

MEETING SUMMARY

NEW YORK STATE APPEARANCE ENHANCEMENT ADVISORY COMMITTEE October 25, 2021

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 10:39 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

DEPARTMENT OF STATE STAFF

Jodi DeLollo
David Mossberg
Ernest Delaney
Denise Tidings
Emily Lupe
Shannon Maguire
Paula O’Brien

VISITORS

**Public Members*

II. DEPARTMENT REPORTS

- A. Enforcement Update – E. Delaney provided an Enforcement report on the beauty and nail salon inspection program. He reported that in the second half of this year, Enforcement started their annual inspection program. He explained that the purpose of inspections is to determine whether salons are operating with violations. He added that Enforcement was primarily focused on whether salons are complying with the new ventilation requirement. He mentioned that when violations are found, the licensee is given the opportunity to correct the violation, thereby avoiding an administrative hearing. E. Delaney reported that for this year, there were a total of 547 inspections and to date, 401 violations have been found of which 184 were ventilation violations. He mentioned that these figures include inspections conducted in New York City, Long Island, and the metro areas of Albany and Buffalo. He stated that there has been a good response from salon owners who have responded to the opportunity to settle violations by email and telephone to provide proof of the collection.
- B. Processing Report – E. Lupe reported on the provided September 2020 and September 2021 licensing 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 allowed licensed individuals to extend their license term during the State of Emergency.

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

Cosmetology:	<i>Written Exam</i> - Administered to 2,739 applicants with a pass rate of 71% <i>Practical Exam</i> – Administered to 2,146 applicants with a pass rate of 81%
Esthetics:	<i>Written Exam</i> – Administered to 2,315 applicants with a pass rate of 69% <i>Practical Exam</i> – Administered to 1,966 applicants with a pass rate of 97%
Nail Specialty:	<i>Written Exam</i> – Administered to 1,657 applicants with a pass rate of 88% <i>Practical Exam</i> – Administered to 1,847 applicants with a pass rate of 89%
Natural Hair:	<i>Written Exam</i> – Administered to 29 applicants with a pass rate of 55% <i>Practical Exam</i> – Administered to 25 applicants with a pass rate of 88%
Waxing:	<i>Written Exam</i> – Administered to 747 applicants with a pass rate of 68%

Board member, A. Fiore, requested information pertaining to the suspension of exams during the pandemic-related State of Emergency. S. Maguire stated that the requested information will be emailed to A. Fiore.

III. ACTION ITEMS

- A. Procedural List – D. Tidings reported on the procedural list. She stated that the draft procedural list provided with the meeting materials consists of a multitude of procedures, some of which fall under the scope of appearance enhancement licensure and others which do not. She explained that this list has been compiled over a period of time with the goal of developing a resource that addresses the ‘gray’ areas of scope of licensure, or practices and procedures that are not clearly identified in Article 27 of the NYS General Business Law—otherwise known as the Appearance Enhancement Law. She mentioned that the Department often receives inquiries from Appearance Enhancement licensees seeking guidance on the allowability of performing certain procedures under the scope of their license and making this procedural list publicly available will provide clarity to our licensees. She stated that the determinations identified on this list were well researched and made in consultation with industry experts, Licensing Counsel, and NYSED’s Office of the Professions, which oversees professional licensing including medical, massage therapy, and acupuncture, as well as other areas of professional licensing. She mentioned that the appearance enhancement industry evolves at a fast pace and new procedures often become available. She added that this list will most certainly require periodic revision to keep up with industry trends and other potential changes and that members are encouraged to keep the Department updated as they become aware of new procedures that are not covered on this list. She thanked everyone who assisted with the development of this list and mentioned that it is our intention to make the final procedural list publicly available upon approval.

IV. NEW BUSINESS

A. Regulatory Update (Ventilation Requirement) – D. Mossberg provided a regulatory update on ventilation regulations. He explained that the regulation was set to go into effect on October 3, 2021, for businesses that were in existence prior to October 3, 2016. He further explained that this regulation, originally set to go into effect in 2016, would have required a nail salon business that obtained a license after that date to meet the applicable ventilation requirement. He clarified that the regulation would also require that preexisting businesses meet the same standards by October 3, 2021. D. Mossberg stated that, in light of the pandemic and in recognition that there was a period time where businesses were temporarily closed, the Department filed an emergency regulation on October 1, 2021. He explained that this emergency regulation now provides those businesses that originally had five years to meet standards (by October 3, 2021) to remain in compliance until April 4, 2022, to meet the new ventilation standards. He clarified that this regulation only impacts those businesses that were in effect before October 3, 2016, and that they now have until April 4, 2022, to meet the same ventilation standards. In response to a member's inquiry as to whether the ventilation requirement applies to salons that only clips nails or provide basic manicuring, D. Mossberg cited the definition/scope of nail specialty as outlined in statute and stated that 'clipping' and 'cutting' would be considered the same service and, therefore, any business that 'clips' nails must comply with the new ventilation requirement.

B. 2022 Meeting Dates – D. Tidings provided the tentative meeting dates for 2022 as follows:

- Monday, April 11 @ 10:30 a.m.
- Monday, June 13 @ 10:30 a.m.
- Monday, October 24 @ 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.

V. ADJOURNMENT

The meeting was adjourned at 10:55 a.m.