

**South Carolina Board of Cosmetology  
Board Meeting  
9:00 a.m., July 11, 2017  
Synergy Business Park  
Kingstree Building  
110 Centerview Drive, Conference Room 108  
Columbia, South Carolina 29210**

**1. Meeting Called to Order**

- a. Public notice of this meeting was properly posted at the S. C. Board of Cosmetology office, Synergy Business Park, Kingstree Building and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.
- b. Rules of the Meeting Read by the Chairperson
- c. Pledge of Allegiance

**2. Introduction of Board Members and All Other Persons Attending**

Chairperson Melanie Thompson called the meeting of the S.C. Board of Cosmetology to order. Other Board members participating in the meeting included:

- ❖ Eddie Jones
- ❖ Patricia Walters
- ❖ Selena Brown
- ❖ Marcia Delaney
- ❖ Stephanie Nye
- ❖ Laquita Clark-Horton

Staff members present included: Mary League, Advice Counsel; Shalon Genwright, Staff; Theresa Brown, Administrator; Kyle Tennis, Office of Disciplinary Counsel (ODC); Eric Thompson, Office of Inspections; Jennifer Stillwell, Office of Investigations and Enforcement (OIE)

**All Other Persons Attending:**

Roderick "Rod" Fitzgerald, Court Reporter; Steven Dawson; Tony Tran; Lethonia Barnes; Thong Ma; Jessica Malachi; Harley Rabon; Courtney Freeman; Denice Brown; Thitiya Sribanjong; Duane Everett; Chesley Phillips; Shawn Young; Jimmie Rabon; Rhonda Metts; Annie Lee

**3. Approval of Excused Absences**

N/A

**4. Approval of Agenda**

Ms. Stephanie Nye made a motion to approve the agenda with any deviations deemed necessary. The motion was seconded by Ms. Laquita Clark-Horton and it carried.

**5. Administrator's Remarks – Theresa N. Brown –** Good morning! The new sanitation regulations were approved on May 26, 2017, in which an e-mail blast went out to all licensees, schools, and salon owners with the updated regulations. The next board meeting will be a one day meeting held on Tuesday, September 19, 2017. Please mark your calendars.

**6. Old Business**

None.

## 7. New Business

### a. Ratification of School Licensure

#### i. Southeastern School of Cosmetology

A motion was made by Ms. Marcia Delaney to approve the final inspection of the Southeastern School of Cosmetology and it was seconded by Ms. Clark-Horton. The motion carried.

### b. Consideration of Licensure

#### i. Thitiya Sribanjong

Ms. Sribanjong was represented by Attorney Duane Everett. She is seeking approval of the reinstatement of her cosmetologist license with a DACA status. She was previously licensed erroneously by a new employee who did not understand the DACA process. Attorney Everett is not her attorney, but is a representative of Ms. Sribanjong's employer, which is a nail salon that is headquartered in Greenville, South Carolina. He handles their regulatory issues and business development from their franchising side. Ms. Mary League, Advice Counsel for the Board of Cosmetology, stated that the information that this agency has obtained regarding Ms. Sribanjong's status confirms that she is a DACA individual, and she does not have lawful presence in the United States through any other type of immigration status. The information was obtained through the SAVE database, a database utilized by government agencies to determine if an individual has the legal status necessary to obtain a public benefit, which is defined under federal law as professional licensure. Ms. Sribanjong stated that her status has not changed. Because her status has not changed, there is nothing that the Board could do. Federal and state law prohibits the issuance of a professional license to someone who cannot show that they are lawfully present in the United States. DACA is not lawful presence. It is deferred action on childhood arrivals, which was an executive order where the president asked immigration authorities to not take action against those individuals who are brought to the United States as children. They do not have legal status, but are allowed to work here. Unfortunately, they are not allowed to be licensed here under federal law, unless the state has chosen to opt out of the federal prohibition. South Carolina has not chosen to opt out, but in fact, by its own statute, has affirmed the prohibition against professional licensing. This board cannot issue a license because it does not have legal authority to do so. Unfortunately, a license was issued in error, but that does not change the fact that the board cannot issue a license of renewal at this point. DACA is a preferred action, not lawful presence. Ms. Sribanjong is not allowed to be professionally licensed here under federal law unless the state opted out. South Carolina has opted out. Chairperson Thompson stated that the Board sympathizes with her as many talented and qualified persons get caught up with the DACA status. Attorney Everett deferred to the original determination that was rendered on March 3, 2014, by Senator Anita Fair who rendered that opinion based on the DACA status and that alone. He challenges the federal law status as DACA is not a federal law, but a misrepresentation. Ms. Sribanjong came to the United States as a child and once ICE issues a work permit, she will have the ability to be employed and professionally licensed. There is not a federal statute that says DACA is illegal. It says that it is not in itself an actual legal residency. Senator Fair has said to be mindful as consideration and discretion are being rendered throughout the United States. Since the ruling on March 3, 2014, there have been ten (10) states that have quickly amended any policies and procedures. In South Carolina, there is no law. The ambiguity is that it is discretionary. There was no reference to a work permit. She possesses a legal work permit issued by the Department of Homeland Security and is the youngest of her family awaiting the naturalization process. DACA was intended to be carved out and defined, but once you have a work permit, it is up to the state. There is not a federal regulation that denies any state from using their discretion and to implement discretionary policy decisions. We want to make it black and white and take away all the efforts and energy she has put in and anyone else alluded to. We are splitting hairs in using or talking about federal statutes. Ms. League stated that the federal law says that you have to have lawful presence to be professionally licensed. That is United States Code, section 1621 A-C. The executive order is not a law. It prevents the immigration authority from deporting people who are not here lawfully. Under the Professional Responsibility and Work Opportunity Reconciliation Act, the federal statute, it does allow for a state to opt out of the licensing prohibition. Some states have opted

out. South Carolina has not opted out. In the South Carolina Code, section 829-10 A affirms the prohibition that you have to have lawful immigration status. DACA does allow individuals to work, but not to be professionally licensed. That is the dilemma this board finds itself in. This state has chosen not to opt of the prohibition and the Board does not have the ability to issue the professional license. The Attorney General's opinion is an opinion and that's what this agency is using as a guideline, but the Board is bound by federal law and state statute. The board has no ability to establish its own policy to do otherwise. Once legal status is obtained, she will be eligible for any benefits. The board regrets it. Attorney Everett states that the Board is overlooking the state's opinion. It is not a law. Ms. Sribanjong is lawful and has a work permit. We have surgeons, lawyers, and other professionals who have yet to be naturalized and are licensed practitioners. Ms. League stated that there is no one in South Carolina who may be licensed by any licensing board with a DACA. A work permit under a DACA status does not confer lawful presence. Attorney Everette asked if the Board will hear this again if precedent was established if actual licenses were presented. The next option is to appeal this to the Administrative Law Court.

Mr. Jones made a motion to deny licensure to Ms. Thitiya Sribanjong and it was seconded by Ms. Clark-Horton.

A Board Order will be sent out and it may be appealed within 30 business days of receipt of that order.

**ii. Jessica Malachi**

Ms. Jessica Malachi represented herself and was seeking approval on gaining licensure as a Registered Cosmetologist. A criminal background report accompanied her PCS application. Her criminal background consisted of shoplifting and the last offense was in 2013.

Mr. Eddie Jones made a motion to go into an executive session for legal advice and it was seconded by Ms. Stephanie Nye. The motion carried.

A motion was made by Mr. Jones to come out of the executive session and it was seconded by Ms. Clark-Horton and Ms. Patricia Walters. The motion carried.

There were no motions made or votes taken during the executive session.

Mr. Jones made a motion to approve licensure to Ms. Jessica Malachi with conditions. The motion was seconded by Ms. Clark-Horton and Ms. Delaney and it carried.

**iii. Harley Rabon**

Ms. Rabon represented herself and was seeking approval on gaining licensure as a Registered Cosmetologist. A criminal background report accompanied her PCS application. Ms. Jimmie Rabon and Ms. Ronda Metts served as witnesses on Ms. Rabon's behalf. A motion was made by Ms. Delaney to go into a closed session to comply with state and federal laws and it was seconded by Ms. Clark-Horton. The motion carried.

A motion was made by Ms. Delaney to approve licensure for Ms. Harley Rabon with conditions and it was seconded by Ms. Clark-Horton and Mr. Jones. The motion carried.

**c. Consideration of Renewal**

**i. Denice Brown**

Ms. Denice Brown represented herself and wanted approval on renewing her license as a Registered Cosmetologist. A criminal background report accompanied her renewal application. Her criminal background consisted of the ill treatment of animals that were left in her care after an incident. The case has not been resolved at this time.

A motion was made by Ms. Brown to approve Ms. Denice Brown for the renewal of her licensure. The motion was seconded by Ms. Clark-Horton and it carried.

**d. Consideration of High School Education**

**i. Tony Thai Tran**

Mr. Tran represented himself and came before the Board for consideration on getting his license reinstated. Per a prior Board Order, Mr. Tran needed to show proof of 10<sup>th</sup> grade education to reinstate his license. A fraudulent high school diploma was given before. Documentation that was translated by AEQUO showed that he had only completed the equivalent of 9<sup>th</sup> grade education. His girlfriend, Ms. Annie Lee, also served as a witness and asked what his options were. Mr. Tran may obtain his GED. Until he can prove a legitimate 10<sup>th</sup> grade education, there is nothing that the Board may do.

A motion was made by Ms. Delaney to deny licensure for Mr. Tony Thai Tran and it was seconded by Ms. Clark-Horton. The motion carried.

**e. Consideration for Online CE**

**i. Marissa Hazelip**

Ms. Hazelip was not present, as she is located in another state at this time. She is a military spouse and has had an issue completing her continuing education for renewal. She traveled to South Carolina and the provider's class was canceled, so Ms. Hazelip is requesting to take all of her continuing education hours online.

Ms. Delaney made a motion to allow Ms. Marissa Hazelip, military spouse or personnel, and with the specific facts that she is stationed on the west coast and attempted to comply with the Board's requirements and was unable to at no fault of her own, to take her second set of continuing education hours online. The motion was seconded by Ms. Clark-Horton and it carried.

**ii. Deondra Mckie**

Ms. McKie was not present, as she is located in another state at this time. She is also a military spouse and is requesting to take all of her continuing education hours online. Ms. McKie may also be trying to obtain licensure in Hawaii, but must actively be licensed in South Carolina to do so. Ms. McKie's license lapsed in March of 2015. Her arrival time to Hawaii was for January 2017, as stated on the documentation in the board materials. She was stationed in Georgia for two (2) years after her license lapsed and there was no attempt of continuing education done. The Board does not understand how they may help her as her license was not current before she left for Hawaii. Ms. McKie will need four (4) continuing education courses, meaning she need 24 hours to become current. Moving forward, staff will ensure that all continuing education hours for each missed renewal cycle are obtained. Ms. McKie was as close as Georgia and made no attempt to take continuing education courses, nor did she go inactive.

Mr. Jones made a motion to deny Ms. Deondra Mckie's request and it was seconded by Ms. Clark-Horton. The motion carried. For clarification, it is not for the 2015-2017 renewal, but the fact that her license lapsed in 2015 and she needs two (2) renewal cycles worth of continuing education is the problem.

Ms. Delaney made a motion for a 15 minute comfort break and it was seconded by Ms. Brown. The motion carried.

**f. Consideration of School Changes**

**i. Virginia College**

Ms. Lethonia Barnes represented Virginia College as they sought approval to change their updated cosmetology program enrollment and tuition agreement. Revisions were made, but there were no changes in the prices, attendance, or hours. Modifications were seen at the end of

the agreement. Inspectors came in and saw “revised” at the end of the paperwork. These changes are for each Virginia College in South Carolina. Any changes to the contract has to be approved by the Board, as the contract is binding to the students. If the contract changes within the course of their program, they have to sign a new contract. The student may not want to attend anymore with the new changes. The old contract was given to Ms. League to review as it was not provided at least 14 days in advance. The new contract was revised on March 14, 2016. On page 1, number 2 and letter ‘E’, add “*and the Board approval*”, which will be another revision. The revised contract may be sent to the Administrator.

Mr. Jones made a motion to approve the revisions to the cosmetology program enrollment and tuition agreement, with the addition of the new revisions. This motion also gives permission to Ms. Theresa Brown, Administrator, to receive the updated contract to review and give the authority to approve the revisions. The motion was seconded by Ms. Delaney and it carried.

**ii. Southeastern Esthetics Institute**

Ms. Courtney Freeman represented Southeastern Esthetics Institute. She is seeking approval on adding a 750 hour instructor training program to the existing school. In the Student Enrollment Contract section, it says “*estheticians*” in the second paragraph, whereas it should say “*Instructors*”. Under the General Terms of Agreement section, “*with Board approval*” needs to be added at the end of the second sentence. In the tenth sentence of that same section, the portion of the sentence that states “*required by the State Board*” needs to be removed. In the fourteenth line of that same section, “*with Board approval*” needs to be added to the end of that sentence. Clarification is needed that the transcript is for a duplicate copy. Students cannot be charged for their initial transcript of hours completed.

Ms. Walters made a motion to approve the instructor program with the contractual modifications/changes needed. The motion was seconded by Ms. Nye and it carried.

Ms. Theresa Brown may approve the revisions aforementioned.

The hiring of a physician falls under the medical board. Those materials were submitted erroneously.

**g. Discussion/Clarification Regarding pH Levels**

This item’s materials were provided by Ms. Courtney Freeman. Ms. Delaney stated that everything was presented beautifully and that nothing was different than what we have had before, so the guidelines are consistent with what we have been doing. The basal layer cannot be penetrated.

Clarification was needed on how the inspectors/staff could definitively know if they see something with a pH level that is not consistent with the regulations, whereas regulations state that the pH level cannot go below 3. She wanted to know what guidance could be given. If something is in question, the question may be submitted to the Administrator and Board members may take a look at it as well, as inspectors/staff are not trained in skin care. It is the combination of the pH level, along with particular acids or machinery that would cause the basal layer to be penetrated. The pH level is not the determining factor. Rewording would be a regulatory change. There are acids with pH levels below 3 that are being sold for take home usage. Ms. Freeman wants to make sure that she is teaching the information correctly. If it penetrates the basal layer, it is prohibited. A firm stance is needed there. Anything that affects the live tissue falls under the medical board. The verbiage in the updated regulations came from previous Board members who were estheticians and continuing education providers who are estheticians.

#### **h. Continuing Education Review (2017) and Board Meeting (2018) Date Changes**

The next Board meeting will be held on Tuesday, September 19, 2017.

The continuing education review for 2017 was originally scheduled for October 16-17, 2017. The new dates that are suggested for approval are October 23-24, 2017.

A motion was made by Mr. Jones to approve the new continuing education review dates to October 23-24, 2017. The motion was seconded by Ms. Clark-Horton and it carried.

In 2018, November 5-6, 2018, are the current board meeting dates. The new dates that are suggested for approval are November 19-20, 2018. Chairperson Thompson suggested November 13, 2018, as the suggested dates fall on the week of Thanksgiving. This meeting will be for continuing education items only.

Ms. Delaney made a motion to approve the November 13, 2018, date as the new November board meeting date in 2018. The motion was seconded by Ms. Clark-Horton and it carried.

#### **i. Final Order Hearings – Mr. Jones recused himself from both hearings as he was the Hearing Officer for both.**

##### **i. 2016-205**

This hearing was in the matter of Mr. Thong Khanh Ma who manages a nail spa in Seneca. A hot wax pot was running during an inspection in August of 2016, whereas only nail technicians were seen. An employee went to unplug the wax pot once Mr. Kevin Eckard, the inspector, was seen. Mr. Eckard, stated that waxing could not be done under a nail technician's scope of practice and that the wax pot needed to be covered when not in use. The staff members stated they used the wax on themselves and that there was a part-time esthetician at the spa, but no license was seen, as the person works in different salons. The following laws/regulations were violated:

- 40-13-110 (A)(2)
- 40-1-110 (1)(F)

The Hearing Officer's recommendations consisted of a \$1,000 fine, payable within 60 days, along with a disciplinary law class to be taken within 90 days. The spa now employs a full-time esthetician. Mr. Ma stated that he attended the meeting to see if the fine could possibly be reduced.

Ms. Delaney made a motion to uphold the Hearing Officer's recommendations for the case of 2016-205 and it was seconded by Ms. Walters. The motion carried.

##### **ii. 2016-206**

The respondent was not present for the hearing, but they were notified of the hearing. The Board proceeded with the hearing. This hearing was in the matter of Kim Khuong Nguyen, who is the owner and manager of a salon in Seneca. Ms. Nguyen has incurred citations in 2014 and 2015 for allowing unlicensed practice and sanitation violations and has paid all citation fines. The current violations are from an inspection on August 10, 2016, by Mr. Kevin Eckard. There was an employee that left the salon upon the inspector's arrival and a second employee that was without identification and unlicensed. Another unlicensed individual had just passed the examination, which does not suffice to provide services. There were also dirty pedicure filters. Ms. Nguyen gave a statement to Mr. Tennis that she apologized for not ensuring that her employees were licensed as it is her responsibility and promised that it would never happen again. She also relied on her employees to ensure that the salon was clean. The following law/regulation was violated:

- 40-13-110 (A)(2)
- 40-13-110 (A)(1)

The Hearing Officer's recommendations consisted of a \$2,000 fine, payable within 90 days. Ms. Nguyen would also need to take a disciplinary law class, along with a sanitation class.

A motion was made by Ms. Delaney to go into an executive session for legal advice and it was seconded by Ms. Nye and Ms. Clark-Horton. The motion carried.

Ms. Delaney made a motion to come out of the executive session and it was seconded by Ms. Clark-Horton. The motion carried.

There were no motions made or votes taken during the executive session.

Ms. Delaney made a motion that in the case of 2016-206 that the Board accepts the findings of the facts and they do not accept the recommendation of the unlicensed practice for the individual with the pass letter for the examination. The remaining findings of the other three (3) violations are affirmed. The Board has modified the penalty to be:

Based on the length of time of licensure, being refreshed in the law classes prior to the most recent violations, pattern of repeated violations with the same issues, they affirm the \$500 per violation fine for a total of \$1,500, payable within 90 days. In addition to that, a suspension of Ms. Kim Khuong Nguyen's Registered Cosmetologist license will be for one (1) year from the date of the Board Order and the respondent must designate a licensed manager for her salon during the time of suspension. The motion was seconded by Ms. Brown and it carried.

## **8. Board Member Reports**

Ms. Brown completed school inspections for the Southeastern School of Cosmetology in Orangeburg. At the first inspection in May, they were not able to complete the inspection as there were things that were looked that needed to be corrected. There were broken chairs, labeling that needed to be done, and it was not completely finished in general. In June, a final inspection was completed and everything was in order. Ms. Jennifer Stillwell accompanied Ms. Brown. Ms. Brown stated that Ms. Stillwell is a very good inspector and that she felt very comfortable signing off on the paperwork. The school is ready to be opened.

Ms. Clark-Horton monitored a continuing education course with Lennie B & Co. Both doors were locked at the venue. She stated her concerns from the course at the meeting on yesterday. It was a great class.

Ms. Delaney monitored the state examination on June 26<sup>th</sup>. The staff administering the examinations was very strict on what was carried into the examination, which included no purses or electronics. There was also no talking. The classroom was packed and there were twelve instructors. It was very interesting. She missed the estheticians.

## **9. Discussion**

None.

## **10. Public Comments**

Ms. Chesley Phillips stated that she had the paperwork that she was negligent in bringing at the prior board meeting, which included certified card, the check register and rosters of classes she had taken from 2013 to 2014 that were supposed to transfer over. She does not have the certificates anymore as her file was stolen. She also had an e-mail from her IT person that she was not able to read, as this is for public comments only. Ms. Phillips wanted to touch base with Ms. Theresa Brown after the meeting. She also mentioned how her excel spreadsheet was hacked and rearranged and how she wanted to get it fixed as soon as possible. At the last board meeting, it was stated that Ms. Phillips had to work off of the current spreadsheet seen online. The Board states to go by what is published on the website.

Mr. Steven Dawson made the comment that Kenneth Shuler schools will not enroll anyone with a DACA status, but other schools will. With the new updates, he asked if a new PowerPoint needed to be submitted for continuing education courses. There is no need to resubmit the PowerPoint with the updated regulations. He also inquired about neck strips and new capes for each client, seen in 4720, letter O.

Ms. Theresa Brown mentioned that on the new continuing education review dates for 2017, October 23-24, providers may have classes scheduled on those dates. Providers are able to have classes on the continuing education review dates as their attendance is not needed. Chairperson Thompson is unable to attend the September board meeting.

#### **11. Adjournment**

Ms. Brown made a motion to adjourn the meeting and it was seconded by Ms. Delaney and Ms. Clark-Horton. The motion carried.

The meeting adjourned at 12:08 p.m.

**The next meeting of the S.C. Board of Cosmetology is scheduled for September 18-19, 2017.**