

1 BEFORE THE OHIO STATE BOARD OF COSMETOLOGY

2 - - -

3 IN THE MATTER OF:

4 BOARD MEETING

5 - - -

6 TRANSCRIPT OF PROCEEDINGS

7 - - -

8 STEVEN THOMPSON,  
Chairman, Presiding

9 - - -

10 Tuesday, September 9, 2014  
11 1:02 o'clock p.m.  
12 Ohio State Board of  
13 Cosmetology  
14 1929 Gateway Circle  
15 Grove City, Ohio 43123

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17 JILLIAN VOGEL,  
18 Professional Court Reporter

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9 On behalf of The Ohio State Board of  
10 Cosmetology.

11 BOARD MEMBERS PRESENT:

12 Lori Pearson, Executive Director  
13 Steve Thompson, Chairman  
14 Thomas Taneff  
15 Valerie Benfer  
16 Luke Hanks  
17 Tasha Sheipline  
18 Charles Penzone  
19 Clara Osterhage  
20 Dr. Gupta

21 ALSO PRESENT:

22 Lori Flanery, Administrative Assistant  
23 April Pemberton  
24 Gary Leitner  
25 Carmen Leitner

1 TUESDAY AFTERNOON SESSION  
2 September 9, 2014  
3 1:02 o'clock p.m.

4 - - -

5 P R O C E E D I N G S

6 - - -

7 BE IT REMEMBERED THAT, on the 9th day of September, 2014,  
8 this cause came on for hearing before Chairman Steven Thompson.  
9 And, the parties appearing in person and/or by counsel, as  
10 hereinafter set forth, the following proceedings were had:

11 - - -

12 CHAIRMAN THOMPSON: Good afternoon. I would like to call  
13 the September 2014 Ohio State Board of Cosmetology meeting to  
14 order.

15 Roll call, please.

16 MS. FLANERY: Dr. Gupta?

17 Mr. Hanks?

18 MR. HANKS: Here.

19 MS. FLANERY: Mr. Taneff?

20 MR. TANEFF: Here.

21 MS. FLANERY: Mr. Penzone?

22 MR. PENZONE: Here.

23 MS. FLANERY: Ms. Benfer?

24 MS. BENFER: Here.

25 MS. FLANERY: Ms. Osterhage?

MS. OSTERHAGE: Here.

1 MS. FLANERY: Ms. Sheipline?

2 MS. SHEIPLINE: Here.

3 MS. FLANERY: Mr. Thompson?

4 CHAIRMAN THOMPSON: Here.

5 I ask all board members and guests to stand as we recite the  
6 Pledge of Allegiance to the United States of America.

7 (Pledge of Allegiance recited.)

8 CHAIRMAN THOMPSON: At this time I would ask all board  
9 members if they've had a chance to review the August board  
10 minutes; and if so, do we have a motion for adoption?

11 MS. OSTERHAGE: Motion for adoption.

12 MR. TANEFF: Second.

13 CHAIRMAN THOMPSON: First by Board Member Osterhage. Second  
14 by Board Member Taneff.

15 Roll call, please.

16 MS. FLANERY: Mr. Hanks?

17 MR. HANKS: Yes.

18 MS. FLANERY: Mr. Taneff?

19 MR. TANEFF: Yes.

20 MS. FLANERY: Mr. Penzone?

21 MR. PENZONE: Yes.

22 MS. FLANERY: Ms. Benfer?

23 MS. BENFER: Yes.

24 MS. FLANERY: Ms. Osterhage?

25 MS. OSTERHAGE: Yes.

1 MS. FLANERY: Ms. Sheipline?

2 MS. SHEIPLINE: Yes.

3 MS. FLANERY: Mr. Thompson?

4 CHAIRMAN THOMPSON: Yes.

5 This is the part of our meeting that's open for public  
6 testimony. Anybody in the audience has the opportunity to  
7 address the board for two minutes.

8 Let me see if we have anybody -- I know we have a couple  
9 people that's on the agenda. Would anybody like to address the  
10 Board?

11 Okay. Seeing none, we'll move on.

12 MR. TANEFF: This lady has her hand up.

13 CHAIRMAN THOMPSON: Oh, I'm sorry. Come on up. Come on up.

14 MS. PEMBERTON: I have never done this. I'm like really  
15 nervous. I just --

16 CHAIRMAN THOMPSON: Will you state your name.

17 MS. PEMBERTON: Yeah, April Pemberton.

18 CHAIRMAN THOMPSON: April, we have you as a new business  
19 agenda item today.

20 MS. PEMBERTON: Okay. I just wanted to get a second  
21 duplicate of my license.

22 CHAIRMAN THOMPSON: We're going to let you come up. We have  
23 your own moment for you today.

24 MS. PEMBERTON: Okay. I didn't know how this worked. I'm  
25 sorry.

1 CHAIRMAN THOMPSON: I mean, you are right on the list here.

2 MS. PEMBERTON: Okay. Great. Sorry.

3 CHAIRMAN THOMPSON: April, we'll get to you before you know  
4 it.

5 MS. PEMBERTON: Okay.

6 CHAIRMAN THOMPSON: Don't go anywhere.

7 MS. PEMBERTON: Okay.

8 CHAIRMAN THOMPSON: Would anybody else like to address the  
9 Board?

10 MR. TANEFF: The gentleman --

11 CHAIRMAN THOMPSON: I'm sorry, sir. Come right on up.

12 MR. LEITNER: I'm suppose to meet with the Board for Carmen  
13 Leitner, my wife.

14 CHAIRMAN THOMPSON: I'm sorry?

15 MR. LEITNER: For Carmen Leitner.

16 CHAIRMAN THOMPSON: She's on the agenda.

17 MR. TANEFF: Yeah, she's under new business.

18 MR. LEITNER: We'll just wait till then. Thank you.

19 CHAIRMAN THOMPSON: Yeah, it'll be quickly.

20 Anybody else? Okay.

21 Any committee reports? Nope.

22 Board Member Sheipline, when is the next -- for the  
23 manager's --

24 MS. SHEIPLINE: It is the day of the October meeting at  
25 10:00. I'm not sure of that exact date offhand.

1 MR. HANKS: The 14th.

2 MS. SHEIPLINE: Yes, the 14th.

3 CHAIRMAN THOMPSON: And that's for the manager's?

4 MS. SHEIPLINE: Yeah, that's to go over the manager's  
5 license.

6 CHAIRMAN THOMPSON: Okay. Any other committees?

7 Any legislative updates?

8 Okay. We'll move right into unfinished business. And the  
9 first item is 4713-13-02, Independent Contractor's Agreement  
10 language.

11 Lori, do you want to fill us in on this?

12 MS. PEARSON: Chairman Thompson, members of the Board, the  
13 requirements for the Independent Contractor Agreement was  
14 discussed at the last two meetings. The discussion surrounded  
15 the removal of the independent contractor as an agreement -- as a  
16 requirement or to keep the requirement of the agreement and to  
17 modify the requirements within that agreement. After discussion  
18 with members and some advisement on the fact that the agreement  
19 would need a lot of work to make sure that we were in compliance  
20 across the board, the recommendation would be to remove the  
21 Independent Contractor Agreement from 4713-13-02.

22 CHAIRMAN THOMPSON: Do we have a motion for adoption?

23 MS. OSTERHAGE: I move that we adopt 4713-13-02 as  
24 presented.

25 MR. TANEFF: Second.

1 CHAIRMAN THOMPSON: We have a first and a second. Any  
2 discussion?

3 MR. PENZONE: Yeah, I'd like to discuss a couple of things.  
4 I mean, I'm -- I agree that everything in red that has been  
5 stricken be stricken; however, if we can start at the top, (A)2,  
6 where it says: The license held by an independent contractor  
7 will be a different color from other salon licenses. And I can't  
8 understand why we would want to do that unless, of course, the  
9 manicurist has a different color license, the stylist license has  
10 a different color. I mean, why do we want to discriminate? Why  
11 do we want to take a group to the side and say, okay, you're  
12 going to have a different color.

13 And what's the purpose? We've stricken everything that  
14 would -- I don't think it's needed, number one; and secondly, I  
15 think it discriminates against the independent contractor to say  
16 this group has to have a specific color. And I just think that  
17 we should strike that along with the other red line stuff.

18 MS. PEARSON: Chairman Thompson, Member Penzone, all  
19 licenses have a different color. Every license type -- a  
20 cosmetology license, manicuring license, esthetics license, salon  
21 license -- each have a designated color for purposes of  
22 separation of a type of licensure, inspection purposes; and the  
23 independent contractor license is no different than any of the  
24 other licenses with its own color coding.

25 The fact that it indicates that in this rule is something

1 that -- it's been in rule, so it's something that we didn't, you  
2 know, target to change. We were focusing on the independent  
3 contractor agreement.

4 MR. PENZONE: So it was there to begin with?

5 CHAIRMAN THOMPSON: It was there to start with.

6 MS. PEARSON: It was there to start with, yes.

7 MR. PENZONE: Oh, okay.

8 Then on page 2 --

9 MS. OSTERHAGE: Hang on one second, Mr. Penzone.

10 Ms. Pearson, do all of the rules, then, about the other  
11 licenses also have that statement that that license is a  
12 different color? I'm just -- I'm thinking consistency purposes.

13 MS. PEARSON: Chairman Thompson, Member Osterhage, I would  
14 have to look at that specifically. I don't want to give you  
15 wrong information, although that is the practice and that is what  
16 happens.

17 MS. OSTERHAGE: Right.

18 MS. PEARSON: I will need to double-check to make sure that  
19 that's the language.

20 MS. OSTERHAGE: Okay. Thank you.

21 MR. PENZONE: We're in discussion still on this particular  
22 issue, right?

23 CHAIRMAN THOMPSON: Yep.

24 MR. PENZONE: On page 2, (B)(2), where it says: Independent  
25 contractor license must be posted at all times with the

1 independent contractor's cosmetology or branch of cosmetology  
2 license in the salon where the independent contractor is working,  
3 then the next sentence says: If the independent contractor  
4 practices a branch of cosmetology at more than one salon, the  
5 individual shall carry the license to each work station and shall  
6 post the license at the station while working, I would like to  
7 add after working, quote: or have a duplicate license for each  
8 location, paid for by the Board and provided by the Board.

9 Why can't we provide a duplicate license for someone who has  
10 that particular situation. So they don't have to -- I mean, I  
11 just think it makes it easier for them to have a license  
12 permanently wherever they're -- you know, if they're working  
13 three days here and two days there, they've got them. Why can't  
14 we provide a second duplicate license?

15 MS. PEARSON: Chairman Thompson, Member Penzone, it has been  
16 policy of the Board that each individual or each salon is issued  
17 one license. If they lose that license, you know, they have to  
18 come in person to get a duplicate license with identification.  
19 And that policy was put into effect back in 2008 under Kevin  
20 Miller because we had a lot of fraud cases along with the selling  
21 of the hours, selling licenses, passing licenses around. So it  
22 was to cut down on the amount of licenses that would possibly be  
23 out in the field, maybe not designated to that specific person.

24 MR. PENZONE: Well, how long ago would that have been do you  
25 think?

1 MS. PEARSON: That was in 2008 when that policy --

2 MR. PENZONE: So six years ago. In that period of time, the  
3 independent contractors have probably tripled -- at least  
4 tripled. I'm just saying it would be easier, I think, for them.  
5 And I mean, I don't know where we go from here. I'm throwing out  
6 some things I'd like to see. I don't know whether we -- what  
7 effect it has on the motion right now.

8 MR. HANKS: I think we should separate it from this motion.  
9 I think it is an issue. I don't know if there's anything  
10 statutorily that would prevent us from doing it at this point. I  
11 think there is.

12 MS. PEARSON: We need to check that information.

13 MR. HANKS: So that would be an issue, but it's across the  
14 board. I mean, we have instructors that move from school to  
15 school that scream for this.

16 MR. PENZONE: They have to take theirs, too?

17 MR. HANKS: Absolutely.

18 MR. PENZONE: Well, I think we would do it for them as well.  
19 I just think it makes it easier.

20 And the last thing I have -- believe it or not, it is the  
21 last thing -- on the last page, on No. 3, it says: Where the  
22 salon has individual locked work areas or salons, each  
23 independent contractor having the authority to use the individual  
24 work area or salon shall be available or shall have an authorized  
25 representative be available to open the locked work area or salon

1 within an hour of the arrival for a board -- arrival of a board  
2 inspector or investigator for an inspection or investigation.  
3 There's no way this is shown anywhere else for a chain salon or  
4 for an independent salon, and I don't know why we're doing this  
5 for this particular group.

6 MS. PEARSON: Chairman Thompson, Member Penzone, this  
7 particular rule was put into place due to -- you know, tanning  
8 salons and individual salons most of the time will have hours  
9 posted. Inspectors go and do an inspection, they go to some of  
10 these types of situations and everybody -- you know, there's 15  
11 people working but everybody creates their own hours. Some don't  
12 come in till 7:00 at night and some come in at 7:00 in the  
13 morning till 9:00 or different situations.

14 We had some complaints and information brought to us that it  
15 was an unfair situation where salons were being inspected on a  
16 regular basis, but an independent contractor could go for years  
17 and never be inspected due to the fact that they're not there  
18 during regular working hours to be able to receive an inspection.  
19 This rule was put into place during the 2012 packet of changes  
20 and voted on and was one of those that went into effect in  
21 February.

22 MR. PENZONE: So what -- I mean, has this been here for a  
23 long time, this particular rule?

24 MS. PEARSON: This particular rule goes back to February --  
25 went into effect February of 2014.

1 MR. PENZONE: I think it's unfair. I'm not having to abide  
2 by this particular deal. Neither is Clara's or Ms. Osterhage's  
3 chain of salons.

4 And, Valerie, you don't have this particular deal.

5 I just think it's unfair. I think it's just setting them  
6 apart and discriminating, actually.

7 MR. TANEFF: Does the Board want to modify the motion,  
8 withdraw the motion or amend it?

9 MS. OSTERHAGE: Mr. Chairman, Mr. Penzone, I guess I -- the  
10 explanation that Ms. Pearson just gave, I think, is the validity.  
11 You know, it's an inconvenience; but I think the validity of  
12 causing them to be inspected on a regular basis like the rest of  
13 the salons -- and that's what this does. This opens their door.

14 When an inspector visits a brick and mortar salon, they  
15 can't -- they're there to visit the salon and everyone there  
16 should be reviewed. If the door is locked, they can't; and in  
17 essence, what Ms. Pearson said is very true. It could be years  
18 between inspections for someone like that. And if our mission is  
19 to protect the public, that would be one way, certainly, that we  
20 would be able to do that, is ensure that every salon is being  
21 inspected at some time including a private booth where the door  
22 may be locked.

23 MR. PENZONE: Well, are your locations open seven days a  
24 week?

25 MS. OSTERHAGE: Yes.

1 MR. PENZONE: I have three that are open seven days a week,  
2 three that are open five days a week, okay. If an inspector  
3 happens to come to one of my locations on a day we're closed for  
4 business, then that's just the way it happened. I think -- you  
5 know, I'm not being called and given an hour to get there to be  
6 inspected when we're closed; and I think it's unfair to have this  
7 in it.

8 MS. OSTERHAGE: But the inspectors understand your -- when  
9 you're open for business, and as Ms. Pearson said, those hours  
10 are posted. The difference here is that in a salon where there  
11 are independent contractors, they have their own hours; and so  
12 even though the brick and mortar -- the front door may be  
13 unlocked and accessible to an inspector, there could be two or  
14 three doors within that salon that are not open for inspection;  
15 and that's where the difference is. I don't -- I don't think --  
16 Chairman -- our Chairman represents the independent contractors,  
17 and I would think that if there was an issue with that, that he  
18 would certainly bring that to our attention.

19 MR. TANEFF: May I ask a question?

20 CHAIRMAN THOMPSON: Board Member Taneff.

21 MR. TANEFF: Ms. Pearson, how long has section (3) been in  
22 place?

23 MS. PEARSON: Since February 2014.

24 MR. TANEFF: Okay. Prior to this, were these independent  
25 contractors using the, oh well, my independent person is not

1 here; sorry, you can't get in, excuse on a regular basis with  
2 your inspectors?

3 MS. PEARSON: Chairman Thompson, Member Taneff, yes. There  
4 were quite a few times when an inspector would go to inspect  
5 certain types of facilities with independent contracting and the  
6 independent contractor would not be available. So they do not  
7 perform an inspection if somebody is not available.

8 MR. TANEFF: Did it happen on more than one occasion, with  
9 respect to the same facility?

10 MS. PEARSON: This would be -- if I could refer to Meg  
11 Lamantia, Supervisor of Inspections.

12 MS. LAMANTIA: Yes, it would occur often, if you look at a  
13 situation like a Lofts, where you go in and there might be 30 or  
14 40 individual rooms that are all individually locked. Depending  
15 on the day of the week or the time of the day, we might only be  
16 able to get into two or three or four; and those are becoming  
17 increasingly popular.

18 MR. TANEFF: Did any of your inspectors get the impression  
19 that it was deliberate?

20 MS. LAMANTIA: Possibly. We probably wouldn't know that --  
21 that they're intentionally locking and leaving to hide from us.  
22 I'm sure it happens. But the biggest majority of it is that  
23 they're becoming so popular and there are so many of them that  
24 lots -- several independent contractors are not getting  
25 inspected.

1 MR. TANEFF: Okay.

2 MS. OSTERHAGE: Mr. Chairman, if I may add onto that?

3 Ms. Lamantia, have there been -- since February of 2014,  
4 have there been issues with people being able to open those doors  
5 for inspection?

6 MS. LAMANTIA: We've kind of tip-toed on that regulation  
7 thus far because of the reorganization of this rule. We haven't  
8 totally started implementing that process yet, because that also  
9 goes hand in hand with the independent contractor contract that  
10 we've had under discussion the last several months.

11 MS. OSTERHAGE: And you would report back to this Board if,  
12 in fact, that became a problem?

13 MS. LAMANTIA: Excuse me?

14 MS. OSTERHAGE: Once you begin enforcing and asking people  
15 to open areas, if there were an issue, you would bring that  
16 back --

17 MS. LAMANTIA: Yes.

18 MS. OSTERHAGE: You would bring that to --

19 MS. LAMANTIA: Most definitely.

20 MS. OSTERHAGE: I think it's incumbent upon this Board to  
21 make sure that all areas of all salons are inspected. I think  
22 that's our job. So I would ask that the motion --

23 CHAIRMAN THOMPSON: We have a first and a second. Any other  
24 discussion?

25 Roll call, please.

1 MS. FLANERY: Dr. Gupta?

2 DR. GUPTA: Yes.

3 MS. FLANERY: Mr. Hanks?

4 MR. HANKS: Yes.

5 MS. FLANERY: Mr. Taneff?

6 MR. TANEFF: Yes.

7 MS. FLANERY: Mr. Penzone?

8 MR. PENZONE: I'll abstain.

9 MS. FLANERY: Ms. Benfer?

10 MS. BENFER: Yes.

11 MS. FLANERY: Ms. Osterhage?

12 MS. OSTERHAGE: Yes.

13 MS. FLANERY: Ms. Sheipline?

14 MS. SHEIPLINE: Yes.

15 MS. FLANERY: Mr. Thompson?

16 CHAIRMAN THOMPSON: Yes.

17 Next item under unfinished business is 4713-5-20, and I will  
18 refer to Board Member Hanks and Director Pearson.

19 I'll let you guys pick. Ms. Pearson?

20 MS. PEARSON: Chairman Thompson, members of the Board,  
21 4713-5-20, Duties of Instructors is a rule that has been on the  
22 board agenda for the last couple months as well.

23 This is a new rule that had been put into place during the  
24 rule overhaul that took place starting in 2012 and came into  
25 effect in 2014. And this rule placed a requirement on an

1 instructor if they're only instructing in a school of cosmetology  
2 or if they would still need to keep their managing license in a  
3 good standing status. The discussion surrounding this rule  
4 started with what would good standing mean. It's not a term we  
5 use throughout our code. And there is some possible conflict  
6 with our statute with the reading of the manager's license  
7 needing to be current and active during the initial application.

8 So the recommendation would be to remove (A) from this rule  
9 and continue with how the Board has done this in the past: Where  
10 an instructor is just teaching in a school of cosmetology, as  
11 long as their instructor license is in a current and active  
12 status, then that would be fine.

13 MS. OSTERHAGE: Mr. Chairman, I'd like to make a motion that  
14 we accept 4713-5-20, Duty of Instructor as presented.

15 CHAIRMAN THOMPSON: Do we have a second?

16 MR. PENZONE: Second.

17 CHAIRMAN THOMPSON: Second by Mr. Penzone. Any discussion?

18 MS. OSTERHAGE: Just one note that I'd like to make,  
19 Mr. Chairman. I do think -- and I spoke with Ms. Pearson about  
20 this. I do think that it is incumbent upon this Board to look at  
21 the -- the fact that these are people who are supervising  
22 students. I think that the Board needs to review whether or not  
23 a manager's license would be required to do so, because, again,  
24 if our -- the law as it reads today talks about necessity of a  
25 manager's license and having to do with people who require

1 supervision at that level. And I think that if there are  
2 individuals who are supervising students in an academic setting,  
3 that the Board needs to revisit that at some point in the future.

4 CHAIRMAN THOMPSON: Any other discussion?

5 Roll call, please.

6 MS. FLANERY: Dr. Gupta?

7 DR. GUPTA: Yes.

8 MS. FLANERY: Mr. Hanks?

9 MR. HANKS: Yes.

10 MS. FLANERY: Mr. Taneff?

11 MR. TANEFF: Yes.

12 MS. FLANERY: Mr. Penzone?

13 MR. PENZONE: Yes.

14 MS. FLANERY: Ms. Benfer?

15 MS. BENFER: Yes.

16 MS. FLANERY: Ms. Osterhage?

17 MS. OSTERHAGE: Yes.

18 MS. FLANERY: Ms. Sheipline?

19 MS. SHEIPLINE: Yes.

20 MS. FLANERY: Mr. Thompson?

21 CHAIRMAN THOMPSON: Yes.

22 We're moving into new business here, and I just want to --  
23 we're going to change the agenda here just a bit. There's three  
24 bullet points. Four, five and six are all executive sessions.  
25 We're going to push those three all the way to the bottom of the

1 meeting, even beyond the Hearing Officer's Report, right?

2 Anyways, we're pushing those to the end here. So we're going to  
3 jump around here a bit.

4 First item of new business is Carmen Leitner. Come on up,  
5 please.

6 CHAIRMAN THOMPSON: Would you state your name.

7 MR. LEITNER: Gary Leitner.

8 CHAIRMAN THOMPSON: And you're speaking on behalf of Carmen?

9 MR. LEITNER: Yes, my wife.

10 MR. TANEFF: And we're assuming that's Carmen Leitner with  
11 you?

12 MR. LEITNER: Yes, this is my wife.

13 CHAIRMAN THOMPSON: Gary, I think I -- we've dealt with  
14 these before, and we're willing to listen to you here; but what  
15 you're asking for, no matter what happens here today, we don't  
16 have the power to do it. It would take a legislative change, but  
17 we're willing to listen to you today on this.

18 MR. LEITNER: Well, I suppose the reason that we're coming  
19 is my wife has practiced her trade in the Dominican Republic  
20 throughout the past 20 years, and what we're trying to do is find  
21 out from you, as professionals and as a board with the State of  
22 Ohio, how do we go about doing this properly?

23 We went through a residency process from another country to  
24 get here; and we had to follow all the rules frigidly to make  
25 sure that we're doing things correctly, and we don't look back on

1 that process as something that was overly laborious.

2 This is the Board here, and what you say is our law. We  
3 want to follow that, but we need you to tell us what to do so she  
4 can practice her craft.

5 MR. TANEFF: Actually, we don't say what the law is. The  
6 law is what it is and we have to follow the law.

7 MR. LEITNER: Okay. I'm sorry. Is there some instruction  
8 that we can get or some -- because when we were in Toledo, the  
9 salon there where she interviewed said, speak with the Board.  
10 They didn't necessarily mean physically to come here, but we  
11 thought that would be the best and most clear path to take and  
12 then find out what we needed. Were there books, were there  
13 instructions that we can have a translator work with her or does  
14 she need to know the language to test that? I mean, that could  
15 be years.

16 CHAIRMAN THOMPSON: Well, if I could give you any advice  
17 here -- it would take a legislative change. There's three pieces  
18 of legislation out there right now, and you could, you know, work  
19 with one of the legislators sponsoring one of those bills. And  
20 that would probably be the direction that -- if I could give you  
21 any advice here, Gary, would be to work with one of the  
22 legislators on that and try to introduce the proper language that  
23 you're looking for in one of those bills.

24 MS. OSTERHAGE: Mr. Leitner, what is Mrs. Leitner's trade?  
25 Are you a hair stylist?

1 MR. LEITNER: She's an esthetician --

2 MS. OSTERHAGE: Esthetician --

3 MR. LEITNER: -- and massage.

4 MS. OSTERHAGE: And you practiced that in the Dominican  
5 Republic?

6 MR. LEITNER: Absolutely. She has all her references here.  
7 She was 16 years in the capital city with the same salon where  
8 she was one trade and one place that she worked for the past 16  
9 years, until she moved up here.

10 MR. TANEFF: Mr. Leitner, if I could ask, if for example,  
11 someone would have a valid driver's license in D.R. or a license  
12 to practice medicine in D.R. or a license to practice law in D.R.  
13 and they come here, should all of these different industries then  
14 give reciprocity and recognize these licenses because --

15 MR. LEITNER: Oh, no. No, I don't think that would be  
16 right. What I'm asking is for a way for -- my wife knows her  
17 trade and my -- my position is that we just want her to be able  
18 to test. She can handle the test. That's not the problem. The  
19 problem is the language, and until you're emersed in our  
20 culture -- it took me two or three years living in the Dominican  
21 to be able to speak fluent Spanish, and I'm still not totally  
22 fluent; but when I go there, I'm not lost.

23 Here we go through an entire cultural change and the thing  
24 that is -- the foundational thing for my wife is to work. She's  
25 a worker. That's what she loves to do. She loves her craft. So

1 we just have to find a way that we can sit through her boards and  
2 be successful, which she already has work in Toledo with one of  
3 the major salons there.

4 MR. TANEFF: Do we offer a Spanish version of the written or  
5 oral questions or --

6 MS. PEARSON: Chairman Thompson, Member Taneff, no, we do  
7 not. We offer English only on our examinations.

8 MR. PENZONE: What would it take to have something like  
9 that? Would that take a legislative change?

10 MS. PEARSON: It would.

11 MR. PENZONE: But there is no provision whatsoever for  
12 interpreter or anything?

13 MS. PEARSON: No. Actually, Member Penzone, we have rules  
14 against interpreters as far as language. We do -- for hearing  
15 impaired, we do offer interpreting services; but for language, we  
16 do not, because, you know, part of the thought process is if it's  
17 offered in one language, you know, we would have to offer it  
18 in -- there's many, many, many people that come to our Board  
19 wanting to test in several different languages, so --

20 MS. OSTERHAGE: Ms. Pearson, do other boards or other  
21 licensing bodies offer multi-language examinations? Do we know  
22 that?

23 MS. PEARSON: Member Osterhage, I would not have the exact  
24 stats on that, but I do believe that states like California --  
25 they offer a different language. I don't know what language

1 exactly, and as far as -- I'm sorry. California is actually a --  
2 not offering it --

3 MS. OSTERHAGE: Not offering it?

4 MS. PEARSON: -- in certain languages, you know, offering it  
5 in one language, not another.

6 MS. OSTERHAGE: In the world that we live in, with all of  
7 the people who come to America that are not immediately -- I  
8 mean, obviously, it's a struggle enough coming; but they're here  
9 and I think it would probably, again, be something that we need  
10 to look into.

11 If it's not going to change -- Ohio doesn't have the high  
12 level of immigrants that Texas, California -- I mean, there's a  
13 lot of states that have -- Florida -- that have a lot of that;  
14 but I think in a -- with a governor who believes in the common  
15 sense part of all of this, we probably should be looking to make  
16 things a little bit easier for people to get jobs -- to work.

17 So it would be my suggestion that, maybe, Mr. Chairman, that  
18 Ms. Pearson do a little bit of research and try to find out what  
19 it would take to do this. I don't think it's asking too much.

20 MS. PEARSON: Chairman Thompson, Member Penzone -- or Member  
21 Osterhage, the practice of hair -- you have to keep in mind as  
22 well that we offer our own examination. Our examination was  
23 brought in house a couple years ago. So all of our test  
24 questions are recorded in house, and so that would also be  
25 another aspect to consider. We would have to take that out if we

1 were offering other languages to be recorded.

2 MR. PENZONE: Ms. Pearson, when you brought it in house, did  
3 it take a legislative change for the new test?

4 MS. PEARSON: Member Penzone, no, because we have -- within  
5 our code, we have the ability to go to an out-source type of  
6 testing agency or to bring our test in house.

7 MR. PENZONE: So code says that absolutely, positively  
8 impossible to provide a test in different languages and also for  
9 interpreters?

10 MS. PEARSON: It does. 4713-7-05 that you have a copy of is  
11 the -- is the rule on the language requirement.

12 MS. OSTERHAGE: It's a rule, not a law.

13 MS. PEARSON: 4713-7-05 is a rule and it amplifies 4713.20.

14 MS. OSTERHAGE: But we don't have 4713.20. It just seems to  
15 me if it's in law, then I think it -- again, the Board should  
16 look at that to see whether or not it would make sense to pursue.  
17 If we're -- we will continue to have immigrants. We will  
18 continue to have people come before the Board asking this  
19 question. It seems to be pretty antiquated to not get our heads  
20 out of the sand and understand it's sort of where the world is  
21 heading. There would be a cost involved, I'm sure; but it  
22 certainly makes good sense that we try to help people work  
23 instead of get in their way.

24 MR. PENZONE: You know, the Chairman mentioned that there  
25 are three pieces of -- did you say there are three pieces of

1 legislation pending right now or is it two?

2 CHAIRMAN THOMPSON: Three.

3 MR. PENZONE: I thought there were two.

4 CHAIRMAN THOMPSON: There's two in the House -- one or two  
5 in the House, one or two in the Senate.

6 MR. PENZONE: There's how many, four?

7 There are four pieces of legislation. Is it possible that  
8 the Leitners could employ the services of a lobbyist or an  
9 attorney to add something to the pending legislation, or is it  
10 too late for any of that?

11 MR. PENZONE: Counselor, would you know that?

12 MR. MCCARTHY: My understanding is this is purely a legal  
13 matter at this point. And if the Board would like some legal  
14 guidance from our office, we will certainly provide that. But as  
15 of now, this rule is active. It's had its review, and  
16 administrative rules have the effect of law. Whether or not  
17 anything needs to be modified in the pending bills, that's a  
18 different issue.

19 So our office can review this -- this rule and provide the  
20 Board with possible options and possible drawbacks if this were  
21 to be modified, if that's the Board's request.

22 MR. PENZONE: Now, what would we have to do to get that  
23 done? Make a motion for you to do that or just request that  
24 the --

25 MR. MCCARTHY: Just request.

1 MR. PENZONE: -- AG's office take --

2 Would that satisfy you, Mr. Leitner and Mrs. Leitner?

3 MR. LEITNER: We would appreciate it.

4 MR. PENZONE: And then maybe by next meeting, you know, we  
5 can discuss it and maybe shoot something off to you.

6 MR. LEITNER: Sure.

7 MR. PENZONE: You know all the details on this.

8 MR. MCCARTHY: It would take probably more than next  
9 meeting. It might take two or three meetings from now.

10 MR. PENZONE: Okay. That's the best we can do, I think, to  
11 try and get you some help.

12 CHAIRMAN THOMPSON: We're limited on what we can do.

13 MR. LEITNER: Right.

14 CHAIRMAN THOMPSON: We can, you know, modify and make rules;  
15 but this is a law. This is something that -- our laws come from  
16 our legislators, and that's where they would have to make a  
17 change on their part, you know.

18 MR. LEITNER: Okay.

19 CHAIRMAN THOMPSON: So, I wish we could. You're not first,  
20 probably won't be the last. So -- but I would probably head you  
21 down that road, talking to a legislator.

22 MR. LEITNER: And you have our contact information. Is  
23 there a way that someone could get back with us and let us know  
24 or -- if there's anything more we can do or anything that our  
25 legal people can do to help?

1 CHAIRMAN THOMPSON: Talk to your local legislator, but -- if  
2 I could give you any advice, that's it.

3 MR. LEITNER: Okay.

4 MS. OSTERHAGE: Thank you for coming.

5 MR. TANEFF: Where do you live by the way? We did not get  
6 your address.

7 MR. LEITNER: Thanks.

8 MR. TANEFF: Folks, Leitners, I think when you came up and  
9 introduced yourself, I don't think that we got an address for  
10 you -- for the record.

11 MR. LEITNER: It's 3240 Fairbanks Avenue, Toledo, Ohio,  
12 43615.

13 Thanks, again.

14 CHAIRMAN THOMPSON: Thank you.

15 Next item under new business is April Pemberton.

16 Come on back up here, April. I told you it wouldn't take  
17 that long.

18 MS. PEMBERTON: Okay. Should I just -- I don't know how to  
19 do this.

20 CHAIRMAN THOMPSON: Yeah, can you state your name and where  
21 you're from.

22 MS. PEMBERTON: I'm April Pemberton. I'm from Lakewood,  
23 Ohio.

24 CHAIRMAN THOMPSON: And your address?

25 MS. PEMBERTON: 1292 Summit Avenue.

1 I need another duplicate of my license. The first time I  
2 lost my original license my roommate moved out, and she had a cos  
3 license, too. And I think she actually went to the Navy, so I  
4 think she might have taken mine by mistake. So I had to come  
5 back up here to get one.

6 And then I was working at a salon for awhile, and I quit  
7 there because I wasn't making anything. I thought I would try  
8 doing retail or something. I moved again and I misplaced my  
9 license.

10 I have looked for two months for it. I have no idea where  
11 it is. I need it to work, so I don't -- I've looked. I've  
12 tried -- I've gotten everyone looking for me. So -- I don't  
13 know.

14 MS. OSTERHAGE: What kind of license is it?

15 MS. PEMBERTON: Cosmetology.

16 MS. OSTERHAGE: A basic license?

17 MS. PEMBERTON: Yeah, just a regular --

18 CHAIRMAN THOMPSON: Director Pearson, can you refresh us  
19 what the law, again -- what the rule -- I'm sorry.

20 MS. PEARSON: Sure. Chairman Thompson, members of the  
21 Board, the policy that we have on duplicate licenses is that you  
22 receive an original license. If a duplicate is required for a  
23 first-time duplicate, the person would need to present themselves  
24 to the board office, in person, with identification to receive  
25 the duplicate.

1           If they then need a second duplicate, it would be to come in  
2 front of the Board to request that. That started, again, back in  
3 2008 to cut down on the number of duplicate licenses being  
4 printed and fraudulently.

5           MR. PENZONE: So you need a motion? I move that -- is it  
6 Pemberton?

7           MS. PEMBERTON: Yes.

8           MR. PENZONE: I move that we grant Ms. Pemberton a duplicate  
9 license.

10          MS. OSTERHAGE: I second.

11          MR. PENZONE: With the caveat that if she loses this one --

12          MS. PEMBERTON: I've got some problems.

13          CHAIRMAN THOMPSON: We have a motion and we have a second.  
14 Do we have any discussion?

15          MR. HANKS: Just a quick question. I'm sure the answer is  
16 no, but is there any blatant history of violation after violation  
17 or anything like that in this case?

18          MS. PEARSON: For her?

19          MR. HANKS: Yeah, for her personally.

20          MS. PEARSON: No, Member Hanks, there is not.

21          MR. HANKS: Good. That's all I got.

22          CHAIRMAN THOMPSON: Any other discussion?

23          Roll call, please.

24          MS. FLANERY: Dr. Gupta?

25          DR. GUPTA: Yes.

1 MS. FLANERY: Mr. Hanks?

2 MR. HANKS: Yes.

3 MS. FLANERY: Mr. Taneff?

4 MR. TANEFF: Yes.

5 MS. FLANERY: Mr. Penzone?

6 MR. PENZONE: Yes.

7 MS. FLANERY: Ms. Benfer?

8 MS. BENFER: Yes.

9 MS. FLANERY: Ms. Osterhage?

10 MS. OSTERHAGE: Yes.

11 MS. FLANERY: Ms. Sheipline?

12 MS. SHEIPLINE: Yes.

13 MS. FLANERY: Mr. Thompson?

14 CHAIRMAN THOMPSON: Yes.

15 Next item is 4713-19-14, the online testing for tanning  
16 certification. I refer this to Director Pearson.

17 MS. PEARSON: Chairman Thompson, members of the Board,  
18 4713-19-14 is the training of operators and employees. The  
19 changes to this rule came about because of the request to allow  
20 for the certified tanning operator's test to be taken online at a  
21 proctored site. Prior to this, the test itself could only be  
22 taken in written form at a proctored location.

23 So the Board voted a couple months back to allow the test to  
24 be given in online format, but it would still need to be at a  
25 proctored location. So the changes to this rule just allow for

1 that online test to begin.

2 MS. OSTERHAGE: Mr. Chairman, I move that we accept  
3 4713-19-14 as assigned.

4 CHAIRMAN THOMPSON: Do we have a second?

5 MR. TANEFF: So moved.

6 CHAIRMAN THOMPSON: By Mr. Taneff. Any discussion?  
7 Roll call, please?

8 MS. FLANERY: Dr. Gupta?

9 DR. GUPTA: Yes.

10 MS. FLANERY: Mr. Hanks?

11 MR. HANKS: Yes.

12 MS. FLANERY: Mr. Taneff?

13 MR. TANEFF: Yes.

14 MS. FLANERY: Mr. Penzone?

15 MR. PENZONE: Yes.

16 MS. FLANERY: Ms. Benfer?

17 MS. BENFER: Yes.

18 MS. FLANERY: Ms. Osterhage?

19 MS. OSTERHAGE: Yes.

20 MS. FLANERY: Ms. Sheipline?

21 MS. SHEIPLINE: Yes.

22 MS. FLANERY: Mr. Thompson?

23 CHAIRMAN THOMPSON: Yes.

24 Now, here is where I'm going to skip the next three bullet  
25 points. Looking for a motion for adoption, Board Orders to

1 Enforce Notice of Violations 2 through 24.

2 MS. OSTERHAGE: So moved.

3 MR. TANEFF: Second.

4 CHAIRMAN THOMPSON: We have a second. Any discussion?

5 Roll call, please.

6 MS. FLANERY: Dr. Gupta?

7 DR. GUPTA: Yes.

8 MS. FLANERY: Mr. Hanks?

9 MR. HANKS: Yes.

10 MS. FLANERY: Mr. Taneff?

11 MR. TANEFF: Yes.

12 MS. FLANERY: Mr. Penzone?

13 MR. PENZONE: Yes.

14 MS. FLANERY: Ms. Benfer?

15 MS. BENFER: Yes.

16 MS. FLANERY: Ms. Osterhage?

17 MS. OSTERHAGE: Yes.

18 MS. FLANERY: Ms. Sheipline?

19 MS. SHEIPLINE: Yes.

20 MS. FLANERY: Mr. Thompson?

21 CHAIRMAN THOMPSON: Yes.

22 Do we have motion for adoption, Board Orders to approve  
23 Settlement Agreements 25 through 65?

24 MR. PENZONE: So moved.

25 MR. TANEFF: Second.

1 CHAIRMAN THOMPSON: We have a first and second. Any  
2 discussion?

3 Roll call, please.

4 MS. FLANERY: Dr. Gupta?

5 DR. GUPTA: Yes.

6 MS. FLANERY: Mr. Hanks?

7 MR. HANKS: Yes.

8 MS. FLANERY: Mr. Taneff?

9 MR. TANEFF: Yes.

10 MS. FLANERY: Mr. Penzone?

11 MR. PENZONE: Yes.

12 MS. FLANERY: Ms. Benfer?

13 MS. BENFER: Yes.

14 MS. FLANERY: Ms. Osterhage?

15 MS. OSTERHAGE: Yes.

16 MS. FLANERY: Ms. Sheipline?

17 MS. SHEIPLINE: Yes.

18 MS. FLANERY: Mr. Thompson?

19 CHAIRMAN THOMPSON: Yes.

20 Okay. The next item of business will be the Hearing  
21 Officer's Report.

22 MS. OSTERHAGE: Mr. Chairman, I move that we accept Findings  
23 of Fact for Case No. 2014-362.

24 MR. TANEFF: Second.

25 CHAIRMAN THOMPSON: Discussion?

1 Roll call, please.

2 MS. FLANERY: Dr. Gupta?

3 DR. GUPTA: Yes.

4 MS. FLANERY: Mr. Hanks?

5 MR. HANKS: Yes.

6 MS. FLANERY: Mr. Taneff?

7 MR. TANEFF: Yes.

8 MS. FLANERY: Mr. Penzone?

9 MR. PENZONE: Yes.

10 MS. FLANERY: Ms. Benfer?

11 MS. BENFER: Yes.

12 MS. FLANERY: Ms. Osterhage?

13 MS. OSTERHAGE: Yes.

14 MS. FLANERY: Ms. Sheipline?

15 MS. SHEIPLINE: Yes.

16 MS. FLANERY: Mr. Thompson?

17 CHAIRMAN THOMPSON: Yes.

18 MS. OSTERHAGE: Mr. Chairman, I move that we accept the

19 Conclusion of Law for Case No. 2014-362.

20 MR. TANEFF: Second.

21 CHAIRMAN THOMPSON: Any discussion?

22 Roll call, please.

23 MS. FLANERY: Dr. Gupta?

24 DR. GUPTA: Yes.

25 MS. FLANERY: Mr. Hanks?

1 MR. HANKS: Yes.

2 MS. FLANERY: Mr. Taneff?

3 MR. TANEFF: Yes.

4 MS. FLANERY: Mr. Penzone?

5 MR. PENZONE: Yes.

6 MS. FLANERY: Ms. Benfer?

7 MS. BENFER: Yes.

8 MS. FLANERY: Ms. Osterhage?

9 MS. OSTERHAGE: Yes.

10 MS. FLANERY: Ms. Sheipline?

11 MS. SHEIPLINE: Yes.

12 MS. FLANERY: Mr. Thompson?

13 CHAIRMAN THOMPSON: Yes.

14 MS. OSTERHAGE: Mr. Chairman, I move that we accept the

15 Hearing Officer's Recommendation for Case No. 2014-362.

16 MR. TANEFF: Second.

17 CHAIRMAN THOMPSON: Any discussion?

18 Roll call, please.

19 MS. FLANERY: Dr. Gupta?

20 DR. GUPTA: Yes.

21 MS. FLANERY: Mr. Hanks?

22 MR. HANKS: Yes.

23 MS. FLANERY: Mr. Taneff?

24 MR. TANEFF: Yes.

25 MS. FLANERY: Mr. Penzone?

1 MR. PENZONE: Yes.

2 MS. FLANERY: Ms. Benfer?

3 MS. BENFER: Yes.

4 MS. FLANERY: Ms. Osterhage?

5 MS. OSTERHAGE: Yes.

6 MS. FLANERY: Ms. Sheipline?

7 MS. SHEIPLINE: Yes.

8 MS. FLANERY: Mr. Thompson?

9 CHAIRMAN THOMPSON: Yes.

10 MR. TANEFF: Yeah. I'll make a motion next that we go  
11 into -- well, first of all, Captain McCarthy, we have -- let's  
12 see, one, two -- three items for executive session. Do I need to  
13 make separate motions for each of these or one motion for all  
14 three or make a motion for the first, discuss it, come out of  
15 executive session, make a motion for the second, do the same  
16 thing and come back and forth?

17 MR. MCCARTHY: Correct, sir, make a separate motion. The  
18 Board will go into executive session; and when the Board comes  
19 out, if the Board wishes to take any action, then we would have a  
20 vote in open meeting. Then there would have to be another motion  
21 for the next executive session.

22 MR. TANEFF: Then I would make a motion that the first  
23 executive session we go into is to consider the appointment and  
24 compensation of an executive director. I would also ask that  
25 Mr. Logsdon join us as well. I think that's it.

1 MR. PENZONE: Second.

2 CHAIRMAN THOMPSON: Roll call, please.

3 MS. FLANERY: Dr. Gupta?

4 DR. GUPTA: Yes.

5 MS. FLANERY: Mr. Hanks?

6 MR. HANKS: Yes.

7 MS. FLANERY: Mr. Taneff?

8 MR. TANEFF: Yes.

9 MS. FLANERY: Mr. Penzone?

10 MR. PENZONE: Yes.

11 MS. FLANERY: Ms. Benfer?

12 MS. BENFER: Yes.

13 MS. FLANERY: Ms. Osterhage?

14 MS. OSTERHAGE: Yes.

15 MS. FLANERY: Ms. Sheipline?

16 MS. SHEIPLINE: Yes.

17 MS. FLANERY: Mr. Thompson?

18 CHAIRMAN THOMPSON: Yes.

19 (Executive Session)

20 CHAIRMAN THOMPSON: Okay. Welcome back to general session  
21 here. Next item on the agenda is appointment of an executive  
22 director.

23 MS. SHEIPLINE: I would like to make a motion that we accept  
24 the appointment of the executive director for -- how do you say  
25 this -- for Christopher Logsdon, that we hire Christopher as our

1 executive director.

2 MR. TANEFF: Second.

3 CHAIRMAN THOMPSON: We have a first and second. Any  
4 discussion?

5 Roll call, please.

6 MS. FLANERY: Dr. Gupta?

7 DR. GUPTA: Yes.

8 MS. FLANERY: Mr. Hanks?

9 MR. HANKS: Yes.

10 MS. FLANERY: Mr. Taneff?

11 MR. TANEFF: Yes.

12 MS. FLANERY: Mr. Penzone?

13 MR. PENZONE: Yes.

14 MS. FLANERY: Ms. Benfer?

15 MS. BENFER: Yes.

16 MS. FLANERY: Ms. Osterhage?

17 MS. OSTERHAGE: Yes.

18 MS. FLANERY: Ms. Sheipline?

19 MS. SHEIPLINE: Yes.

20 MS. FLANERY: Mr. Thompson?

21 CHAIRMAN THOMPSON: Yes.

22 MR. TANEFF: I'd like to make a motion to go back into  
23 second executive session to consider the employment and  
24 compensation of an assistant executive director, and I would ask  
25 Mr. Logsdon to stay in please and, of course, Captain McCarthy

1 and the other assistant attorney general.

2 CHAIRMAN THOMPSON: Do we have a second?

3 MR. HANKS: Second.

4 CHAIRMAN THOMPSON: Second by Mr. Hanks.

5 Roll call, please.

6 MS. FLANERY: Dr. Gupta?

7 DR. GUPTA: Yes.

8 MS. FLANERY: Mr. Hanks?

9 MR. HANKS: Yes.

10 MS. FLANERY: Mr. Taneff?

11 MR. TANEFF: Yes.

12 MS. FLANERY: Mr. Penzone?

13 MR. PENZONE: Yes.

14 MS. FLANERY: Ms. Benfer?

15 MS. BENFER: Yes.

16 MS. FLANERY: Ms. Osterhage?

17 MS. OSTERHAGE: Yes.

18 MS. FLANERY: Ms. Sheipline?

19 MS. SHEIPLINE: Yes.

20 MS. FLANERY: Mr. Thompson?

21 CHAIRMAN THOMPSON: Yes.

22 (Executive Session)

23 CHAIRMAN THOMPSON: We're back in general session right now.

24 MS. OSTERHAGE: I'd like to make a motion that we move into  
25 our third executive session to address the pending court action.

1 MR. TANEFF: Second.

2 MR. MCCARTHY: Before the Board does that, the Board  
3 certainly can go into executive session to discuss the matter  
4 pending in appeal; but if the Board is comfortable deliberating  
5 in public, that would actually become public record and this  
6 licensee would be aware of how the Board feels on the matter as  
7 well, not just simply the Board's vote.

8 The issue is whether or not the Board wants to modify  
9 existing Board order sanctions. So if the Board simply wants to  
10 state the reasons why it does not want to alter the current  
11 sanctions in public, it can do that. If the Board feels more  
12 comfortable doing it in executive session, it's purely up to the  
13 Board.

14 MR. TANEFF: Well, we had a motion and a second, but I'm  
15 okay withdrawing my motion.

16 MS. OSTERHAGE: I would like to withdraw my motion.

17 MR. TANEFF: And I will withdraw my second.

18 MR. MCCARTHY: At this time the matter of OP Nails -- the  
19 Board previously issued a final adjudication order back in about  
20 April or so. There was over a \$4,000 fine, over a 30-day  
21 suspension of the license for the salon. Now, the suspension was  
22 supposed to take place about August 24th, August 25th.

23 Now, before the suspension went into effect, OP Nails took a  
24 different course of action. Previously other salons have stayed  
25 open in violation of the Board's orders; and then they would even

1 go to court trying to appeal the suspension, without getting a  
2 court order from a judge allowing them to stay in business. But  
3 what OP Nails did is they immediately filed their appeal with the  
4 Court and the same day had the judge issue a stay of the Board's  
5 sanction.

6 Now, what was conveyed to me by OP Nails is that they simply  
7 wanted to have the suspension delayed until after the Labor Day  
8 weekend because of the financial margin outcomes. They seem to  
9 be okay still with the 30-day suspension and they simply needed  
10 some time to get the \$4,250 together.

11 So right now the Court has sustained the suspension. So  
12 they can legally operate as a salon. And the Board cannot  
13 actually modify the current order unless OP Nails gets rid of its  
14 appeal. So OP Nails has agreed to withdraw its appeal and never  
15 bring the appeal again if the Board would enter into a settlement  
16 agreement to modify the current sanctions; and specifically,  
17 they're asking for a payment schedule, four equal installments to  
18 begin 30 days after the Board order to pay the fine. And their  
19 letter doesn't say anything about the suspension.

20 So if the Board would want to allow the company to serve its  
21 suspension simply before the end of the year or, say,  
22 November 1st or whatever the Board wants, that's the Board's  
23 discretion. In general, the Board should not modify its final  
24 adjudication orders. That's not the typical route the Board  
25 would want to do.

1           They admit their violations and are willing to remove the  
2 appeal. So it's purely up to the Board if they want to allow  
3 there to be a payment plan or modify the suspension.

4           MR. PENZONE: I don't have a problem with a payment plan at  
5 all. And you're saying it's not usual to modify?

6           MR. HANKS: With the appeal in place.

7           MR. PENZONE: With the appeal in place.

8           MR. MCCARTHY: Yes. Basically, it took a little bit of time  
9 for this whole process to unfold. It would have been ideal if  
10 the company would have come to the Board immediately upon the  
11 final issuing, so then at the next board meeting, the Board could  
12 meet and discuss it. Because as soon as the appeal goes to  
13 court, the Court is the only one that has jurisdiction over the  
14 case, not the Board.

15           MR. TANEFF: Captain McCarthy, would it be your  
16 recommendation that this Board -- that we accept this settlement  
17 agreement?

18           MR. MCCARTHY: I think that this happens often enough that  
19 Boards grant payment plans. It's not to typical for Boards to  
20 modify suspensions though. So if the Board wanted to allow the  
21 interim director to enter into a settlement with OP nails -- to  
22 give a payment plan, only upon OP Nails withdrawal of their  
23 appeal -- a permanent withdrawal of their appeal, they could  
24 never bring it again. And as soon as the appeal is withdrawn,  
25 the director would have the power to enter the settlement; and

1 then at the next regularly scheduled board meeting, the Board  
2 could consider whether or not to approve the settlement.

3 MR. TANEFF: I'm okay with that if you guys are.

4 MS. OSTERHAGE: Counsel, the suspension would remain -- that  
5 would not change?

6 MR. MCCARTHY: That's perfectly up to the Board to decide  
7 and a vote as to how the Board feels on that would be the right  
8 way to do it.

9 MS. OSTERHAGE: But not today.

10 MR. MCCARTHY: Today would be the time to do it. And it  
11 would be to either modify the suspension or simply just give a  
12 payment plan and allow your director to enter a settlement.

13 MR. TANEFF: Or we could also make a motion to approve the  
14 settlement as proposed?

15 MR. MCCARTHY: Yes, sir. But the settlement as proposed  
16 does not speak towards the suspension the Board already ordered.  
17 That is the problem.

18 MR. TANEFF: Right. But if --

19 MS. OSTERHAGE: Is that a problem if we --

20 MR. MCCARTHY: If the Board wants to stick to its 30-day  
21 suspension --

22 MS. OSTERHAGE: Well, they didn't mention it in their  
23 request.

24 MR. MCCARTHY: Correct.

25 MS. OSTERHAGE: Is that what you're saying?

1 MR. TANEFF: Or if we agree to accept the proposed  
2 settlement and they drop the appeal with prejudice, we allow them  
3 to operate pending the payment of the fine in four installments,  
4 we're done with this thing.

5 MS. OSTERHAGE: Well, Mr. Taneff, I do not think that we  
6 should -- first of all, we don't have this case in front of us.  
7 I don't remember this case specifically in terms of what the  
8 violations were. I suppose we could ask. I think granting a  
9 payment plan -- they're still paying the same amount of money in  
10 fines and they're still serving their suspension. That's  
11 important. That's what we said the first time we looked at the  
12 case probably in more detail, correct?

13 So my -- I would be willing, and I think it's appropriate,  
14 to grant them the payment plan. But in terms of changing  
15 anything else about this case in the form of a settlement, I  
16 think, would probably be inappropriate without us having all of  
17 that information in front of us.

18 MR. PENZONE: Perhaps Member Osterhage would like to make a  
19 motion to that effect to see where it leads.

20 MS. OSTERHAGE: I would like to make a motion that we allow  
21 the executive director -- empower the executive director to enter  
22 into a settlement agreement with -- I don't know the case number  
23 and I don't remember -- you said it's --

24 MR. MCCARTHY: OP Nails.

25 MS. OSTERHAGE: -- OP nails, to allow them a payment plan, I

1 believe you said, in four separate installments? So that would  
2 be 1,000 some odd dollars per installment. Anybody have a  
3 calculator to do that? Do I need to state the exact amount?  
4 We're good? Okay. That would be my motion.

5 MR. HANKS: Second.

6 CHAIRMAN THOMPSON: Any discussion?

7 MS. BENFER: What about the suspension?

8 MS. OSTERHAGE: We're not changing -- my motion did not  
9 include -- nothing would change outside of granting the payment  
10 plan.

11 CHAIRMAN THOMPSON: Any discussion?

12 Roll call, please.

13 MS. FLANERY: Dr. Gupta?

14 DR. GUPTA: Yes.

15 MS. FLANERY: Mr. Hanks?

16 MR. HANKS: Yes.

17 MS. FLANERY: Mr. Taneff?

18 MR. TANEFF: Yes.

19 MS. FLANERY: Mr. Penzone?

20 MR. PENZONE: Yes.

21 MS. FLANERY: Ms. Benfer?

22 MS. BENFER: Yes.

23 MS. FLANERY: Ms. Osterhage?

24 MS. OSTERHAGE: Yes.

25 MS. FLANERY: Ms. Sheipline?

1 MS. SHEIPLINE: Yes.

2 MS. FLANERY: Mr. Thompson?

3 CHAIRMAN THOMPSON: Yes.

4 Any further new business?

5 MR. TANEFF: Motion to adjourn.

6 MS. OSTERHAGE: Second.

7 CHAIRMAN THOMPSON: We have a motion to adjourn. Second by  
8 Board Member Osterhage.

9 MR. PENZONE: Before we --

10 CHAIRMAN THOMPSON: Oh, discussion? Yeah, you go ahead.

11 MR. PENZONE: Counselor, it's been a pleasure. I'd like to  
12 wish you good luck in your next career move, and thanks for all  
13 you've done for this Board.

14 MR. MCCARTHY: I appreciate it.

15 MR. PENZONE: And now we wish the best of luck to you.

16 MR. TANEFF: Are we allowed to ask where you're going, which  
17 firm?

18 MR. MCCARTHY: A firm down in Nashville -- a civil rights  
19 firm. So enforcing civil rights.

20 MR. PENZONE: Good luck to you.

21 MR. MCCARTHY: Thank you.

22 MR. TANEFF: Hope she's worth it.

23 (Laughing)

24 CHAIRMAN THOMPSON: Any further discussion? We have a first  
25 and a second.

1 Roll call, please.

2 MS. FLANERY: Dr. Gupta?

3 DR. GUPTA: Yes.

4 MS. FLANERY: Mr. Hanks?

5 MR. HANKS: Yes.

6 MS. FLANERY: Mr. Taneff?

7 MR. TANEFF: Yes.

8 MS. FLANERY: Mr. Penzone?

9 MR. PENZONE: Yes.

10 MS. FLANERY: Ms. Benfer?

11 MS. BENFER: Yes.

12 MS. FLANERY: Ms. Osterhage?

13 MS. OSTERHAGE: Yes.

14 MS. FLANERY: Ms. Sheipline?

15 MS. SHEIPLINE: Yes.

16 MS. FLANERY: Mr. Thompson?

17 CHAIRMAN THOMPSON: Yes.

18 - - -

19 And, thereupon, the hearing was concluded at 2:58 o'clock

20 p.m.

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C-E-R-T-I-F-I-C-A-T-E

I do hereby certify that the foregoing is a true, correct and complete written transcript of the proceedings in this matter, taken by me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and transcribed from my stenographic notes.

\_\_\_\_\_  
Jillian Vogel  
Professional Reporter  
and Notary Public in and for  
the State of Ohio

My commission expires: 2-13-16.

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