



# Board of Barbers and Hairdressers

Alaska Division of Corporations, Business and Professional Licensing

## DRAFT MEETING MINUTES

March 4, 2023, at 9:00 AM AKST via Zoom

**These minutes have not yet been reviewed or approved by the board.**

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

Staff Present: Renee Carabajal, Program Coordinator; Cynthia Spencer and Wanda Whitcomb, Occupational Licensing Examiners; various staff present for certain reports

### Call to Order

The meeting was called to order at 9:03 a.m. by Chair McMullin. A quorum was established.

**Motion by Ms. Hardy to approve the agenda.** Seconded by Ms. Sypakanphay. **The board did not vote on this motion; however, no member objected.**

Chair McMullin asked if any members had ethics disclosures. No members responded.

### Discussion About Executive Order 129

Boards and Regulations Advisor Sara Chambers joined the board to answer questions or talk through Executive Order (EO) 129. She summarized the EO, which was introduced about six weeks earlier. She explained that about half of the state's professional licensing programs are currently managed by the division, so it isn't a new model, just an alternative that the governor believes will be more efficient than the current model. She said that the department valued industry engagement in issues affecting licensure and is exploring options to continue that if the board is eliminated.

The chair said she didn't think the EO was the right direction, even considering the board's struggle with participation. She is very concerned that this is a step toward deregulation, which she thinks is dangerous. The public harmed by a hairdresser or esthetician is silent; they typically live in shame of the harm done after seeking a beauty service. She also didn't believe the division could handle the work that the board does and would have to hire additional employees with industry experience.

Ms. Chambers said the department affirmatively clarified with the governor's office that this is not a move toward deregulation, which would require a bill introduced in the legislature and not through an executive order. She said that the department was looking at creation of an advisory board or panel that could offer advice and insight without the additional burden of adopting regulations or otherwise requiring a quorum for action. All regulations will continue to require public comment, as it does now. Since licenses are already primarily approved by staff, that is not a primary concern. She explained some of the existing structures that would assist the program in being successful if the EO goes into effect.

The chair reviewed the upcoming meetings scheduled regarding the EOs.

Ms. Palin said that she is licensed in five states, and this board operated differently than other boards she has experienced. Industry expertise is important.

Chair McMullin said it was important that the board be engaged and discuss matters related to the industry. Ms. Chambers said that if the EO does not pass, the board will need to have some serious and perhaps uncomfortable discussions about the level of participation and engagement required to ensure matters before the board move forward successfully. She said she will provide training and support to help board members understand their responsibilities and the steps needed to complete the work they have been stating they need to do but which doesn't get done—starting with making a commitment to attend board meetings and completing research and other necessary work outside of meetings. If the board isn't committed to doing the work required, the EO might be a gift to explore an alternative method of governance. The chair agreed.

Ms. Hardy asked what the reason was for sunseting the board. Ms. Chambers said the governor's office had considered various elements and determined this and other programs would be more efficiently managed by the division instead of a board. Ms. Hardy said she would reach out to the governor's office of boards and commissions for specific information since she used to work in that office. The chair said she felt that would be helpful.

Ms. Miramontes asked if division staff felt they could handle the workload. She said that she understands the reason for the EO since the board has been unwilling to form a quorum for most meetings over the last year.

Ms. Carabajal said that it was time for public comment. The chair said that they would potentially continue the discussion at 11:00.

### **Public Comment**

Rachel Lauesen requested that the board consider taking public comment at the end of the meeting so people could respond to board discussions. The chair said that the board typically didn't take action at the same meeting the topic was introduced.

Ms. Carabajal said that staff had been advised to offer public comment at the beginning of the meeting so the board can benefit from public input on items on the agenda and can consider it in their deliberation.

### **Investigative Report**

The board heard the most recent probation report from Senior Investigator Jenni Summers, reflecting five individuals on probation and none released during this period. She also introduced Chase Evans, who is the new investigator for this program. Investigator Kendra Wardlaw was also present. Investigator Evans provided the report for the period from September 29, 2023, and December 21, 2023. There were 31 open cases and one closed case during this period.

Ms. Spencer stated that Chair McMullin would need to be recused from the executive session because she was the reviewing board member.

**Motion by Ms. Sypakanphay to enter executive session according to AS 44.62.310(c)(3) to discuss matters required to be confidential under state law. Seconded by Ms. Miramontes. The board did not vote on this motion; however, no member objected.**

Board members and staff, except for Ms. McMullin, entered executive session at approximately 10:00 a.m. and exited executive session at 10:10 a.m. A quorum was present to conduct business.

**Motion by Ms. Sypakanphay to adopt the consent agreement in case #2023-000467.** Seconded by Brea Hardy. **On a roll call vote, all eligible members voted to support the motion; Ms. McMullin abstained.**

**Motion by Ms. Sypakanphay to adopt the consent agreement in case #2022-000820.** Seconded by Brea Hardy. **On a roll call vote, all eligible members voted to support the motion; Ms. McMullin abstained.**

Ms. Spencer said she would route those consent agreements to the chair through DocuSign.

The board took a break between 10:17 and 10:27 a.m. Following the break, all members were present, and there was a quorum to conduct business.

### **Division and Financial Update**

Division Operations Manager Melissa Dumas presented the fiscal report for the second quarter of FY2024, ending December 31, 2023. It reflected a surplus of \$1,350,795 following this fiscal year's renewal and a carry-forward from FY23 of \$686,467. She explained how to read the report, described the positive timekeeping process, and explained the differences among types of expenditures. Applications for this program have increased by 5% since FY19. She reviewed where to find the board member resources, statistical information, and division reports pages on the web site.

### **New Business**

Since it was running ahead of schedule, the board skipped to a discussion of dermaplaning services. Ms. Spencer stated that the board had determined "many moons ago" that only barbers could provide dermaplaning services because they utilized razors. The chair said that estheticians, not barbers, may provide dermaplaning services because they are allowed to exfoliate the skin not to go below the dermal layer. Ms. Spencer asked if she could share that publicly, and the chair said that was allowed.

Ms. Spencer said there have been questions about approval of blood-borne pathogen courses from providers of those courses. Since the board had not been able to form a quorum for several months, those approvals have not happened. She asked if the board would delegate to staff approvals of blood-borne pathogen courses required in AS 08.13.030, as long as the courses met the requirements in statute and regulation. The chair said that would be fine with her and asked if any member objected. No member commented. Ms. Carabajal said a motion and vote is required.

**Motion by Chair McMullin to approve delegation of blood-borne pathogen courses to staff.** Seconded by Ms. Palin. **On a roll call vote, all members voting supported the motion; Ms. Sypakanphay did not respond.**

### **Administrative Business**

Ms. Carabajal said the minutes for the October meeting were available and requested board approval. Remaining minutes for November and December town halls would be posted in OnBoard soon.

**Motion by Ms. Hardy to approve the minutes from October 2, 2023.** Seconded by Chair McMullin. **On a roll call vote, all members supported the motion.**

The board discussed The Esthetics District. Ms. Carabajal said they were awaiting affidavits from two applicants, and the Department of Law was looking at some information. Ms. McMullin and Ms. Palin offered to proctor that practical exam. Staff said they would work to schedule the exam once their information had been received. Applicants would be required to bring models and kits for use during the practical exam.

Ms. Spencer said there were no licensing applications requiring board review.

### **Regulations**

Chair McMullin said the board had heard some useful information at the town hall meeting on esthetics and that she had emailed the Department of Law with questions regarding the board's discussion about esthetics in 2023. She read aloud the current definitions of esthetics in statute and regulation, as well as her proposed definition of "appliances," which refers to that term used in AS 08.13.220(5):

12 AAC 09.990 (12) "applicances" means any medical device in the FDA Class I designation and Class II devices with settings that allow for Class I treatment with low to moderate risk requiring general controls to be used by estheticians without medical supervision for the noninvasive treatment of the skin

She said her intent is to clarify without being so specific that it would not be relevant in five years.

Ms. Hardy said she had no comments. Ms. Miramontes and Ms. Sypakanphay said they supported the proposed definition.

Ms. Palin said she agreed with the proposed definition. She asked if the board would require training to use a dermaplaning scalpel. Chair McMullin said schools would be allowed to teach it under the current "applicances and devices" section in the curriculum. They would not be required to do so. Hopefully schools will ensure they are teaching the services the market demands. She said hands-on training is important for dermaplaning since using a scalpel could be invasive if done incorrectly.

Ms. Miramontes asked whether an esthetician could use these appliances on the body. Chair McMullin said she wasn't clear on whether AS 08.13.220(5) allowed estheticians to work on the body—such as removal of body hair—although she knew they were doing so in practice.

### **Executive Order 129, continued**

Ms. Chambers rejoined the board at 11:00 to see if there were any additional questions or concerns for the board to discuss. Chair McMullin reminded the board that they could call in and speak during public testimony or simply watch the hearings online. Ms. Chambers said she understood that public testimony had closed in House Labor and Commerce but would continue to let the board know what is scheduled. She also said that the hearings were archived online if listening in real time wasn't an option.

Ms. Miramontes asked again whether staff could provide their input on the Executive Order and whether additional staff would be needed. Ms. Carabajal, who supervises program staff, said that they do not have an opinion on the EO but that management was already discussing options if it passes. She said the EO would not go into effect until July 1, and they would let the current board and public know what will happen.

Ms. Chambers said that the licensing staff would actually gain more time to work on licensing matters if they didn't have board business to also handle. Management would need to take additional time to review and implement an advisory board or other changes necessary as a result of the EO.

Ms. Hardy asked why a tattoo artist needed a temporary license for a convention if the shop they are working for already had a shop license. Ms. Carabajal referred Ms. Hardy to AS 08.13.120 for an explanation and encouraged board members to refer individuals with questions to staff if the board member is unsure of the answer.

Chair McMullin asked for an explanation about HB 314 and SB 225 regarding occupational licensing fees. Ms. Chambers explained that the two governor's bills on occupational licensing fees would pull investigative expenses out of the formula required to set fees in AS 08.01.065. Her understanding was that the division would use business license and/or corporations revenues to cover professional licensing investigative expenses, including appeals. This would help stabilize licensing fees, especially for smaller licensing programs, without impacting fees for business licenses or corporate registration. This concept has been researched and proposed over many years but was only introduced as legislation this year. Ms. Carabajal agreed with Ms. Chambers' assessment and encouraged the board to write a letter of support. She pointed out as an example that this licensing program had \$13,000 YTD in investigative expenses; if this legislation passes, those expenses would no longer be borne by licensees of this program. The chair said she supported the legislation. Ms. Chambers said that the board would need to vote to support the legislation as a body. Ms. Carabajal said the division had provided a template letter for boards to use, if they wish.

**Motion by Chair McMullin to send a letter of support using the template HB 314 and SB 225.**

Seconded by Ms. Sypakanphay. **On a roll call vote, all members supported the motion.**

The board took a break for lunch between 11:30 a.m. and 12:30 p.m. Following the break, all members except Ms. Hardy were present, and there was a quorum to conduct business.

**Regulations, continued**

The chair said she had drafted a list of appliances and procedures that she thought would be helpful to post if the proposed regulations are adopted and become effective. Ms. Spencer said she anticipated regulations specialist Alison Osborne would be present at 1:00 p.m.

Ms. Spencer and Ms. Whitcomb said estheticians are asking about whether they can perform nanostamping, nanoneedling, and Japanese scalp cleansing. The chair said she felt that scalp cleansing falls under hair-related practices, not esthetician services. The chair said that nanostamping and nanoneedling might be included in the proposed regulatory scope if practitioners utilize Class I low-impact cartridge heads that do not use needles and do not penetrate below the dermal layer. She thought a scalpel would be another example of a Class II device being used at a Class I level if they are using them superficially and with dermaplaning training. The chair said that the DEC regulations (18 AAC 23.220) did not permit estheticians to use lancets or needles. She said that lidocaine is not within the scope of estheticians who are not supervised by a medical professional.

The chair asked if board members had any additional regulatory ideas or projects. No board members responded. Ms. Spencer suggested 12 AAC.09.106(d) should be amended to follow 12 AAC 09.002(j) because the former requires information that is already obtained in the license verification, creating an unnecessary

burden on the applicant and staff. 12 AAC 09.106 has more requirements than 12 AAC 09.002. Ms. Spencer also said there was a necessary courtesy licensing update in 12 AAC 09.002(s) to match the new 90-day requirement in 12 AAC 09.004.

Ms. Osborne joined the meeting, and the chair brought her up-to-speed on the discussion. The chair said that all devices used by licensees are FDA classified. She said she had recently reached out to a contact at DEC to see if their regulations could be updated.

Ms. Spencer displayed the chair's proposed list of allowable devices and procedures, which the chair walked through. The chair said that derma lights and IPL were two completely different devices: Derma lights are low-impact LED lights, while IPL is an ablative laser treatment. She also said she was hearing that body cavitation is a medical procedure that should be performed in a doctor's office, not in a salon.

Ms. Osborne said that instructor licenses in 12 AAC 09.002 and 12 AAC 09.006 could possibly serve two different purposes and, therefore, might need to be different. Ms. Spencer said her concern was with requiring information that was already provided in the license verification. The chair suggested that if the instructor license in another state required the same standards as Alaska's, that should be sufficient. Ms. Osborne said that could be changed in 12 AAC 09.106(d)(2). She said that 12 AAC 09.106(d)(5) could be deleted so the licensing jurisdiction, not the applicant, would have to provide that information. She was concerned that all jurisdictions might not supply verification of the three years/600 hours.

**Motion by Chair McMullin to initiate a regulations project regarding the definition of appliances, repeal the instructor license requirements in 12 AAC 09.106(d)(5), amend 12 AAC 09.106(d)(2), and change the 30-day requirement in 12 AAC 09.002(s) to 90 days. Seconded by Ms. Hardy. On a roll call vote, all members supported the motion.**

Ms. Carabajal suggested the board approve the project to move forward without additional board approval unless substantive changes were made by the regulations specialist or Department of Law.

**Motion by Chair McMullin to approve the project for public comment if there are no substantive changes by the regulations specialist or Department of Law. Seconded by Ms. Sypakanphay. On a roll call vote, all members supported the motion.**

The chair thanked Ms. Osborne.

## **Officer Elections**

The chair said she needed to step down because she had completed her second term. Ms. Palin nominated Ms. Sypakanphay, who was not sure she could take on the responsibility. She said that she was planning to nominate Ms. Palin. The chair and Ms. Carabajal recommended a co-chair be appointed to help with the responsibilities. Ms. Carabajal recommended the board establish an interim chair in case Ms. McMullin is replaced; elections would be held at the following meeting, if needed. This would allow a potential new chair or co-chairs to try out the role until elections were held.

**Motion by Chair McMullin to elect Ms. Sypakanphay and Ms. Mirsmontes as interim co-chairs. The motion was not seconded. On a roll call vote, all members supported the motion.**

Chair McMullin said she was happy to work with the new interim co-chairs to learn and share duties. Ms. Carabajal said she had just heard that Ms. Dougherty was not reappointed, and staff had not yet heard any information about filling the vacant barber seat.

## **Correspondence**

Chair McMullin said she talked to the writer of a letter with concern that the esthetician license was being phased out in favor of limited esthetics and advanced esthetics. This was a misunderstanding based on her reading of the minutes and has been cleared up. There are currently no changes proposed to the esthetics license or scope of practice. The chair said there is no license to practice advanced esthetics or definition of advanced esthetics at this time.

The board received a letter requesting a waiver of the regulation pertaining to a mobile shop license (12 AAC 09.111). Ms. Spencer displayed the regulations for mobile shops, which does not include body art. Ms. Sypakanphay, as a body art licensee, said that the safety and sanitation requirements would be difficult to meet in an Airstream, and that every move would require a new inspection. The board discussed that body art is not currently included and would require a regulations change.

The board received a letter asking if estheticians could use Nanostamp 360, which has a depth of 0.25 and .5. The board said that needles were not allowable within the esthetician scope of practice as discussed earlier in the meeting. The letter also asked if Biorepeel and lancets could be used. The board said Biorepeel is allowed since it is a superficial salicylic acid chemical treatment. Lancets are not allowed as discussed earlier in the meeting.

The board received a letter asking what licenses are required to perform permanent laser hair removal. The board discussed that IPL lasers that offer permanent hair removal are not allowed under the esthetician scope of practice and use of them is regulated by the State Medical Board.

The chair asked if there were any follow-up questions regarding what the board had accomplished during the meeting. Ms. Spencer said she had no additional questions. There were no questions from other board members. The chair encouraged the new co-chairs to reach out to her if needed.

There being no further business before the board, they adjourned at 1:52 p.m.