

BOARD OF BARBERING AND COSMETOLOGY

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

MINUTES OF MEETING

Date: Monday, December 16, 2019

Time: 12:00 p.m.

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

Present: Lynnette F. McKay, Cosmetology Member, Chairperson
Chad Nelson, Public Member
Amanda Severson, Cosmetology Member
Margaret Williams, Barber Member
Valerie Kato, Deputy Attorney General ("DAG")
Kedin C. Kleinhans, Executive Officer
Lei Ana E. Green, Executive Officer
Leanne Abe, Secretary

Excused: None.

Guest: None.

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 12:19 p.m. by Chairperson McKay.

Minutes of the November 25, 2019 Board Meeting: After discussion, it was moved by Chairperson McKay, seconded by Ms. Williams, and unanimously carried to approve the November 25, 2019 meeting minutes, as circulated.

At 12:22 p.m., the Board recessed the meeting to discuss and deliberate on the following adjudicatory matter pursuant to Chapter 91, HRS:

Chapter 91, HRS A. In the Matter of the Barber's License of GERLYN L. SMITH, fka

Adjudicatory
Matters:

GERILYNNE L. SMITH, aka GERLYN LOUISE ARAGON SMITH; BAR 2019-39-L.

After discussion, it was moved by Chairperson McKay, seconded by Ms. Williams, and unanimously carried to approve the Settlement Agreement relating to the Matter of the Barber's License of GERLYN L. SMITH, fka GERILYNNE L. SMITH, aka GERLYN LOUISE ARAGON SMITH; BAR 2019-39-L.

At 12:23 p.m., the Board reconvened its scheduled meeting and immediately entered into Executive Session.

Applications:

At 12:23 p.m., it was moved by Chairperson McKay, seconded by Ms. Williams, 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 12:26 p.m., it was moved by Chairperson McKay, seconded by Ms. Williams, and unanimously carried for the Board to move out of Executive Session.

A. Ratification of Issued Licenses

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

B. Application for Restoration

(1) Angela Krzynowek (BEO-12718)

After discussion, it was moved by Chairperson McKay, seconded by Ms. Williams, and unanimously carried to approve the beauty operator application of Angela Krzynowek.

Executive Officer's Report: A. Licensing Examination of the National-Interstate Council of State Boards of Cosmetology ("NIC")

Executive Officer Kleinhans stated that the Board motioned to move forward in implementing the NIC examination at the previous meeting on November 25, 2019. He provided the Board a brief update regarding NIC's recent press release:

- o NIC will be redesigning their website, projected to be implemented on March 1, 2020.
- o In addition to the four current languages that NIC offers (English, Korean, Spanish, and Vietnamese), NIC will be offering ten (10) more languages: Chinese, Russian, Arabic, German, Japanese, Tagalog, Hindi, Mon-Khmer (Cambodian), Persian, and Laotian.

The Board had no additional comments or questions regarding the NIC examination.

Old Business: A. Industry Bulletin regarding Invasive Procedures

Executive Officer Kleinhans stated that there were no further testimonies received since the last meeting on November 25, 2019.

The Board unanimously agreed to defer the discussion and decision making until the next meeting on January 28, 2020.

New Business: A. Discussion of Barber/Beauty Shop Application and Barber "Operator-in-Charge"

Discussion ensued regarding the current Barber/Beauty Shop Application forms. Executive Officer Kleinhans stated that the the Board brushed on the term "Barber Operator-in-Charge" at the previous meeting and whether the Board's licensing laws/.rules warrant that a barber shop needs to have a barber "in charge". He reported that the Beauty statute, HRS §439-17(a), mandates "that a licensed beauty operator in the appropriate licensure category shall be in charge of the shop." In contrast, the Barber statutes, HRS §§ 438-7(d)(2) and 438-7(d)(3) requires an applicant for a "barber shop license shall identify at least one licensed barber at the barber shop to qualify the barber shop for licensure"; and "identify the owner of the

barber shop who shall be responsible for all operations of the barber shop.”

DAG Kato suggested that if the Board’s concern is to track and confirm the barber/beauty licensees employed to qualify the shop for licensure, then the application and its forms could be amended to confirm employment at the very minimum. The Board discussed amending the Barber Shop application form and creating a separate Barber/Beauty Operator “Confirmation of Employment” form to identify the licensed barbers/beauty operators that will qualify the shop for licensure or a beauty licensure category.

After discussion, it was moved by Chairperson McKay, seconded by Mr. Nelson, and unanimously carried by the Board to have Executive Officer Kleinhans amend the Barber Shop application form including the acknowledgment section and to include a separate Barber/Beauty Operator Confirmation of Employment form for review at the next board meeting on January 28, 2020.

Hawaii
Administrative
Rules (“HAR”):

A. Revisions to HAR Chapter 73 – Barbers (Draft #2)

The Board discussed the following substantive amendments to Draft 2:

- o “§16-73-2 Definitions
~~["Operator-in-charge" means the barber responsible for the shop.]~~”
- o “§16-73-3(b) Notification and filing of names, addresses, and changes.
~~...each holder of a license to operator a barber shop shall file the name and location of the barber shop, the name and license number of the barber shop [in-charge of the shop] qualifying the shop for licensure, and...~~”

Executive Officer Kleinhans stated that the above amendments should be included as accorded by the Board’s recently discussed amendments to the Barber/Beauty Shop application form and amending the “Operator-In-Charge” form to the “Confirmation of Employment” form.

- o “§16-73-4.5(3) Exemptions from licensure.
~~[An offer or employee of the United States, if the practice is performed by the officer or employee within the federal property]~~ Any individual, if the practice is performed within federal property.”

Executive Officer Kleinhans noted that Ms. Williams requested the above amendment to further clarify that a license is not required if the practice is performed within federal property.

- o “§16-73-27(a) Barber examination.
The examination shall be designed to test the applicant’s theoretical and practical knowledge in the practice of barber [and the applicant’s knowledge of the board’s laws and rules]...”

Executive Officer Kleinhans stated that the above provision removes the requirement that the examination must test the applicant’s knowledge of the Board’s laws and rules pursuant to the Board’s previous motion to not include State laws/rules questions on the upcoming NIC exam.

- o “~~[§16-73-30 Credits.
The applicants shall earn credits for each examination part passed and the credit shall be maintained for the next three examinations as consecutively scheduled by the board from the date the applicant first qualifies for examination.]~~
- o “§16-73-33 No show applicant.
An applicant who has registered but fails to sit for the examination is considered to be a no show applicant, and shall forfeit the examination fee. The no show applicant shall register and pay the appropriate fees for any subsequent examination.”

Executive Officer Kleinhans stated that the “No show applicant” section initially replaced the “Credits” section; however, he recommended that the “No show applicant” be given its own section number to show the history of each section.

- o “§16-73-37 Shop conditions.
Every shop shall be ~~[be provided with]~~ have adequate sanitary facilities, including access to toilets, hot and cold running water, sinks or wash basins. Toilets shall be located in suitable and properly ventilated toilet rooms with self-closing doors;”

Executive Officer Kleinhans stated that the above amendments mimic the proposed Beauty rules in response to the repeal of the Department of Health sanitation rules.

- o “§16-73-38(a)(5) Sanitary practices.
A barber shall not perform or attempt to perform any treatment that is within the scope of practice of medicine as defined by chapter 453, HRS.”

Executive Officer Kleinhans stated that the amendment further clarifies that the definition of the “practice of medicine” is defined by chapter 453, HRS.

Executive Officer Kleinhans stated that technical, non-substantive amendments will also be included to Draft #3 for grammar purposes.

After discussion, it was moved by Ms. Williams, seconded by Ms. Severson, and unanimously carried to accept the proposed amendments of HAR Chapter 73 Draft #2.

B. Revisions to HAR Chapter 78 – Beauty Culture (Draft #1)

Executive Officer Kleinhans stated that the packets of the rules were available at the Board meeting for public review. He reported following substantive rule changes initially proposed by the Beauty Rules Committee at the Board’s August 26, 2019 meeting:

- o “§16-78-2 Definitions.
For purposes of this chapter:
“Barber training” means barber apprenticeship in a licensed shop under direct supervision of a licensed barber or beauty operator in the appropriate category or as a student at a licensed barber school.

"Beauty apprentice" is a person who is employed in a beauty or barber shop in learning to be a beauty operator and while doing so assists in any of the practices of cosmetology under the direct supervision of a licensed beauty operator or licensed barber for the hairdresser category.

"Beauty culture", also known as cosmetology as defined in this section.

"Beauty operator" means one of the following licensure categories: cosmetologist; hairdresser; esthetician; or nail technician.

"Beauty school", unless the context clearly indicates otherwise, means a post-secondary school engaged in teaching cosmetology.

"Beauty shop" means any establishment or place of business wherein the practice of cosmetology is engaged in or carried on and is the primary purpose of that establishment or business; provided that the practice of barbering is allowed in that establishment or business.

"Beauty training" means beauty apprenticeship in a licensed shop under direct supervision of a licensed barber or beauty operator in the appropriate category or as a student at licensed beauty school.

"Board" means the board of barbering and cosmetology as established pursuant to sections 438-3-, 438-5, and 438-6, Hawaii Revised Statutes.

~~["Certificate of registration" means either a license or a registration certificate issued by the board.]~~

"Cosmetologist" is a person who is licensed to engage in the practices of a hairdresser, and esthetician, and a nail technician for compensation.

"Cosmetology", also known as beauty culture, means the art and science of beauty care of the skin, hair, scalp, and nails, and includes any one or a combination of the licensure categories if they are performed on a person's head, face, neck, shoulders, arms, hands, bust, upper part of the body, legs, or feet for cosmetic or beautification purposes, and is non-invasive or non-surgical in nature.

"Department" means the department of commerce and consumer affairs.

"Direct supervision" means supervision by a licensed beauty operator, or licensed barber who is provided training and guidance to the beauty apprentice while

physically in the same workspace as the beauty apprentice."

"Director" means the director of [the department] commerce and consumer affairs.

"Esthetician" means a person who, with hands or non-medically prescribed mechanical or electrical apparatus or devices or by use of cosmetic preparations, antiseptics, tonics, lotions, or creams, engages for compensation in any one or any combination of the following practices"

- (1) Massaging, cleansing, stimulating, manipulating, exercising, beautifying, or doing similar work on the scalp, face, neck, hands, arms, bust, upper part of the body, legs, or feet;
- (2) Cleansing, exfoliating, wrapping, or doing similar work upon the entire body, without direct contact by the hands and utilizing gloves, loofah mitts, or brushes; or
- (3) Removing superfluous hair on any part of the body of any person by means other than electrolysis or laser treatment.

"Executive secretary" or other equivalent expression means any person employed and assigned by the department to provide administrative services to the board, and to act as a liaison between the board and the department.

"Hairdresser" is a person who for compensation engages in any one or any combination of the following practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, braiding, weaving, using hair extensions, or similar work upon the hair of another person.

"Independent contractor" or "chair renter" or "booth renter" or similar terms means an individual who provides beauty culture services for the public for compensation under an arrangement or lease with the owner of a physical beauty or barber shop.

"Instructor" is a person who teaches any of the licensure categories; provided that the term shall not be used by an operator who trains apprentices in a beauty shop.

"Instructor-trainee" means a person who is engaged in learning to be an instructor at a beauty school [in-learning

~~to be an instructor]~~ and while so doing does or assists in teaching ~~[any of the classified practices]~~ the beauty culture practices of the appropriate licensure category under the direct supervision of ~~[an]~~ a licensed instructor.

"Licensure category" means any one of the beauty operator categories of cosmetologist, hairdresser, esthetician, and nail technician.

"Nail technician" is a person who for compensation engages in any one or any combination of the following practices:

- (1) Cutting, trimming, polishing, color, cleansing, or otherwise providing services on a person's fingernails and toenails for cosmetic or beautification purposes;
- (2) Applying artificial fingernails and toenails; and
- (3) Massaging and cleansing a person's hands, arms, legs, and feet.

"Person" includes ~~an [individuals, partnerships, corporations, associations,]~~ individual, partnership, corporation, association, or public or private organization [of any character] other than governmental agencies.

"Post-secondary" means beyond the education equivalent to the completion of high school or grade twelve.

"Shop" means either a licensed beauty shop or a licensed barber shop, or independent contractor's workspace that is licensed as a beauty shop or barber shop.

"Student" is a person who is engaged in learning to be a beauty operator at a beauty school, and while doing so does or assists in doing any act involved in the practice of any or all of the licensure categories of cosmetology under the supervision of an instructor.

"Temporary permit" means a permit allowing a qualified applicant to practice as a beauty operator or instructor under the direct supervision of a licensed beauty operator instructor for a period of time covering three consecutive examinations offered by the board after the permit's date of issuance.

"Wrapping" or "body wrapping" means the same as defined in the definition of an esthetician in this section, provided that wrapping or body wrapping for weight loss or

inch reduction is not considered within the definition of an esthetician.”

Executive Officer Kleinhans reported that the above definitions were proposed to further clarify current Board policy, scope, and regulatory structure.

- “§16-78-3(d) Notification and filing of names, addresses, and changes.
In addition to the requirements of subsection (a), a licensed beauty school shall file the name and location of the beauty school, the name of the principal, and the license number of the principal, if licensed, the names and beauty operator license numbers and instructor license numbers of all instructors of 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.”

Executive Officer Kleinhans stated that the new subsection (d) was created to differentiate the filing requirements between shops and schools.

- “~~§16-78-4 Duplicate certificates and licenses.~~
~~A fee shall be assessed for duplicate certificates and licenses.”~~

Executive Officer Kleinhans stated that the above section was unnecessary as the Professional and Vocational Licensing Division’s (“PVL”) Licensing Branch handles duplicate certificates and licenses and its policy may be subject to change.

- “§16-78-5 Renewal of license.
Renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of a date on or before December 31 [or earlier] of every odd-numbered year.”

Executive Officer Kleinhans stated that the above amendments further clarify the latest a renewal shall be considered paid and, the dates of every renewal period.

- “§16-78-5.5 Restoration of forfeited license.
(b) A forfeited license may be restored within three years
under the following conditions...
...[(4) Should the restoration request be made after
three years from the date of forfeiture, a written
explanation along with supporting documentation shall
be necessary and shall be subject to approval.]
(c) The board may consider restoration of a license that
has been forfeited beyond three years of the expiration
upon the submittal of the licensee’s written request along
with evidence of the licensee’s continued competence in
the practice of the appropriate licensure category, and all
other requirements of this section.”

Executive Officer Kleinhans reported that the above amendments clarify the restoration process and to ensure consumer protection, an applicant for license restoration must provide evidence of his/her continued competence of the practice.

- “§16-78-7.5 Display of licenses or permits.
All licenses and permits shall be conspicuously displayed in
the office, place of business or employment, or school of the
license holder, and evidence of current licensure shall be on
the person of a licensee and made available upon request.”

Executive Officer Kleinhans stated that the new section was added to reinforce HRS §439-2 which states: “The license of a beauty operator, instructor, shop, or school and the permit of an apprentice or temporary permit shall be displayed in a conspicuous place in the office, place of business or employment, or school of the holder.”

- “§16-78-9 Forms and instructions.
[(c) The applicant shall attach to the required and
appropriate application a recent passport sized
photograph.]”

Executive Officer Kleinhans reported that the above subsection (c) is proposed to be repealed as the statute, Board, nor PVL currently do not require applicants to submit a photograph for licensure.

- “§16-78-10 Application for examination and license.
(a) Applications for examination and license for a beauty operator or an instructor shall be filed [at least seven weeks prior to the examination month, which may be regularly] in accordance with the agreement between the board and its testing service, provided that the examination should be given not less than three times a year.
(b) A temporary permit [may] shall be issued [to an applicant that has met the requirements for examination] upon request to an applicant who has been approved to sit for the licensing examination, to train and work during the applicant’s efforts to pass the examination. [The applicant shall provide the information necessary to issue a temporary permit.]”

Executive Officer Kleinhans stated that the above amendments no longer require an application to be submitted seven weeks prior to an examination month; however, is instead determined by the agreement between the Board and its testing administrator. He added this may give some leeway for the transition to the NIC examination. Further, subsection (b) is amended to clarify that a temporary permit shall be issued to an applicant that has been approved to sit for the licensing examination, provided the individual submits an application. He noted that this is current practice regarding temporary permits and generally, temporary permits are not denied if the applicant has been approved to take the examination.

- “§16-78-11 License applications for beauty shop and beauty school.
(a) Applications for license of a beauty shop shall include the necessary documents and information as required in sections [16-78-41] 16-78-40.5 to 16-78-45[, in addition to:].
 - (1) Verification that the shop complies with the sanitary requirements of the department of health;
 - (2) Name of a currently licensed beauty operator who shall practice at the shop;
 - (3) Should the applicant be a corporation or

- ~~partnership, verification of proper registration with business registration division (BREG); and~~
(4) ~~Should the applicant be an individual, a passport-sized photograph of the applicant taken not more than one year prior to the date of application.]”~~

Executive Officer Kleinhans stated that the above amendments were in response to the repeal of the Department of Health’s sanitation rules. He stated that he will detail the amended sections 16-78-40.5 to 16-78-45 after reporting the amended sections prior to 16-78-40.5.

- “§16-78-16 Abandonment of application.
An application shall be deemed to have been abandoned [if all requirements, including filing of forms and payment of fees have not been completed within two years from the date first filed] and shall be destroyed if the applicant fails to provide evidence of continued efforts to complete the licensing process for two consecutive years; provided that the failure to provide evidence of continued efforts includes but is not limited to:
 - (1) Failure to submit the required documents and other information requested by the board within two consecutive years from the last date the documents or other information was requested;
or
 - (2) Failure to provide the board with any written communication during two consecutive years indicating that the applicant is attempting to complete the licensing process, including attempting to complete the examination requirement.”

Executive Officer Kleinhans reported that the section was amended to further administer HRS §436B-9(b), “Action on applications; abandoned applications.”

- “§16-78-19 Requirements for registration as an apprentice.
 - (1) Submit verification of having an education equivalent to the completion of high school, as determined by the United States department of

education or the State of Hawaii department of education;

- (2) Provide the name, license number, and address of the [beauty] shop, [and] the name and licensed number of the [beauty operator] licensee supervising the apprentice[;], and specify the licensure category of the supervising licensee;...

...(7) A licensed barber with one year of experience shall be deemed to be qualified to train an apprentice in the hairdresser category.

~~[(b) An instructor-trainee shall:~~

- (1) ~~Submit verification of having an education equivalent to the completion of high school;~~
(2) ~~Provide a copy of a current beauty operator license in good standing; and~~
(3) ~~Submit verification of one year beauty operator experience in this State or another jurisdiction having standards substantially equivalent to those of this State.]”~~

Executive Officer Kleinhans stated that the amendments to paragraphs (1) and (2) solidify current Board policy and regulatory structure. Further, paragraph (7) was added pursuant to the Board’s previous discussion on cross-over training. Additionally, subsection (b) was removed as the beauty statutes and the Board currently do not require instructor-trainees to submit documentation.

- “§16-78-20 Requirements for examination and license.

(b) In order to apply for examination and licensure, a [Beauty] beauty operator [applicants] applicant shall provide verification of:

- (1) [have] Having an education equivalent to the completion of high school, as determined by the United States department of education or the State of Hawaii department of education[.—One], provided that having one year of experience as a licensed beauty operator in another jurisdiction shall satisfy the high school education requirement[.]; and

~~[(c) Beauty operator applicants shall satisfy the]~~

- (2) Completing beauty training [requirement] as a

student at a beauty school, as an apprentice in a [beauty] shop, or ~~[being currently licensed in another jurisdiction]~~ having a combination of training as a student at a beauty school and as an apprentice in a shop; or having a current license as a beauty operator in another state or jurisdiction in the applicable licensure category.

(C) Barber training in this State or barber training gained in another state or jurisdiction that is deemed to be substantially equivalent to barber training in this State, shall fulfill the training requirement for the hairdresser licensure category. One year of experience as a licensed barber shall satisfy any difference in the beauty training and the high school education requirement for a hairdresser.

Executive Officer Kleinhans stated that the above amendments are in regard to applicants for Instructor licensure and that paragraph (b)(1) solidifies current Board policy regarding education. Further, paragraph (b)(2) clarifies that training obtained via beauty school or apprentice may be combined. Subparagraph (b)(2)(C) was added to recognize cross-over training should an applicant qualify for examination via HRS §439-12(f)(2).

- *“§16-78-21 Temporary Permit.*
 - (c) Temporary permit shall not be renewed or extended.*
 - (d) The temporary permit provides the qualified beauty operator applicant to practice and train ~~[and work]~~ in a licensed beauty shop under supervision of a ~~[licensed beauty operator in the appropriate certification]~~ licensee in the applicable licensure category, or the qualified instructor applicant to practice and train in a licensed beauty school under supervision of a licensed instructor.*
 - (e) The qualified beauty operator or instructor applicant shall file a temporary permit application and pay a temporary permit fee.*
 - (f) The qualified beauty operator applicant with a previously issued temporary permit in one licensure category may request a change in licensure category if the*

applicant duly qualifies. This request shall be in writing and another temporary permit application shall be completed and filed, and payment of a temporary permit fee shall be required.”

Executive Officer Kleinhans reported that the above changes further solidify the Board’s current regulatory structure regarding temporary permits.

- “§16-78-28 Examination.
(d) The examination shall be given in the English language, and no applicant shall be permitted the use of a reader, interpreter, or any other examination aid, unless the applicant is granted an exception in accordance with the Americans with Disabilities Act of 1990.”

Executive Officer Kleinhans reported that the above amendment is currently a part of section 16-78-30. He noted that the section will be repealed to be included to section 16-78-21 with an additional provision regarding ADA exemptions as Prometric currently accommodates such requests.

- “~~§16-78-31 Supplies and equipment.~~
~~Each applicant shall be required to provide their own supplies, and equipment for the examination.]”~~

Executive Officer Kleinhans stated that the above section is proposed to be repealed as the Board currently does not require a practical portion for examination.

- “§16-78-36 Exemptions from licensure.
(6) A person involved in an [Educational] educational [activities] activity conducted in connection with any monthly, annual, or other special program from which the general public is excluded, who uses cosmetology products or techniques without compensation for the practice services[. This exemption shall apply only to the specific days of the special program];
(7) [Persons] A person employed by a theatrical [groups] group, modeling [agencies or] agency, wedding service, photography [studies] studio,

mortuary, or funeral home without being directly compensated by the client ~~[being serviced]~~ or the client's designee for the beauty services;"

Executive Officer Kleinhans stated that paragraph (6) is being amended to further specify that individuals providing an educational activity should not receive compensation. Further, paragraph (7) is being amended to exempt an individual employed by a wedding service, mortuary, or funeral home from licensure, provided the individual employed by the aforementioned business are not directly compensated by the client or the client's designee for the beauty services.

- "§16-78-37 Exceptions to place of practice.
 - (4) ~~[Educational activities]~~ Upon a person at an educational activity conducted in connection with any monthly, annual, or other special program from which the general public is excluded, and provided that compensation is limited to the educational program and not for practice services. This exception shall apply only to the specific days of the special program; and
 - (5) As an employee of a theatrical group, modeling agency, wedding service, ~~[or]~~ photography studio, mortuary or funeral home, provided the client or the client's designee does not directly compensate the licensee.
- (b) The conditions for practice outside of a licensed shop are as follows:
 - (1) Arrangements for services shall be made through a licensed shop, provided that an individual licensee engaging in the services is considered to be a licensed shop;
 - (2) Records shall be kept by the licensed shop of such arrangements; and
 - (3) All services shall comply with the sanitary practices and requirements of this chapter."

Executive Officer Kleinhans stated that the amendments to paragraphs (5) and (6) are in conjunction with paragraphs 16-78-36(6) and (7). Additionally, the Beauty Committee proposed subsection (b) to provide structure and extend

consumer protection when beauty services are being practiced outside of a licensed shop.

- “§16-78-40.5 License applications.
(a) An application for a beauty shop license shall include:
 - (1) The name and license number of a currently licensed beauty operator who shall practice at the shop as the operator-in-charge;
 - (2) Should the applicant be an entity other than an individual, verification of proper registration with the business registration division of the department.

Executive Officer Kleinhans noted that this section was initially in section 16-78-11(a); however, was given its own section so that sections regarding beauty shop requirements are in the same subchapter.

- “§16-78-41 [~~Compliance with other laws~~] Shop conditions.
[The board may accept a signed statement from the department of health that the shop for which the certificate is sought is or will be in full compliance with all State public health and safety requirements.] A person who operates a beauty shop shall comply with the following conditions:
 - (1) The walls, floors, ceilings, furniture, fixtures, and all other parts and surfaces in a shop shall be kept clean at all times.
 - (2) Every shop shall be properly and adequately lighted and ventilated;
 - (3) Every shop shall be provided with adequate sanitary facilities, including toilets, hot and cold running water, sinks or wash basins. Toilets shall be located in suitable and properly ventilated toilet rooms with self-closing doors; and
 - (4) A work station shall be maintained in a safe, clean, and sanitary manner.”

Executive Officer Kleinhans reported that the above amendments are in response to the repeal of the Department of Health sanitation rules. He added that the amendments clarify the term “adequately equipped” pursuant to HRS §439-17(a).

- “§16-78-41.5 Sanitary practices.
(a) Any person who is engaged in the practice of
cosmetology shall observe the following sanitary practices:
 - (1) Razors, shears, scissors, brushes, clippers,
tweezers, finger bowls, or combs, or any like
article shall not be used on any patron unless
the article has been thoroughly cleaned and
sanitized since last used. All such instruments
shall be thoroughly cleaned and sanitized using
a method approved by the State department of
health, after having been used on a patron.
After sanitization, all such instruments shall be
stored in a manner to prevent contamination, or
must be sanitized again immediately before use
on a subsequent patron, provided that special
sponges and makeup applicators used in the
practice of esthetics shall be discarded after
being used on a patron;
 - (2) No beauty operator shall stop the flow of blood
by using alum or other material unless the same
is used in liquid form or as a powder and applied
with a clean towel;
 - (3) The use of any astringent in lump or styptic
pencil form, lump alum, powder puff, neck
duster, or skin planning implements, including,
but not limited to credo blades, or facial
extraction implements, including, but not limited
to lancets shall be prohibited in any shop.
Possession of the same is prima facie evidence
that same is being used at the shop in the
practice of cosmetology;
 - (4) A beauty operator shall not remove or attempt to
remove any wart, mole, pimple, or ingrown hair.
Cleaning of ears is prohibited;
 - (5) A beauty operator shall not perform or attempt to
perform any treatment that is within the scope of
practice of persons trained in medical science;
 - (6) A beauty operator engaged in the practice of
cosmetology shall wash his or her hands
thoroughly with soap and hot water immediately
before and after attending to any client;
 - (7) In the practice of cosmetology, a licensee is

- required to utilize disposable lip brushes, make-up wands, facial and make-up sponges, sponge-tipped eyeshadow applicators, and other articles, as determined by the board;
- (8) Towels or other fabrics that come in contact with the skin or hair of a person shall be used on more than one client without being laundered in an acceptable manner. After use on a client, such towel or fabric shall be placed in a hamper with a cover or other suitable receptacle, from which it shall not be removed except for laundering or final disposal. Laundry shall be washed clean and subjected to a sanitizing process before being used on another client. The sanitizing process shall subject such laundry to a temperature of at least 180 degrees Fahrenheit for a minimum of twenty minutes or sanitized by other methods approved by the State department of health before again being used on a client;
- (9) Prior to servicing any client, the headrest of any chair shall be covered with a clean towel or sanitized by a method approved the State department of health. If any towel or implement is to be wet, such towel or implement shall be wet in running water and shall not be dipped in any water container;
- (10) All towels and other fabrics used in any shop shall be kept in a closed cabinet at all times when not in use;
- (11) All creams, tonics, cosmetics, and other applications used on a client shall be kept in clean closed containers.
- (12) A clean towel or protective paper neck strip shall be placed around the neck of each client served so that at no time will the hair cuttings, cloth, or cape come in contact with the neck or skin of the client; and
- (13) Only products and equipment that are approved for the practice of cosmetology shall be used on clients. All beauty operators shall comply with product label procedures and ensure that proper

training has been completed before offering new techniques and services.

(b) Failure to comply with the sanitary practices listed in section (a) may be construed to be professional misconduct, gross negligence, or manifest incapacity, and subject to disciplinary action.”

- “§16-78-41.6 Infectious and contagious diseases.
(a) A beauty operator afflicted with a contagious or infectious disease in a communicable form, shall not be permitted to engage in the practice of beauty culture on a client in a beauty shop, nor shall a client afflicted with such a disease be permitted to receive any beauty culture services in a beauty shop, unless appropriate precautions are taken to prevent the further spread of such disease.
(b) A beauty operator who engages in the practice of beauty culture in the shop and has been afflicted with such disease shall be permitted to return to work only upon submittal of a written statement from a physician that the beauty operator is permitted to return to work.”

Executive Officer Kleinhans noted that the proposed sections 16-78-41.5 and 41.6 also were in response to the repeal of the Department of Health’s sanitation rules to provide a minimum standard of sanitation for consumer protection. He added that the amendments to section 16-78-41.5 further specify that non-compliance with the section shall be construed to be professional misconduct, gross negligence, or manifest incapacity.

- “§16-78-42 [~~Shop~~] Relocation of shop; change in shop ownership.
~~[A fee shall be charged for relocation under the same name and ownership.]~~ (a) Relocation means that a shop moves from its current location to a new location, while retaining the shop name and ownership. The licensee shall submit a completed relocation application and pay the applicable fees.
(b) A change in ownership of a shop requires the new owner to complete a beauty shop application, pay the applicable fees, and meet all requirements for a new beauty shop license.

(c) ~~[License certificates are]~~ A shop license is nontransferable.

Executive Officer Kleinhans reported that the above amendments further specify the Board's current policy and process regarding relocation applications.

- *"§16-78-42.5 Shop license. More than one beauty shop license may be issued to any place of business, including an independent contractor who works in an existing licensed beauty shop, provided that each beauty shop license hold is jointly and severally responsible and liable to the board."*

Executive Officer Kleinhans reported that the proposed section 16-78-42.5 further solidifies the Board's policy regarding independent contractors.

- *"§16-78-45 ~~[Employment]~~ Practice of barbers. A barber with a valid and current license ~~[shall be permitted to work]~~ is qualified to practice barbering in a beauty shop ~~[without meeting any additional cosmetology licensing requirements]~~ however, training a barber apprentice in the beauty shop shall not be allowed. "*

Executive Officer Kleinhans noted that the section authorizes a barber to practice in a beauty shop; however, the proposed amendment to disallow the training of a barber apprentice may conflict with crossover training.

- *"§16-78-48 ~~[Schools]~~ Beauty school license. (b) Each licensed school shall new its license on or before December 31 of each year. The annual renewal process shall include the submittal of a renewal application and all applicable fees. (c) A beauty school relocation means that a school moves from its current location to a new location, while retaining the school name and ownership. A beauty school relocation shall require the new owner to complete a new license application, comply with all current requirements, and pay all applicable fees."*

(d) A change in school ownership shall require the school to file a new application, comply with all current requirements, and pay applicable fees.

(e) A school license is nontransferable.

(f) The beauty school owner or designee shall provide the name and license number of every instructor employed by the school, and shall be in charge of and responsible for the operator of the school.

(g) Any change relating to the beauty school's instructors shall be reported in writing to the board within thirty days of the change."

Executive Officer Kleinhans noted that the above subsections were inserted from other current sections, such as 16-78-11, for organizational purposes as Subchapter 7 applies to beauty schools.

- "§16-78-49 [Application] License application
(1) A complete statement of the applicant's [training] fitness and experience [in order to establish his fitness] to conduct a school as proposed. The applicant shall also provide a mission statement that includes the educational objectives for each course of study;"

Executive Officer Kleinhans reported the Beauty Committee's proposed amendment to paragraph (1) includes a mission statement requirement with the application process.

- ~~"[§16-78-50 License. Licenses to operate a beauty school are nontransferable.]"~~

Executive Officer Kleinhans noted that repealed section 16-78-50 was inserted into section 16-78-48.

- "§16-78-51 Courses of study.
(b) The courses of study shall include instruction in theory and practical application under the supervision of a licensed instructor.
(c) The provisions of chapter 439, Hawaii revised statutes, chapter 16-78, Hawaii administrative rules, and chapter

436B, Hawaii revised statutes shall be taught in all classes.”

Executive Officer Kleinhans stated that the newly proposed subsections (b) and (c) will further solidify the Board’s policy on school curriculums.

- “[~~§16-78-52~~ Law and rules.
~~State law and rules adopted by the State board shall be taught in all classes.]”~~

Executive Officer Kleinhans stated that section 16-78-52 is being inserted into section 16-78-51.

- “[~~§16-78-53~~ Principal.
~~The principal shall provide the name and certificate number of all instructors and be in charge of and responsible for the operation of the school.]”~~

Executive Officer Kleinhans stated that section 16-78-53 is being split and inserted into sections 16-78-6 and 16-78-49.

- “§16-78-55 Instructor-trainee.
(6) An instructor-trainee shall not be allowed to independently provide instruction to students without the presence and supervision of a licensed instructor.”

Executive Officer Kleinhans reported that the proposed paragraph (6) further specifies that instructor-trainees require supervision by a licensed instructor when providing instruction to students.

- “§16-78-58 Equipment and materials.
(a) ~~The school shall maintain [at least the following minimum equipment for each twenty-five students enrolled:~~
 - (1) ~~Three shampoo bowls;~~
 - (2) ~~Three dryers;~~
 - (3) ~~Sufficient reclining chairs for facials (punees are acceptable);~~
 - (4) ~~Three manicure tables;~~
 - (5) ~~One chair and dresserette station for each~~

- ~~student;~~
- (6) ~~Mannequin for each student with first quality hair for use in practicing the art of cosmetology (mannequins shall be placed on firm stands);~~
 - (7) ~~Wet sterilizers (sufficiently large to accommodate the instruments used by twenty-five students);~~
 - (8) ~~Electrical appliances for the proper training of beauty culture; and~~
 - (9) ~~X-ray equipment shall not be used.]~~ the necessary teaching equipment and instructional materials for the appropriate beauty operator licensing categories offered and taught, and shall be of an adequate number and quality to be conducive to effective training.

~~(b) [The requirement of subsection (a) shall be standard beauty equipment and maintained in good working condition.]~~ The teaching equipment and instructional materials shall be maintained in good working order, and meet current professional standards.”

Executive Officer Kleinhans reported the Beauty Committee’s proposed amendments to section 16-78-58 specifying that schools would need to maintain necessary equipment to ensure effective training, instead of a specific number of dryers, tables, etc.

- “§16-78-60 [School hours] Cooperative education program. [The program of instruction for any instructor or student shall not exceed forty hours per week nor more than eight hours in any one day.] The cooperative education program (CEP) is a formal program established by agreement between the licensed beauty school and a licensed shop to provide a student of the beauty school with the opportunity to apply the student’s academic education to supervised work experience in accordance with the beauty school curriculum. The required conditions for an effective CEP shall include, but are not limited to, the following:
 - (1) The school and shop shall develop and establish the training program for the eligible student, and the training shall be in compliance with the

- appropriate course of study within the beauty school curriculum;
- (2) The school shall be responsible for the student training at the shop;
 - (3) The school shall appoint a coordinator to facilitate the program and to serve as the liaison between the school, shop, supervising licensee, and student;
 - (4) The shop shall ensure that the licensee who supervises the work of a student shall have at least one year of experience as a beauty operator;
 - (5) Any student who has satisfactorily completed at least fifty percent of the appropriate course of study is eligible to participate in the CEP; and
 - (6) Every student shall wear a name tag that reflects the student status of the program participant."

Executive Officer Kleinhans stated that he was unable to find previous discussion from his predecessor regarding this matter and inquired with Chairperson McKay.

Chairperson McKay responded that the CEP provides a pathway for a beauty student to obtain an externship via on-the-job training with a licensed beauty shop, provided that there is an agreement between the school and the shop.

Executive Officer Kleinhans stated that technical, non-substantive amendments will also be included to Draft #2 for grammar purposes.

Chairperson McKay inquired if there should be a provision regarding the allowance of a word-for-word dictionary. Executive Officer Kleinhans responded that the proposed section §16-78-28(d) allows Prometric to grant an exception in accordance with the Americans with Disabilities Act of 1990.

After discussion, it was moved by Ms. Williams, seconded by Ms. Severson, and unanimously carried to accept the proposed amendments of HAR Chapter 78 Draft #1 and to amend section §16-78-28(d) to allow for a word-for-word dictionary.

Board of Barbering and Cosmetology
Minutes of the December 16, 2019 Meeting
Page 27

Open Forum: None.

Next Board Meeting: Tuesday, January 28, 2020
12:00 p.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Announcements: None.

Adjournment: There being no further business to discuss at this time, the meeting was adjourned at 2:06 p.m.

Taken and recorded by:

/s/ Leanne Abe

Leanne Abe, Secretary

Reviewed and accepted by:

/s/ Kedin C. Kleinhans

Kedin C. Kleinhans, Executive Officer

KCK:la

01/01/20

[X] Minutes approved as is.
[] Minutes approved with changes