

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
STATE OF NEW HAMPSHIRE
DIVISION OF HEALTH PROFESSIONS
BOARD OF BARBERING, COSMETOLOGY, & ESTHETICS

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**BOARD OF BARBERING, COSMETOLOGY, & ESTHETICS
PUBLIC MINUTES OF JANUARY 13, 2020, MEETING**

The January 13, 2020, meeting of the Board of Barbering, Cosmetology, & Esthetics (the “Board”) convened at 9:22 a.m. at the Office of Professional Licensing and Certification, 121 South Fruit Street, Concord, New Hampshire with the following members present and eligible to vote:

Holly Rodrigues (HR)
Sarah Partridge (SP)
Joshua Craggy (JSC)
Kassie DuBois (KD)
Jeanne Chappelle (JC)

Absent: Dana Pierce (DP)
Kim Hannon (KH)

Others in Attendance:

Lindsey Courtney, OPLC Director, Division of Health Professions (LBC)
Tom Broderick, Rules Attorney (TB)
Beulah Green, Inspector (BG)
Sandra Hodgdon, Inspector (SH)

At the start of the meeting, JSC asked a question regarding the status of the mobile barbershop rules. Discussion ensued regarding the updates and the December 2019 meeting. The Board discussed that there were no major changes. JSC generally inquired as to the status of an ongoing case and a new investigation. SH provided a brief update based on public information. The Board decided to discuss in detail during non-public session.

1. **Approve Public Minutes of the December 16, 2019, Board Meeting.** Upon motion by SP, with a second by KD, the Board voted unanimously to accept the minutes as written.

2. **Rules Review, Tom Broderick (10:00).** TB introduced himself to the board. JSC stated that he noticed there was still a provision on the application requiring a certificate of occupancy. JSC noted that the Board had previously discussed removing that requirement. TB stated he had taken that requirement out of the text of the rules, but had not removed it from the application. TB stated he would remove the provision on the application form relating to certificate of occupancy. JSC stated the rules otherwise looked great.

SH stated that she was at a barbershop and was discussing these rules. SH stated the barber stated a peddler license was required by the town. JSC stated it depends on town requirements. A discussion ensued regarding various town requirements. SH inquired what to say to licensees. JSC proposed that inspectors tell licensees that it is simply up to the town. The Board generally discussed that it is up to the individual licensee to ensure that they are complying with all municipal requirements.

JSC inquired whether the Board should advise licensees to obtain town permits. A JC noted she would prefer not to list all items as the Board may not list all possible requirements. JSC suggested adding language in the application so the licensee acknowledges that it is his/her obligation to ensure he/she has permission to operate in the location of mobile barbershop. The Board generally agreed with JSC's proposal. Upon motion by JSC, with a second by JC, the Board voted unanimously to approve the rules as amended.

Upon motion by JSC, with a second by HR, the Board voted unanimously to approve the rules regarding renewals.

3. **Correspondence:**

- A. Preliminary Quarterly Report. The Board reviewed this item.
- B. Question from Salon Professional Education Company. SP noted it was problematic that the email was using the term "skin care" as opposed to esthetics. JC stated it was a national franchise. A discussion ensued regarding use of proper terminology. JC stated there was no problem with just having an esthetics program. They can have an esthetics program without cosmetology. JSC stated they should just open a school. SP stated the Board office can send the rules regarding schools. HR agreed. NFA on this item.
- C. Nashua North High School-Adult Ed. LBC explained the question received by the board office. A discussion ensued regarding how to respond. Upon motion by HR, with a second by KD, the Board voted unanimously to have LBC resend Nashua North High School information regarding the Board's rules.

4. **Review/Discuss Standing Orders (no document).** LBC explained that she was asking boards to review with their administrators any standing orders that they have or are willing to consider. LBC explained that all actions of office staff should be taken pursuant to statutory authority, board vote, or a standing order of the board. Examples include approving applications for renewal licensure, approving applications for initial apprentice licenses, and signing board orders as authorized representatives. Other examples include approving applications for initial licensure, approving booth rentals, and applications for reciprocal licensure.

HR noted that complaints should come to the Board. JC stated that if staff are going to deny an application, or if there is a question answered “yes,” the application should be reviewed by the Board.

BG stated that there has been a concern for a long time about waiving finds. BG stated that, in the past, fines had often been waived by the Administrator. HR stated that such an action undermines the credibility of inspectors. Discussion ensued regarding waiving fines and the inspections process. JSC stated that the inspectors provide the inspections and are told if the licensee does not agree, they can appeal. JSC stated that when the licensee signs the inspection form, they are confirming receipt. JSC stated that the Board should always review applications with a criminal record.

The Board discussed APU’s request for delegating subpoena authority. JSC stated that he likes to have the subpoenas come to the Board for review.

LBC asked the Board regarding the inspections process. JC stated that, the way it is now, the inspectors go to a salon, see infractions, and tally up the points, which equal the amount of the fine. The inspectors provide inspections forms to the salon owner. The licensee may then pay the fine. BG stated that, if the licensee pays the fine, the Board is essentially accepting the resolution of the case. JC stated the Board office will send a fine letter, but sometimes the licensee has already paid before the letter reaches the salon owner.

HR inquired how the Board would learn of an inspection unless it was an egregious amount. KD stated that the Board had previously discussed that inspection fines are sometimes considered a business expense. The Board discussed requiring cases with a certain history or of a certain amount to go to the Board directly. A discussion ensued regarding APU no longer taking cases that have been paid by licensees. SP stated that, a solution may be to no longer have a dollar amount on the form.

LBC proposed that the inspectors issue fines with points only. A discussion ensued regarding requirements to change the form. JC noted that, even if the form does not say “dollars,” the inspection form is asking for a monetary value. JC stated that, it seems like when a person pays a fine, the case is settled. The Board discussed that a licensee may either pay the fine or request a hearing. When the licensee chooses to pay the fine, it is considered discipline. JSC stated that, if the fine is over a certain amount, it should come to the Board’s attention. The Board discussed whether the threshold should be in individual categories or the total fine amount.

5. Follow up/Update from December Meeting:

- A. Elizabeth Grady (no document) (Appearance at 10:34). Ms. Elizabeth Racioppi (ER) introduced herself. ER stated she owns an Elizabeth Grady franchise in Nashua. She has been there for six years. The company is headquartered in Medford, Massachusetts. The company has introduced laser-based services across 24 salons, 3 of which are in New Hampshire. ER stated she was before the Board to take a look at what it would take to have estheticians perform laser-based services in New Hampshire. ER noted that her company could offer IPL, but Massachusetts offers all other services. ER introduced Cate Tool (CT), from the corporate office.

CT noted she represents the esthetician industry on the Massachusetts Board of Cosmetology but was appearing before the Board as a representative of Elizabeth Grady. CT stated that she understood that estheticians can perform IPL services in New Hampshire. However, the regulations, policies, and statutes are unclear regarding non-ablative laser services. Elizabeth Grady is looking to be able to perform non-ablative services in its salons, nothing that breaks the skin. Elizabeth Grady partners with Cynosure, which is a division of Hologic Corporation.

The icon platform that offers IPL has a 1540 nanometer non-ablative laser hand piece. Elizabeth Grady is looking to offer sculpture laser for body sculpting, similar to cool sculpture. There is no breaking of the skin, no invasiveness. CT believes these services can be done safely by estheticians with proper training. CT stated she is not suggesting that estheticians should perform these services without proper training; however, Elizabeth Grady would like to explore the possibility for these services in its three New Hampshire stores.

JSC inquired whether there were programs set up for extended education. CT stated that they do—Massachusetts allows a minimum of 32 hours of training. In Massachusetts, salons must have a physician director, not on-site, but that has a supervisory responsibility.

JC asked whether the device could be purchased without the training. CT stated the corporation that produces the device will sell the device to anyone as long as the buyer can legally perform the service and has a medical director. There has to be some medical direction or oversight. CT is not suggesting there should not be that requirement.

CT would like to see how it would be possible to make this service available to estheticians in New Hampshire. This would increase earning potential. CT does not believe estheticians should be doing anything ablative, as it is outside the scope of practice for an esthetician. CT noted she has had experience with 1540 nanometer non-ablative services and believes it is a safe service that perhaps should be perhaps should be performed under medical direction without a medical director on-site.

Discussion ensued regarding the practice currently falling under the New Hampshire Board of Medicine (MD or PA) or New Hampshire Board of Nursing (APRN).

HR inquired as to the different licensure levels in Massachusetts. CT stated that Massachusetts now has one level of licensure. There used to be two levels (one at 300 and another 600 hours). Now, there is a minimum requirement of 600 hours for licensure. Some states have a medical esthetician (Washington DC, VA, Colorado, Utah) program that require 900 hours. In Massachusetts, a licensee obtains a license with 600 hours and can take an advanced training course for an additional 8-80 hours. There are no continuing education requirements in Massachusetts.

A discussion ensued regarding registration of the laser device, and the requirement of having the devices separated. The Board discussed who would inspect the space.

CT noted she understands the process and that regulation will not happen overnight. CT stated that, in her professional opinion, an esthetician can safely provide these services with proper training. The Board discussed inviting all stakeholders to the table to discuss this issue (Board of Medicine, Board of Nursing, Elizabeth Grady).

CT thanked the Board for its time. LBC will reach out to CT when other stakeholders agree to engage in the conversation.

- B. HB 1260—Next hearing 1/16/20 @11:00 LOB 306. JSC noted this LSR proposes to reduce the penalty for practicing without a license from a misdemeanor to a violation. The Board discussed whether a representative would attend. LBC will try to attend. HR noted this agenda item was for the Board's information only.

6. Other Items of Public Importance.

JC stated she knows of a woman who owns a photography studio who has a person working for Beauty Counter that applies cosmetics for photo shoots, under the umbrella of selling Beauty Counter makeup. The Board discussed that this is authorized if she is selling the makeup. BG stated it is a loophole; as long as the artist is working for a specific company, they can apply makeup and charge as a distributor. KD noted the artist must be selling for the particular company. BG stated that as long as the artist is representing the company as a distributor, it is lawful.

JC raised an issue with Cheshire Career Center regarding the high school exchange student. The student is on an education visa and does not qualify for an apprentice license without a social security number. She is not enrolled in a cosmetology program. As a non-enrolled student, can she participate in classroom activities under the supervision of a licensed instructor in that space? JC recommended that she write a waiver request to the Board.

KD states the Board should figure out a way to change the rules so that students can participate. JSC stated they have never dealt with this issue. The Board agreed to discuss with legal counsel.

- 7. Non-Meeting with Legal Counsel (11:00).** The Board recessed at 11:00 a.m. for the purpose of consulting with legal counsel. The Board reconvened into public session at 12:16 p.m.

Upon motion by JSC, with a second by HR, the Board voted unanimously to permit the Division Director and the Board office to continue the current operations of the office until the Board issues standing orders. LBC will provide the Board with proposed standing orders for its next meeting.

Upon motion by JSC, with a second by SP, the Board voted unanimously to send letters to Cheshire Career Center and Nashua North, advising them of the ability to submit requests for declaratory rulings.

The Board discussed designating a person to work on updating rules. SP volunteered. SP will work with Tom and JD on rules revision concerning inspections.

8. **Motion to Seal December 16, 2019, Non-Public Minutes.** At 12:30 p.m., upon motion by HR, with a second by KD, the Board voted unanimously to maintain the privacy of the items discussed in the December 16, 2019, non-public meeting session pursuant to RSA 91-A:3, on the grounds that public disclosure may adversely affect the reputation of a person other than a Board member, or render the proposed action ineffective.
9. **Non-Public—authorized by RSA 91-A:3, II(c), and the Board’s executive and deliberative privileges.** At 12:30 p.m., pursuant to RSA 91-A:3, upon motion by JSC, with a second by KD, the Board voted to conduct a non-public session because public disclosure may render a proposed action ineffective or adversely affect the reputation of a person other than a Board member.

At 1:10 p.m., JSC moved to seal the non-public minutes. HR seconded the motion. The Board voted unanimously to maintain the privacy of the items discussed in non-public session pursuant to RSA 91-A:3, on the grounds that public disclosure may adversely affect the reputation of a person other than a Board member, or render the proposed action ineffective.

At 1:12 p.m., the Board voted unanimously to go out of non-public session and into public session.

Fines – members engaged in a brief discussion regarding the Board’s rules of payment plans for fines and the relationship for renewing licenses. Further discussion will occur at a future meeting.

Meeting adjourned at 1:20 p.m.