

MINUTES

COSMETOLOGY AND ASSOCIATED PROFESSIONS

Monday, December 2, 2019

9:00 A.M

Room 474, Fourth Floor

Heber M. Wells Building

160 E. 300 S. Salt Lake City, Utah

CONVENED: 09:07 AM

ADJOURNED: 12:26 PM

DOPL STAFF PRESENT:

Larry Marx, Bureau Manager
Ernie Gamonal, Board Secretary
Sicily Hill, Compliance

Lynne Anthony, Investigator
Elisa Campbell, Investigator

BOARD MEMBERS PRESENT:

Julianne R. Young, Board Chair
Meagan DeLange
Marti Frasier
Jackie Lynn McKay

Meredith Taylor
Shanna Gilchrist
Fred Martinez

BOARD MEMBERS ABSENT:

Sherri L. Steele

Christine Heathman

GUESTS:

Candace Daly, USBA
Sonja Burton, Jordan School District
Daniel McCarthy
Minh Nguyen
Shannon Mechling, JATC/NCA

Tracy Mathis
Lynn Thomas, PSI
Shawn Conder, PSI
Kelly Swalberg

ADMINISTRATIVE BUSINESS: (00:01:50)

Read and Approve Minutes

The minutes from the October 7, 2019 meeting were reviewed. Ms. Frasier made a motion to approve the minutes as written, seconded by Mr. Martinez. The motion passed unanimously.

COMPLIANCE UPDATE: (00:02:32)

Ms. Hill presented the compliance report for today's appointments. Questions were asked and answered.

APPOINTMENTS:

Lynna Dao (00:15:05)

Ms. DeLange interviewed Ms. Dao and asked how the apprenticeships are going. Ms. Dao believes her apprenticeships are going well. Ms. Hill said that Ms. Dao has been compliant and turns in the required documents on time. Ms. Young asked how the Ms. Dao is educating herself on the rules. Ms. Dao has been reviewing the rules, specifically at the DOPL general rule and identified offenses that may negatively impact licensure. Ms. Dao asked about the upcoming source capture rule requirement. Ms. Young explained that the

ventilation needs to be at each station for acrylic nails. It was clarified that this is a building code requirement. Ms. Dao will meet with the Board at the April 6, 2020 meeting.
COMPLIANT

Nicole Searle (02:39:40)

Ms. Searle failed to appear for her appointment with the Board and has not been in recent communication with the Division and Ms. Hill has not been able to reach her. The Board discussed a possibility of issuing a citation Ms. McKay recommended the Division issue a Notice of Agency Action for suspension until Ms. Searle becomes compliant and must meet with the Board at the February 3, 2020 meeting. Ms. Frasier seconded and the motion passed unanimously.
NON-COMPLIANT

Jennifer Lamb (00:21:40)

Ms. DeLange interviewed Ms. Lamb and asked about her work. Ms. Lamb is working at both Layton and Bountiful ManCave locations but the Bountiful location may be moving. Although she has many, she is managing her stressors. She has recently completed the ankle monitor phase of her sentence. In order to build clientele, she is working to get more online reviews. Ms. Hill says that the supervisor reports are very complementary. Ms. Lamb is continuing treatment and it is going well. Her family is out of state but she has a sober support network of friends, she volunteers, and reads to occupy her time and is 204 days sober. Ms. Frasier offered congratulations on her progress. Ms. Lamb will meet with the Board at the February 3, 2020 meeting.
COMPLIANT

NEW ORDERS:

Jaclyn Page (00:30:04)

Mr. Martinez interviewed Ms. Page following introduction to the Board and DOPL staff members. Mr. Martinez asked if Ms. Page was in treatment and she said that she attends 20 hour per week. Ms. Young had Ms. Page explain her situations that resulted in a probationary license. Ms. Page stated that she got in with bad people and made some bad choices which made for months of trouble. She went to work and disclosed what was going on and wants to get back to what she had before. Ms. Young noted that Ms. Page missed four check-ins at the beginning. Ms. Page said that she was unsure how to properly check in. Ms. Young explained what Ms. Page can expect with her probation. Ms. Young asked if she had any questions and informed her that there is a network of support available. Ms. Page informed the Board that she is being drug tested about three times per week and discussed her drug court progress. Ms. Frasier and Ms. Page discussed her strong family support. Mr. Marx encouraged Ms. Page to read through the stipulation for full understanding and compliance. Ms. Page will meet with the Board at the February 3, 2020 meeting.
COMPLIANT

Huyen Dao (00:40:00)

Daniel McCarthy is counsel for Mr. Huyen Dao and has introduced an interpreter, Binh Nguyen. The Board and DOPL staff members introduced themselves. Ms. Young asked for an overview of what led him to be here. Due to a language barrier, Mr. McCarthy provided a summary: Mr. Dao was accused of touching a client inappropriately, he pled guilty to a Class A misdemeanor, and he is currently on probation. Mr. Dao entered into a stipulation with the Division and he is currently working as a nail technician under the stipulation, he is working with his probation officer and has taken a class. Ms. Young

asked where he is working and Mr. Dao said he is working at Top Nails Spa in Holladay, Utah. Mr. Dao is interested in obtaining a Nail Technician instructor's license for future employment at Top Nail Hair & Beauty School. Ms. Young clarified that Mr. Dao was interested in only obtaining a Nail Technician Instructor license and not an Esthetics Instructor license. Mr. McCarthy said that Mr. Dao would pursue a license through an on-the-job-training. Ms. Anthony mentioned that the accrediting agency would have more information as to whether or not he could become an employee of an accredited school. Ms. Young explained the different paths to instructor licensure. If Mr. Dao pursues a path toward an instructor license, he must still comply with his own supervision requirements provided in his stipulation.

Ms. Frasier recommended that the Mr. Dao contact NACCAS to get the information needed and provided contact names. The Board would need more information before considering his application for instructor. Ms. Young told Mr. Dao that the Board is here to protect the public and also to provide support for the licensees.

Mr. Dao thanked the Board and apologized for his problem. He said he is happy in his job and now he knows what he needs to do.

Mr. Marx asked how long the court ordered the probation. Mr. McCarthy said the court ordered probation for five years; however, the probation officer said the probation could terminate early after two years. Mr. Marx asked about Mr. Dao's court ordered course. Mr. McCarthy said he didn't have the information, but he would forward the verification of completion to the Ms. Hill. Mr. Marx asked if Mr. Dao was on the Sex Offender Registry. Mr. McCarthy said that the registry is not required for this conviction. Ms. Anthony asked if Mr. Dao has obtained a mental health evaluation because the evaluation is part of the court order and for the Division's stipulation. Mr. McCarthy will follow up and provide related information to the Division. Mr. Dao will meet with the Board on February 3, 2020.

COMPLIANT

APPRENTICESHIP REVIEW: (00:59:50)

Tanny Roberts (Instructor)

Charlee Evans, Dhannylle Swalberg, Sena Domenici (Apprentices)

Ms. Anthony provided a summary of why these apprenticeships are before the Board. Ms. Anthony quoted *Rule R156-11a Cosmetology and Associated Professions Licensing Act Rule, Section 804 – Approved Nail Technician Apprenticeship Requirements*:

(12) If an apprentice completes the apprenticeship and fails the NIC Nail Technology Theory Examination or NIC Nail Technology Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

*(b) explain to the Board why the apprentice is not able to pass the examination;
and*

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

Ms. Anthony identified Ms. Roberts as the instructor for Ms. Evans, who is also her daughter, beginning February 1, 2017. The apprentice log sheets began on January 27, 2017. Ms. Evans first attempts at the examinations were July 2017 with failing results on

both exams; however, she did pass her theory examination in June 2018. The practical exam was attempted three times in 2018 with failing scores. During a recent DOPL inspection, the inspectors discovered that the log sheets from 2017 were not signed or initialed by the instructor and Ms. Evans was working on the day of the inspection.

Ms. Swalberg's apprenticeship was registered in November of 2018; however, her apprenticeship actually began on January of 2019. No log sheets have been signed by the instructor and the last date recorded in the logs was May 1, 2019. The theory examination was attempted three times beginning in May 2019. Ms. Swalberg recently passed the theory examination on her fourth attempt and the practical examination has not yet been attempted.

Ms. Domenici's apprenticeship was registered in May 1, 2019 and her logs began on May 7, 2019. Some of the logs were initialed and signed. When the logs were reviewed and their accuracy was questioned during an investigator inspection, Ms. Roberts went back and noted that dates she had previously initialed were incorrect. Ms. Domenici passed her theory examination on November 23, 2019.

Both Ms. Swalberg and Ms. Domenici have acquired outside assistance to help them prepare for the practical examination.

The Board and DOPL staff members introduced themselves.

Ms. Young asked Ms. Roberts for an overview of her apprenticeship program. Ms. Roberts was surprised that Ms. Swalberg didn't pass the examinations because in the practice examinations she tested well. Ms. Roberts asked Ms. Swalberg to review the book and bring in the exam score reports, but said that Ms. Swalberg never brought them in. Ms. Evans started her apprenticeship part-time in high school before she moved to Saint George and suspended her apprenticeship. Ms. Roberts believes Ms. Evans failed the practical examination due to anxiety.

Ms. Young asked Ms. Roberts about the incomplete logs. Ms. Roberts said she found the rest of the logs and will be emailing them in. Ms. Roberts didn't know why the Ms. Swalberg's logs were unsigned. Ms. Swalberg and Ms. Domenici asked Ms. Roberts for their logs immediately and the instructor didn't have time to sign them or make copies.

Ms. Swalberg said her instructor had the log sheets but she asked for the sheets so she could total them up to see how far she was in her apprenticeship. She was going to take them back for Ms. Roberts' signatures, but she never did.

Ms. Domenici, always had possession of her logs throughout the apprenticeship until she gave the logs to the shop owner, Raina who is Ms. Roberts' mother, to make copies. She called the Division and was told that her logs were the most important part of her apprenticeship. She returned the next day to get them.

Ms. Young asked about the relationship between Ms. Swalberg and Ms. Domenici, and the instructor. The apprentices said that the relationship is severed. Ms. Young asked Ms. Swalberg and Ms. Domenici about the concerns that they had about the apprenticeships. Ms. Domenici said that she and Ms. Swalberg paid \$4500 for the Nail Technician apprenticeship. They don't believe they were taught in an effective way.

Ms. Young asked Ms. Roberts how she conducts her apprenticeships. Ms. Roberts said that all testing, practical kits, books, and product came from the \$4,500 apprenticeship fee. The apprentices also get one third of the money collected for services provided during their apprenticeships. Ms. Roberts believes that she spends \$1,500 of the fee on expenses related to the apprenticeship. Ms. Roberts said that Ms. Domenici stopped coming in regularly and only came in when Ms. Roberts wasn't expecting her and not available. Ms. Roberts stopped making lesson plans because Ms. Domenici's attendance was inconsistent.

Ms. Young asked Ms. Roberts how she address the concerns of Ms. Swalberg and Ms. Domenici. The instructor said she was only recently made aware of the student's concerns. Ms. Young asked Ms. Roberts if the concerns were justified. Ms. Roberts said the concerns were due to her apprentices' lack of regular attendance.

Mr. Martinez asked about the apprenticeship schedule. Ms. Roberts said that her apprentices were scheduled of one hour of theory time in the mornings and twice weekly testing. The theory time consisted of studying the Miladys book, flashcards, and the workbook.

Ms. Swalberg said that the salon owner gave her a key to the salon in case nobody was there when she arrived for the apprenticeship. She said there were times when Ms. Roberts wouldn't come into the salon. There were some discrepancies between Ms. Roberts' and the apprentices' recollections on these details. Ms. Roberts denied the apprentices counted hours logged that she did not supervise.

Mr. Martinez asked about chapter tests and practical demonstrations. Ms. Roberts said she ordered DVDs for her apprentices' practical instruction. Mr. Martinez said the instructor has a responsibility to provide a full education.

Ms. McKay and Ms. Roberts agreed that the logs were inconsistent, not timely signed, and accounted for hours when the salon was not open.

Ms. Young admonished Ms. Roberts about the apprenticeships. She instructed Ms. Roberts to go through the logs and make sure that they are accurate because the Division needs them to issue a license. Ms. Young instructed the apprentices to make copies of their logs and to give a copy of the logs to the Ms. Roberts to complete their logs so the apprentices can apply for licensure once they have passed their examinations.

Ms. Roberts explained her methods of preparing apprentices to pass the examinations.

Ms. Frasier asked if Ms. Roberts has the Instructor's manual and workbook, for which Ms. Roberts answered "No". Ms. Frasier instructed Ms. Roberts to obtain them. The Division will review the situation and applications to determine if the hours are acceptable for licensure.

Ms. Roberts will follow up by reviewing camera footage to confirm attendance. The logs will be subsequently be sent in with applications.

Ms. Frasier made a motion to recommend the Division suspend Ms. Robert's Instructor license until all three of the current apprentices: Ms. Evans, Ms. Swalberg, and Ms. Domenici become licensed. The Board would then consider recommending reinstating the

Instructor license with stipulations to be determined at that time. Mr. Martinez seconded and the motion was passed unanimously.

Tracy Mathis, a member of the public, asked questions about qualifications for a nail technician apprenticeship. The questions were answered by Ms. Young and Ms. Anthony.

Ms. Young told Ms. Roberts that she has one week to provide accurate logs to the apprentices and reviewed examination status with each apprentice. They verified that another instructor is assisting in examination preparation.

Questions about reduction in citation fines were asked and answered.

APPLICATION REVIEW: (01:35:45)

Andre Hill

Mr. Hill requested the meeting with the Board. The members of the Board and DOPL staff members introduced themselves to Mr. Hill.

Mr. Hill's barber license was previously revoked due to noncompliance. His criminal and administrative histories were reviewed. Following a lengthy discussion about Mr. Hill's past, Ms. Frasier made a motion for Mr. Hill to voluntarily submit drug/alcohol testing results to the Division for a period of six months. If Mr. Hill submits negative results, his license could be considered to be issued on probation. Ms. McKay seconded and the motion passed unanimously.

STIPULATION REVIEW: (02:17:50)

Rebecca Fitts

Ms. Fitts has been serving a six month suspension due to creating a falsified license for her daughter who had not passed her required examination and for falsifying a response on an application regarding previous disciplinary action by another state. The Board discussed with Ms. Fitts her plans for the future following the suspension of her license. Ms. Frasier made a motion to lift the suspension subject to the Division Director's approval. Ms. DeLange seconded and the motion passed unanimously.

DISCUSSION ITEMS:

Rule R392-702—Status Update (00:38:02)

Board Secretary, Ernest Gamonal reviewed the proposed rule filed by the Utah Department of Health with respect to safety and sanitation for salons and schools. The proposed rule timeframe for public comment had been completed and during the initial public hearing period on November 15, 2019, due to public comments, it was determined that it is necessary for the rule to be amended and refiled at a later date.

Rule R156-11a—Status Update (02:29:53)

Lynn Thomas and Shawn Conder, on behalf of PSI, provided information regarding combining the score for the cosmetology and barbering practical portions into one score and for all cosmetology associated examinations passing scores to be reduced from 75% to 70%. In addition, the barbering portion will be amended in order to reflect the scope of practice for Utah barbers. The "go-live" date will be determined by the outcome of the upcoming proposed rule filing. PSI will notify the schools of upcoming changes. Mr. Gamonal will add a discussion item on the February 3, 2020 for an update. Ms. Thomas assured the Board that a PSI representative would be available either in person or by phone.

TENTATIVELY SCHEDULED MEETINGS:

February 3, 2020
April 6, 2020

June 1, 2020
August 3, 2020

October 5, 2020
December 7, 2020

ADJOURN: 12:26 PM (no motion required)

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessary shown in the chronological order they occurred.

4.6.2020
Date Approved

Juliano R. Young
Chairperson — Cosmetology and Associated Professions

April 6, 2020
Date Approved

Allyson Pettley
Bureau Manager—Division of Occupational & Professional Licensing