested parties in accordance with the Public Meeting Law.

The following members answered roll call:

Bridget Anderson	-	Member
Vicki Criswell	-	Member
Lyra Faltys	-	Chairperson
Pamela Foran	-	Member
Melanie Judkins	-	Member
Jason Lassek	-	Secretary
Marie Nordboe	-	Member
Becky Pettigrew	-	Vice-Chairperson
Pamela Rowland	-	Member

Members Absent:

Ruth Lucas	-	Member
David Newson	-	Member (arrived at 10:45 a.m.)
Lisa Pfeil	-	Member

Others Present:

Ed Vierk, Assistant Attorney General
Dennis Scott, Investigator
Russ Fosler, Investigator
Kris Chiles, Program Manager, Licensure Unit
Nancy Herdman, Health Licensing Coordinator, Licensure Unit

A quorum was present and the meeting convened.

2. ADOPTION OF AGENDA

MOTION: Pettigrew moved, seconded by Judkins, to adopt the agenda. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Nordboe, Pettigrew, Rowland (9). Voting nay: None (0). Absent: Lucas, Newson, Pfeil (3). Motion carried.

3. APPROVAL OF MINUTES (7-6-15, 7-20-15 work session; 8-3-15 conference call)

MOTION: Rowland moved, seconded by Anderson, to approve the minutes of 7-6-15. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Nordboe, Pettigrew, Rowland (9). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Newson, Pfeil (3). Motion carried.

MOTION: Rowland moved, seconded by Criswell, to approve the work session minutes of 7-20-15. A roll call vote was taken. Voting aye: Criswell, Faltys, Foran, Judkins, Nordboe, Rowland (6). Voting nay: None (0). Abstain: Anderson, Lassek, Pettigrew (3). Absent: Lucas, Newson, Pfeil (3). Motion carried.

MOTION: Anderson moved, seconded by Rowland, to approve the minutes of 8-3-15. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Lassek, Nordboe, Pettigrew, Rowland (7). Voting nay: None (0). Abstain: Foran, Judkins (2). Absent: Lucas, Newson, Pfeil (3). Motion carried.

10:35 a.m. - Anna Harrison, compliance monitor, entered meeting

4. INVESTIGATIONAL & CONFIDENTIAL INFORMATION/REPORTS – CLOSED SESSION

MOTION: Pettigrew moved, seconded by Rowland, to enter into closed session at 10:39 a.m. for the purpose of hearing discussions of a confidential nature and for the prevention of needless injury to the reputation of the individuals. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Nordboe, Pettigrew, Rowland (9). Voting nay: None (0). Absent: Lucas, Newson, Pfeil (3). Motion carried.

10:45 a.m. - Newson entered meeting
11:11 a.m. - Scott and Foslor departed meeting
11:19 a.m. - Harrison departed meeting
12:14 a.m. - Break
12:26 a.m. - Meeting resumed

MOTION: Pettigrew moved, seconded by Judkins, to return to open session at 12:58 p.m. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Absent: Lucas, Pfeil (2). Motion carried.

12:58 p.m. - 1 public person entered meeting

5. APPLICATION REVIEW AND RECOMMENDATIONS – OPEN SESSION

a. Initial Licensure/Reinstatement/Convictions/Administrative Penalties

Michael Buehler - Cosmetologist

MOTION: Pettigrew moved, seconded by Nordboe, to recommend issuance of the license with no terms or conditions. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

Ryan Krause – Tattoo Artist

MOTION: Rowland moved, seconded by Judkins, to defer and request additional information. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

Dennis Smartt-Mead – Tattoo Artist

MOTION: Judkins moved, seconded by Newson, to recommend issuance of the license with no terms or conditions. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

Marie Sandoval - Cosmetologist

MOTION: Pettigrew moved, seconded by Nordboe, to defer and request additional information. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

Jaesa Vaughn - Cosmetologist

MOTION: Newson moved, seconded by Judkins, to recommend offering a Probationary license with 2 year probation, to include the standard terms and conditions and the following: body fluid screens, quarterly employer reports, no solo practice, follow the evaluation recommendations. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

Candace Jordan – Cosmetologist Reinstatement

MOTION: Pettigrew moved, seconded by Anderson, to recommend offering a Probationary license with 6 month probation, to include the standard terms and conditions and the following: jurisprudence examination. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

Elizabeth Naple – Esthetician reinstatement

MOTION: Lassek moved, seconded by Newson, to recommend reinstatement of the license with no terms or conditions. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

Kalyn Taylor – Cosmetologist Reinstatement

MOTION: Lassek moved, seconded by Judkins, to recommend offering a Probationary license with 1 year probation, to include the standard terms and conditions and the following: employer reports, no solo practice, follow evaluation recommendations, follow court requirements. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

Alexander White – Body Piercer

MOTION: Judkins moved, seconded by Newson, to recommend issuance of the license with no terms or conditions. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

Faltys stated that the cosmetologist application requesting early release from probation will be addressed at the end of the agenda.

6. Unfinished Business

a. Review/Revise Conviction Guidelines Relating to Application Reviews

The Board reviewed the draft document. Rowland suggested that changes be made under MIP to make the time periods match closer to those in the DUI area.

MOTION: Lassek moved, seconded by Judkins, to approve the Conviction Guidelines with changes discussed. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Lassek, Newson, Nordboe, Pettigrew, Rowland (10). Voting nay: None (0). Abstain: None (0). Absent: Lucas, Pfeil (2). Motion carried.

- 1:09 p.m. - Vierk departed the meeting
- 1:15 p.m. - Teresa Hampton, Department attorney, entered the meeting

b. Regulations (Final comments relating to Draft Regulations and next steps)

Chiles stated she did not receive permission to request consideration of introduction of a bill to propose changes to the statutes. She commented that she would be reviewing the regulations to see if changes could be made in the regulations to move along some of the issues/concerns that precipitated the proposed statute changes. One possible area would be to define 'school' as a secondary educational institution in order to assist with student funding issues. Rowland expressed concern about how long it takes to change the statutes.

7. NEW BUSINESS

a. Correspondence/Issues

Letter from Brandy McMorris:

The purpose of her letter was to propose the exemption of Natural hair styling from the definition of cosmetology and give natural hair styling its own licensure category. She provided the following information:

- Natural hair styling is a traditional practice that is safe. It is a service of washing, conditioning, drying, twisting, wrapping, weaving, extending, locking, pinning, or braiding hair by hand or with mechanical devices and without the use of any harmful chemicals. The majority of natural hair styling consists of, but is not limited to, the art of braiding. By definition, braiding includes: the use of natural and synthetic hair extensions, natural or synthetic hair fibers, decorative beads, and other hair accessories. It may also include the minor trimming of natural hair or hair extensions incidental to twisting, wrapping, weaving, extending, locking or braiding hair, the use of topical agents, and the making of wigs from natural hair, natural fibers, synthetic fibers, and hair extensions. Hair braiding is also known as "African-style hair braiding" but it is not limited to any particular cultural, ethnic, racial or religious group or forms of hair styles. Natural hair styling does not include the application of dyes, reactive chemicals, or other preparations that alter the color of the hair or the structure of the hair by curling or straightening. Natural hair styling also does not include the use of chemical hair joining agents such as synthetic tape, keratin bonds, or fusion bonds. The mechanical devices used are clips, combs, curlers, curling irons, hairpins, rollers, scissors, needles, thread, and hair binders and blow dryers. Natural hair styling also include styles that aren't exactly braids but require only skill and the customer's hair.
- There are only two cosmetology schools in Omaha; the only thing taught in the area of natural hair styling is the basic cornrow. In fact, it is not even a requirement to know how to braid to successfully pass the program. Never in either school is a student taught or required to know Natural hair styling and braiding as defined above.
- Natural hair styling presents no significant health and safety risks to customers and practitioners. There should be no requirement for natural hair stylists to obtain a cosmetology license. Natural hair stylists should instead be required to obtain a license specifically for natural hair styling.
- States like Kansas, Utah, Arizona and Georgia have all deregulated natural hair braiding with no training or license necessary to make a living styling hair naturally. Washington D.C., Texas, Minnesota, Missouri and Florida have all deregulated hair braiding from cosmetology and have anywhere from 6 to 210 credit hours of training to obtain a license to braid. Arizona, Utah, Mississippi, and California are 4 of 10 states that have recently changed the laws about natural hair braiding under the evidence that it is unconstitutional to arbitrarily interfere with the people's ability to earn a living in their chosen occupation- per the Fourteenth Amendment. More relevant, Illinois has deregulated natural hair styling in an effort to include other styles that aren't technically braids, but still do not require the use of any kind of harsh chemicals able to severely damage or alter hair structures as well as be a risk to customers and practitioners.
- Natural hair styling presents no significant health risks, but there are some minor health precautions to consider. In interaction with the public and the possibility of exposure to many types of diseases and conditions, a natural hair stylist should have in-depth knowledge on health and safety measures. If a natural hair stylist acquires a salon or chooses to work in a salon to provide services, there should be sound understanding on how to conduct business in that setting. Also, the use of the mechanics listed in the definition should be well-known. I have compiled a list of suggested, general concentrations for natural hair styling awareness that I feel should be needed in order to obtain a natural hair stylist license. The subjects are: Health, safety and sanitation principals, classifications of micro-organisms, prevention of the spreading of micro-organisms in the environment, disease prevention, types of diseases and disorders of the hair and scalp, proper draping of chair and client, standard precautions, composition of hair, phases of hair growth, types of alopecia that may be associated with hair braiding, procedures pertaining to first aid, people skills, shampooing hair, conditioning hair, blow drying hair, moisturizing hair, types of braids, and adding of synthetic and natural hair extensions.
- I realize there is no current program in place to implement such a change. Yet, there are many options for Nebraska to almost immediately carry out a process for natural hair stylists to be able to get to work lawfully. The National-Interstate Council of State Boards of Cosmetology is composed of licensing boards of cosmetology in the U.S. and U.S. territories. Through their website, nictesting.org, they offer

examinations for many topics as they relate to cosmetology. They have an exam tailored just for natural hair styling that states like Illinois use. This test, or one similar, can be used to construct curriculum and also as the proctored assessment for those seeking a license in Nebraska. The subjects I listed could be trained and tested on in a school setting allowing for those who get a passing grade to apply for their natural hair styling license. Another possibility could be to allow those who feel they are knowledgeable enough to skip training and be tested, or both. I also feel registration, application, renewal and all other applicable fees should remain for this type of license, relatively.

The Board voiced appreciation for the detailed information and suggestions presented by Ms. McMorris. The board had a lengthy discussion relating to natural hair styling and braiding. They recognized that many states offer separate licenses or exempt braiding from licensure. Nebraska regulations include braiding as a topic area within the required curriculum, however, there is not a set number of hours required to be trained. The curriculum was developed to provide schools with flexibility to teach current trends providing they covered the required topic areas identified in the regulations.

The following concerns were voiced:

- Possibility of infections and lack of training to recognize health issues if practice is unregulated
- Possibility of creating multiple limited license types (such as shampooing, braiding, etc)
- Could consider requiring a specific number of CE hours for natural hair styling in order to renew the cosmetology license, but decided that they would then need to consider other types of services and that would be cumbersome given Nebraska only requires 8 hours to renew
- A statute change would be needed to address any changes

It was the Board's position (not a legal opinion) that natural hair styling, including braiding, is within the scope of practice of cosmetology. Therefore, if such services are provide for compensation, a cosmetology license is required.

38-1016. Cosmetology, defined. Cosmetology means the practice of performing for compensation any or all (1) of the acts of arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, styling, or similar work upon the hair, wig, wiglet, or hairpiece of any person, by any means, with hands or a mechanical or electrical apparatus or appliance; (2) esthetics; (3) nail technology; and (4) other similar practices upon the hair, scalp, face, neck, arms, hands, feet, or nails of any person when performed for the purpose of beautifying or enhancing physical appearance or the teaching of any practice specified in this section for occupational purposes.

b. Body Art, Cosmetology, Electrology, Esthetics, Nail Technology, Indoor Tanning Facilities

Body Art – Judkins had nothing to report.

Cosmetology – Lassek discussed that hair straighteners had been reformulated and they lasted longer and were much improved.

Electrology – Foran reported that there was a new technique that works on a fast pulse. She stated electrology is considered permanent while laser is not.

Esthetics – Criswell commented that eyebrow tinting and eyelash extensions were becoming more common as well as eyelash perming was being used more again. She cautioned that is was important to be careful when using fibers on eye lashes because it can pull out or break the lashes.

Nail Technology – Pettigrew reported that the Peels representative said the Denver show was October 31 and that not many were signed up so this may be the last one.

Indoor Tanning Facilities – Pettigrew reported that the convention is in Columbus on September 24-28. She said she will be getting a certification and there were sessions on FDA regulations along with other training.

8. REPORTS/UPDATES

a. National-Interstate Council of State Boards of Cosmetology

Faltys and Nordboe passed around materials and discussed the sessions they attended at the national convention.

1:59 p.m. - Lassek departed meeting
 2:01 p.m. - Lassek entered meeting
 2:35 p.m. - Lassek, Nordboe, Newson, public person departed meeting
 2:37 p.m. - Nordboe, Newson entered meeting
 Pettigrew departed meeting

b. Disciplinary/Non-Disciplinary Action Report

Chiles reported there had been two body art disciplinary actions including one suspension for not paying child support.

2:46 p.m. - Pettigrew entered meeting

c. Statistics: Examinations / Renewal / Licensing / Administrative Penalties

Chiles reported the examination statistics for the last two months:

Nail Technology	8 passed, 7 failed
Cosmetology	42 passed, 10 failed
Esthetician	15 passed, 6 failed
Cosmetology Instructor.	3 passed
Jurisprudence - Probation	4 passed, 6 failed
Jurisprudence – CE	2 passed. 1 failed

Chiles reported the following salon renewal statistics to date:

Cosmetology	2152 salons, 1497 have not renewed
Nail Technology	183, 160 have not renewed
Esthetics	46 salons, 36 have not renewed

Chiles stated on-line renewals had a lot of mistakes and many requests were being received for paper renewal forms.

Chiles distributed the statistics for licensees.

MOTION: Pettigrew moved, seconded by Newson, to enter into closed session at 3:30 p.m. for the purpose of hearing discussions of a confidential nature and for the prevention of needless injury to the reputation of the individuals. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Newson, Nordboe, Pettigrew, Rowland (9). Voting nay: None (0). Absent: Lassek, Lucas, Pfeil (3). Motion carried.

MOTION: Pettigrew moved, seconded by Judkins, to return to open session at 3:43 p.m. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Newson, Nordboe, Pettigrew, Rowland (9). Voting nay: None (0). Absent: Lassek, Lucas, Pfeil (3). Motion carried.

Tina Grundmann – Cosmetologist Reinstatement (Early Release from Probation)

MOTION: Rowland moved, seconded by Anderson, to defer and request additional information. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Newson, Nordboe, Pettigrew, Rowland (9). Voting nay: None (0). Abstain: None (0). Absent: Lassek, Lucas, Pfeil (3). Motion carried.

9. ADJOURNMENT

MOTION: Pettigrew moved, seconded by Newson, to adjourn. A roll call vote was taken. Voting aye: Anderson, Criswell, Faltys, Foran, Judkins, Newson, Nordboe, Pettigrew, Rowland (9). Voting nay: None (0). Abstain: None (0). Absent: Lassek, Lucas, Pfeil (3). Motion carried.

Faltys declared the meeting adjourned at 3:45 p.m.

Respectfully submitted,

Jason Lassek, Secretary
Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art

Summarized by Nancy Herdman, Health Licensing Coordinator