BOARD OF BARBERING AND COSMETOLOGY

Professional and Vocational Licensing Division Department of Commerce and Consumer Affairs State of Hawaii

MINUTES OF MEETING

Date:	Wednesday, April 11, 2012
<u>Time</u> :	9:00 a.m.
<u>Place</u> :	King Kalakaua Conference Room King Kalakaua Building 335 Merchant Street, 1 st Floor Honolulu, Hawaii 96813
<u>Present</u> :	Lance M. Marugame, Barber Member, Chairperson Lee Ann Apao, Cosmetology Member, Vice-Chairperson Angela Howard, Public Member June J. Takano, Public Member Rodney J. Tam, Deputy Attorney General Laureen M. Kai, Executive Officer Lori Nishimura, Secretary
Absent:	Alexander Choi, Public Member
Excused:	Carla M. Morioka, Cosmetology Member
<u>Guests</u> :	Chad Nelson, Fantastic Sams Margaret Williams, Hawaii Institute of Hair Design
<u>Agenda</u> :	The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Hawaii Revised Statutes ("HRS") section 92-7(b).
Call to Order:	There being a quorum present, the meeting was called to order at 9:07 a.m. by Chairperson Marugame.
<u>Additions/</u> <u>Revisions to</u> <u>Agenda</u> :	None.
<u>Minutes of the</u> <u>February 8,</u> 2012 Board <u>Meeting</u> :	It was moved by Vice-Chairperson Apao, seconded by Ms. Howard, and unanimously carried to approve the minutes of the February 8, 2012 Board Meeting, as circulated.

Chairperson Marugame recessed the meeting at 9:08 a.m. to discuss and deliberate on the following adjudicatory matter pursuant to HRS chapter 91:

Chapter 91, HRS,
AdjudicatoryA.In the Matter of the Beauty Operator's License of
Susan Nguyen; BAR 2011-3-L

Matters:

Ms. Kai provided a brief summary of the case:

- Respondent is the designated beauty operator for hairdresser services at Lahaina Hair and Nails ("shop");
- Regulated Industries Complaints Office ("RICO") issued citations for unlicensed beauty operator activity to two (2) employees of the shop, who were not licensed and were engaged in beauty operator activity without being supervised by Respondent, which are violations of HRS section 439-19(a)(3), permitting an unlicensed person to perform activities which require a license.

The terms of the Settlement Agreement ("SA") are:

- Respondent agrees that she must supervise any apprentices or temporary permittees who are employed by the shop;
- Respondent must pay a \$250 administration fine;
- Should Respondent fail to make payment of fine or to timely comply with the terms of the SA, Respondent's license shall be automatically revoked without a hearing upon RICO's filing of an affidavit with the Board attesting to such failure; and
- The Board may pursue additional disciplinary action as provided by law as the Board deems appropriate.

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

B. In the Matter of the Barber Shop License of Tuoi T Pham Hair Styling LLC dba T's Hair and Nails Salon and the Barber's License of Tuoi Thi Pham; BAR 2011-8-L

Ms. Kai provided a brief summary of the case:

 RICO investigators found (on two occasions) that Respondents did not display the licenses of all the barbers working in the shop, including the license for Respondent Pham, which are violations of HRS section 438-14(a)(6), failing to display licenses as provided in this chapter, and HAR section 16-73-41(b), shop owner or person in charge shall ensure that licenses are conspicuously displayed adjacent to work stations.

The terms of the Settlement Agreement ("SA") are:

- Respondents agree that only properly licensed barbers and beauty operators are allowed to work in shop and that all licenses are to be conspicuously displayed;
- Respondents must pay a \$500 administrative fine;
- Should Respondents fail to make payment of fine or to timely comply with the terms of the SA, Respondents' licenses shall be automatically revoked without a hearing upon RICO's filing of an affidavit with the Board attesting to such failure; and
- The Board may pursue additional disciplinary action as provided by law as the Board deems appropriate.

After discussion, it was moved by Vice-Chairperson Apao, seconded by Ms. Howard, and unanimously carried to approve the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

At 9:19 a.m., the Board reconvened its scheduled meeting and immediately followed with the Executive Session.

ExecutiveAt 9:19 a.m., it was moved by Vice-Chairperson Apao, seconded
by Ms. Howard, and unanimously carried for the Board to enter
into Executive Session to consider and evaluate personal
information relating to individuals applying for licensure in
accordance with HRS section 92-5(a)(1), and to consult with the
Board's attorney on questions and issues pertaining to the
Board's powers, duties, privileges, immunities, and liabilities in
accordance with HRS section 92-5(a)(4).

EXECUTIVE SESSION

> At 10:10 a.m., it was moved by Vice-Chairperson Apao, seconded by Ms. Howard, and unanimously carried for the Board to move out of Executive Session. The Board immediately recessed the meeting.

At 10:16 a.m., the meeting reconvened.

Applications: A. Ratification of Issued Licenses

After discussion, it was moved by Vice-Chairperson Apao, seconded by Ms. Howard, and unanimously carried to ratify the list of issued licenses attached (see, attached list).

- B. Examination and License
 - (1) ARNOLD, Jason (Barber)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the barber application for examination and license for Jason Arnold.

(2) ROTH-TIJERINA, Maria T. (Beauty Operator-Esthetician)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the beauty operator application for examination and license, in the esthetician category, for Maria T. Roth-Tijerina.

- C. <u>Restoration of Licenses</u>
 - (1) ANNIE Y CORP (BSH 2640)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the beauty shop license of ANNIE Y CORP.

(2) HOVIND, Gina S. (BEO 10640)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the beauty operator's license of Gina S. Hovind.

(3) ISHIKAWA, Donna M. (BEO 4196)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the beauty operator's license of Donna M. Ishikawa.

(4) LOGAN, Lorisa M. (BEO 10550)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the beauty operator's license of Lorisa M. Logan.

(5) MALAQUI, Noreen H. (BEO 6973)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the beauty operator's license of Noreen H. Malaqui.

(6) NONAKA, Shari T. (BSH 3020)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the beauty shop license of Shari T. Nonaka.

(7) SHIMAMURA, Lore C. (BEO 10898)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the beauty operator's license of Lore C. Shimamura.

(8) STUBBS, Laura S. (BEO 12393)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the beauty operator's license of Laura S. Stubbs.

(9) UYEHARA, Cynthia L. (BEO 4295)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the beauty operator's license of Cynthia L. Uyehara.

(10) VU, Helen N. (BAR 2783)

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to approve the restoration of the barber's license of Helen N. Vu.

D. Beauty Operator Apprentice

(1) WILLIAMS, Tina Marie

Executive Officer Kai stated Tina Marie Williams, a licensed barber, is requesting approval from the Board to accept her barber training to be used to partially fulfill the apprenticeship beauty training requirement for a cosmetologist's license. Ms. Kai further stated that Ms. Williams intends to then work as an apprentice under a licensed cosmetologist who is employed at her barber shop to earn the remainder of training hours required. Board members noted that the situation, as described in Ms. Williams' request, does not meet the definition of "cross-over training", which allows beauty school training hours to be used together with apprenticeship training hours to meet the training requirement, pursuant to HRS chapter 439, and determined that there was no similar provision in the barber statutes in HRS chapter 438.

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to deny Ms. Williams' request because the Board's laws and rules do not allow for the substitution of barber school training hours for the beauty operator apprenticeship hours that are required for a cosmetologist's license.

The Board further suggested the following options to be communicated to Ms. Williams:

- Earn the required 1800 training hours at any licensed beauty school in the State; or
- Earn the required 3600 training hours as an apprentice under the supervision of a licensed cosmetologist, which includes working as an apprenticeship under the supervision of the licensed cosmetologist employed in her barber shop; or
- Earn a combination of both, with the understanding that, pursuant to Hawaii Administrative Rules section 16-78-19, she will be credited with one-half the number of training hours if transferring from an apprenticeship to a school or credited with double the number of training hours if transferring from a school to a beauty shop apprenticeship situation.

A. 2012 Legislative Proposals

(1) Senate Bill No. 2007, Relating to Cosmetology

Executive Officer Kai informed the Board that Senate Bill No. 2007, which proposes to amend HRS section 439-12(f), by authorizing the Board to accept the prior experience of an applicant for a beauty operator's license in lieu of beauty instructor training to fulfill the educational requirements for an instructor's license, was not granted a hearing and therefore, died.

- B. Hawaii Administrative Rules ("HAR")
 - (1) Repeal of HAR Section 16-73-29

The Executive Officer stated that, as decided by the Board earlier, this amendment to the administrative rules relating to barbering would be combined with other rule revisions that are identified by the Board.

(2) Other Amendments to HAR Chapter 16-73

Executive Officer Kai reiterated that Ms. Morioka had volunteered to review Hawaii Administrative Rules chapter 16-73 to determine if there were other amendments that the Board may want to propose to be included in a more comprehensive revision of this rules chapter, and further that this agenda item will be tabled due to Ms. Morioka's excused absence.

Legislation and Rules:

Examinations: A. <u>Results of Cosmetology Examinations Administered</u> January 2012

Executive Officer Kai provided the following results of the Cosmetology examinations administered January 2012:

Total Examinations Scheduled	265
Total Examinations Administered	253
Total Examinations Passed	115
Total Passed Percentage	45%
Total Examinations Failed	138
Total Fail Percentage	55%

B. Results of Barber Examinations Administered March 6-9, 2012

Executive Officer Kai provided the following results of the Barber examinations administered March 6-9, 2012:

Total Examinations Administered	47
Total Examinations Passed	19
Total Passed Percentage	40%
Total Examinations Failed	28
Total Fail Percentage	60%

- <u>Scope of</u> <u>Practice</u>: Executive Officer Kai stated that the Board has been receiving numerous inquiries on whether the following practices fall in the scope of practice of cosmetologists, estheticians, and barbers.
 - A. <u>Treatments Using Laser/Intense Pulsed Light (IPL); Photo</u> <u>Facial; Green Light Laser; Oxy-Blast; Sonic Youth; Collagen</u> <u>Rejuvenation; Radio Frequency or Visage</u>

Executive Officer Kai informed the Board of its past determination prohibiting the use of lasers by its licensees; however, these other services and treatments may or may not include the use of lasers. After discussion, the consensus of the Board was to reaffirm its decision prohibiting the use of lasers by its licensees, and further to prohibit the performance of treatments using laser/intense-pulsed light (IPL), photo facial, green light laser, oxy-blast, Sonic Youth, collagen rejuvenation; radio frequency; and Visage.

B. Permanent Eyelash Extensions

Executive Officer Kai informed the Board of its past determination that the application of permanent eyelash extensions falls under the scope of practice of an esthetician, cosmetologist, and barber. After discussion, the consensus of the Board was to reaffirm its decision that the application of permanent eyelash extensions falls within the scope of practice of an esthetician, cosmetologist, and barber.

C. <u>Tinting of Eyelashes and Eyebrows</u>

Executive Officer Kai informed the Board of its past determination that the tinting of eyelashes and eyebrows is prohibited to be provided by any of the Board's licensees. Discussion ensued, and Vice-Chairperson Apao, a licensed cosmetologist, informed the Board that tinting products specifically designated for use on eyelashes and eyebrows are available for purchase and use in the profession.

After discussion, the consensus of the Board was to allow the practice of eyelash and eyebrow tinting, limited to the use of products specifically designated for use in the eye area, and further, that the service falls within the scope of practice of an esthetician, cosmetologist, and barber.

D. Microdermabrasion

Discussion ensued on microdermabrasion and the differences between the ratings issued by the manufacturers of the equipment used in the treatment, e.g., esthetician-grade and physician grade. After discussion, the consensus of the Board was to rely upon the grade determination provided by the equipment manufacturer to prohibit the use of physician grade microdermabrasion and to allow the use of esthetician grade microdermabrasion, and further, that the treatment falls within the scope of practice of an esthetician, cosmetologist, and barber.

E. Chemical Peels

Discussion ensued on chemical peels relating to the variance in gycolic acidity levels of different products used in chemical peels. Ms. Howard stated that products with different gycolic acidity levels are available on the market, but that she was

> uncertain about the degree and each level's effect on the skin, and further stated that she would volunteer to research this procedure and apprise the Board of her findings.

F. Commedone Extractions

Discussion ensued on commedone extractions which Vice-Chairperson Apao explained is not the same as treatments using a lancet, which the Board has prohibited due to the shaving of skin with its blade type material. Ms. Apao stated that a commedone extraction tool has no sharp ends and that the pressure it exerts on the skin allows for the safe and expedient removal of blackheads. The consensus of the Board was to determine that commedone extractions fall within the scope of practice of an esthetician, cosmetologist, and barber.

G. Fish Pedicures

Executive Officer Kai reiterated that the service known as "fish pedicure" was an ongoing Board discussion with no official decision on whether it is allowed in Hawaii. Chairperson Marugame stated that he has learned that the Department of Health would not prohibit it; as it was their understanding that UV light could be used to disinfect the water in which the fish cleansed the customer's fee. After discussion, the consensus of the Board was to disallow fish pedicures due to sanitation and public health concerns.

H. <u>Specific Practice Requirements Included in Services Provided</u> by Nail Technicians

Executive Officer Kai informed the Board that both beauty school and apprenticeship training curriculums for nail technicians include "hair removal" as part of the practical application component. She further stated that the curriculums also included "aromatherapy" and "spa treatments" as part of the theory component. Discussion ensued on whether these services should be part of the training for a nail technician's license. It was the consensus of the Board that "hair removal" should not be part of the training curriculums, while "aromatherapy" and "spa treatments" should be retained in the curriculums.

> It was moved by Vice-Chairperson Apao, seconded by Ms. Howard, and unanimously carried to approve the Board's consensus positions as stated in the respective discussions above.

Requirement for
Apprentice to
Re-register with
Board UponExecutive Officer Kai informed the Board that an apprentice who
had identified her supervising beauty operator as required when
she had registered with the Board as an apprentice had worked
for a period of time and accumulated a number of training
hours. This supervising operator subsequently left the shop and
Supervising Beauty
the apprentice had been assigned to a different supervising
operator. The apprentice did not re-register and notify the
Board of this change. The Board has been asked to allow the

Board of this change. The Board has been asked to allow the apprentice to be credited with the training hours earned with the non-registered supervising operator. Discussion ensued on Hawaii Administrative Rules section 16-78-19(a)(2), which states that the apprentice is responsible for informing the Board of any changes to the apprentice's supervising beauty operator.

At 11:00 a.m., it was moved by Vice-Chairperson Apao, seconded by Ms. Howard, and unanimously carried for the Board to enter into Executive Session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities in accordance with HRS section 92-5(a)(4).

EXECUTIVE SESSION

At 11:12 a.m., it was moved by Vice-Chairperson Apao, seconded by Ms. Howard, and unanimously carried for the Board to move out of Executive Session.

After discussion, it was moved by Ms. Howard, seconded by Vice-Chairperson Apao, and unanimously carried to deny the apprentice's request to allow the credit of training hours earned prior to registering changes in the supervising beauty operator with the Board, pursuant to HAR 16-78-19(a)(6), and further that it is the apprentice's responsibility to notify the Board of any changes relating to the apprentice's supervising beauty operator.

DAG Tam left the meeting at 11:15 a.m.

Chair/Booth
Rental BeautyExecutive Officer Kai stated that currently, while the Board
requires that a beauty operator who rents a chair/booth also
obtain a beauty shop license, and may share the sanitation
clearance issued by the Department of Health with the actual
beauty shop licensed, this practice and policy determination has
not been memorialized in past Board meeting minutes.It was reaffirmed by Board consensus that based on the
statutory definition of a "beauty shop", a beauty operator who

statutory definition of a "beauty shop", a beauty operator who rents a chair/booth in a physical shop is required to obtain a beauty shop license for that chair/booth.

Open Forum: None.

- Next BoardWednesday, June 27, 2012Meeting:9:00 a.m.Queen Liliuokalani Conference RoomKing Kalakaua Building, 1st FloorHonolulu, Hawaii 96813
- Announcements: Vice-Chairperson Apao stated that she will not be able to attend the next Board meeting. Executive Officer Kai reminded Board members to notify the Board's office in advance of any meetings that they are unable to attend.
- <u>Adjournment</u>: There being no further business to discuss at this time, the meeting was adjourned at 11:20 a.m.

Taken and recorded by:

/s/ Lori Nishimura

Lori Nishimura, Secretary

Reviewed and approved by:

/s/ Laureen M. Kai

Laureen M. Kai, Executive Officer

LMK: In 05/09/12

[X] Minutes approved as is.

[] Minutes approved with changes. See Minutes of ______

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VLI_LICENSE_VIEW

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