

MEETING SUMMARY

NEW YORK STATE APPEARANCE ENHANCEMENT ADVISORY COMMITTEE November 17, 2020

The meeting was held by the Department of State, Division of Licensing Services, via WebEx conferencing. A virtual meeting was held to comply with COVID-19 social distancing directives. Due to the fact the meeting of the NYS Appearance Enhancement Advisory Committee was held remotely, the public hearing section was held in abeyance.

I. CALL TO ORDER, INTRODUCTIONS and OFFICIAL ATTENDANCE

Michelle D’Allaird Brenner called the meeting to order at 10:33 a.m. Roll call was performed, and it was announced that there was not a quorum. The official attendance was as follows:

COMMITTEE MEMBERS

Michelle D’Allaird Brenner

Excused:

Shirley Cheng

Anthony Fiore

VISITORS

Christopher Feml

Todd Garofano

**Other Public Members*

DEPARTMENT OF STATE STAFF

Amy Penzabene

Ernest Delaney

Denise Tidings

Marcella Rose

Alison Lacy

Emily Lupe

Shannon Maguire

Paula O’Brien

Jasmine Norman

Annette Harris

NYSED STAFF (BPSS)

Kimberly Kuster-Smith

NYSED STAFF (Public Schools-CTE)

Nicole Hadsell

II. DEPARTMENT REPORTS

- A. Enforcement Update – E. Delaney explained that his report would cover DOS investigations of the Governor’s Executive Orders concerning complaints against salons. He stated that in response to the COVID-19 pandemic, on March 22, 2020, Governor Cuomo signed a series of Executive Orders which closed all non-essential businesses including appearance enhancement businesses and nail salons. He added that the Governor also created statewide guidelines for how salons could safely reopen and operate; to enforce the guidelines, the Governor established the New York Pause Enforcement Assistance Task Force. He explained that this Task Force enforces the statewide guidelines by collecting complaints against salons and practitioners who are operating in violation of the Governor’s Executive Orders and referring those complaints to the Department of State for investigation. He added that complaints are filed by phone or online and the typical complaint will make allegations such as no employees at the salon are wearing face masks, the salon is overcrowded, failed to practice social distancing rules, or is operating when the salon is prohibited from being open. He mentioned that these complaints can be filed anonymously. E. Delaney reported that as of today, a total of 1,046 complaints were referred to the Department for investigation and explained that the focus of the investigations is getting the salons in compliance. He explained that Enforcement contacts the salon owner and advises them of the Governor’s

Executive Order and receives a statement or proof from the owner of their compliance with the Executive Order. He further explained that more serious violations receive written warnings directing the salon to cease operation and some of these complaints are referred to appropriate law enforcement agencies.

- B. Processing Report – E. Lupe reported on the provided November 2019 and November 2020 statistical reports. She explained that the total number of licensees are broken down by license type and that the 2020 figures only include active licensees and do not include expired licenses covered by EO 202.11 which allows licensed individuals to extend their license term during the current State of Emergency.
- C. Written and Practical Exam Updates – S. Maguire reported that the Division of Licensing Services suspended all license examination services on March 16, 2020, due to the COVID-19 pandemic. She explained that exam applicants were notified by email of the exam cancellations. She reported that the Division restored written appearance enhancement examinations in Albany on July 6 and on July 20 the exams were restored in Binghamton, Buffalo, Franklin Square, Hauppauge, Rochester, Syracuse, and Utica; written exams resumed in New York City and Rockland County in mid-August. She further reported that practical exams for cosmetology, esthetics, and nail specialty were restored the last week of July; testing has resumed statewide at all schools that are open and have allowed us to resume testing. She added that exam candidates who had exams that were cancelled due to COVID-19 were sent notifications of their cancellations with instructions to monitor their account for their new exam date. She explained that as exams were restored, candidates that had cancelled exams were rescheduled for the next available exam in their region. She stated that all written exam candidates who had cancelled exams have been rescheduled and that the Division is working on rescheduling practical exams as those sites reopen. S. Maguire reported that COVID-19 safety measures have been established for exams site, proctors, examiners, and exam candidates and that the proctors and examiners are responsible for ensuring that these measures are appropriately followed. She elaborated on the safety measures stating that the capacity has been reduced to ensure six-foot spacing between exam candidates and that exam proctors, examiners, and exam candidates are advised not to attend the exam if they have any symptoms, have been in contact with a confirmed or suspected COVID-19 positive person(s) in the past 14 days, and follow the posted travel advisory. She stated that masks must be worn at the exam and that everyone attending an exam is asked to sanitize their hands before and after the exam. She added that the proctors and examiners must wear gloves at all times when handling exam documents that are touched by other proctors and exam candidates and that they must also disinfect surfaces prior to and after each exam session while wearing gloves; additionally, all exam candidates are instructed to bring their own writing instruments.

S. Maguire reported that there was an update to the written esthetics exam and that the updated exam was given in Albany on July 6 and is now being administered statewide.

D. Practical Examination Revisions for COVID-19 Precaution Compliance – D. Tidings reported on updates made to Appearance Enhancement practical licensing examinations to help ensure the safe administration of practical examinations during the COVID-19 pandemic. She added that the updated exams reflect new COVID-19 guidelines and additional PPE requirements as outlined in the Governor’s Executive Orders. D. Tidings stated that to ensure that social distancing efforts are met, examinees may no longer use live models for practical exams. She explained that while mannequins were required for the cosmetology practical exam prior to the updates, mannequins are now required for the nail specialty, esthetics, and natural hair styling exams as well. She mentioned that this change was made to help reduce the risk of infection for individuals who want to take their practical examination and that the transition is going well. She added that most of the practical examination requirements remain the same with only some minor adjustments. D. Tidings also reported that the practical exam success rates have been relatively unaffected by the new requirements. She mentioned that updated examination documents and COVID-19 checklists for exam candidates may be found on the DOS website at www.dos.ny.gov under the respective license webpages.

III. ACTION ITEMS

A. Scope of Practice/Procedural Update – D. Tidings discussed the Division’s ongoing effort to make determinations on procedures that may, or may not, fall under the scope of Appearance Enhancement licensure. She reported that since the NYS Appearance Enhancement Advisory Committee last met back in February, the New York State Medical Board provided opinions on a few procedural areas. She provided information on the following procedures:

▪ **Radiofrequency Facials** - The NYS Medical Board opined that radiofrequency facials would be considered the practice of medicine. The Medical Board stated that, “like RF diathermy, this is an introduction of energy to alter the dermis. While there is no penetration by a needle, there is dermal modification, which we would consider the practice of medicine.”

▪ **Vacuum Therapy** – The NYS Medical Board stated that “the NYS Board for Massage Therapy does not believe that vacuum therapy should be considered within their legal scope and that the Medical Board does not believe that the procedure falls within the medical legal scope of practice either.”

▪ **Cryotherapy** – The NYS Medical Board opined that cryotherapy would “firmly be placed in the practice of medicine if it is considered to be a treatment.” The Medical Board stated that the FDA regulates devices.

D. Tidings stated that the procedural list that the Division has been compiling has been finalized and is currently under review as a final step before making this information publicly available. She explained the process that is followed for making procedural determinations.

M. D’Allaird Brenner expressed her concern over the procedural definitions that are provided to make these determinations and stated that we would continue to review the procedural determinations before making them publicly available. D. Tidings added that there would be ongoing updates to the procedural list as the Division becomes aware of new procedures.

IV. NEW BUSINESS

- A. Domestic Violence Awareness Update – A. Penzabene provided some background on the Domestic Violence and Sexual Assault Awareness training course. She explained that the new legislation became effective on June 17, 2020. She reported that all new appearance enhancement licensees will be required to complete this mandatory one-hour training prior to making application for licensure. She explained that in order to implement this new requirement, the Department worked with the NYS Office of Prevention for Domestic Violence to develop and post an online video on the Department's website, making it available to both new licensees who are required to take the training as well as to current licensees who may want more information on this topic; this training is optional for current licensees. She added that the training video provides information on this topic as well as tips on providing avenues for assistance to customers that licensees may encounter at their place of business. A. Penzabene stated that the Department's website has been updated to make this information available. She reported that additional regulations related to this topic were adopted on November 10, 2020, incorporating this one-hour training into the curriculum for the various appearance enhancement license types, allowing the students to complete the one-hour training within their current educational program rather than having to take an additional hour of training after the completion of their course. She added that the updated curricula information has been provided to the NYS Education Department to disseminate to approved schools and inform them that they will need to incorporate this one-hour training into their current program(s). A. Penzabene mentioned that the NYS Office of Prevention for Domestic Violence will be available to assist the schools with updating their program and to answer any type of questions that may arise from topics being presented in the program.
- B. Guidance on Reopening AE Businesses – E. Delaney discussed the increase of persons infected with COVID-19 and that these increases appear to be happening in clusters; the clusters are located in Rockland County, Orange County, Rochester, New York City, and in a few upstate counties. He reported that as a result, the Governor has created the cluster action initiative which will divide clusters and the area around them into three categories or zones and depending upon the zone, will determine whether restrictions are needed. He mentioned that a red zone has the greatest restriction, an orange zone is a warning zone, and a yellow zone is a precautionary zone. He stated that once a cluster zone has been identified, the zone will remain in effect for 14 days after which it will be reevaluated based on the rate of COVID-19 infections in the zone. He explained that this affects salons if a salon is located within a cluster zone, this will determine whether a salon can be open and operate or if the salon must be closed. He mentioned that if a salon is located within a red zone, all non-essential businesses must be closed including salons. He added that if the salon is located in an orange, these zones are warning zones, and certain high risk, non-essential businesses such as gyms, fitness centers, and nail and appearance enhancement salons are closed; if a salon is located in a yellow zone, then non-essential businesses are allowed to be open so salons can be open and operate. E. Delaney also mentioned that New York State has a website where salon owners can type in their salon address and see if their salon is located within a cluster zone. He added that if the salon is allowed to be open, the business is required to follow the statewide guidelines including: hand sanitizers being placed throughout the salon for use by employees and customers, customers must only be permitted entry into the salon if they wear a face covering, employees must wear a face covering that completely covers their nose and mouth and either a face shield or safety goggles when servicing a customer, customer seating must maintain six feet distance from all others except the employee providing services unless a physical barrier is in place, the salon must remove all non-essential amenities including product

samples and reading magazines, and the salon must notify the state local health department immediately upon being informed of any positive COVID-19 test results by an employee. More information on the cluster zones and reopening guidelines can be found at www.forward.ny.gov.

- C. Notice on Gender-Neutral Pricing and Services – P. O’Brien, Director of Consumer Protection, shared information on a new consumer protection measure in New York State. She discussed a notice that was sent out in early October on the new guidance regarding the gender-neutral pricing law that went into effect on September 30, 2020. She stated that the guidance covers the law which basically makes it unlawful for businesses to charge a different price for a service or product unless there is a gender-neutral reason. She explained some of the factors that businesses can consider when determining pricing, which may include: the amount of time it took to provide such service, the difficulty of offering such service, cost incurred in offering services, labor used in providing such services, materials used in providing the services, and if a price difference for a substantially similar service is based solely on the gender of individuals whom the prices for the services are performed or marketed, it is unlawful. She mentioned that while service is a big part of the appearance enhancement industry, so is product; she explained that the guidance goes through different products and how they are marketed. She added that we have long been marketing our products for men and for women and the laws states that if it is a substantially similar product, you must charge the same price. P. O’Brien stated that the guidance gives some examples related to the salon services and salon products (for example, hair gel or hair pomade marketed for men with the same ingredients, size, and manufacturer as another hair gel or pomade offered by the salon for women—if the two products are virtually identical, the price should be the same). She added that there are a number of other examples out there in the marketplace that generated this legislation; the price disparities between men and women’s products have been stark for a long time and this measure is a movement forward to creating equity in the marketplace.

V. ADJOURNMENT

The meeting was adjourned at 11:03 a.m.