

1 NEW YORK STATE
2 DEPARTMENT OF STATE
3 DIVISION OF LICENSING SERVICES
4
5 NEW YORK STATE APPEARANCE ENHANCEMENT ADVISORY
6 COMMITTEE

7

8 DATE: May 8, 2023 at 10:05 a.m.

9 VENUE: Webex

10 CHAIR: MICHELLE D'ALLAIRD BRENNER

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Reported by Annette Lainson

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1 APPEARANCES:

- 2 LEEANNE SHADE, Board member
- 3 LISA HELMAR, Department of State, Host
- 4 DAVID MOSSBERG, Department of State
- 5 JOHN GOLDMAN, Department of State
- 6 JENNA BERSCHWINGER, Department of State
- 7 EMILY LUPE, Department of State
- 8 JODI DELOLLO, Department of State
- 9 HEIDI HICKS, Department of State
- 10 SHANNON MAGUIRE
- 11 JACK BILELLO

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1 (The meeting commenced at 10:05
2 a.m.)

3 MS. DELOLLO: Good morning,
4 everybody.

5 CHAIR BRENNER: Good morning. I'd
6 like to call to -- to order that I get in a
7 sentence. Today is Monday, May 8th, 2023.
8 This is an open meeting of the New York State
9 Appearance Enhancement Advisory Committee.

10 I am Michelle D'Allaird Brenner and
11 I'm Chair of the New York State Appearance
12 Enhancement Advisory Committee. The time is
13 now 10:06 and I'll go ahead and start by
14 taking attendance of the advisory board
15 meeting members that are here. I've
16 introduced myself.

17 BOARD MEMBER SHADE: LEEANNE SHADE.

18 CHAIR BRENNER: Shirley Cheng is --

19 MS. DELOLLO: Shirley -- she's not
20 here.

21 CHAIR BRENNER: Okay. So as far as
22 advisory board meeting members, it is just the
23 two of us that are here. So thank you to
24 everyone else that has joined us. I guess
25 we'll just move forward. Given that we don't

1 have enough members here, we will not have a
2 quorum. So we will have to hold off and table
3 approving meetings from September 13th of '21,
4 October 25th of '21, April 11th of '22, May
5 23rd of '22, and October 24th of '22.

6 I'm going to go ahead and move right
7 along and get started with department and
8 subcommittee reports. And our first is our
9 enforcement update, and I'm going to pass that
10 first to John Goldman to pass along.

11 MR. GOLDMAN: Hi. Hey, good
12 morning. I just wanted to take this
13 opportunity regarding the enforcement report.
14 We've been a little -- over the years, we've
15 had a variety of enforcement personnel present
16 the report, discuss maybe some new issues, et
17 cetera. But we decided it'd to best to have a
18 dedicated staff person for that purpose. And
19 so I wanted to introduce to you who's been
20 selected for that.

21 Jennifer Swinger is a newly-
22 appointed deputy chief investigator. She's
23 been here as the designator. She's done
24 hundreds if not thousands of inspections, so
25 she's certainly familiar with the enforcement

1 program, the statutes, and regulations, and so
2 forth and so on. So she's the best choice for
3 that position. And she, like I said, she's
4 going to be dedicated and so, you know,
5 any -- any issues you may have or questions
6 relevant to enforcement, she's going to be the
7 person. She'll be here giving the report
8 going forward.

9 CHAIR BRENNER: Perfect. Yeah.
10 Thank you. Jenna, you can go ahead and read
11 the report. You're welcome.

12 MS. SWINGER: So as John said, my
13 name is Jenna. I'm one of the Deputy Chief
14 Investigators who appear up here in Albany.
15 So for this meeting, I kind of looked at what
16 was touched upon last April and kind of just
17 wanted to build off that so you can focus in
18 comparison because we've kind of been focusing
19 on the same things, having the same programs.

20 So our 2023 inspection program began
21 on January 1. We have a continued focus on
22 nail salons with the ventilation requirements.
23 So last April when John spoke about this, he
24 reported that at that time we had completed
25 323 inspections statewide. And of those 323;

1 246 had ventilation violations, which was at
2 that time a 76-percent failure rate. So
3 looking at the first quarter of 2023, so
4 January 1 to April 1, we have conducted 473
5 inspections statewide with 113 of those having
6 ventilation violations. So a significant
7 improvement from last April, that's about 23
8 percent from last April's 76.

9 We are still continuing the
10 opportunity to cure process. So basically,
11 those tickets that are issued, the licensees
12 have an opportunity, opportunity to cure the
13 violations, basically by submitting those
14 corrections to us via email. And we've seen
15 that to be proving very successful. Majority
16 of people take advantage of that opportunity.
17 So I looked at those 473 inspections that we
18 completed, and 106 of those 473 have been
19 referred to hearing, but only 32 of those 106
20 were for no ventilation.

21 So that just goes to show that even
22 for those ones that were ticketed in that
23 opportunity to cure process, they were able to
24 correct it and provide proof of ventilation.
25 So it's going very well. And at this point in

1 time, you know, we're going to continue that
2 same process through the remainder of the
3 year. We have a total quota of 2,800
4 inspections statewide. We see no issue with
5 being able to do that.

6 CHAIR BRENNER: Jenna are -- is it
7 territorial-specific at any given
8 time or do you have people all over?

9 MS. SINGER: They're all over, yes.

10 CHAIR BRENNER: Great. Thank you so
11 much. Any questions, anybody? Okay. Next is
12 our processing report from Emily Lupe.

13 MS. LUPE: Good morning. Included
14 in the materials you were provided, you will
15 find licensing statistics for April of 2022
16 and April of 2023. These reports show the
17 number of appearance-enhancement licenses.
18 They're broken down by license type. You'll
19 see the numbers are fairly consistent between
20 years and below is the processing report.

21 CHAIR BRENNER: Anybody have any
22 questions? Examination administration report,
23 Shannon Maguire.

24 MS. MAGUIRE: And so the following
25 statistics will cover all of 2022. For

1 cosmetology, the written exam was administered
2 to 5,079 applicants with a pass rate of 68
3 percent. The practical exam was administered
4 to 2,964 applicants, with a pass rate of 82
5 percent. For esthetics, the written exam was
6 administered to 4,331 applicants with a pass
7 rate of 71 percent, versus the practical was
8 administered to 2,522 applicants with a pass
9 rate of 98 percent.

10 Per-nail specialty, the written exam
11 was administered to 2,757 applicants with a
12 pass rate of 83 percent and the practical exam
13 was administered to 2,205 applicants with a
14 pass rate of 90 percent. For natural hair,
15 the written exam was administered to 67
16 applicants with a pass rate of 46 percent,
17 practical exam was administered to 37
18 applicants with a pass rate of 92 percent.
19 And lastly, for waxing, the written exam was
20 administered to 1,426 applicants with a pass
21 rate of 64 percent. Any question?

22 CHAIR BRENNER: Shannon, how is it
23 in esthetics, what's the big difference
24 between the number of people taking the
25 written versus the practical?

1 MS. MAGUIRE: I think a lot of that
2 is repeat test takers is the pass rate. It's
3 lower than the written or practical.

4 CHAIR BRENNER: Okay. That makes
5 sense. How are -- are we catching up from
6 COVID?

7 MS. MAGUIRE: We are. Yeah --.

8 CHAIR BRENNER: Because I know
9 you're still slammed with esthetics.

10 MS. MAGUIRE: Aesthetics especially,
11 we're doing much better with that than
12 everything else with that. We did see a
13 slight increase from 2021. Nothing alarming.
14 I think a lot had to do with this also
15 financing in the middle of 2021, so it was
16 unequal.

17 CHAIR BRENNER: Any time we're going
18 to go away from mannequins? Go back to real
19 people?

20 MS. MAGUIRE: We haven't discussed
21 it.

22 CHAIR BRENNER: We haven't discussed
23 it. Are you recommending that or it'd be
24 great to go back to real people, for, at least
25 for esthetics. At least for esthetics. I

1 find that we struggle a little bit with the
2 waxing because that's -- it's very awkward.
3 Even the makeup applications, just to do it on
4 real people would be so much easier.

5 And now that we're past COVID and
6 kind of out of that whole thing, the only time
7 they're working on mannequins is to prep for
8 State board. They're -- they're back on
9 clients. They're working on people. We're
10 not using the mannequins at all in the school
11 anymore except to literally do a prep for
12 State board and it throws them off a little
13 bit. It definitely does.

14 MS. DELOLLO: I would say keep the
15 mannequin, because it's always difficult to
16 find somebody who has a State board cup.

17 MS. MAGUIRE: Being there plus a
18 mannequin, that's gone very well.

19 BOARD MEMBER SHADE: Yeah. Yeah.
20 When I did it, however many years ago, my
21 first grandmother died in it before, so I had
22 find somebody like the night before. I've
23 never worked that tensed. Yeah, that's still
24 an issue. Nobody likes pink girls and State
25 ...

1 CHAIR BRENNER: Yeah. Yeah. Step
2 one. So that'd be awesome. That'd be great.
3 Thank you. Any questions from anybody else
4 for Shannon? All right. Moving on to action
5 items. We've got one item under that, and
6 that is lash tinting and I'm going to take
7 over that.

8 For as long as I can possibly
9 remember, lash tinting clearly states in
10 our -- your Parents Enhancement Law book that
11 it is not permitted at all. And that's one of
12 those things that has always been right out
13 there. And then from a professionals'
14 perspective as well as business owners,' whole
15 owners' perspective, all we get are the
16 constant, well, everyone's doing it. The
17 other states are doing it. And then the
18 professionals that are doing it anyway that
19 are out there.

20 So we've kind of kept our eye on it.
21 Our biggest struggle for years has been that
22 the F.D.A. has not approved anything for lash
23 tinting. In July of 2022, RefectoCil actually
24 has a product called Intense Browns and it is
25 not F.D.A. approved, but has been passed as

1 F.D.A. compliant. And I'm going to -- I
2 personally, that's out of my realm of legality
3 from compliant and approved. However, if you
4 do go to the F.D.A. guidelines, they clearly
5 list colors that have been F.D.A. approved to
6 be used for brow tinting and lash tinting as
7 safe and effective. And one of them is silver
8 nitrate in a percentage of 4 percent or less.
9 And this is exactly what RefectoCil is using,
10 they're actually, they're using a silver
11 nitrate at a 3 percent.

12 So that came out, they went to the
13 F.D.A., the F.D.A. did approve them as F.D.A.
14 compliant for use in lash and brow tinting.
15 So we, I sent some information over, we'd like
16 to bring that to the board to take a look at
17 because it's a huge part of our business.
18 There's an enormous market for it and there's
19 so many things that are out there. And if
20 there would be a way that we could make that
21 acceptable for aestheticians and
22 cosmetologists would be fantastic.

23 I don't know what that takes, David.
24 That might be -- be your -- be your -- need
25 your input because it is in our law book, so

1 I'm assuming.

2 BOARD MEMBER SHADE: Yeah. And it's
3 something not coming from salon owners'
4 perspective. Is I see it advertised at
5 Brazilian salons all the time, and I have, you
6 know, guests coming into my salon asking for
7 it, and you know, I'm compliant. So I'm like,
8 yeah, we don't do that. And they're like,
9 well, why not? So and so does it still.

10 So I'm potentially losing business
11 being compliant, but yet these people, I mean
12 literally when they were advertising it and
13 they're not getting hammered for doing it.
14 You know, it's -- that's the risk I guess
15 they're taking. I -- I wouldn't be
16 comfortable putting my head on a pillow at
17 night, but --.

18 MR. GOLDMAN: We do cite it
19 regularly, I would say. I would say it's
20 uncommon. I would say obsessively uncommon,
21 but we see it and when we see it, they have to
22 observe it occurring. We just see advertise
23 and prices, et cetera.

24 CHAIR BRENNER: Yeah because they
25 advertise all the time.

1 MR. GOLDMAN: Well, curling -- well,
2 what is it, dyeing?

3 BOARD MEMBER SHADE: Curling is
4 curling.

5 MR. GOLDMAN: Well, the reality, I
6 think all this is dye.

7 CHAIR BRENNER: Yeah, so --.

8 MS: SHADE: Well, it's not
9 permanent. I -- from my understanding,
10 looking into like lash lists, as long as it is
11 curative based, that -- that's legal to do.
12 Not only the requirement.

13 MR. GOLDMAN: I think D.O.H. has
14 recently issued an opinion to us as an
15 enforcement that we can't cite anything but
16 dye because the regs specifically says dye.
17 You know, I think our enforcement people were
18 of the opinion that any chemical near their
19 eyes mainly could steer them away.

20 (Audio cuts off 0:12:41 to 0:14:39)

21 MR. MOSSBERG: Hold it on my cell,
22 put it on speaker.

23 MR. GOLDMAN: Well, let me -- let me
24 see if I could switch the audio. Hold on.
25 Let me switch the audio.

1 MS. LAINSON: We'll leave it on
2 speaker while we record it.

3 CHAIR BRENNER: Okay. Sure. Hi
4 there, Dave?

5 MR. GOLDMAN: Is that better?

6 BOARD MEMBER SHADE: John's calling
7 you. Are you getting another call?

8 MR. MOSSBERG: Hi. Is that any
9 better?

10 CHAIR BRENNER: Yeah.

11 MR. GOLDMAN: All right, so speak
12 real loud because they want the mics to pick
13 up on the recording.

14 MR. MOSSBERG: All right. Sorry
15 about that, everyone. Usually this -- this
16 doesn't have any problem.

17 So the statute or the regulation
18 just says that no appearance enhancement
19 licensee shall be authorized or permitted to
20 apply dye of any kind to eyelash or eyebrow
21 hair. In reviewing it previously, our opinion
22 from counsel's office was that permanence
23 achieved in the regulations doesn't
24 necessarily mean must ever last as permanent.
25 Rather, it just means that it had the ability

1 to penetrate or to permeate, you know, the
2 hair roots.

3 And so really, that would not
4 necessarily mean that we would be focused
5 solely on, you know, the -- the chemical or
6 the material of the product, whether or not it
7 had the ability that, you know, to permeate
8 sort of the structure or the -- the hair
9 structure of the hair.

10 That doesn't mean necessarily that
11 the board can make a recommendation to change
12 the regulation. You know, something to the
13 effect that even if it's still permeates the
14 hair, then provided that it's still, you know,
15 was F.D.A. approved or F.D.A. compliant or
16 something to that effect, that that could be
17 something that necessarily we could consider
18 to choose correct.

19 CHAIR BRENNER: That makes sense.
20 And so, Dave, in order for that to happen,
21 what needs to come from the advisory board?
22 Something written up and signed by everybody
23 that's on the advisory board before it goes
24 to --?

25 MR. MOSSBERG: No. I mean,

1 certainly if the board were to sort of have
2 consensus on that, they would certainly be
3 persuaded to check there to begin to prepare.
4 One of the items, you know, for the agenda
5 today to go over was, you know, sort of the
6 role, the power of board.

7 So it's just one of those committees
8 that the department secretary could act
9 without, you know, approval from the committee
10 or even consensus but considering that the
11 regulation that -- that, you know, that for so
12 long, from a policy perspective, it
13 would -- it would be, you know, important to
14 have consensus of the board before the
15 secretary would have the authority to act.

16 CHAIR BRENNER: Awesome. Perfect.
17 Thank you. Now, we'll go ahead and do that,
18 put together something as a consensus from us
19 and that being at the next meeting. Do I
20 email or?

21 MS. DELOLLO: ...

22

23 CHAIR BRENNER: Yeah.

24 MS. DELOLLO: And then we still the
25 governance meeting.

1 CHAIR BRENNER: Oh, yeah.

2 MS. DELOLLO: So maybe we should get
3 them.

4 CHAIR BRENNER: Okay.

5 MS. DELOLLO: Or, we could get
6 something else.

7 CHAIR BRENNER: Yep, we'll do that.
8 Okay. All right. Anybody have any questions
9 on lash tinting? Good.

10 BOARD MEMBER SHADE: Sounds
11 interesting. As in super -- there's mascara
12 too.

13 CHAIR BRENNER: Yeah. Awesome.
14 Thank you. Dave, thank you so much. I
15 appreciate it. Thank you. Moving on to our
16 next agenda item is new business. We do have
17 four great topics. Our first is a list of
18 procedural services for Jodi DeLollo.

19 MS. DELOLLO: So yes. So, many
20 months ago, I think the -- the board and the
21 department and Dave worked on a -- a
22 subcommittee to -- to create this document
23 that lists some of the procedures that are out
24 there or some of the -- the services that are
25 out there and whether or not this was within

1 the scope of licensure.

2 So interestingly enough, eyelash did
3 encroach ending around this list. So I was
4 hoping we'd have a little more, you know,
5 little more concrete -- since last meeting,
6 because we discussed that last meeting is when
7 we brought up the whole F.D.A. approval.

8 So we are going to send this, a link
9 to our website. We are going to post this on
10 our website. We're hoping to have
11 clarification or maybe, I guess for now, I
12 mean the eyebrow and eyelash tinting is
13 prohibited. So we'll leave that in there
14 because it does list it as prohibited. So
15 we're going to send an email out to all
16 licensees. We'll post it on our website. The
17 email will just have a link to our website.

18 CHAIR BRENNER: Excellent.

19 MS. DELOLLO: And then with
20 the -- the communication, we'll let them know
21 that it'll -- every time it changes, we're
22 not, probably not going to send, you know, but
23 we'll update it on our website and we'll just
24 need to periodically --.

25 CHAIR BRENNER: Well, it's like a

1 living document. So it's accountability on
2 the professionals checking their scope.

3 MS. DELOLLO: Yes.

4 CHAIR BRENNER: That's awesome.

5 MS. DELOLLO: Yep. So we'll send
6 that out just as we figure out --.

7 CHAIR BRENNER: Here, it does say
8 how much really.

9 MS. DELOLLO: Okay.

10 CHAIR BRENNER: So at some point, I
11 was told by the State that the cure to this
12 proved ...

13 MS. DELOLLO: I can't speak to that.

14 CHAIR BRENNER: Well, it's not
15 titled.

16 MS. DELOLLO: Well, that's why this
17 will be fantastic because people are calling
18 and getting different answer -- getting
19 different -- getting different answers to
20 questions. So now we just send them to the
21 link because I'll try and post the link on my
22 website for the school too.

23 CHAIR BRENNER: Because we get
24 inundated with phone calls all the time and
25 they can come.

1 MS. DELOLLO: Yes. Yep.

2 CHAIR BRENNER: And I think some of
3 the biggest challenge to this point has also
4 been is they go to the shows and product
5 manufacturers are telling them, oh no, you can
6 do that. That's absolutely safe, and then
7 we're like, you can't.

8 MS. DELOLLO: Or sometimes staff
9 members say, well, there's a class and they're
10 giving it in New York. And I'll say, just
11 because they're giving it in New York State,
12 do it in New York. It's a class. Oh, they're
13 doing fibroblast plasma classes. They're
14 doing all of these things that are
15 just -- yeah, just crazy.

16 CHAIR BRENNER: Awesome. Thank you.

17 MS. DELOLLO: Thank you.

18 CHAIR BRENNER: Very exciting. All
19 right. Next on new business, are board
20 members in the appointment process and Jodi,
21 I'm going to pass that to you once again.

22 MS. DELOLLO: So I wonder if we
23 should maybe change the order of this. I
24 don't know what makes sense because Dave's
25 going to talk about roles and

1 responsibilities, but either way, I know
2 there's been some inquiry, like, what are you
3 going to do to get -- you know, so I mean, our
4 involvement in the appointment process is that
5 you can feel free with anyone that you know
6 out in the industry that would like to be a
7 member. They submit a resume, you know, you
8 can send it to Heidi as the board coordinator.
9 Some resumes we'll forward it to our office
10 here.

11 They just send it to make sure the
12 applications are met depending on what
13 description of that particular appointment,
14 and then that goes to the governor's
15 appointments office and those appointments are
16 made here.

17 CHAIR BRENNER: Okay.

18 BOARD MEMBER SHADE: Is that
19 what -- is that what the holdup is? Because
20 I've submitted two people, I've had two
21 people --.

22 MS. DELOLLO: I can't speak to their
23 process or their timeline, but I know we
24 forward that. We receive them as long as --?

25 BOARD MEMBER SHADE: In the end, you

1 sent them to somebody here? Well, originals
2 to these.

3 MS. DELOLLO: Okay. As long as it's
4 you know, they meet the criteria for
5 appointment, then we forward it along.

6 CHAIR BRENNER: That's perfect
7 because there was even a time where it was
8 just kind of the list was sent out and here's
9 who assigns those things and reach out on your
10 own. So that's great to have like you guys
11 for a contact in order to do that --.

12 BOARD MEMBER SHADE: And people do
13 do that --.

14 MS. DELOLLO: But we'll forward
15 everything as well.

16 CHAIR BRENNER: That's fantastic.
17 That's awesome. Thank you.

18 MS. LUPE: I personally know that
19 I've sent my credentials and resume to the
20 speaker, to the Secretary of State and just
21 have never heard anything. And then the
22 pandemic happened.

23 CHAIR BRENNER: Send it again.

24 MS. HICKS: She did.

25 CHAIR BRENNER: Oh, okay. Thank you

1 Heidi.

2 MS. HICKS: She's ... how do I do
3 this?

4 CHAIR BRENNER: That's awesome.
5 That's great. Fantastic for trying. Okay.
6 Next for new business, roles, and
7 responsibility of the board. Okay. Is David
8 going to do that? He doesn't look like ...

9 MS. DELOLLO: It was a last-minute
10 change.

11 CHAIR BRENNER: Okay. Awesome.

12 MR. MOSSBERG: All right. Hi
13 everyone. I kind of want to ... you can help
14 me out I'll try to yell louder. But it's my
15 understanding that there's been some time
16 since you've met or certainly met in-person to
17 go over sort of rules of the board. And Jodi
18 had put together sort of a brief overview of
19 what the advisors committee's role is in our
20 department. And so, you know, that we'll be
21 doing today so obviously no one has any
22 questions later on. You know, having just to
23 ...

24 Basically, the advisory board exists
25 as a statutory construction. The board was

1 created at the same time that the general
2 business law went into existence for the
3 current sort of statutory scheme. So
4 basically, since the early '90s when the
5 department began regulating the different
6 occupations, you know, esthetics, flexion, and
7 so board was created and consists of nine
8 board members.

9 Currently, there are five empty.
10 Unlike some of our boards, we needed a quorum
11 of the full board, not just for decisions, at
12 any given time in order to conduct official
13 business. So at this instance, we would
14 always be five members whether or not there's
15 five appointed changes, actually given.

16 General business law requires that
17 the advisory committee meet at least three
18 times, but of course, they can meet more than
19 that. And it would be basically when the
20 committee had something that they would've
21 want to bring to the Secretary of State's
22 attention for consideration or the other way
23 around where the Secretary was considering
24 something and was looking for work or guidance
25 from the advisory committee.

1 So you know, for that reason, that's
2 why there's sort of diversity in the committee
3 in terms of who's appointed, you know, in
4 terms of the skillset, the licenses, the
5 practices that they perform. And the
6 committee basically had the broad powers by
7 the Secretary on any informal matters that
8 affect the general business law. So
9 the -- the general business law has some
10 examples of statutes, so covers, for example,
11 things like education, curriculum
12 requirements, cultural awareness or particular
13 styles and practices. But that is by no means
14 exhaustive.

15 Basically, anything that's relevant
16 for the industry is something that the
17 advisory committee needs to make
18 recommendations for or the secretary can
19 request the advisory committee for their
20 opinion. But that's because it's advisory and
21 this is something that I was sort of alluding
22 to earlier, the committee did not actually
23 have to vote or meet in order for there to be
24 a change in the regulation. The secretary has
25 that power to change the regulations,

1 basically, at his or her discretion. But
2 obviously you know, having input from the
3 committee is certainly advisor able and
4 important.

5 The only other thing that I would
6 mention in terms of you know, powers of the
7 committee is, you know, basically that it is
8 advisory. So at any point, you know, any
9 other board members can certainly bring
10 something our attention, certainly to our
11 attention and something that we'd consider.
12 So that's all I have sort of with the update
13 or the refresher on the board powers. But as
14 I said, if anyone has questions or concerns,
15 you know, feel free to reach out.

16 CHAIR BRENNER: That's great, David.
17 Thank you. Any questions?

18 MS. DELOLLO: I have -- I -- I have
19 one question simply because I'm -- this is not
20 really my realm of -- of -- of understanding
21 at different times, but how is it that certain
22 things surpass our knowledge? For instance, I
23 know that there was a bill for micro-needling
24 and I -- we've gotten inundated with phone
25 calls at the school several times and said,

1 well, you know, a bill was passed and we're
2 allowed to do micro-needling as long as we
3 take a course. I think it was 40 or 60 hours
4 or something like that.

5 And -- and I hadn't heard of it, we
6 hadn't had any conversation on it. Somebody
7 found it and sent it to me. And at the time,
8 Denise was still with us and I thought, oh my
9 gosh, how -- how did this happen and none of
10 us knew about it. And it's still pending.
11 It's sitting out there, it never got passed.
12 It's just sitting there. But how does this
13 happen? How do we not learn of these things?

14 I mean, obviously somebody hired
15 either an attorney or a --?

16 BOARD MEMBER SHADE: Hold that
17 language lane.

18 MS. DELOLLO: A lobby, thank you.
19 Or a lobbyist. I mean, so those -- these
20 types of things can actually get past by all
21 of us without us knowing and then could
22 possibly become a law?

23 MR. MOSSBERG: So that would be, I
24 think, somewhat rare for it to actually become
25 law. Generally speaking, we have a

1 legislative affairs individual as well as a
2 legislative counsel at the Department of
3 State. And so usually, what would happen is
4 if a legislator was approach to consider a
5 bill, that legislature might contact our
6 inter-gov person and you know, it -- it's not
7 a requirement, but usually, that's what would
8 happen.

9 And then our inter-gov person would
10 contact, you know, come to our program, and
11 basically say, you know, the State senate has
12 certainly presented disclosing besides bill
13 around, you know, what our, you know,
14 concerns. What we would then do is we would
15 work with our legislative counsel and then we
16 would make, basically, a recommendation to the
17 governor's office.

18 So we wouldn't generally, you know,
19 communicate our concerns directly to the
20 legislator. And you know, unless it's a bill
21 where it's been signed by both chambers, if
22 it's a one-house bill, generally, you know,
23 department doesn't publicly comment on any
24 this stuff. So I -- I think it would be
25 somewhat rare that through house bill that's

1 signed, you know, people didn't know about.
2 But you know, that's generally the process,
3 the way that it would work if a bill is
4 actually getting, you know, picked up or if
5 there was some sort of likelihood it would get
6 passed.

7 MR. GOLDMAN: Did that happen? Did
8 it pass?

9 CHAIR BRENNER: It didn't pass.
10 It's still floating out there. All right. So
11 I don't know what happens when -- I don't know
12 why, and that was, you know, Denise had said
13 at this given time, she said, it's still out
14 there. It's -- it's kind of pending. And I
15 don't know what that means because that's not,
16 you know, how long do things pend for, the
17 negotiation?

18 MR. MOSSBERG: So that could happen
19 frequently where you'll have, you know -- so
20 we have obviously a Senate assembly, so it
21 wouldn't be uncommon for a bill to be passed
22 just in, you know, one of the houses, but
23 would obviously require both houses to vote
24 and to approve the same bill before it gets to
25 the governor's office.

1 So generally, you know, one house
2 bill that's been pending for a while is
3 usually an indication that there's no
4 legislative act that is actually going
5 forward. You know, one of our other boards,
6 there was one house bill that's been proposed
7 by the same legislator, I think, every year
8 for, I want to say eight or nine years and it
9 just never goes anywhere.

10 So I don't think that's an issue,
11 but I think certainly if there was ever a
12 house bill, you know, I think that our inter-
13 gov affairs person or certainly our
14 legislative counsel would know about that.
15 Instead, I think the department would know and
16 obviously certainly relay that information to
17 the advisory committee. Certainly, knowledge
18 in regards to the bill pending that impact
19 Article 27 of the general business law.

20 So I don't think there's anything
21 else that's tied to the bill.

22 MR. GOLDMAN: So is the bill to
23 create another subcategory, an addition too
24 that would be licensed?

25 CHAIR BRENNER: Yep. Yep. It was

1 just, because it -- it's micro-needling, so
2 it's puncture in the skin. Nowhere in our
3 scope of practice is puncturing the skin
4 permitted. In -- in a very interesting
5 situation that when Denise Tidings was still
6 here, we went back and forth and we're not
7 quite sure how it happened. Because when we
8 were working on the drafts and what falls
9 under our scope and doesn't fall under our
10 scope, we know puncturing the skin does not
11 fall under our scope of practice.

12 But we -- it's huge. I mean, it's
13 gotten super popular. So what they've also
14 said is, you know, well if the needle is only
15 under 0.25, then it's okay for aestheticians.
16 It kind of went back and forth.

17 So Denise had submitted it to the
18 medical board and the medical board said, it's
19 not under our scope of practice. So we kind
20 of played around with, well, if it's not under
21 anybody's scope of practice, you know, not
22 saying it is okay, but it doesn't really fall
23 under anyone's scope of practice. And then
24 all of a sudden acupuncture said, it's under
25 our scope of practice because they use needles

1 that puncture the skin.

2 There's not a single acupuncturist
3 out there doing micro-needling. I mean, it is
4 a whole different realm altogether. But
5 because they sent back -- sent a claim and
6 saying, well, you know, in order to puncture
7 the skin with a needle, that falls under
8 acupuncture, all of a sudden micro-needling
9 then fell under acupuncture. They had a
10 couple of board meetings that I tried to
11 attend, or get a summary or do something, and
12 I wasn't able to. So we're trying to just
13 kind of get the board, the acupuncture board
14 to say that micro-needling itself is not what
15 they do at all because I mean, it's just, it's
16 small holes in the surface of the skin to
17 apply product.

18 So somebody must have had -- you
19 know, I don't, and I don't even know who it
20 was, and the lobbyist went and tried to get
21 micro-needling approved for esthetics. As
22 long as the needle was under 0.25 and as long
23 as they took a, I think it was a 40-hour
24 course or something like that and sanitation
25 and disinfection was included, and so it's

1 just out there. So no, it hasn't -- hasn't
2 gone far.

3 MR. MOSSBERG: So I don't know if
4 this helps, but I just found a bill, it looks
5 like there was one house bill
6 opposing -- proposed in the assembly that was
7 proposed in October of 2020, proposed again in
8 January of 2022, and it was proposed again in
9 January of 2023. The bill would allow license
10 and identification of cosmetologists to
11 practice micro-needling, but it would require
12 them to take an additional five-hour micro-
13 needling course offered by State agents
14 appearing at the fold.

15 And it would also define micro-
16 needling specifically as the use of a roller
17 covered in very small needles to insert very
18 small needles into the skin. But it doesn't
19 appear as if this has been picked up in the
20 Senate. So you know, as I said, you know,
21 historically, one house bill that doesn't have
22 a counterpart in the Senate oftentimes doesn't
23 go anywhere. But I can certainly make a note
24 to speak for our legislative counsel to
25 correct this, so see if I can send this in.

1 CHAIR BRENNER: That'd be awesome.
2 Great, thank you. Thanks David. Any other
3 questions?

4 MS. MAGUIRE: Mister, maybe you
5 talked about New York State, possibly --

6 MS. DELOLLO: We do want to --.

7 MS. MAGUIRE: So we'll open up
8 public comment at the end.

9 MS. DELOLLO: Oh, sorry.

10 MS. MAGUIRE: That's all right.

11 MS. DELOLLO: Sorry.

12 MS. MAGUIRE: Thank you. Going
13 back -- going back to just roles and
14 responsibilities of the board, is there
15 anything in regards to -- I mean, I know
16 things happen and people can't always make it,
17 but is there anything or like some sort of
18 attendance? Like not requirement, but yeah,
19 like, like if you'll miss so many, maybe
20 you're on probation? Because you know, you're
21 talking about we have to have all five to get
22 a quorum because there's nine seats and
23 there's only five filled and that hasn't
24 happened since I've been on the board. And I
25 mean, I know it hasn't been that long, but

1 anything? Just to, you know, make people
2 somewhat accountable?

3 MS. DELOLLO: I -- I can look into
4 it.

5 BOARD MEMBER SHADE: Okay.

6 CHAIR BRENNER: I don't know off the
7 top of my head --.

8 BOARD MEMBER SHADE: I mean there
9 are last-minute things do come up.

10 CHAIR BRENNER: We encourage
11 attendance, we send the meeting dates out in
12 advance and have, you know, make sure a
13 majority can make it. We try to -- I don't
14 know what control we have over unscheduled,
15 you know, issues, what happens and what has
16 happened. But we do encourage -- we do
17 encourage, you know --.

18 BOARD MEMBER SHADE: Because
19 otherwise, we get nothing done.

20 CHAIR BRENNER: No, and you know
21 what, Leanne? It's fine. We were chatting
22 about this before and it makes an interesting
23 point that at the same time, we have all tried
24 to figure out ways to get on this board and be
25 part of this and to make a difference. So a

1 little accountability on our group together to
2 communicate outside of this meeting with you
3 folks might be beneficial to, hey guys, here's
4 what we've got going on and to pull ourselves
5 together. We try to do that outside of here
6 as well.

7 BOARD MEMBER SHADE: We should
8 really do that soon.

9 CHAIR BRENNER: Right or request
10 that. We try to -- if you're not involved and
11 you don't care, don't do it.

12 BOARD MEMBER SHADE: Right. Okay.

13 CHAIR BRENNER: All right.
14 Excellent.

15 Then last thing on new business is
16 new advisory board meeting. Heidi.

17 MS. HICKS: And that's going to be
18 on Monday, July 17th at 10:00 a.m.

19 CHAIR BRENNER: Perfect. Next on
20 the agenda is public forum period. You may
21 comment.

22 MS. MAGUIRE: Sure. Discuss any
23 talk of doing like two degrees of esthetic
24 licenses. Medical esthetics and regular
25 esthetics, which I know several states have

1 done because we are getting into so much more
2 micro-needling and -- and such.

3 CHAIR BRENNER: I know that I've
4 been on this board for, my gosh, for a really,
5 really, really, really, really long time. And
6 even back to the time when, gosh, Annette
7 Hansen was on the board, that was a really
8 long time ago. I mean, even back to that time
9 period we had this conversation, especially
10 when the two-tier licenses started to get
11 really, really familiar.

12 And we do a 1,200-hour program at
13 the school with CIDESCO and I think it's a
14 great idea. I think this conversation also
15 came along with taking esthetics and
16 cosmetology and pulling those things apart.
17 But if I'm not mistaken, and Dave, I'm going
18 to put you back in the hot seat on this one.
19 The -- the -- the -- the legal steps and what
20 goes into doing that is quite intense because
21 we're basically having a second, we're adding
22 another license by adding a master esthetics
23 license. So I guess that's question number
24 one. I think it'd be fantastic.

25 How it gets done, I don't know.

1 Separating esthetics and cos, I think we came
2 to the decision that that will never, ever
3 happen, but would be a great thing also.

4 MS. MAGUIRE: It would absolutely
5 because --

6 CHAIR BRENNER: The qualifications
7 aren't there.

8 MS. MAGUIRE: -- because it has the
9 instructor --I mean what we teach in the
10 program. And then they go out and start doing
11 all this stuff, and it's like, please get
12 training because it's not part of our
13 curriculum. We can demo it, but, please go
14 get training because the hours, whatever it
15 is, 50 or so hours that we spend
16 doesn't -- doesn't cut it.

17 MS. DELOLLO: We're with that. It's
18 just a public comment.

19 CHAIR BRENNER: Yeah. Yeah. So I
20 think then, yeah, David, I won't put you on
21 the spot, how's that sound?

22 MR. MOSSBERG: Good.

23 CHAIR BRENNER: But I think
24 that -- I don't do this how long. It's
25 a -- it's a -- it's a great comment. It has

1 been brought up before and I think that's a
2 great thing then for the advisory board to
3 discuss about too and then come back to the
4 board and discuss, you know, different options
5 if it is at all feasible for something for us
6 to do down the road. So thank you.

7 Any other questions or comments?

8 Then we'll go ahead and adjourn today's
9 meeting. Thank you everybody. Take care.

10 (The meeting was adjourned at 10:48
11 a.m.)

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1 STATE OF NEW YORK

2 I, ANNETTE LAINSON, do hereby certify that the
3 foregoing was reported by me, in the cause, at the
4 time and place, as stated in the caption hereto,
5 at Page 1 hereof; that the foregoing typewritten
6 transcription consisting of pages 1 through 40, is
7 a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 15th day of May,
11 2023.

12

13

Annette Lainson

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ANNETTE LAINSON, Reporter

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