
OHIO STATE BOARD OF COSMETOLOGY

1929 Gateway Circle

Grove City, Ohio 43123

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OFFICIAL BOARD MEETING MINUTES OF March 14, 2017

REGULAR BUSINESS MEETING

TRANSCRIPTION NOTE (Exhibit A):

Anderson Reporting Service, 3242 West Henderson Road, Suite A, Columbus, OH 43220 was the transcription service for this meeting. Transcript is attached as Exhibit A.

ATTENDANCE (Exhibit B):

Thomas Taneff, Chairperson

Clara Osterhage, Vice Chairperson

Rowena Yeager

Charles Penzone

Luke Hanks

Tasha Sheipline

Staff in attendance:

Christopher H. Logsdon, Executive Director

Lori Pearson, Deputy Director

Lori Flanery, Program Administrator 1

Charley Yaniko, Board in-house counsel

Assistant Attorney General in attendance:

Daniel Murry, Assistant Attorney General

Others in Attendance:

Matt Wells, Ohio Department of Education

Chanel Polescak, COI

Liz Spencer, Moler Beauty Academy

Jessica Price, Massage Envy

Jenna Hill, Massage Envy

Angela Hodges, The Hornsby Group

Tim Hornsby, The Hornsby Group

Elizabeth Murch, OSA

Lisa Goome, Roosters

Lisa Bachmayer, Roosters

Dub Nelson, Roosters

Greg Ballmer, Roosters

Morgan Law, Apollo

Deborah Moore, Paramount

Bunny Neal, CDHS

Gwen Holland, SportsClips

Agenda item #1: CALL MEETING TO ORDER

Mr. Taneff called the meeting to order at 1:06 p.m.

Agenda item 1a: Roll Call

Ms. Flanery took roll call and six members were present. Ms. Cumberlander and Dr. Gupta were excused. Having noted a majority of members were present, Mr. Taneff proceeded to conduct business.

Agenda item 1b: Pledge of Allegiance to the Flag of the United States of America

Following the roll call, Mr. Taneff asked members to stand and recite the Pledge of Allegiance to the Flag of the United States of America. Members and audience rose and recited the Pledge of Allegiance.

Agenda item 1c: Approval of Meeting Agenda (Exhibit C)

Motion #1: Ms. Osterhage moved to approve the meeting agenda for March 14, 2017. Ms. Sheipline seconded the motion. Discussion: Ms. Osterhage encouraged the Executive Director to consider combining the proposed action with the member's agenda for each meeting. Mr. Taneff agreed. No further discussion. Roll call vote taken - carried: 6 – 0.

Agenda item #2: APPROVAL OF PREVIOUS MEETING MINUTES (Exhibit D)

Agenda item 2a: Approval of Previous Meeting Minutes (Exhibit D)

Motion #2: Mr. Penzone moved to approve the meeting minutes of February 14, 2017. Ms. Yeager seconded the motion. Discussion: None. Roll call vote taken - motion carried: 6– Yes.

Agenda item #3: OFFICER AND STAFF REPORTS (Exhibit E)

Agenda item 3a: Chairperson's Report

Mr. Taneff had no report.

Agenda item 3b: Executive Director's Report (Exhibit E)

Mr. Logsdon filed a written report. Mr. Logsdon provided a brief verbal review of his report.

Mr. Logsdon stated that the financial activity reported in his report would stand as written. Mr. Logsdon stated that he has presented the Board with cost estimates on a number of capital expenses over \$500.00 and he is requesting authorization to purchase the noted items.

Next, Mr. Logsdon stated that he provided testimony on the Board's 2018/2019 biennial budget recommendations before the Ohio House of Representatives State Government and Agency Review Finance Subcommittee. Mr. Logsdon characterized questioning from the committee as in-depth and lengthy. Mr. Logsdon stated that he would not know the date for testimony before the Ohio Senate until the Ohio House of Representatives passes the budget bill.

Next, Mr. Logsdon noted meetings and travel incurred since the last Board meeting.

Next, Mr. Logsdon reviewed rules that were heard during a public hearing on March 6, 2017. Mr. Logsdon stated that opposition testimony had been heard on rules 4713-1-07 and 4713-5-09. Mr. Logsdon stated that copies of the written testimony were provided to members under new business. Mr. Logsdon reviewed the possible actions the Board could consider.

Next, Mr. Logsdon reminded members of the 2016 financial disclosure deadline. Discussion: Mr. Penzone inquired about the Ethics training requirement. Mr. Logsdon explained that the training is annual, but no specific deadline. Mr. Logsdon stated that he would provide members a link to the training.

Last, Mr. Logsdon introduced the agency's customer service staff to the public and the Board and recognized them for their service. Discussion: Ms. Sheipline remarked that the customer service staff was very polite and professional. Ms. Sheipline also noted that she conducted a technical education showcase for legislators. She stated esthetics, nail technology, and cosmetology was represented.

Motion #3: Ms. Osterhage moved to approve the Executive Director's Report. Mr. Penzone seconded the motion. Discussion: Mr. Hanks noted a few date errors on page 2 of the report under travel report. Mr. Logsdon stated that he would correct the dates. Roll call vote taken - motion carried: 6- Yes.

Motion #4: Ms. Osterhage moved to approve the following capital purchases subject to available funding:

Qty	Item	Estimated cost
5	Conference Chair	\$328.50/unit, total \$1,642.50
3	Stack Chair 4/carton	\$183.00, total \$549.00
3	Surface Pro 4	\$1,274.51, total \$3,823.53
5	HP Monitors	\$141.24, total \$706.20
5	HP Printers	\$894.05, total \$4,470.25
1	Scanner	\$4,626.81

Mr. Hanks seconded the motion. Discussion: None. Roll call vote taken - motion carried: 6- Yes.

Agenda item #4: COMMITTEE REPORTS

Agenda item 4a: Administrative Review Committee Report (Exhibit F)

Mr. Taneff asked Mr. Logsdon to present the Administrative Review Committee (ARC) report. Mr. Logsdon reported that the written report and recommendations of the Administrative Review Committee are presented as written.

**Names and identifying information was redacted from the Administrative Review Report. For the purpose of discussion, matters were referred to only by case number and referenced by case number verbally. Identifying information based upon the correlating case number was added during the writing of the minutes where specific reference or motion is entered upon the board's journal.*

Next, Mr. Logsdon reviewed two additional matters that he characterized as having the same fact pattern as case # 2017-83. Mr. Logsdon asked the Board to consider the recommendations being presented rather than waiting another 30 days.

2017-88 02/22/2017 Inspection was conducted and alleged a violation of section 4713.64 (A) (1) of the Ohio Revised Code for an alleged violation of section 4713.14 (B)(1) of the Ohio Revised Code for aiding and abetting the unlicensed practice of a person. Per the Board's violation matrix, if an individual is cited for a first offense of practicing a branch of cosmetology on an expired license, and license is renewed within thirty (30) days of the end of renewal period, the violation is dismissed as a result of the timely compliance. The individual in this matter timely renewed her license, and the violation has been dismissed. The matrix, however, is silent on this issue as to the salon.

Recommendation: Dismiss violation alleged against the facility due to the individual's and salon's timely compliance with Ohio law.

2017-113 02/15/2017 Inspection was conducted and alleged a violation of section 4713.64 (A)(1) of the Ohio Revised Code for an alleged violation of section 4713.14 (B)(1) of the Ohio Revised Code for aiding and abetting the unlicensed practice of a person. Per the Board's violation matrix, if an individual is cited for a first offense of practicing a branch of cosmetology on an expired license, and license is renewed within thirty (30) days of the end of renewal period, the violation is dismissed as a result of the timely compliance. The individual in this matter timely renewed her license, and the violation has been dismissed. The matrix, however, is silent on this issue as to the salon.

Recommendation: Dismiss violation alleged against the facility due to the individual's and salon's timely compliance with Ohio law.

Members engaged in some discussion concerning where the information on 2017-88 and 2017-113 could be found. Mr. Taneff called the question on approval of the report.

Motion #5: Ms. Osterhage moved to confirm the Administrative Review Committee (ARC) report, as referenced hereto by attachment to the minutes of the Board. Mr. Hanks seconded the motion. Discussion: Ms. Osterhage stated that case 4713-45 was confusing. Mr. Yaniko provided an explanation; however, Ms. Osterhage stated that the rules being violated were not inconsistent, but rather the advice provided by staff was inconsistent. Some discussion between members ensued. Ms. Osterhage asked Mr. Yaniko to clarify the report. Ms. Osterhage also asked if the matter of fine payment by a new salon applicant under OAC rule 4713-1-07 would be address in rule review under new business. Mr. Logsdon affirmed it would. No further discussion. Roll call vote taken - motion carried: 6 – Yes.

Motion #6: Mr. Hanks moved to approve the recommendations provided for cases 2017-88 and 2017-113 based on same fact basis as approved ARC recommendation for case 2017-83. Ms. Yeager seconded the motion. Discussion: None. Roll call vote taken - motion carried: 6 – Yes.

Agenda item 4b: Rules Committee Report (Exhibit G)

Mr. Hanks filed a written committee report and unofficial minutes of the committee meeting that occurred on March 1, 2017. Mr. Hanks provided a brief verbal review of the committee business. Discussion: Mr. Logsdon corrected Mr. Hanks report by stating the committee had not voted on any action, but had recommended actions to the Board. Mr. Hanks affirmed.

Motion #7: Ms. Osterhage moved approve the Rules Committee report filed by Mr. Hanks. Ms. Yeager seconded the motion. Discussion: Mr. Penzone stated that he discussed proposed rule 4713-15-11 at the Rules Committee, which was tabled and that he was to bring a neck brush to the board meeting. Mr. Penzone brought one for the membership to see. Mr. Penzone stated that a previous member of the Board, Dr. Huheey, felt the brush was acceptable and Mr. Penzone recommended that the Board allow such a brush to be used in salons. Mr. Penzone inquired if the Board should consider the matter. Mr. Logsdon recommended that the matter be brought back to the Rules Committee. No further discussion. Roll call vote taken - motion carried: 6– Yes.

Agenda item #5: PUBLIC TESTIMONY (Exhibit H)

- Sandra Simpkins

Ms. Simpkins was not present.

- Elizabeth Murch, Ohio Salon Association

Ms. Murch introduced herself and provided her address for the record. Ms. Murch stated that she represented the Ohio Salon Association and that a number of members of the Ohio Salon Association were present to address proposed rule 4713-1-07. Ms. Murch stated that proposed rule 4713-1-07 prohibits the shaving of the face and that she was appearing to request that the language be removed or modified to permit face shaving with a safety razor. Ms. Murch stated that Roosters Men's Grooming Centers (Roosters) met with members of the Cosmetology Board staff and the Barbers Board prior to 2013 to determine whether or not shaving of the face with a safety razor was permitted. Ms. Murch stated that the Barbers Board informed Roosters that they had no jurisdiction over cosmetology and the Cosmetology Board told Roosters that the rules and law were silent as to shaving and it was not prohibited. Ms. Murch continued that shortly after the Cosmetology Board Director sent an email to the Barber Board Director informing him that he was adding face shaving as a prohibited act to remove any uncertainty on the topic. The new prohibition language, Ms. Murch stated, and then appeared in 2013. Ms. Murch stated that Roosters franchises were unaware of the rule until the Ohio Salon Association provided the current proposed amended rule for comment. Ms. Murch stated that shaving is not listed in cosmetology law, but it is listed in the Ohio barber law, which indicates shaving of the face, shaving around the area of the ears and neck, or trimming facial hair are barbering practices. Ms. Murch argued that cosmetologists also shave around the area of the ears and neckline and trim facial hair. Ms. Murch stated that textbooks cover care of beards and shaving. In addition, she stated safety razors could be purchased by children. Ms. Murch stated that cosmetologist, under the current rule, can shave the sideburns and the back of the neck and that there was nothing inherently special about shaving the other two inches of the face.

- Lisa Groome, Roosters

Ms. Groome introduced herself and provided her address for the record. Ms. Groome stated that she was appearing on behalf of Roosters Men's Grooming Centers in Columbus, Ohio and that she is requesting that the Board remove language from the current rule that prohibits shaving. Ms. Groome stated that the language prohibiting shaving was added "clandestinely" to the rule and is a violation of a recent Supreme Court decision. Ms. Groome stated that Rooster's Men's Grooming Centers (Roosters) entered into business in good faith and in meetings between Ohio Roosters and the former cosmetology Board director, they were met with support. Ms. Groome stated that there were no rules on the cosmetology side that prohibited shaving and that the Barber Board rules referred to straight shaving. Later, Ms. Groome stated, language was "slipped" into the cosmetology rules without an opportunity for them to provide public comment.

Ms. Groome stated that their stylists use high quality safety blades after extensive training. She stated the blades are disposed of after or offered to the client. Ms. Groome stated that fusion blades are inherently safe. Ms. Groome stated that elimination of the language in proposed rule 4713-1-07 would be a benefit. Ms. Groome stated that she understands shaving is a sensitive issue with the Ohio Barbers Board, but that their sensitivity does not justify preventing cosmetologists from using the same tool that is available to the public.

Discussion: Mr. Penzone inquired of Ms. Groome's assertion that there was collusion between the Board's prior director and the Ohio State Barber Board prior director. Ms. Groome stated that she was referring to an email sent from Mr. Trakas to Mr. Warner in October 2012. The Board requested to see the email and took a break from 1:50 p.m. to 1:56 p.m.

Following the break, Ms. Bachmayer was called.

- Lisa Bachmayer, Roosters

Ms. Bachmayer introduced herself and provided her address for the record. Ms. Bachmayer stated that her company performed due diligence and investigated the laws and rules of the Board of Cosmetology and Barbers in the state of Ohio before investing in her business. Ms. Bachmayer stated that she contacted the Ohio Cosmetology Board on December 1, 2011, when questioned by a Barbers Board inspector about cosmetologists shaving. Ms. Bachmayer stated that a staff member she had spoken with and the Ohio State Board of Cosmetology's director stated that the practice of shaving was not prohibited. Ms. Bachmayer stated that she had also contacted the Barbers Board director on the same day and she was told the Ohio Barbers Board had no jurisdiction over cosmetologists. Ms. Bachmayer stated that Barbers refer some of her customers, because they do not shave. Ms. Bachmayer referenced the rule change in 2013 that added shaving as a prohibited act under rule 4713-1-07. Ms. Bachmayer stated that 39 states permit cosmetologists to use a safety razor. Ms. Bachmayer asserted that if the current language is designed to protect the public, then why other states would place their patrons at risk.

- Greg Ballmer, Roosters

Mr. Ballmer introduced himself and provided his address for the record. Mr. Ballmer stated that his company is five years old and employs eight employees. His employees, he stated pay state, local, and federal taxes. Mr. Ballmer stated that shaving represents approximately 20% of his business. Mr. Ballmer stated that if the rule stands, as is, he would not be hiring, but instead, his staffing would decrease. Mr. Ballmer asserted that the true test of the rule is if it protects the health and safety of Ohioans. Mr. Ballmer stated that he uses Mach 3 disposable razors, which are common over-the-counter implements. Mr. Ballmer questioned how there could be a rule prohibiting the practice if a child could purchase and use one. Mr. Ballmer reviewed the training process each of his cosmetologists receives from Roosters. The rule, he stated fails to promote economic development.

- Dub Nelson, Roosters

Mr. Nelson introduced himself and provided his address for the record. Mr. Nelson provided some personal background of his 30 years in the securities industry. Mr. Nelson stated that he was the chief compliance officer, which meant he was responsible for compliance in a highly regulated industry. Mr. Nelson stated that his son contacted the Ohio Cosmetology Board on February 24, 2011 and spoke with a staff member who told him that although the rule is silent, there was no prohibition on using a safety razor in the context of shaving a face. Mr. Nelson stated he spoke with a Board staff member on April 29, 2011 and he was told that not only could a cosmetologist shave, but that the Ohio State Barber Board had no jurisdiction over cosmetology. Mr. Nelson stated that he also spoke with the Ohio Barber Board director and was told that he (the Barber Board director) could only inform him about the training requirements for Barbers. Mr. Nelson discussed the rules process. Mr. Nelson stated that safety razor patent from 1889 states the safety razor would reduce the need for a barber. Mr. Nelson also stated that over 35 states permit shaving by cosmetologists and Ohio is one of the few that does not..

Agenda item #6: UNFINISHED BUSINESS

None.

Agenda item #7: OLD BUSINESS

Agenda item 7a: Eye lash Extensions

Mr. Logsdon introduced the item, stating the Board passed a policy statement approximately six months early that was due to expire. Mr. Logsdon stated that the staff is recommending an updated policy statement concerning eye lash extension enforcement.

Motion #8: Ms. Sheipline moved to approve the following policy statement:

The Ohio State Board of Cosmetology is now tasked with regulating the practice of eye lash extensions, which has been added to the scope of practice of esthetics. Statute now requires individuals providing eye lash extension services to be licensed as estheticians or cosmetologists, and requires that these services only be performed in facilities licensed by the Board. Having now provided persons impacted by these new requirements six months to become educated in the relevant laws and rules and come into compliance, the Board will now focus on the continued education of businesses and individuals engaged in eye lash extension services, and on issuing compliance warnings for first-time violators, and progressive sanctions, as warranted, for repeat violators.

Ms. Osterhage seconded the motion. Discussion: Ms. Osterhage inquired if there had been many calls concerning eyelash extensions after the passage of the bill. Ms. Pearson stated the office had received some calls during the fall months, but not too overwhelming. No further discussion. Roll call vote taken - motion carried: 6 – Yes.

Agenda item #8: NEW BUSINESS

Agenda item 8a: Chemical Peels – follow-up

Mr. Logsdon was asked to present the matter. Mr. Logsdon stated that the issue is for discussion only and as a follow-up to the testimony provided to the Board at its last meeting concerning a request to lower the minimum pH value of skin peel solutions under the current rule. Mr. Logsdon stated that the discussion is not an end-point on the issue, but rather it was a beginning. Mr. Logsdon stated that information summarized from the available texts demonstrated consistency with the Board's current rule. Discussion: Mr. Penzone asked if the text provided was consistent with the Board's current rules. Mr. Logsdon stated that the Board's current rule requires that that skin peel solution not be more than a 30 percent concentration and a pH value of no less than 3.0, which he stated is consistent with the text. Ms. Pearson affirmed, stating a pH value lower than 3.0 would go deeper into the layers of the epidermis and that the scope of esthetics would prevent going below the stratum corneum. Mr. Penzone how the Board would go about providing more flexibility. Ms. Pearson stated that the Board would need to look at the research. Ms. Pearson stated that she has asked Dr. Gupta to look into the matter and possibly other dermatologists. Ms. Yeager inquired if there were over-the-counter items that can be purchased and go below the 3.0. Ms. Pearson stated that she had not found any in research. Mr. Logsdon stated that the texts indicate the medium to deep peels are recommended to be done by a physician. Mr. Penzone inquired by whom. Mr. Logsdon stated the two leading texts for the industry, and then read from each. Mr. Logsdon noted that both texts recommended that chemical peels employing a pH value of less than 3.0 were not recommended for salon peels. Mr. Logsdon stated that the information being provided to the Board was not provided to suggest the Board does not have authority to do something different, but just to point out the current rule is consistent with the two leading textbooks for the industry. Mr. Penzone inquired if it was a rule. Mr. Logsdon affirmed. Mr. Penzone asked if the rule could be amended to be less than a pH of 3.0. Mr. Logsdon stated that the question is complex, because the Board must consider if doing so would conflict with other rule or law. Mr. Penzone asked if that would be the Ohio Medical Board. Mr. Logsdon stated that the Board would need to consider if performing medium or deep skin peels would be a medical practice. In addition, Mr. Logsdon indicated that legal review may have a perspective to consider. Mr. Logsdon affirmed more research was needed.

Ms. Sheipline stated that skin peels are a higher risk procedure and she would like to hear from Dr. Gupta. Mr. Logsdon stated that testimony provided to the Board at its prior meeting indicated that the Board's current rule that limits pH values to no less than 3.0 for chemical peels was based on an industry panel statement. Mr. Logsdon stated that he believes the texts are clear and consistent with rule.

Mr. Penzone inquired about violations of the rule. Mr. Logsdon stated that the presenter before the Board in February alluded to violations, but that it is not a common violation encountered, because the Board is not testing solutions.

Ms. Osterhage asked why the Board would have something in its rules that cannot be verified. Mr. Logsdon stated that testing is part of the discussion, but reminded members that the allegation is a new revelation.

Mr. Logsdon stated that the staff is continuing their research.

Ms. Yeager stated that the presenter, the prior month, stated that consumers could purchase and perform peels at home with a pH as low as .6. Mr. Logsdon stated that because it is available does not mean it is legal and not necessarily legal for licensees to perform. Mr. Logsdon stated that as an individual, he could put anything on his face, but as a licensee, it is different.

Agenda item 8b: Bob Gray – Follow up

Mr. Logsdon introduced the matter stating a background summary was provided to the Board concerning Mr. Gray's inquiry and request to the Board. Mr. Logsdon stated that he regrets to report that he does not believe the Board has the authority, particularly once a fine is filed with the Ohio Attorney General's office.

Motion #8: Mr. Penzone moved to not waive the fine in the matter of Aristocrat A BTY SLN and Tanning CTR, Case No. 2015-758. Ms. Sheipline seconded. Discussion: Ms. Osterhage encouraged Mr. Logsdon to speak with him about installment plans. Mr. Logsdon explained that the Ohio Attorney General's office would need to discuss payment options with him.

Mr. Penzone then withdrew his motion. Mr. Penzone stated that if the Board had the authority, he would think it would be waived, but since the Board does not have the authority, a motion is not needed.

Agenda item 8c: Temporary Event Salon Application

Ms. Osterhage addressed the issue. Ms. Osterhage stated that the temporary event salon application requires a notary stamp. The Ohio Revised Code, she stated, requires applicants to verify information, by oath, and the salon forms use the word "affirm" for the notary. Ms. Osterhage reviewed the reason the forms require a notary. Ms. Osterhage stated the staff have reviewed the issue and believes that a salon application could be amended to remove the notary requirement. Ms. Osterhage stated that she believe it is important, because obtaining a notary stamp can be a burden upon the person completing the form. Ms. Sheipline agreed, asking if the notary is truly necessary.

Mr. Yaniko state that he believes the forms are fine without the requirement and eventually all forms will become electronically filed. Mr. Logsdon clarified his position on the matter, but recommended that all salon forms be amended to remove the requirement.

Motion #8: Ms. Osterhage moved to approve removing the notary requirement on the Temporary Event Salon Application and other Salon Applications. Ms. Yeager seconded the motion. Discussion: None. Roll call vote taken - motion carried: 6 – Yes.

Agenda item 8d: Policy on Handling Salon Applications (Exhibit I)

Mr. Logsdon introduced the agenda item. Mr. Logsdon stated that item 8(d) was before the Board to establish a specific process for handling salon applications. Ms. Osterhage asked to address the issue. Ms. Osterhage stated that she is a

believer in removing barriers and helping people, whether individual or salons and assisting them with moving forward. Ms. Osterhage feels the Board should work diligently to make the process easier. Ms. Osterhage stated that she and other salon owners were very thankful that the Board decided years ago to remove the opening inspection as a condition of licensure. Ms. Osterhage reviewed the old process of obtaining a license. Ms. Osterhage reviewed the current process of obtaining a salon license and added that there was nothing on the application that keeps a business from opening that is not safe or compliant when an inspector visits. Ms. Osterhage stated that she understands that these [license] may not be a priority to anyone other than the person getting ready to open a business. Ms. Osterhage addressed the uncertain circumstances of opening a business: construction, inspections, etc. Ms. Osterhage stated that she appreciates what the staff is looking to do, she would like to have the process become electronic and permit payment by credit card, which would send a document back the same day. Ms. Osterhage stated that she appreciates the policy, but would like to see a system that turns things around very rapidly. Ms. Osterhage stated that she is not in favor of policy that is not sensitive to time lines. Mr. Taneff interjected suggesting exigent or special circumstances.

Mr. Hanks stated that the policy makes sense. Mr. Taneff agreed, stating he does not appreciate staff being pressured to pull an application, which appears as if favoritism is being offered. However, Mr. Taneff continued, that he does not like a policy that does not consider exceptions. Mr. Taneff suggested amending the policy statement to add exceptions for the Executive Director based on exigent or special circumstances. Ms. Osterhage indicated she would support such a change.

Ms. Osterhage stated she would support the motion if the agency also commits to removing barriers. Ms. Sheipline inquired if the new elicense system would address the issue. Ms. Osterhage urged staff to create a fillable, pdf form. Mr. Taneff agreed. Member discussed the motion and Mr. Taneff restated it.

Motion #9: Ms. Osterhage moved to approve the following policy statement:

Policy #2.23 Salon Application Processing

Policy: It shall be the policy of the Board to handle salon applications in the order received. The Executive Director shall have the authority to temporarily reassign work duties to aid salon application processing staff if there is a delay or backlog in the processing of salon applications based upon the normal processing time, unless exigent or special circumstances arise.

Mr. Penzone seconded the motion. Discussion: None. Roll call vote taken - motion carried: 6 – Yes.

Motion #10: Ms. Osterhage moved to have the staff implement a method of receiving applications for salon licenses and payment prior to the release of Elicense 3.0. Mr. Penzone seconded the motion. Discussion: Mr. Logsdon stated that he was not speaking against the motion and he thinks it is admirable; however, he believes the current technology being designed will eventually address the issue. Mr. Logsdon warned against investing time and effort into a process in advance of coming technology that will address the issue. Mr. Taneff inquired if the new system would address Ms. Osterhage's concerns. Mr. Logsdon stated that the new system is designed to reach a position of paperless applying. Last, Mr. Logsdon noted that electronic systems or not are still prone to the accuracy of the user, which will not be alleviated by the system. Ms. Osterhage inquired of the number of applications received. Ms. Pearson addressed the question. Mr. Penzone inquired if adding a deadline in the motion would help. Mr. Logsdon stated the deadline would be better, but noted that the Board would not control the system implementation schedule.

Ms. Osterhage withdrew the motion.

Mr. Logsdon stated that Ms. Pearson has been tasked with evaluating the salon processing activity and to look at ways to redo processing time.

Mr. Nelson asked to speak. Mr. Nelson suggested that the Board obtain and review the IT project plan and look into PDF smart forms with built in workflow.

Agenda item 8e: Rule Reconsideration (Exhibit J)

- Proposed rule 4713-1-07

Mr. Taneff inquired of who would be presenting the issue. Mr. Logsdon stated that the two rules are open for Board discussion, but since the rules are filed the decision would be to continue with the filing, withdraw the rule(s), or amend and refile the rule(s). Ms. Osterhage asked to address proposed amended rule 4713-1-07 concerning prohibited practices. Ms. Osterhage stated that she was concerned about the information Roosters representatives were provided in advance of opening their businesses. Ms. Osterhage indicated that she has a problem with prohibiting shaving with a safety razor, if persons were led to believe doing so was allowed. Mr. Taneff inquired if any person testifying memorialized in writing what was said by the former director and/or staff. Mr. Nelson stated there was an email that was responded to and other things that their counsel or lobbyist had in writing. Ms. Osterhage inquired about any evidence supporting the discussions that persons stated occurred. Ms. Osterhage added that she does not see why shaving could not be performed as it puts no person at risk. Ms. Osterhage stated that she too was interested in any documentation concerning prior information provided. Discussion then ensued concerning when the rule was last amended to prohibit shaving of the face. Ms. Osterhage repeated her request for documentation. Mr. Nelson replied that they would go back and research electronic correspondence, but it might take some time.

Mr. Penzone inquired if the rules were going to JCARR. Mr. Logsdon replied that the rule was scheduled for JCARR hearing on March 27, 2017. Mr. Taneff inquired what could be done to minimize inconvenience for these businesses. Mr. Logsdon stated that he had met with everyone in attendance and he had advised them that a statutory change would best fix the scope of practice. Mr. Taneff asked what else could be done. Mr. Logsdon stated that the language could be removed from the rule, but cautioned that it would not change that it [shaving] is not in any part of the definition for any of the practices. Mr. Taneff suggested removing the language. Mr. Logsdon stated that it was up to the Board to decide. Ms. Sheipline inquired about the definition of hair removal. Mr. Logsdon stated that the statute is very clear and that the definition of hair removal is "definite," meaning the statute contains no language like, "includes, but is not limited to:" Mr. Taneff inquired about removing the words, "facial shaving." Mr. Taneff asked if removing those words would mean the Board has no authority and enforcement would be up to somebody else. Mr. Yaniko stated that the rules under Chapter 8 of 4713 of the Administrative Code concerning safe and effective practice for each license includes a provision that the scope of practice for each of these licenses is limited to the defined scope for each under Section 4713.01 of the Revised Code. Mr. Yaniko stated that shaving does not appear in any of the defined scopes. Inquiry about the definition of "hair removal" was repeated and Mr. Logsdon affirmed that the definition is not open ended, but very definite. Ms. Pearson stated that shaving has never been part of the cosmetology curriculum. Ms. Pearson stated that the practice appears in the available textbooks, because the textbooks are used nationally. Ms. Sheipline sought additional explanation. Ms. Pearson stated that there are a number of practices listed in textbooks, but would not be part of Ohio's curriculum.

Motion #11: Ms. Osterhage moved to refile proposed rule 4713-1-07 as amended with the removal of paragraph (F)(5). Ms. Sheipline seconded the motion. Discussion: Mr. Penzone inquired about reflexology, which is also prohibited in the rule. Ms. Yeager stated that she did not understand why reflexology is in the rule. Mr. Penzone inquired why reflexology is prohibited. Ms. Pearson stated that reflexology is regulated by the Medical Board. Mr. Penzone stated that massage therapists can perform the service. Ms. Pearson noted that massage therapist are regulated through the Ohio State Medical Board. Mr. Hanks noted that reflexology is the same as shaving, because it is regulated by another board. Mr. Hanks suggested that the issue be addressed legislatively first. Mr. Penzone stated that a licensed massage therapist could offer reflexology in a salon. Ms. Pearson affirmed. Mr. Penzone continued by stating that a licensed Barber can give a shave. Ms. Osterhage added that it is only with a straight razor. Mr. Yaniko corrected by stating the Ohio Barber law only states "shaving the face." Mr. Taneff called the question. Roll call vote taken - motion carried: 5 – Yes, 1 – No (Hanks).

- Proposed rule 4713-5-09

Next, Mr. Logsdon provided a review of proposed rule 4713-5-09. Ms. Osterhage inquired about the difference between the old and the new rule. Mr. Yaniko addressed the matter stating the old rule requires someone seeking enrollment in an educational program or for someone to become licensed to provide proof of legal residency and/or authority to earn income. Mr. Yaniko stated that immigration law calls an ability to earn income an “employment authorization document.” Such a document is available to a large number of people, some are legal and some are not. Federal law, he stated, which is referenced in the proposed new rule 4713-5-09, asserts that states and local municipalities cannot issue public benefits to individuals unless they fall into a specific class. A professional license, Mr. Yaniko noted, is one of the things that cannot be provided to a person unless they are in a status that can earn income. Mr. Yaniko stated the current rule is simply tying the Board’s requirement to the federal law, which must be complied with to determine who cannot be licensed. Ms. Osterhage inquired what difference the language makes for someone wanting to go to school. Mr. Yaniko stated that the phrase, “in order to enroll” has been struck from the original rule. Mr. Yaniko stated that he had concerns the original provisions conflict with the U.S. Supreme Court’s decision that states a child’s immigration status is subject to equal protection under the 14th amendment as far as receiving a public education. Mr. Yaniko stated that he does not believe it should be the Board’s place to speak to whether a person can or cannot enroll. The rule he stated would require schools to advise students that they would need to be in a lawful status in order to be licensed. Ms. Osterhage summarized Mr. Yaniko’s comments. Ms. Shepline inquired if career tech programs would be part of the free and appropriate public education, meaning a person would be entitled to career tech training as part of their education, even though licensure might be off limits. Mr. Yaniko responded that her understanding was correct, stating that it was his opinion that if the Board tells a public school student that they can’t enroll in a program that others can enroll in, that someone could claim the Board is discriminating on the basis of ethnicity or national status and in violation of the Supreme Court’s decision. Mr. Yaniko recommended that the Board step back from and inform students as to the requirement to be in a lawful status in order to receive a license.

Mr. Logsdon added that the Board’s responsibility concerning proof of residency exists under its authority to issue a license. Mr. Logsdon stated that Chapter 4713 does not address the Board’s authority concerning enrollment qualifications.

No action taken.

Agenda item 8f: Hearing Officer Report and Recommendation

None.

Agenda item 8g: Correction to Previously Approved Orders of the Board

None.

Agenda item 8h: Board Orders to Enforce Notices of Opportunity for Hearing (Items #1 - #14) – (Exhibit K collective)

Motion #12: Ms. Osterhage moved to approve Orders of the Board as listed on “COS – Issue Report NOV Business + Credential” dated 03/06/2016 to 03/06/2017 as items #1 through item #14 and the Orders to be journalized and attached hereto as an exhibit. Ms. Shepline seconded the motion. Discussion: None. Roll call vote taken - Motion carried: 6 - Yes

The Orders of the Board shall become effective upon the date of mailing of the Orders.

SO ORDERED

The language contained therein will be incorporated by reference into the Board's journal in this case and attached as an exhibit to the minutes.

Agenda item 8j: Board Orders to Approve Settlement Agreements (Items #15- #31)
(Exhibit L collective)

Motion #13: Ms. Osterhage moved to approve the Consent Agreements as listed on "COS – Issue Report NOV Business + Credential" dated 03/06/2016 to 03/06/2017 as items #15 through item #31 and the entered upon the Board's journal as an Order of the Board and attached hereto as an exhibit. Mr. Penzone seconded the motion. Discussion: None. Roll call vote taken - Motion carried: 6 - Yes.

The Orders of the Board shall become effective upon the date of mailing of the Order.

SO ORDERED

The language contained therein will be incorporated by reference into the Board's journal in this case and attached as an exhibit to the minutes.

Agenda item #9 EXECUTIVE SESSION

None.

Agenda item #10 ADJOURNMENT

Motion #14: Ms. Osterhage moved to adjourn. Ms. Yeager seconded the motion. Discussion: None. Roll call vote taken. Motion carried: 6- Yes.

The meeting adjourned at 3:30 p.m.

Executive Director's Certification: These are a true account of the proceedings in accordance with Section 121.11 of the Ohio Revised Code, approved by a majority of a quorum of the membership of the Board on April 11, 2017.



Christopher H. Logsdon, Executive Director



Witness