

MEETING SUMMARY

NEW YORK STATE APPEARANCE ENHANCEMENT ADVISORY COMMITTEE April 11, 2022

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
Anthony Fiore
Erin Hundley
Leeanne Shade

Excused:

Shirley Cheng

VISITORS

**Public Members (remote)*

DEPARTMENT OF STATE STAFF

Jodi DeLollo
Ernita Gantt
John Goldman
Denise Tidings
Emily Lupe
Shannon Maguire
Marcella Rose
Alison Lacy
Michael Shannon
Lisa Helmar

- A. Approval of 9-13-21 & 10-25-21 Meeting Summaries – M. D’Allaird Brenner announced that the approval of the September 13, 2021, and October 25, 2021, would need to be tabled until the next meeting due to a lack of quorum.

II. DEPARTMENT REPORTS

- A. Enforcement Update – J. Goldman mentioned that at the last meeting, in October 2021, it was reported that the State had issued 401 notices of violation and that 184 of those resulted in tickets for ventilation violations (due to the inability of the shop owner to produce the ventilation certificate), which is about a 45 percent ratio. He pointed out that the program began on July 1, 2021, covering the period of January through June 2021. He added that the figures more accurately represent the period of July through October 2021, as there was a moratorium on inspections as a result of the COVID situation. He reported that following the October meeting, another round of inspections was done which focused on nail salons; he pointed out that the 401 violations were a mix of both nail salons and non-nail salons. J. Goldman stated that latter part of 2021 (starting in October and ending about mid-December, when there was another moratorium on inspections again due to uptick of COVID cases), they performed another 323 inspections statewide. He reported that with the focus on nail salons during this round of inspections, there was a larger percentage of ventilation violations, with 246 violations issued, or a 76 percent failure rate as opposed to 45 percent during the first round of inspections. He stated that the combined inspections totaled 724 of which 430 were issued ‘no ventilation certificate’ violations—an overall 59 percent failure rate. He explained that the tickets were handled through an ‘opportunity to cure’ (OTC) process

which instead of applying a monetary penalty against the shop, the shops in violation were given the opportunity to cure the violation through an email communication system. He mentioned that the process worked very well and that they are still working on assessing the materials submitted by these shops and making compliance determinations. He added that these cases were handled in a special manner and that paralegals that work with our legal team were communicating with the shops and providing them with an opportunity to come into compliance, if they were not already grandfathered, by signing an agreement to have the system installed within a set timeframe.

J. Goldman reported on the 2022 enforcement program, stating that their focus has been on a backlog of complaints. He mentioned that the backlog developed as a result of the moratorium on inspections and that they have roughly 400 backlogged complaints. He clarified that these complaints originated from consumers. He added that for the remainder of 2022, they will focus on completing these investigations.

Lastly, J. Goldman mentioned a concern regarding the validity of ventilation certifications and the possibility of submissions that are fraudulent or do not meet required codes. He stated that they have developed a 'spot check' system to verify the validity on some of the submissions. He added that this audit has not yet revealed any issues with the received submissions and if they do detect any issues in the future, appropriate action will be taken.

M. D'Allaird-Brenner asked for clarification on whether ventilation requirements are the same for nail salons versus other appearance enhancement businesses offering nail services. J. Goldman clarified that the requirements are the same for both.

A. Fiore inquired as to whether the State has anything in place with regards to a limit on the number of violations a salon can receive before they are shut down or may no longer offer these services. J. Goldman explained that he was not aware of a policy of this nature but that our legal team looks at the disciplinary history of any business we regulate and if they see repeat violations, the disposition could result in more than a fine. A. Fiore stated his concern that it may be difficult for some shops to comply with the ventilation requirement due to the expense or layout of the shop. J. Goldman mentioned that they were aware of some places of business where it isn't feasible to vent to the exterior of the building and that he wasn't sure how these instances will be handled. J. DeLollo added that once a Licensing investigation is completed, any case that results in a hearing is separately heard and decided by an Administrative Law judge.

B. Processing Report – E. Lupe reported on the provided March 2021 and March 2022 licensing statistical reports. She explained that the total number of licensees are broken down by license type and that the 2021 figures only include active licensees and do not include expired licenses covered by EO 202.11 which allowed licensed individuals to extend their license term during the State of Emergency.

E. Hundley inquired as to whether we could provide licensing figures for a 20-year span on all appearance enhancement disciplines. J. DeLollo stated that we could request that a report be run to provide to members at the next meeting or to email to members. She mentioned that licensing figures would only be available from 2014 to present.

C. Written and Practical Exam Updates – S. Maguire provided examination statistics for 2021 as follows:

Cosmetology: *Written Exam* - Administered to 4,168 applicants with a pass rate of 72%
Practical Exam – Administered to 2,896 applicants with a pass rate of 82%

Esthetics: *Written Exam* – Administered to 3,115 applicants with a pass rate of 69%
Practical Exam – Administered to 2,537 applicants with a pass rate of 97%

Nail Specialty: *Written Exam* – Administered to 2,236 applicants with a pass rate of 97%
Practical Exam – Administered to 2,546 applicants with a pass rate of 89%

Natural Hair: *Written Exam* – Administered to 44 applicants with a pass rate of 59%
Practical Exam – Administered to 32 applicants with a pass rate of 84%

Waxing: *Written Exam* – Administered to 1,034 applicants with a pass rate of 65%

Additionally, S. Maguire provided examination statistics for the first quarter of 2022 as follows:

Cosmetology: *Written Exam* - Administered to 1,057 applicants with a pass rate of 66%
Practical Exam – Administered to 675 applicants with a pass rate of 87%

Esthetics: *Written Exam* – Administered to 1,093 applicants with a pass rate of 68%
Practical Exam – Administered to 671 applicants with a pass rate of 97%

Nail Specialty: *Written Exam* – Administered to 580 applicants with a pass rate of 86%
Practical Exam – Administered to 542 applicants with a pass rate of 93%

Natural Hair: *Written Exam* – Administered to 13 applicants with a pass rate of 38%
Practical Exam – Administered to 14 applicants with a pass rate of 93%

Waxing: *Written Exam* – Administered to 306 applicants with a pass rate of 65%

M.D'Allaird Brenner inquired as to whether the Department had any plans on reinstating live models, as opposed to mannequin heads, for the esthetics practical exam. S. Maguire stated that the Department has not had those discussions yet and isn't sure what will happen in the future. She added that mannequins are currently required for all practical licensing examinations.

III. ACTION ITEMS

A. Public Access to List of Procedural Services – M. D'Allaird Brenner stated that a subcommittee was formed a couple of years ago to look at a variety of services that we are coming across and to determine what is allowable under the respective AE licenses. She mentioned that the subcommittee put together an extensive list of topics and categorized each procedure based on

licensure—what procedures fell under cosmetology, esthetics, nail specialty, waxing, etc., or under a medical or other professional license, or what is uncategorized because it is an unregulated area. She added that now that the list is in place and growing, we would like some ideas on how the public could best access this information. She stated that our priority is the consumer's safety and protection and what we are seeing is licensees that are unsure of what they can and cannot be doing (and don't know where to get this information) and, therefore, could be putting consumers at risk if they are performing procedures that are not within their scope of practice. She mentioned that some of these licensees are being told by product manufacturers, distributors, sales representatives, etc., (unaware of New York State laws/regulations) that a procedure is allowable under their scope of their license. M. D'Allaird Brenner stated that she wanted to provide some ideas and gain support from the Department on making this information publicly accessible to licensees and consumers. She suggested the possibility of collaborating with the Consumer Protection Office to put together some type of consumer outreach to perhaps get a pamphlet or this information out to the public as well as our licensees. She stressed that the information is needed by our licensees to provide them with guidance to protect themselves and their consumers. She mentioned that it may be beneficial to provide this information to the beauty schools, appearance enhancement businesses, beauty associations, and even some major trade magazines. She added that many of the trade magazines report this type of information and guidelines for the various states. She stressed the need for this information to come from an official source and that perhaps a directive could be posted on the Department's website where individuals could be referred to for access.

J. DeLollo stated that the Department could explore these various avenues for making this information publicly accessible and will report back to members. She mentioned that we could post the information on our website but wasn't sure if the information would be found there. She added that we could check with our Consumer Protection Office for outreach ideas. J. DeLollo also mentioned that the Department could consider sending an email blast.

J. Goldman added that the online Appearance Enhancement Law Booklet is often an overlooked resource and that licensing information may be found there. He mentioned that there is a section in the regulations entitled 'Applicability' that, although not all-inclusive, identifies some prohibited services. He also mentioned that Enforcement cites shops on a regular basis for performing prohibited procedures.

L. Shade suggested the possibility of adding a link or attachment that could 'pop up' during online renewal.

IV. NEW BUSINESS

A. Next Meeting Date – D. Tidings announced that the next meeting date is scheduled for Monday, June 13, at 10:30 a.m.

She mentioned that board members should let her know as soon as possible if they have any conflicts with these dates. She added that members should email her with any agenda items they would like to be considered for future meetings.

V. ADJOURNMENT

The meeting was adjourned at 11:05 a.m.