

**ARKANSAS
STATE BOARD
OF COSMETOLOGY**

**COMMITTEE MEETING
MINUTES**

JANUARY 17, 2006

PARTICIPATING BOARD MEMBERS AND STAFF

Jane Powell, President

Cliff Keene, 1st Vice President

Nick Downey, 2nd Vice President

Mitzie McKinney, Treasurer

Veda Traylor, Secretary

Kathy Wittum, Director

PURPOSE

This Committee was called by the State Board of Cosmetology President during the November 2005 board meeting, for the purpose of reviewing the scope of practice for aestheticians and electrologists. Specifically, the Committee reviewed the issue of hair removal and microdermabrasion as it relates to the cosmetological branches. The Committee's goal was to develop guidelines for the Board Staff and Inspectors to follow at the present time and to prepare legislative recommendations for the Board to consider proposing during the 2007 legislative session.

Minutes of the Meeting

The meeting was called to order at 8:30 a.m. in the class room of the President's cosmetology school, BeeJay's Hairstyling Academy, located on Hinson Loop in Little Rock. All members were present.

In order to better clarify the issues outlined below, it should be noted that Ms. Wittum explained during the Committee meeting that she understands A. C. A. §17-26-102(a) to define the various branches of cosmetology, which limits the scope of practice according to each profession. However, A. C. A. §17-26-102(b) broadly identifies what the "art of cosmetology" includes. In Ms. Wittum's opinion, a cosmetologist may practice all phases identified in the "art of cosmetology" while the manicurist, aesthetician, and electrologist may practice only those phases included in subsection (b) that fall within the appropriate definition found in subsection (a).

Each question addressed by the Committee is outlined below, as well as the answer and/or recommendation:

1. What is the scope of practice for aestheticians as currently defined? A. C. A. §17-26-102(a)(9) defines "aesthetician" as meaning "any person who engages in the practice of beautifying the face, neck, arms, bust, or upper part of the human body by massaging, cleaning, or stimulating the face, neck, arms, bust or upper part of the human body by means of the hands, devices, apparatus, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, and creams;"

a. Does this definition include hair removal through tweezing and waxing? Yes. A. C. A. §17-26-102(b)(4) permits the removal of superfluous hair "...by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays;"

b. Does this definition include hair removal through the use of lasers? No. Neither definitions found in subsection (a) nor subsection (b) permits the use of lasers by aestheticians.

Note: The Committee wants clarification on what the use of "light waves, commonly known as rays" means from a legal standpoint.

c. Can an aesthetician employ the use of lasers while working in a physician's office? The Committee has determined that the answer to this question depends on the capacity in which an aesthetician chooses to perform services.

- The answer is "no" if the licensed aesthetician chooses to operate in this professional capacity. In this case, the licensed aesthetician would display his/her aesthetician license and advertise himself/herself as such. Doing so would place the licensed aesthetician under the jurisdiction of the State Board of Cosmetology, thus rendering him/her accountable to the cosmetology law and the Board's rules and regulations.
- The answer is "yes" if the licensed aesthetician chooses to disregard his/her aesthetician license. In this case, the licensed aesthetician would not display his/her aesthetician license or advertise himself/herself as such. This would place the aesthetician completely under the

physician's umbrella and make him/her subject to the Arkansas Medical Board's requirements found in Regulation 22, which permits a physician to train and supervise a person to operate a laser within the clinic. In this case, the State Board of Cosmetology would have no jurisdiction over the licensed aesthetician or the operations within the physician's office.

Although it has not been practiced in the past, the Committee agreed that the cosmetology inspectors must begin inspecting the physician offices that employ aestheticians to determine if they fall within the cosmetology Board's jurisdiction. In the event that a licensed aesthetician is working as such within the medical facility, then the medical facility must hold an establishment license as required in A. C. A. §17-26-401(a) and (b). President Powell and Ms. Wittum stated that their contact (whether written or verbal) with Bill Trice, legal counsel for the Medical Board, indicated that he agreed with the above.

d. On what part of the body can an aesthetician perform services? A. C. A. §17-26-102(a)(9) permits an aesthetician to perform services on the "face, neck, arms, bust, or upper part of the human body..." Following a lengthy discussion over whether the language meant from the bust up or the waist up, the Committee determined that this provision allows for an aesthetician to perform services from the bust up on the human body. The Committee further determined that a legislative change is warranted to this section, which would remove the language "face, neck, arms, bust, or upper part of." The Committee agreed that a licensed aesthetician should not be limited in performing services that may be requested by a client.

In addition, the Committee determined that the definition outlined in A.C.A. §17-26-102(a)(9) could be improved by changing the language "the human body by massaging" to "external manipulation of the skin of the human body." Therefore, the Committee recommends this legislative change for the upcoming session.

e. Can an aesthetician practice microdermabrasion by means of a device? Yes. President Powell stated that she and Ms. Wittum had observed microdermabrasion on two occasions: one by a licensed aesthetician working within a physician's office and one by a licensed aesthetician working independently. President Powell and Ms. Wittum agreed that microdermabrasion is basically exfoliation and a form of cleansing the skin. The difference between the two observations was the device classifications employed by the aestheticians.

The Committee agreed that this practice is permissible provided an aesthetician employs a device that meets the definition of Class I or Class II as permitted by the Federal Drug Administration (FDA). According to information prepared by the National Interstate Council for Cosmetology Boards, a Class I device is generally non-invasive and mostly used without medical supervision. Examples of a Class I device are hand-held massagers, microcurrent facial toning devices, microdermabrasion, and vacuum massage cellulite systems. A Class II device is typically sold under, or used by a licensed physician or licensed practitioner. An example of a Class II device is a laser hair removal device.

Therefore, the Committee recommends that the cosmetology inspectors begin inspecting the device employed by an aesthetician during the normal course of the inspection. An aesthetician that performs services outside the scope of practice as defined in A. C. A. §17-26-102(a)(9), or that employs a device outside the bounds established by the FDA, would be in violation of the Cosmetology law and subject to disciplinary action by the Board. In addition, a physician that employs a licensed aesthetician to work in this professional capacity must comply with the Cosmetology law and the

Board's Rules and Regulations, which would include obtaining an establishment license for the medical facility.

f. Can an aesthetician practice microdermabrasion by chemicals? Yes. However, the Committee recommends that the Board adopt the guidelines established by the National Coalition of Esthetics Association (NCEA), which are as follows:

- The use of any acid or acid solution that would exfoliate the skin below the Stratum Corneum is prohibited.
- Phenol, Trichloroacetic acid, Dichloroacetic acid and any acid in any concentration level that requires a prescription are prohibited.
- Chemical exfoliation for an aesthetician does not include the mixing and combining of skin exfoliation products or services, but does include the following: a) alpha hydroxyl acids of 30% or less with a pH of not less than 3.0; and b) salicylic acids of 10%, 15% and 20%.
- A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven (7) days.
- Only commercially available products utilized in accordance with manufacturers' instructions may be used.
- A patch test shall be administered to each client prior to beginning any chemical exfoliation series.
- If licensed professionals wish to perform chemical exfoliation, they should take the necessary licensing education as part of their curriculum to include theoretical and practical application.

Note: After the committee meeting, President Powell notified Ms. Wittum that more research is needed on this issue as it relates to the existing statute A.C.A. § 17-26-301(b), which prohibits a practitioner from using “phenol greater than ten percent (10%), or corrosive sublimate such as mercury or any of its preparations, derivatives, or compounds in a solution greater than one in five hundred (1:500)...” President Powell stated that she and Ms. McKinney would further research this issue.

g. President Powell stated that the Board needs to begin researching Intense Pulsed Light (IPL), as it will be the next area of concern for which the Board will need to provide guidance.

2. What is the scope of practice for an electrologist? A. C. A. §17-26-102(a)(6) defines “electrologist” as meaning “any person who permanently removes hair from, or destroys hair on, the human body for beautification by the use of an electric needle, or by the use of any other kinds of devices or appliances designed to permanently remove hair from the human body;” In addition, A. C. A. §17-26-102(c) basically restates this scope of practice under the “art of cosmetology” language.

- a. Does this definition include the use of a laser? Yes. An electrologist is permitted to employ the services of a laser.
- b. Does this definition limit the parts of a body on which an electrologist can perform services? No. The definition broadly states that services can be performed on “the human body.”

In summary, the Committee has provided guidelines for the Board Staff and Inspectors to begin practicing immediately. These guidelines are as follows:

- 1. An aesthetician may remove superfluous hair by means of tweezing and waxing only.
- 2. An aesthetician may not employ a laser at any time while practicing under his/her aesthetics license; however, an aesthetician may provide services under the supervision of a physician and under the authority of the Arkansas Medical Board as stipulated in Regulation 22.
- 3. The cosmetology inspectors will include as part of their inspection routine an inspection of aestheticians for compliance to #1 and #2.
- 4. An aesthetician may provide services from the bust area and upwards on the human body.
- 5. An aesthetician may perform microdermabrasion services to the public provided they comply with the following:
 - a. For mechanical microdermabrasion services: Class I and Class II devices are permissible.
 - b. For chemical services: They must follow the guidelines established by the NCEA, which are stated above in “f” of these minutes.
- 6. An electrologist may perform services on any part of the human body and employ the services of a laser.

A copy of these minutes will be provided to Arnie Jochums, the Board’s legal counsel, for review to ensure that the recommendations would not pose a legal conflict. Then, each member of the Cosmetology Board will be provided a copy for review at the March board meeting for their approval of the recommendations it contains. The Committee will then be ready to solicit feedback from the Arkansas Medical Board through Mr. Trice before rendering decisions on the final legislative changes to include in the upcoming legislative session.

There being no further business, the Committee adjourned at 10:45 a.m.

Respectfully submitted,

Kathy Wittum, Director

February 19, 2006