

BOARD OF BARBERING AND COSMETOLOGY

Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

Date: Monday, June 15, 2015

Time: 1:00 p.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, Hawaii 96813

Present: Lance M. Marugame, Barber Member, Chairperson
Angela Howard, Public Member
Lynnette F. McKay, Cosmetology Member
Chad Nelson, Public Member
Christobal Quintana, Barber Member
Anne Tokunaga, Cosmetology Member
Rodney J. Tam, Deputy Attorney General ("DAG")
Laureen M. Kai, Executive Officer
Lori Nishimura, Secretary

Excused: Alexander Choi, Public Member

Guests: Catherine P. Awakuni Colón, Director, DCCA
Margaret Williams, Hawaii Institute of Hair Design

Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Hawaii Revised Statutes ("HRS") section 92-7(b).

Call to Order: There being a quorum present, the meeting was called to order at 1:00 p.m. by Chairperson Marugame.

Additions/
Revisions to
Agenda: None.

Minutes of the
May 11, 2015
Board Meeting: After discussion, it was moved by Mr. Quintana, seconded by Ms. Tokunaga, and unanimously carried to approve the minutes of the May 11, 2015 Board meeting, as circulated.

At 1:03 p.m., it was moved by Ms. Howard, seconded by Chairperson Marugame, and unanimously carried for the Board to enter into Executive Session to consider and evaluate personal information relating to individuals applying for licensure in accordance with HRS section 92-5(a)(1).

EXECUTIVE SESSION

At 1:24 p.m., it was moved by Ms. Howard, seconded by Ms. McKay, and unanimously carried for the Board to move out of Executive Session.

Applications:

A. Ratification of Issued Licenses

It was moved by Ms. Howard, seconded by Ms. Tokunaga, and unanimously carried to ratify the list of issued licenses attached (see, attached list).

B. Examination and License

(1) GOOD, Raquel L. (Beauty Operator - Esthetician)

After discussion, it was moved by Ms. Howard, seconded by Ms. McKay, and unanimously carried to approve the beauty operator application for examination and license of Raquel L. Good.

(2) SANDERS, Michael D. (Beauty Operator - Cosmetologist)

After discussion, it was moved by Ms. Howard, seconded by Mr. Nelson, and unanimously carried to defer decision making on the beauty operator application for examination and license of Michael D. Sanders, pending his compliance with the executed plan he had entered into with the Regulated Industries Complaints Office ("RICO"); RICO Case No. BAR 2014-43-C.

C. Beauty Shop/Barber Shop License

(1) ADVANCED MEDI-SPA LLC (New Beauty Shop)

The Board's consensus was to defer discussion on Advanced Medi-Spa LLC until DAG Tam arrived to the meeting.

- (2) ASUNCION, Wilfredo M. Jr.
dba JSTYLE SALON (New Barber Shop)
- (3) ENVY EYES AND WAX LLC (New Beauty Shop)
- (4) JENJA BEAUTY LLC (New Beauty Shop)
- (5) KAPOLEI SALON LLC (New Barber Shop)
- (6) KELEKOMA, Carleen L.
dba RADIANCE HAIR SALON
(Relocation of Beauty Shop: BSH 4900)
- (7) KIRIFI, Windy L. (New Beauty Shop)
- (8) POSR CORP.
dba POSR ESTHETICS (New Beauty Shop)
- (9) SOUTH SIDE BARBERSHOP INC (New Barber Shop)

The remaining eight (8) barber/beauty shop applications, (#2 to #9), were preliminarily reviewed by staff, the Executive Officer, Ms. McKay and Ms. Tokunaga (the designated Board members to review the barber shop and beauty shop applications for consideration for this Board meeting).

Ms. McKay stated that she and Ms. Tokunaga reviewed the eight (8) applications, (#2 to #9), and concluded that they meet all requirements for barber/beauty shop licenses, and recommends approval. After discussion, it was moved by Ms. McKay, seconded by Ms. Tokunaga, and unanimously carried to approve the barber shop and beauty shop applications listed above.

D. Restoration of License

- (1) CHOE, Sun Hee (BEO 13581)

After discussion, it was moved by Ms. Howard, seconded by Mr. Quintana, and unanimously carried to approve the restoration of beauty operator license of Sun Hee Choe.

- (2) COOPER, Brenda M. (BEO 10440)

After discussion, it was moved by Ms. Howard, seconded by Mr. Quintana, and unanimously carried to

approve the restoration of beauty operator license of Brenda M. Cooper.

(3) PHAM, Kevin V. (BEO 13572)

After discussion, it was moved by Ms. Howard, seconded by Mr. Quintana, and unanimously carried to approve the restoration of beauty operator license of Kevin V. Pham.

The Board's consensus was to defer Agenda items #5 to #7, until DAG Tam arrived to the meeting.

Hawaii
Administrative
Rules ("HAR"):

A. Report from the Investigative Committee on Amendments to HAR Chapter 16-73 (Barbering)

No report. Executive Officer Kai inquired as to the status of the rule revisions. The committee reported that its work is nearing completion, and that a draft copy of the rule revisions may be forthcoming for the Board's consideration at its next meeting.

B. HAR Chapter 16-78 (Cosmetology)

(1) Report from the Investigative Committee on Amendments to Entire Chapter

No report. Executive Officer Kai inquired as to the status of the rule revisions. The committee reported that its work is ongoing and about 75% completed. Committee member Tokunaga stated that she had provided DAG Tam with the results of her research into the repealed sections of HRS chapter 439 that impact the administrative rule revisions that the committee is considering and that the committee is awaiting DAG Tam's findings in the matter. Executive Officer Kai reminded the committees to review the administrative rule citations relating to authorizing and implementing statutes, as many of them have been repealed since the last amendment/compilation of the rule chapters.

(2) Report from the Executive Officer on Amendments to Rules Relating to the State Authorization of Licensed Beauty Schools by the U.S. Department of Education

Executive Officer Kai reported that the Governor approved, on May 12, 2015, the Board's request to conduct a public hearing. She further reported that a public hearing notice was published on May 29, 2015. The public hearing is scheduled for July 13, 2015, at 1:00 p.m., with the Board meeting to follow immediately after.

Mr. Nelson stated that he will not be able to attend the July hearing and meeting due to a conflict in schedule.

DAG Tam arrived to the meeting at 1:33 p.m.

DAG Tam requested to return to the following Agenda item #8; there were no objections:

B. HAR Chapter 16-78 (Cosmetology)

(1) Report from the Investigative Committee on Amendments to Entire Chapter

DAG Tam provided the results of his research into the repealed sections of HRS chapter 439 that impact the administrative rule revisions that the committee is considering:

- HRS section 439-3 - pertained to makeup of the Cosmetology Board;
- HRS section 439-4 - pertained to officers;
- HRS section 439-5 - pertained to meetings;
- HRS section 439-6 - pertained to power to investigate;
- HRS section 439-7 - pertained to rule making power;
- HRS section 439-8 - pertained to assistance to the Board; and
- HRS section 439-10 - pertained to apprentices/instructor trainees.

DAG Tam stated that he had inadvertently omitted HRS section 439-9 from his search and that he will research that section and report back to the Board. DAG Tam also commented that these sections of HRS chapter 439 are general provisions, and that citations in the

cosmetology rules may need to reference the barber statutes of HRS chapter 438.

At 1:43 p.m., it was moved by Ms. McKay, seconded by Ms. Tokunaga, and unanimously carried for the Board to enter into Executive Session to consider and evaluate personal information relating to individuals applying for licensure in accordance with HRS section 92-5(a)(1), and to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities in accordance with HRS section 92-5(a)(4).

EXECUTIVE SESSION

At 1:58 p.m., it was moved by Ms. McKay, seconded by Ms. Howard, and unanimously carried for the Board to move out of Executive Session and immediately recess the meeting to discuss and deliberate on the following adjudicatory matter pursuant to HRS chapter 91.

Chapter 91,
HRS, Adjudicatory
Matters:

A. In the Matter of the Beauty Shop License of L'MOUR NAIL & BEAUTY SALON, INC. and the Beauty Operator's Licenses of THUY THI VAN and JAMES C. DANG; BAR 2014-59-L

DAG Tam provided a summary of the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order regarding L'Mour Nail & Beauty Salon, Inc., Thuy Thi Van, and James C. Dang, Respondents. He stated that Respondents Thuy Thi Van and James C. Dang, who each hold a beauty operator's license and are the designated beauty operators in charge of L'Mour Nail & Beauty Salon, Inc., and Respondent L'Mour Nail & Beauty Salon, Inc., licensed beauty shop, permitted an individual who was not licensed as a beauty operator, apprentice or holder of a temporary permit to perform cosmetology on the premises of L'Mour Nail & Beauty Salon, Inc. for compensation. RICO alleges that the Respondents violated HRS section 439-19(a)(3).

DAG Tam summarized the terms of the Settlement Agreement:

- Administrative fines in the amount of five hundred (\$500.00) dollars to L'Mour Nail & Beauty Salon, Inc., two

- hundred fifty (\$250.00) dollars to Thuy Thi Van, and two hundred fifty (\$250.00) dollars to James C. Dang; and
- Failure to fully and timely comply with terms of the Settlement Agreement shall result in the automatic revocation of Respondents' licenses.

After discussion, it was moved by Ms. Howard, seconded by Mr. Nelson, and unanimously carried to approve the Settlement Agreement relating to the Matter of the Beauty Shop License of L'Mour Nail & Beauty Salon, Inc. and the Beauty Operator's Licenses of Thuy Thi Van and James C. Dang; BAR 2014-59-L.

At 2:01 p.m., the Board reconvened its scheduled meeting.

Examination:

A. National Interstate Council ("NIC") of State Boards of Cosmetology Licensing Examinations

Mr. Nelson provided a handout on his findings to the Board's inquiries from the Board's last meeting. Excerpts from his findings included the following:

- Currently, 33 states, the District of Columbia, Guam, and the Virgin Islands use the NIC testing program;
- The state of Mississippi adopted NIC testing in March 2015;
- NIC had approved the following computer based testing companies to administer the NIC written examinations: ISO Quality Testing and PSI Services, LLC (Mr. Nelson to follow up whether PCS may also be authorized);
- NIC testing has greatly enhanced mobility of licensure from one state to another, especially in the Western Region;
- NIC written examinations are administered via computer allowing exam retakes within days of failing; and
- He was not able to obtain a copy of the contract between California and NIC.

Executive Officer Kai requested Mr. Nelson attempt obtaining a copy of Mississippi's Request For Proposals because that state eventually selected and contracted with NIC. Board members asked whether there are sufficient testing sites in Hawaii, what training topics were tested on the written examination, and whether there are separate exams for each of Hawaii's separate beauty operator license categories, for

beauty instructors, and for barbers. Mr. Nelson stated he will do further research.

Mr. Nelson left the meeting at 2:18 p.m. The Board also recessed the meeting at that time.

At 2:21 p.m., the meeting reconvened. The Department's Director, Catherine P. Awakuni Colón, was welcomed to the meeting at this time. Director Awakuni Colón was in attendance to discuss the license requirements of a booth/chair renter/independent contractor working in a licensed beauty shop; thus, the following Agenda item was taken out of order and discussed at this time.

Executive Officer's Report: B. Booth/Chair Renter/Independent Contractor in Licensed Shop

Director Awakuni Colón thanked the Board for allowing her to address the Board regarding a complaint she had received concerning the license requirements for a booth/chair renter/independent contractor who works in a duly-licensed beauty shop. She commented that public complaints sometimes escalate to be forwarded to the Director's Office, and that she wanted to provide a "department wide perspective" in her response to the complainant.

Director Awakuni Colón inquired about the current requirement that a booth/chair renter/independent contractor working in a licensed shop also hold a shop license in conjunction with an individual license. She believes that this requirement may be an undue burden for a business owner or operator. This may be especially burdensome for small businesses, as a booth/chair renter/independent contractor is often a sole practitioner, and that it may be accurate to say that the majority of these beauty operators who are booth/chair renters/independent contractors are female. Thus, the requirement may be perceived as an onerous penalty and hindrance to small business owners. She further commented that the requirement may be a challenge to enforce. She asked the Board whether it would explore another way to protect the public without requiring an additional layer of licensure.

Ms. Howard commented that in her experience, there are very few salons that are employee-based (i.e., where the beauty operators are employees of the brick-and-mortar

shop). She stated that the majority of shops, perhaps up to 80%, are renting chairs/booths to independent licensed beauty operators who are not employees of the shop. These independent contractors set their own working schedules, establish their own price lists, grow their own clientele, advertise under their own names, purchase their own supplies and materials, and act as sole business proprietors by paying their own taxes and obtaining their own optional liability insurance. She further commented that she does not believe that the requirement is discriminating to women practitioners. Executive Officer Kai stated that the initial cost of a beauty shop license is \$196.00. Mr. Quintana agreed that the requirement is perceived not as a financial burden, but a necessary cost of doing business that may qualify as a tax exemption.

Director Awakuni Colón commented that as a layperson with a legal background, she does not think the Board has legal rights to enforce the license requirement for chair/booth renters/independent contractors, as also confirmed to her by the Regulated Industries Complaints Office ("RICO"). She asked how a chair/booth renter/independent contractor was made aware of the additional license requirement, as a plain reading of the statute does not provide instructions as to how to comply.

DAG Tam commented that a "beauty shop" is defined in HRS section 439-1 as "any establishment or place of business wherein the practice of cosmetology is engaged or carried on and is the primary purpose of that establishment or business". He further commented that this requirement is similar to that of the Board of Massage Therapy and the issuance of massage establishment licenses in HRS chapter 452. He stated that under the definition of a "massage establishment", the Board of Massage Therapy has taken the position that if an owner of a building rents out rooms to separate individuals who are independent contractors (i.e., not employees of the owner and the owner does not issue a 1099 or W-2 to these individuals), advertise under their own names, have their own separate clients, set their own hours, each individual needs his or her own massage establishment license. They have taken a similar position with respect to people who have massage tables at the mall, swap meet, races, etc. Each physical space where massage therapy is

conducted generally needs its own massage establishment license.

In addition, RICO does not have any problems with the licensure requirements for a massage establishment. He further stated that he did not believe that this requirement discriminated against women because the interpretation is not gender-based and that in general, "ignorance of law is no excuse"; however, the Board may need to consider further ways to make this requirement known, such as a notice on the Board's website.

Director Awakuni Colón was thanked for attending today's meeting.

DAG Tam stated that he will further discuss this matter with RICO.

A. Designated Operator-in-Charge of Shop

Executive Officer Kai informed the Board that RICO had asked about the Board's position on the requirement that a shop have a designated operator-in-charge of a shop for each of the beauty culture services that are provided at the shop. RICO stated that it sometimes pursues violations by operators-in-charge in addition to the shop owner/licensee; however, they question whether this is authorized by the Board's laws and rules.

DAG Tam cited the following that may be used as the basis for the requirement:

- HRS section 439-17(d), which reads "The beauty shop owner shall be responsible for all operations of the shop and shall be responsible to see that only currently licensed individuals, apprentices or temporary permittees are practicing in the shop."
- HAR section 16-78-3(c), which reads "In addition to the requirements of subsection (a) a licensed beauty shop, or school shall file the name and location of the shop or school, the name and license number of the person in charge of and responsible for the shop or the school, and, in the case of a partnership, corporation, or association, shall also file with the board the names

and addresses of the partners, officers, and directors, as the case may be, and shall notify the board within thirty days of all changes.”

- HAR section 16-78-6, which reads “Beauty shop or beauty school shall be responsible for all operations and shall be responsible to see that only duly licensed or registered persons work in the place of business or school.”

DAG Tam remarked that based on these sections, an “operator-in-charge” seems to be inferred in the laws and rules; however, the rules should be amended to specifically define the term “designated operator-in-charge”, and should clarify that operator’s responsibilities. Ms. McKay and Ms. Tokunaga agreed to see how the requirement could be clarified in their current work as the Investigative Committee on Amendments to HAR chapter 17-78.

Discussion resumed on the following Agenda item that had been pending.

Applications:

C. Beauty Shop/Barber Shop License

(1) ADVANCED MEDI-SPA LLC (New Beauty Shop)

Executive Officer Kai reiterated that the Board had denied the application for a new beauty shop for Advanced Medi-Spa LLC at its May 14, 2014 meeting, and had reaffirmed its decision at its November 25, 2014 meeting.

In addition to this matter, in a February 13, 2015 letter, the Board requested that the applicant, Advanced Medi-Spa LLC and its owner, Ms. Cindy Chang, provide additional clarifying information regarding two (2) judgments that the Board had been made aware of. The Board believed that outstanding monetary judgments and similar unsatisfied obligations reflected adversely upon an applicant’s financial integrity, and would be grounds for denial of a license, pursuant to HRS section 436B-19(8). In the letter, the Board asked specifically for the court documents explaining the underlying facts and circumstances relating to the following judgments

that have been obtained against her in circuit court (Civil No. 09-1-2752-11), and the court documents and other documentation that reflects the current status of each judgment (e.g., whether they have been satisfied, whether the applicant entered into a payment arrangement for either judgment, whether the applicant made any payments on either judgment, the outstanding balance of each judgment, etc.):

- February 28, 2011 for \$80,079.34;
- January 31, 2012 for \$115,238.02.

Executive Officer Kai reminded the Board that it had received a response to its December 3, 2014 letter from Ms. Chang on January 7, 2015 and had determined at its February 9, 2015 meeting that it did not answer the Board's questions relating to the financial integrity of the applicant and did not provide any court documents relating to the judgments. Therefore, another letter with the same request was sent to the applicant dated February 13, 2015.

At its April 13, 2015 meeting, the Board determined that the applicant would be provided with a final opportunity to respond to the Board's request, and an April 23, 2015 letter was sent to Ms. Chang informing her that the Board would like to receive a response by May 26, 2015 and that the Board would make its determination at its June meeting, with or without her response.

- Ms. Kai stated that on May 22, 2015, the Board received a May 5, 2015 letter from Ms. Chang responding to the Board's February 13, 2015 and April 23, 2015 letters. She summarized the documents that were submitted by Ms. Chang and as described in Ms. Chang's cover letter.

After review of the documents and discussion, it was moved by Ms. McKay, seconded by Chairperson Marugame, and unanimously carried to reaffirm the Board's denial made at its May 14, 2014 meeting and affirmed at its November 25, 2014 meeting. The motion further stated that the Board's questions about

the financial integrity of the applicant had not been answered in spite of the Board's numerous requests; therefore, a lack of financial integrity would be added as another basis for the denial of the application.

Open Forum: None.

Next Board Meeting: Monday, July 13, 2015
Immediately Following the Public Hearing at 1:00 p.m.
Queen Liliuokalani Conference Room
King Kalakaua Building,
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Announcements: The Board acknowledged Mr. Quintana's last meeting as a Board member. Mr. Quintana was thanked for serving on the Board for many years. His knowledge about barbering and the Board will be missed.

Adjournment: There being no further business to discuss at this time, the meeting was adjourned at 3:15 p.m.

Taken and recorded by:

/s/ Lori Nishimura

Lori Nishimura, Secretary

Reviewed and approved by:

/s/ Laureen M. Kai

Laureen M. Kai, Executive Officer

LMK:ln

07/07/15

Minutes approved as is.

Minutes approved with changes. See Minutes of _____.

LTYPE	LIC NUM	BP NAME PART 1
BEO	20431	LOIS M <BRUNK<
BEO	20432	NAOMI <LOWE<
BEO	20433	SHEENA L F <GALBRAITH<
BEO	20434	SOPHIA I <GARCIA<
BEO	20435	SAIMA <AHMAD<
BEO	20436	KRISTINA M <FOLSOM<
BEO	20437	ERIN <BADER<
BEO	20438	KAREN R <CHANDLER<
BEO	20439	BROOKE A <ASLETT<
BEO	20440	RIE <KOBAYASHI<
BEO	20441	RACHAEL D <UECKE<
BEO	20442	PAMMY T J <MA<
BEO	20443	IRENE <FINESKOS<
BEO	20444	JOCELYN L <LENTINI<
BEO	20445	RACHEL ANN N <ITO<
BEO	20446	HIROKI <SAKAI<
BEO	20447	KAREN A <RANUCCI<

LTYPE	LIC NUM	BP NAME	PART 1
BAR	3588	DIANA N	<PHONG<