



DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
BOARD OF BARBERS AND HAIRDRESSERS

MINUTES OF THE MEETING HELD OCTOBER 02, 2023

By the authority of AS 08.01.070(2) and AS 08.86.030 and in compliance with the provisions of AS 44.64, Article 6, a scheduled board meeting was held via teleconference/Zoom and in person in Anchorage on, October 02, 2023

October 02, 2023:

Attendance

Members Present: Chair Michelle McMullin, Connie Dougherty, Khitsana Sypakanphay, Tenaya Miramontes, Wendy Palin

Members Absent:

Glenda Ledford, Breanna Hardy

Staff Present: Sara Chambers, Boards and Regulations Advisor; Cynthia Spencer & Wanda Whitcomb, Licensing Examiners; Melissa Dumas, Administrative Operations Manager; Alison Osborne, Regulation Specialists; Renee Carabajal, Program Coordinator; Jennifer (Jenni) Summers, Investigator

Public Present via Zoom:

There were 46 attendees via Zoom.

1. Call to Order/Roll Call

The board was called to order at 9:12 a.m.

Board members present via roll call: Michelle McMullin, Connie Dougherty, Tenaya Miramontes, Khitsana Sypakanphay, Wendy Palin

A. New Board Member Introductions – Wendy Palin and Tenaya Miramontes

Wendy Palin and Tenaya Miramontes greeted the board and introduced themselves.

2. Review Agenda

The board reviewed the agenda.

Ms. Chambers reminded the public that the upcoming public comment, Item 5, was not the avenue to speak about the proposed regulation change packet because the board had not provided public notice of an oral hearing. This regulation project had a written public comment period that began August 29, 2023, and closed September 29, 2023. Ms. Chambers stated any other public comments would be accepted during Item 5.

Motion: 1st Michelle McMullin – 2nd Wendy Palin

Approve agenda as written.

Approved by majority.

3. Ethics Disclosure

Considering several new members participating in their first meetings, Ms. Chambers reviewed the ethics requirements of the Executive Ethics Act with the board.

All Board members present declared by roll call they had no conflicts to disclose.

4. New Business

A. Legislative Proposal Update

1. Previous legislative proposal

Chair McMullin reviewed legislative proposals from the board's FY24 Annual Report, as well as

the letter and previously proposed legislative change packet to representatives written by former Chair, Jennifer Lombardo. Chair McMullin also reviewed the 2023 letter to Senator Jesse Bjorkman and proposals from former board member Tina Taylor.

Chair McMullin stated the board would continue to draft legislation as needed to meeting industry changes and standards and that she had been working with Senator Jesse Bjorkman on the current legislative change proposals.

Ms. Chambers stated interested parties could review the board's annual reports for legislative and regulatory recommendations; these reports are available on the division's website.

The chair briefly discussed the November 2022 AAG memo regarding estheticians using dermal lights. Chair McMullin suggested dermal light use is a standard for estheticians and removing the ability to use/provide this type of service if allowed by law would be detrimental to the profession. Ms. Chambers added some context and details to help the new board members and public understand the history of the legal advice, how the board may decide to act on it, and potential next steps for clarification of existing regulations and potentially pursuit of statute changes. Chair McMullin suggested further discussion with the Department of Law, the Medical Board, and Board of Nursing is needed. Chair McMullin foreshadowed that she would be asking the board to "push pause" on the sections of proposed regulations pertaining to esthetician curriculum later in the meeting.

The board agreed there has to be a line for estheticians working a medical office and those working in a traditional shop; what services are able to be provided are completely different.

2. New proposal(s) to Add

a. Discusstion Creation of New License Type, Advanced Esthetician

Chair McMullin reviewed documentation she provided reflecting the Idaho Board of Cosmetology's esthetician scope of practice. Chair McMullin clarified that this was simply one example of how another state regulates this type of work.

Chair McMullin reported Idaho scope of practice reflects non-invasive care of skin and allows estheticians to utilize medical devices classified as Class-1 the United States, Food and Drug Administration designed for care of the skin; except that a Class-2 medical device designed for skin care may be used as directed and supervised by an authorized and licensed health care practitioner. Their law also permits estheticians to provide temporary removal of superfluous hair by lotion, creams, wax and tweezing to depilatories or other means, as well as tinting or perming of the eyebrow and the eyelashes. Chair McMullin stated she felt this information covers everything Alaska estheticians should currently be able to do and opens up Class-1 medical devices for esthetician use.

Chair McMullin stated there are only five states that offer an advanced esthetician license that don't require training and licensure as a health care provider; these states require between 400 and 600 hours of training.

Ms. Chambers stated she encourages board members, while considering these changes, to remember that each state has its own requirements, laws, and regulations which should be considered. Alaska has different requirements, laws, and regulations – which could be changed using the appropriate processes. Ms. Chambers also encouraged the board to speak with the Department. of Law, State Medical Board, and Board of Nursing to obtain a complete and full understanding of the context of all laws for Alaska. Ms. Chambers also stated that these discussions may also result in statutory/regulatory changes for the medical and nursing boards, especially addressing delegation and supervision requirements., so everyone must ensure changes are done appropriately, with so many levels of types of technology as well as levels of practitioners, it's important to have all stakeholders at the table to openly discuss all aspects and impacts of potential changes. She reminded the board the legislature will begin session January 2024, so time is running out to expect changes to be completed the end of the 33rd Alaska State Legislature.

The board briefly reviewed several position statements published by the State Medical Board and explained to the public where these documents could be located online:

- i. Guideline Regarding Delegating to Medical Assistants (Unlicensed Assistive Personnel), 2011
- ii. Guideline Regarding the Use of Lasers and Laser Surgery, 2007, incorporating the position from the American College of Surgeons regarding use of lasers, pulsed light, radiofrequency devices or other techniques.
- iii. Guidelines for Physicians in Delegating Procedures to Non-physician Personnel When Performing Certain Dermatological Procedures, 2017

Chair McMullin read sections of the State Medical Board guidance suggesting that some current practices known to be operating in Alaska are required to be under direct physician supervision and required to be operated by a person with an appropriate health care license. The practices are regulated by the State Medical Board and may constitute unlicensed practice of medicine. These are some of the areas for discussion with the State Medical Board and Board of Nursing.

The board was behind schedule and paused Item 4 to open the meeting for public comment.

5. Public Comment – The chair reminded listers that oral testimony for public noticed regulations would not be accepted because the board did not authorize an oral hearing.

➤ **Jacqueline. Polis, Esthetician.**

Ms. Polis stated that she is excited for changes moving forward in the industry and licensing; recognizes there are logistics that a lot of us are just out here working in the industry that don't have a full grasp of as the board does. She was frustrated seeing esthetician scope of practice being discussed and changed as detailed in the May 15, 2023 position statement which removed modalities.

She supported working with the medical and nursing boards towards updating esthetics and/or creating an advanced esthetician license.

She supported following FDA approval/guidelines should be followed and suggested verbiage like "over the counter" or "prescriptive device".

She stated that if types of modalities are removed from the current scope of practice it will negatively impact hers and other estheticians' businesses.

The board thanked Ms. Polis for her time and participation.

➤ **Rachel Lauesen, Attorney, Lauesen Law Team, representing Skinlife Medspa.**

Ms. Lauesen stated today's discussion from the board is positive with respect to the acknowledgement that the statutes have not kept up with the times and stating that there needs to be a conversation with the Department of Law to ensure that nothing is taken away from the existing scope of practice.

Ms. Lauesen stated that the November 2022 memo from the Department of Law reflects the board's statutes are outdated and does not reflect current practices allowed in most states. Ms. Lauesen said some of the procedures the board is concerned with are taught as part of the standard esthetician curriculum with these procedures begin performed at out-of-state establishments where Alaska estheticians may go to complete training hours that are required by Alaska.

Ms. Lauesen criticized the board for not allowing public comment, oral or written, during the June 15, 2023, meeting and only allowing 15 minutes for public comment during this meeting. She raised concern that Chair McMullin stated future legislation would include an allowance for grandfathering which was there is no mention of in the June 15, 2023, meeting minutes. Ms. Lauesen felt frustrated that none of the documents being presented during this meeting were included in the public board packet.

Ms. Lauesen stated the board's May 15, 2023 esthetician scope of practice memo eliminating modalities and declaring them unlawful stigmatized business and licensees.

Ms. Lauesen said open discussion with medical boards were good decisions. Ms. Lauesen stated based on all of this information and current discussion, the board should withdraw the esthetician position statement and that the board should recognize their statutes are outdated which the board has repeatedly recognized but have taken no action to correct.

Ms. Lauesen thanked the board.

The board thanked Ms. Lauesen for her time and participation.

Ms. Chambers noted that time was short for public comment and asked if other attendees who would like to address the board to raise their hands; seeing only Gloria Bamberg-Merritt as wanting to address the board, Ms. Bamberg-Merritt was recognized. Ms. Chambers also stated that everyone's comments were appreciated and that they were providing great feedback.

➤ **Dr. Gloria Bamberg-Merritt, Instructor/Barbering**

Dr. Bamberg-Merritt greeted the board and thanked them for allowing her the opportunity to speak and stated she appreciated the board being available to speak with the public in reference to issues at hand and past issues.

Dr. Bamberg-Merritt stated open and clear communication, and keeping practitioners involved and part of the dialog is important as changes discussed effect the livelihood of licensees.

The board thanked Dr. Bamberg-Merritt for her time and participation.

6. Division and Financial Update

Melissa Dumas, Administrative Operations Manager joined the board and introduced herself.

A. Division and Financial Update: FY23 3rd Quarter Budget Reports

Ms. Dumas reviewed the 3rd quarterly report with the board and provided a review of the fee setting process. Ms. Dumas asked the board if there were any questions; hearing none, Ms. Dumas thanked the board for their time.

The board thanked Ms. Dumas for her time and reporting.

Recess The board recessed at 10:29 a.m. for a short break; reconvened at 10:37 a.m. Staff confirmed by roll call that a quorum was present.

4. New Business, continued

A. New proposal(s) to add Legislative Proposal Update

3. Proposal from Tenaya Miramontes

Ms. Miramontes informed the board she had been working on a bill prior to being appointed to the board. Ms. Miramontes stated she has been contacted by many young people asking about how to enter the industry. They would like to see what is involved before beginning a training program. Current statutes allow for unlicensed individuals to only wash hair, and the current hair braider license does not allow the use of hot tools. Ms. Miramontes stated the proposed changes would add the use of hot tools and allow the addition of hair washing/drying. The changes would allow more interested individuals to learn and provide basic services.

The documentation provided in the meeting packet is a draft from Representative Jesse Sumner's office. OLE Spencer stated the draft legislation, as written. would remove the current hair braiding license and add an aspect that is already covered under the current body piercing license.

Ms. Miramontes requested input from the board as there is a draft deadline which she wants to make sure she meets and provides edits to the draft bill. Ms. Miramontes informed the board she did not want to eliminate the hair braiding license, just add services to the license. Ms. Miramontes also asked the board if there was anything they might want to add to the draft bill.

The board agreed, as the draft bill was written, it would deregulate/remove the hair braiding license.

Ms. Chambers stated she believes the draft bill intention is to move hair styling into an updated hair braiding license, which would allow hair styling without chemicals, along the lines of the non-chemical barber license. Ms. Chambers suggested the board put together a working group to discuss the proposed bill.

Chair McMullin cautioned the board that Representative Sumner may not want to add elements to the draft bill and that the board needed to be careful of deregulation since the purpose of the board is to protect the public.

Ms. Miramontes stated that there is quite a bit of sanitation and regulation hours required for training, so possibly changing or adding training areas would be the best avenue.

The board briefly discussed changes to the hair braiding license, creating a new hair styling license, and training requirements.

Ms. Chambers recommended if the board supported Ms. Miramontes' legislative concept, a motion stating that would be helpful in the legislative process.

Ms. Sypakanphay stated she felt this was a great idea and including hairstyling in the hair braiding license is a good idea.

Ms. Dougherty stated she also felt this bill was a good idea, however further review and discussion is needed.

Board members agreed with Ms. Sypakanphay and Ms. Dougherty. Chair McMullin asked Ms. Chambers to assist Ms. Miramontes in responding to Rep. Sumner.

Motion by Chair McMullin to conceptually approve Ms. Miramontes' legislative proposal to add shampooing, blow drying, and the use of hot tools to the hair braider license scope of practice. The motion was approved unanimously.

B. Apprenticeship fees/wages information

OLE Whitcomb informed the board that a new federal apprenticeship program called Atarashii recently began in Alaska. OLE Whitcomb registered concerns about a grant structure used by this company; her understanding is that the apprentice is paid a wage, and there should be no payment by the apprentice for the education.

Alaska Department of Labor and Workforce Development (DOLWD) and Alaska Commission on Postsecondary Education (ACPE) both had questions regarding the Atarashii program charging apprentices for their education. ACPE information provides that if an apprentice is being charged for their education, this is considered a tuition and the shop/instructor becomes a school and must apply for and receive school approval from ACPE.

OLE Whitcomb informed the board that several instructors have begun working with the Atarashii program and there would most likely be more individuals obtaining their education through this program as well.

The board discussed this information and requested staff work with these state and federal agencies to gather information prior to revisiting with the board at their next regular meeting.

Action Item: Request additional apprentice wage, instructor fees/payment information from the Federal Dept. of Labor, Alaska DOLWD, and ACPE for presentation at next meeting.

Recess The board recessed at 11:13 a.m. for a short break; reconvened at 11:23 a.m. Staff confirmed by roll call that a quorum was present.

7. Review & Adopt Proposed Regulations: 12 AAC 09.002, 12 AAC 09.004, 12 AAC 09.005, 12 AAC 09.010, 12 AAC 09.075, 12 AAC 09.106, 12 AAC 09.162, 12 AAC 163, 12 AAC 09.185, and 12 AAC 09.190

Regulation Specialist, Alison Osborne joined the meeting and introduced herself to the board.

Ms. Osborne informed the board that about 90% of the received written public comments were against changes to the esthetician curriculum.

Ms. Chambers asked the board if they had time to read the submitted comments since many came in just before the board meeting; members of the board stated they had read through some but not all of the submissions. Ms. Chambers suggested the board take time to read all written comments prior to deliberating on them.

The board began reading submitted public comments at 11:27 a.m. and completed their review at 11:44 a.m.

Ms. Osborne reviewed the regulation changes with the board, including clarification that the division was proposing a confirming change in 12 AAC 02.140(4) and (7) to repeal written exam fees.

Ms. Chambers explained that the board had contracted with Prov to begin computerized test administration October 2022; and stated the fee changes were an administrative clean up as examination fees are now paid directly to Prov.

The board briefly discussed the regulation packet and found there was consensus to request Ms. Osborne remove proposed changes to 12 AAC 09.162 and 12 AAC 09.163 relating to dermal lights from the current packet. Chair McMullin clarified that the board would go back to the Department of Law for further discussion regarding the use of dermal lights by estheticians.

Action Item: *Request further review of AS 08.13.220(5), particularly the use of dermal lights, from the Department of Law.*

Motion by Connie Dougherty to table proposed changes to 12 AAC 09.162 and 12 AAC 09.163 and adopt the proposed changes to 12 AAC 09.002, 12 AAC 09.004, 12 AAC 09.005, 12 AAC 09.010, 12 AAC 09.075, 12 AAC 09.106, 12 AAC 09.185, and 12 AAC 09.190. Seconded by Wendy Palin.

The motion was approved unanimously.

Ms. Osborne explained the next steps in the process. The board thanked Ms. Osborne for her time and assistance.

The board thanked Ms. Osborne for her time and assistance.

Recess The board recessed at 12:18 p.m. for a lunch break; reconvened at 1:22 p.m. Staff confirmed by roll call that a quorum was present.

9. Investigations

Senior Investigator Jennifer (Jenni) Summers joined the board and introduced herself.

Investigator Summers informed the board that public members are not selected as reviewing board member (RBM) for case reviews as they are not licensees and not subject matter experts. Investigator Summers began board member investigative process training.

A. Board Investigative Process Training

1. Investigative Process
2. Confidentiality Training
3. Board Communications Training
4. Board Member Reviews Training

Investigator Summers reminded the public that the investigative process is explained on the division website.

The board thanked Investigator Summers; Investigator Summers urged the board to contact her if they had any questions or concerns with the investigative process.

Ms. Chambers announced that the division was offering additional board member trainings which all board members were encouraged to attend. Ms. Chambers stated training information can be found on the website under the quick link in the sidebar titled, "Board Member Training".

B. Investigative Memo

Investigator Summers reviewed the Investigative Memo with the board and reported 31 open matters and 28 closed matters during April 26, 2023 – September 28, 2023. The board had no questions.

C. Investigative Probation Report

Investigator Summers reviewed the probation report with the board and reported three licensees were still on probation and one licensee had been released due to surrendering their license. The board had no questions.

D. Executive Session

Motion to enter executive session: 1st Khitsana Sypakanphay – 2nd Michelle McMullin
Alaska state Board of Barbers and Hairdressers enter executive session in accordance with AS 44.62.610(c) and Alaska constitutional right to privacy provisions, for the purpose of discussing subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion. Board staff to remain during the session.

Approved by majority roll call.

Board entered executive session at 2:34 p.m. and returned from executive session at 2:57 p.m. Staff confirmed by roll call that a quorum was present.

Ms. Chambers announced that prior to adjourning into executive session, it wasn't noted that board members Michelle McMullin and Khitsana Sypakanphay were recused from certain executive session discussions because they were the reviewing board members for presented cases.

Motion: 1st Connie Dougherty – 2nd Wendy Palin

Adopt Voluntary Surrender of License for Case 2022-000249, Sara Grocott, as presented.

Michelle McMullin and Khitsana Sypakanphay were recused from voting on this matter.

Approved by majority of quorum via roll call vote.

Motion: 1st Michelle McMullin – 2nd Connie Dougherty

Adopt Consent Agreement for Case 2022 – 000388, Francisco Valladolid, as presented.

Khitsana Sypakanphay was recused from voting on this matter.

Approved by majority of quorum via roll call vote.

10. Old Business

A. AS 08.13.220(4) Body Piercing; does allow licensees to pierce ear lobe.

The board reviewed the June 28, 2023, email from OLE Spencer stating Director Robb and Deputy Director Saviers reviewed the board's request for assistance in interpreting whether AS 08.13.220(4) allows licensed body piercers to provide ear lobe piercings. Director Robb confirmed that a license as a body piercer is not required to pierce the "external part of the outer ear."

Ms. Chambers stated that she felt the definition was still unclear and that the image really didn't provide specifics of "outer ear." The chair stated that the outer ear is medically defined as the lobe. Ms. Spencer provided a brief history of this definition; it was created to allow jewelry stores, like Claire's and Icing, to provide ear lobe piercings without having to obtain a body piercing license.

Ms. Spencer displayed a diagram of the ear on the screen. Ms. Miramontes suggested that the board clarify this definition in regulations. Ms. Chambers recommended OLE Spencer continue this conversation with Director Sylvan Robb and Deputy Director Glenn Saviers.

Chair McMullin agreed with Ms. Chambers and stated for the record that AS 08.13.220(4) does allow licensed body piercers to pierce the ear lobe. Ms. McMullin felt the definition was worded awkwardly.

Ms. Chambers suggested this definition also be added to the board's legislative proposal packet and that they could also consider a regulation project to add clearer definition.

Action Item: Ms. Spencer will follow up with Director Robb to clarify whether her interpretation includes only the lobe or the entirety of the outer ear. The board requested adding this discussion to the next meeting agenda.

11. Administrative Business

Ms. Chambers stated that a comment had been received about the board's meeting minutes and the board not having public comment during its June 15, 2023 meeting. Ms. Chambers stated meeting minutes are not transcripts but are condensed minutes of a meeting. Ms. Chambers also stated that no public comment had been public noticed for this meeting; it was considered a special meeting of the board because it was only working on creating definitions for statutes which would be included in future proposed legislative changes. The board could have opted to take public comment but was not required to because it was not advertised.

Ms. Spencer stated that she typically had meeting minutes drafted within 10 days of a meeting. The drafted minutes were then sent to her supervisor for review; once reviewed by staff, minutes were emailed to the board chair for review with a 2 – 3 day turn around. If edits were received back from the chair within the time frame, those edits were incorporated into the version posted in draft format on the website and to other board members.

A. Review/Edit/Approve Meeting Minutes

1. May 15, 2023 Meeting
2. June 15, 2023 Meeting

The board reviewed drafted May 15, 2023 and June 15, 2023, meeting minutes.

Motion: 1st Khitsana Sypakanphay – 2nd Connie Dougherty

Accept the May 15, 2023 and June 15, 2023, meeting minutes as presented.

Roll Call - Approved unanimously.

B. FY24 Annual Report

Ms. Chambers stated that annual reports were due June 30 of every year per statute. The division prioritized providing boards with the FY24 report template with the hope that boards would have plenty of time to complete the report by the June 30 deadline. Ms. Chambers encouraged board members to begin drafting their required submissions now.

C. Officer Election Notification – Announcement for January 2024 Meeting

Ms. Chambers informed the board that Chair McMullin was terming out March 1, 2024 and encouraged the board to begin thinking about electing a new chair during the January 2024 meeting. Ms. Chambers also encouraged the board to consider electing a vice-chair in case the new chairperson was unable to attend a meeting. Ms. Chambers stated that having these elections during the January 2024 meeting would allow time for mentorship and training with the exiting chairperson.

D. Out of Country Applicants – Announcement

OLE Spencer informed the board that staff had been receiving an influx of out of country applicants; using the checklists in regulation, practical operation resources the board provided several years ago, documentation available in board resources file in OnBoard, and the creation of transcript evaluation worksheets, staff were usually able to verify out of country training met training requirements for the license type being applied for.

OLE Spencer also stated that typically, staff is able to verify training requirements with provided transcripts, however there were cases where staff may be unable to verify training requirements. These applications would be loaded to OnBoard for consideration and packaged with a detailed memo stating the license type being applied for, training staff was able to verify, and what assistance staff needed from the board to complete the application. OLE Spencer stated these applications would be open for a 10-day review/vote by board members and reminded the board that their participation was mandatory during these reviews.

E. Correspondence

There were no items to review.

F. Application Review

There were no applications to review.

Ms. Chambers and Chair McMullin discussed scheduling additional meetings to discuss scopes of practice. The board briefly discussed the benefits of holding a town hall meeting to also discuss scopes of practice and esthetics issued. The board also briefly discussed date conflicts with the already scheduled January 18, 2024 meeting and agreed to change the date.

The board scheduled the following meeting dates and times:

- October 18, 2023, 5:00 p.m. – 7:00 p.m., Town Hall meeting on esthetics and other topics of public interest. This will be a Zoom meeting.
- November 08, 2023, 9:00 a.m. – 4:00 p.m., Scope of practice work session to draft requested legislative changes. This will be a Zoom meeting.
- January 25, 2024, 9:00 a.m. – 4:30 p.m., Regular board meeting. This will be a Zoom meeting with possible travel to Juneau depending on if the board has a complete legislative packet for submission.

Action Item: Ms. Chambers will discuss a potential meeting of the three boards with the executive administrators of the Medical Board and the Board of Nursing.

12. Adjourn


The chair declared the board off the record at 3:53 p.m.

Respectfully submitted:


Cynthia Spencer

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Cynthia Spencer, Licensing Examiner

Approved by:



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Michelle McMullin, Chairperson
Board of Barbers and Hairdressers

Date: 3/4/2024