

# Transcript of the Testimony of

**Date:** May 9, 2006

**Case:** before the arkansas state board of cosmetologyboard meeting &

Printed On: September 5, 2006

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BEFORE THE ARKANSAS STATE BOARD OF COSMETOLOGY

BOARD MEETING & PUBLIC HEARING

BE IT REMEMBERED, that on the 27th day of March, 2006, before the members of the Arkansas State Board of Cosmetology, the following business and actions came on for hearing, as follows, to-wit:

A P P E A R A N C E S:

BOARD MEMBERS:

JANE POWELL - President  
CLIFFORD KEENE - 1st Vice President  
NICK DOWNEY - 2nd Vice President  
VEDA TRAYLOR - Secretary  
MITZIE MCKINNEY - Treasurer  
LAJOY GORDON  
ANN PICKERING  
SHERRON WEST  
MELINDA STEELE  
PATRICIA TURMAN  
KATHY WITTUM - Director  
ARNOLD JOCHUMS - Legal Counsel  
MISTY BORKOWSKI - Hearing Officer

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P R O C E E D I N G S :

MS. POWELL: Madam Secretary, will you take the roll?

MS. TRAYLOR: Everybody is present except Sherron West.

MS. POWELL: The public hearing on proposed rules and regulation changes will come to order. If there's anyone that would like to speak on behalf of the -- on the public hearing on proposed rule changes, if you'd please come up to the front -- I'll tell you what. Let's take a count of who'd like to speak on behalf of the public hearing and proposed rules and regulation changes. Give me a show of hands, please, so we can kind of figure out how long this is going to take. We've got -- one, two -- I'm sorry. Please, try again. If you'll just, please, come up to the front desk here and state your name.

MS. WITTUM: Who'd like to go first?

MR. CASHEN: Is this for the changes or addition?

MS. WITTUM: This is for the public comment.

MR. CASHEN: For the public comment?

MS. WITTUM: Yes. For the rule changes. So if you have anything that you want to say about the proposed rule changes, this would be the time.

MS. POWELL: Yes?

MS. ROBBINS: I'm Georgia Robbins, Mountain Home, Arkansas. And I just want to say, and I'm probably -- I'm wasting my breath, but I just want you to know that I think our State Board has been wonderful to me for 33 years and I've been there every day. I don't think that the law should be changed at all. So that's all I've got to say. Thank you.

MS. POWELL: Thank you, Ms. Robbins.

MR. FINK: Hi.

MS. POWELL: Hi.

MR. FINK: I'm Jack Fink. And I've had an opportunity to look at the proposed change and have a concern that I think that you-all need to focus in on liability issues with the discretionary off-campus hours. I understand that you've tried to build in some safeguards in some respects for education and other things, but if you look at this, what you have is schools sponsoring their students to go off

campus. They're certainly going to be transported in vehicles and I've talked to some insurance agents and you have significant liability issues, literally, because now these hours are going to be used for credit, so they're school sponsored activities. And you're putting these kids on the road and it doesn't take a really smart plaintiff's lawyer, when an accident happens, they're going to sue to school. They may try to sue the Board and they may try to sue the director. Now, Mr. Jochums can address the issue of sovereign immunity to the extent that it will protect you-all. But one of the things that you need to focus in on if you've just got other students driving or even just instructors driving -- you've got your private insurance just to be riding around just like everybody else. But you run the risk of that private insurance being voided because you're using it in a commercial-type activity. When they sell you your policy, they sell it to you and you're going to ride around and go to work, whatever, not use it in your business typically. There are some real risks involved in this and I

think you need to think those through. This is not something that you need to just say, "Oh, I'm sure it will fine." It will be fine until the first accident. And then you hold liability for those students that are hurt or third parties are hurt.

I thought really hard about this. When you look at the language in the proposed rules, there are -- there is a provision in that law that requires the director to have 30 days written notice of the event and everything else. And I thought about putting a clause in that which would require the director to make sure that there's adequate insurance coverage, but the more you think about that, that puts an almost insurmountable burden upon your director, because how is he or she to know if there's adequate coverage, you know, if there's going to be two students in the car, six students in the car, just whatever. So I don't think this is something you can cure with just language shoring it up. But I want you guys to focus in on that because I think it's a real significant concern. As I understand the status of the rules right now, there is no

credit for these discretionary off-campus hours and we've had it back and forth. But I think -- and Mr. Jochums, correct me if I'm wrong, I think the state of the regs at this point is, there is no credit given. Arnie, am I right?

MR. JOCHUMS: At this point they're not even a regulation. There's been a practice in the past where credit was given in this non-rule rule.

MR. FINK: But there's not a written -- there's not a policy or regulation.

MR. JOCHUMS: At this time, there is not.

MR. FINK: Okay.

MR. JOCHUMS: That is correct.

MR. FINK: So it's not sanctioned, for lack of a better term. Credit was given, but was not a rule, so if you passed the regulation in its proposed form, it becomes a school sponsored function. I want you to think hard about that. And there's nothing to say that those students can't go off-campus on their own, outside of the guise of getting hours for the activities. If they do that I think it significantly lessens the liability issue that you've got. If they're going to get course

credit for those hours, I can't see how that's not a school sponsored sanctioned encouraged activity. And you need to think through what's going to happen when somebody gets hurt. If you're putting young people on the road, something will eventually happen. Think that through. That's really important. You'd be better off, in my opinion, with no rule than a bad rule. That's the concern I've got. I felt like it ought to be raised. As I said, I spoke with several insurance agents about this to see if I, you know, what would your position be if someone had individual insurance, was taking some kids on a school sponsored function. And they can't give me a well, it wouldn't affect the coverage, because it will might.

MR. KEENE: Jane?

MR. FINK: These are just things that I think you guys ought to consider. This is a very -- it's a real concern.

MR. KEENE: I have a question when you finish.

MR. FINK: I'm finished.

MS. POWELL: Cliff?

MR. KEENE: Is there anybody here that



you're representing?

MR. FINK: I'm here with Lynda Lee, Lee's School. I'm sorry. I should've said that at the beginning.

MR. KEENE: Do you have any other ideas or suggestions besides the insurance suggestion, since you did later say it might not be a good idea for the records to keep.

MR. FINK: I've tried to look at a way to shore it up to fix it, but I think it's almost an insoluble problem. You could write it and say the director has got to make sure there's adequate insurance in place and everything else, but think of the burden that puts on the director.

MR. KEENE: Well, I know that the insurance and liability was talked about. We talked quite a bit about it at one of first public meetings. And in speaking to the Representative Thayer, he assured me, basically, that the Board wasn't liable, just as you said that Arnie could tell us. I'm aware that we're protected to a degree.

MR. FINK: It's not just the Board I'm talking about --

MR. KEENE: I know.

MR. FINK: -- but the school owners, too.

MR. KEENE: But -- the -- when we had our meeting at the Capital the first part of the month, I think the legislative body there made it quite clear that they wanted us to pass any kind of legislation about this or regulation, as long as it got passed. I think that was made pretty clear to us, that we are to pass something. You said better to not pass something bad as to, you know, something at all.

MR. FINK: And I believe that's true.

MR. KEENE: And I could agree with that, but we were, I think, pretty well directed to pass something.

MR. FINK: Well, that --

MR. KEENE: Even if it is bad.

MR. FINK: That's fine and I understand it. I understand the position it puts you in, but I'd rather say -- and I understand the position that you're in having been given those directions, but I say no rule is better than to impose liability on the schools.

MS. TURMAN: Sometimes I was nurse, but

anyway -- I could not take a student home, and at that time in my privately owned vehicle. Or a student could not leave unless a parent came and picked him up because of liability insurance. In my position now as a supervisor, if one of my employee's get sick, I cannot take that employee home because of liability concerns with my company. They could not be in a privately owned car and go. And that was from my company's attorney's point of view. We could not do that. I could not do it as early as 1970 when I had a student that was ill. I did know that for a fact.

MR. KEENE: This is isn't mandatory policy. I mean, it's not that every school and every instructor has to do this. It's going to be a voluntary thing for the schools to offer the extracurricular -- or whatever they decide to call this. His concern, still, is quite valid even if it's not a mandatory thing, it's still going to be voluntary to the schools. I don't think it removes any of the liability if we still sanction it. If the school is afraid of the liability or the student is afraid of using their vehicle, then I think that's where the

Legislature was coming from -- or the legislative body was coming from, is let them take on the responsibility. Let them take it.

MS. POWELL: Response?

MR. FINK: I think that puts a really unfair burden on the school. We know dealing with students isn't always the easiest thing anyway, then when you give them something that sounds like fun, they're going to want to do it, but you've got to say no. The board will let you do it, that's how the rules read, but you've got to say no. That strikes me as kind of unfair.

MR. KEENE: Yeah, maybe it is unfair. The one that will have to deal with that is that school with that student. Of course, with that student, you have -- you could argue that the school -- that student has the option to go to another school if there's one available in that area. It will come to a business decision on the school's part. I wish there was a better way to do -- to write this, but I don't see it.

MR. FINK: I don't know that it can be solved with word craftsmanship. I really don't.

MS. POWELL: Anything else, Mr. Fink?

MR. FINK: No.

MS. POWELL: Thank you very much.

MR. CASHEN: Hi. My name is Paul Cashen.

MS. POWELL: Mr. Cashen.

MR. CASHEN: I'm with Lynndale

Fundamentals, in Beebe in southern central Arkansas. Lynndale's wanted me to -- I am a spokesman. And the purpose of my job is to keep the directors of the school focused in the right direction. And we'd like to -- if I might approach the table to eliminate the same problem. I think I have two copies of it, would you like a copy, sir?

MR. FINK: I wouldn't mind one.

MR. CASHEN: We have the same issue concern -- there was actually two comments: the liability of the schools -- and I'm not going to read it out loud. I'll let you read it.

MS. POWELL: Thank you, Paul.

MR. CASHEN: Basically what it's saying is in the line six change it to "the bonafide instructor accompaniment requirements -- accompaniment requirements will be for the sole purpose of the off-campus discretionary hour

verification process and shall not be construed as any other form of responsibility that would impose liability upon the instructor." I really haven't taken it to the point of imposing something to the school, but you're quite right.

The next one basically deals with the allocation of hours. The student would be at a meeting and the purpose of the instructor to be -- the board is actually telling us, okay, well, we're going to allow you six hours for this class. And when the instructor goes there, the student might take off and go somewhere else. It's up to the instructor at that point to deliver back to the board the number of students that would be receiving hours and how many hours that they would've received. And it's at the point it's up to the instructor's discretion as to how many hours would actually be received. If that student took off and they weren't there the full six hours, cut them back. If you look at that line in the revised rules it's really an unclear sentence. That's all I wanted to say.

MS. POWELL: I'm not certain that I

understand, Paul, what you are saying here on this revised rules, the statement at the beginning.

MR. CASHEN: Oh. This portion, the first portion, was just to get a release of liability to the instructor. Because if the instructor takes off -- say the car broke down or they got run over, well, do you sue the person that repaired the car, the person who that owned the car, the person that sold them the car, and the school, and the instructor.

MS. POWELL: Absolutely.

MR. CASHEN: And even if they're being adults or get a written release or statement, a statement saying okay, I release you from liability and we sent it to the board. It still included them and still doesn't really release them. And somebody is going be liable.

MS. POWELL: Right.

MR. CASHEN: And that's what that's about.

MS. POWELL: Well, I --

MR. CASHEN: It's just a proposed.

MS. POWELL: Right.

MR. CASHEN: I'm not an attorney.

MS. POWELL: And I'm certainly not.

MR. CASHEN: But it was just an idea, because it was the same point Cliff was making is that we've got to accomplish something. We need to make sure that today, before this day ends that we get something in writing.

BOARD MEMBERS: Thank you.

MR. CASHEN: Lynndale thanks you.

MS. POWELL: Anyone else?

MS. GRINDER: I think that can be handled and it's important to include, I think, a waiver of liability for students to sign -- who would be going on these events, to sign a waiver of liability related to the event. I think that would handle it. That's what is used for elementary school children, high school children. So basically these are young adults and I think it would be pertinent to them, as well, and might be part of the approval package that's included when the director approves the event is having the students sign the waiver of liability.

MR. KEENE: Jane? Driver of -- in that situation, isn't the driver a school employee? The bus is, I guess it would be state owned and -- is it state owned or in some capacity they



are related to the state and that maybe they're protected that way?

MS. GRINDER: Oh. The driver? It would be --

MS. POWELL: It would be a state employee.

MR. JOCHUMS: It might be a private school.

MS. POWELL: That's true.

MS. GRINDER: I don't know the implications of everything involved, but I know waivers of liability are --

MS. POWELL: I guess my question would be, and I guess maybe it would need to be more directed towards the insurance board, as to how successful having that disclosure -- or how effective having that waiver would be. I know we have been in a world of -- I just -- I know people sign a lot of pieces of paper and I'm just concerned. As a business owner I would be concerned as to how effective that would be. And I guess, maybe, I'd want to hear more of a legal history of how effective that waiver has been. You hear all the time, well, I have a contract. And then they'll say, well, that contract's not worth any more than the paper it's written on. So what do you have when you

have the waiver is what I would want to know.

MR. FINK: I'm sure that Mr. Jochums could give you some advice. Do they have anything for the third party who's hurt and also, you can have just as easily have a problem with a student who's got -- someone under 18, they can't execute a valid waiver.

MS. POWELL: I'm sorry. Go ahead.

MS. MCKINNEY: No. Let her go ahead.  
That's fine.

MS. COTTON: I want to say something on the student waiver. Ms. Tamara Cotton. That's all fine and dandy to have somebody to sign a waiver, who was taking the students as something for us to think about. We had an incident, Oklahoma, I believe it was for the Student Appreciation Day where the instructor that was supposed to be in charge of the students that went to monitor hours was -- it wasn't an educational outing for anybody. So if you're paying an instructor to go to these extracurricular hours with your students and the instructor's behavior is that of a thirteen-year-old, who is responsible for that? She's on your payroll. We need to think about

that for liability issues. Unless you're there personally, and you-all know if you've been to the hair shows, you can't monitor every student that goes, one person that's in charge of those students. They're everywhere. It's not a babysitting job. It should be for educational purposes and that should go on in the classroom.

MS. POWELL: Thank you, Ms. Cotton.

Is there anyone else?

Yes, ma'am.

MS. KLINE: Gwen Kline. I've been on some of these field trips. We can't say, as instructors, say that that student is going to be at that continuation class or whatever we're going to have that day. We've got a list that we keep, you know, of who shows up and who doesn't show up. Some of these things to the students, I know they're young adults, but they're young. It's just like a free hour of skipping school. Some of them will take off and they'll go over here and they'll have lunch. And you know and then they'll show up at the end. I'm sure you've already seen them at the end of the lesson or whatever they're to

attend. We can't be reliable for them, because they're not going to be there. So they're not getting their hours or anything like that.

Yeah, they're not. But what are we going to do if they're in an accident? I'm all for, you know, saying, well, relax, and watch this lady color this hair. And I know I'm saying it and I'm not being really professional about it. But I'm just down to earth and I'm telling you, it's not for us to be reliable for it. And we can't. I think they're education should be in the school.

MS. POWELL: Thank you. Okay, ma'am?

MS. AKARD: Tracy Akard, Hot Springs Beauty College, and we are certainly in favor of students receiving discretionary hours. If there is a concern about liability -- schools have a concern about liability, then they can choose not to participate. That was my, one of my stands, is that this is an optional thing. Schools do not have to participate if they chose not to. As we had talked about surrounding states, all of our surrounding states have students participating in extracurricular activities around and going to

-- doing things outside of school. So we're not the only place that is dealing with liabilities. So this is certainly not something that's just unique to Arkansas. So other places have addressed it, we can address that, too. I can -- I can be in charge, if I choose to participate, then that's a liability that I can take on and something that I can deal with between me and my attorney. If I want to have my students sign a waiver, then that's what I can do. I can be in charge of my students. I have not had a problem with my students, nor do I have a problem with my staff. Again, that is my choice of how I want to educate my students.

I have two instructor-trainees right now, and I am rewriting their exams. Therefore, I am rereading the textbook that my staff is taking their test out of in that instructors' book. In chapter five, it talks about teaching our instructors. It talked about, in that chapter, the method of teaching. There was about three or four pages that talked about the things that students need. And it also talked about extracurricular activities and field

trips that encourage students to receive because of things that they don't receive within the schools. So it's even being taught to our teachers and encouraged to our teachers to take our students outside of the four walls. So this is the book that we teach our teachers to teach out of. So, you know, take a look there. This is something that just -- another world that we can expose our students to. Thank you.

MS. POWELL: Ms. Akard?

MS. AKARD: Yes, ma'am?

MS. POWELL: I think I also understand what you're speaking of on this curriculum. And you had spoke about the different states and just what they would do in their states. I think our position here, as the board, is we understand that other states are doing extracurricular or they're doing, maybe discretionary student hours. I think our problem is when the student receives hours for it, I think -- we don't -- I mean, I know that, you know, that different states have been mentioned to get 30 hours in this, or eight hours in that. And I know that the curriculum

you're talking about says field trips are good, but I don't know if they're getting hours for them. I mean, they may need a field trip, but I don't know if they're going to need hours for that field trip.

MS. AKARD: Well, we did bring that information forward about how many -- Oklahoma, for one, has 75 hours --

MS. POWELL: Right.

MS. AKARD: -- that they're students can receive outside of school. So there are surrounding states doing this and again, those schools also have to address liability. But once again, if there are schools that are concerned about liability then they just have to opt out and not go. And again, that's something that I can deal with between my attorney and my self and up until a year and a half ago, we were doing this.

MS. TURMAN: Do you know how many hours each one of those states has to have in order for them to complete their course and also if they're spending 75 hours out of the classroom, what is their pass/fail ration?

MS. AKARD: No. I don't know about pass to

fail ration. I'm sure that we could know about -- and I don't know that that's even an issue about pass or fail, because I don't think discretionary hours has anything to do with passing or failing.

MS. TURMAN: Even though they could get those hours to help them pass the State Board?

MS. TRAYLOR: That's the goal of everybody.

MS. AKARD: That is one -- that is a goal, to pass, but it is also to educate. And again, it's about choice of how we want to educate our students.

MS. TURMAN: But the student is paying for those hours. If they're not ready to pass the State Board and they go over and they're charged extra hours. That's, you know, isn't that true? You know, if they're -- it's 1500 hours in the State of Arkansas. If they're not completely trained in that time, doesn't it cost extra if they have to have extra hours to come to the Boards?

MS. AKARD: If they -- I don't know if I totally understand. They have to complete 1500 hours. I've never had to retain anybody over



1500 hours because they weren't ready to take their exam.

MS. TURMAN: Right. But do you know if other states do? That's what I was interested in.

MS. AKARD: I couldn't answer that. I couldn't answer that.

MS. POWELL: Do you have something --

MS. AKARD: That's all I have.

MS. POWELL: Okay. Thank you.

MS. AKARD: Thank you.

MS. ROBBINS: I can answer that.

MS. POWELL: Okay.

MS. ROBBINS: I'm Georgia Robbins. I have a license in the State of Missouri, Instructor's. I had a school there for ten years. Yes. They do charge them over in Missouri. That, I know. I've been in Arkansas 33 years, so I'm kind of telling my age, too, but I really don't care. What I'm saying to you, if these schools would spend a little more money -- we've got an African-American that came from St. Louis, Missouri. We paid her \$450.00. She taught us how to do hair extensions. Okay? You can bring it in to the

school. You don't have to get them out on the highways. You don't have to get them into bars and drinking and all this good stuff, because that's what's going to happen. I trained for 33 years, I know. Went to a lot of shows. Spend a little money. Bring them in to the schools. Bring these artists in to schools. Do it on a Monday. Do it on a Monday. That's my day off. I could do it on a Monday. I could do it on a Saturday. We go four days a week. So we've got all that time that if we want to bring it in, we can bring it in, but we've got to pay some money. We don't need to be on the road with these kids. Our school is where we're at, where we're covered with our insurance. We're not going to get them out there and get them killed. I've taken them to style shows, yes, but they're on their own. That's their responsibility, their parents' responsibility. And you better all listen to me, because these things can happen. Did you not see the bus accident? How many seen that on TV, where it killed all the people, just about, on that bus? Those people weren't even supposed to be hauling those people around on that bus that

was on a tour, on an ocean tour. Right? Those people will never go again. You want your kids to always go home, you better keep in school where you're responsible, where you've got control. And that's what I've got to say. Thank you.

MS. POWELL: Thank you.

MS. HAYDEN: What I would like to make a suggestion for is, since we're talking about liability insurance, we all know that we can carry insurance for our schools and for our students. I'm sure there is some type of insurance that would cover the school if they wish to do so. So allow the schools to be the ones that decide whether or not they want to carry the extra insurance to be liable for students going off-campus. Whoever wants to do this could just check into it. I know Lords of London, they insurance everything. They did my marina, so you know, I think that's what we need to look into.

MS. POWELL: Thank you, J.Q.

MS. MCKINNEY: Since there has been -- I would like to make a motion that the board reconsider the implementation of Director

Wittum's proposed regulation of March 6, 2006, under new revised mark-up 6.13, Discretionary Off-Campus Student Hours as submitted in its entirety.

MS. TURMAN: I second that.

MS. POWELL: I have a motion and a second.

Is there any discussion?

(No response.)

MS. POWELL: If not, I have a motion --

MR. JOCHUMS: What does that do?

MS. POWELL: Pardon?

MR. JOCHUMS: You might want to clarify for the people in the audience, what you're talking about.

MS. POWELL: Yes.

MR. JOCHUMS: Why don't you just clarify for them.

MS. POWELL: Do you have the --

(Cell phone ringing.)

MS. POWELL: Cell phone.

MS. MCKINNEY: Director Wittum, did not all the schools receive copies of the mark-up of the rules and regs or is it just the ones that attended on the 6th?

MS. WITTUM: We sent the March draft out to

all the schools.

MS. MCKINNEY: Okay.

MS. WITTUM: What you just said was to implement the original.

MS. MCKINNEY: The original, yes, ma'am.

MS. POWELL: Would you mind, Ms. McKinney, if you're making a motion, would you mind reading that for clarification?

MS. MCKINNEY: This is new revised rules mark-up 6.13 Discretionary Off-Campus Student Hours. For those who have them, my page that I have is numbered 35.

I said, "Students may receive credit towards their chosen course of study through discretionary off-campus hours accrued in Arkansas when the events are provided at no charge to the student. These hours may be obtained by attending seminars, workshops, and competitions or any other off-campus class or event that is relevant to the student's course of study. The content of any of these activities must promote motivation and educational incentives towards the cosmetology industry and its related branches. Students must at all times be accompanied by a bona fide

instructor and the instructor/student ration must at all times meet the standards outlined below in section 6.14. Instructors who accompany students during these activities must keep written records of student attendance through a sign-in/sign-out sheet, and the written record must be submitted with the school's monthly report that immediately follows the event or activity."

Paragraph two, "In addition, schools are required to obtain prior approval from the Director for students desiring to attend any event or activity. The approval must be obtained within thirty (30) days of the event of activity. School owners must submit a written request to the Director that contains the following information: a.) Name and location of the event or off-campus activity; b.) Date of event or off-campus activity; c.) List of each instructor to attend; d.) List of each student to attend; e.) Documentation verifying the number of hours available to each student from the curriculum section for which hours may be used; f.) Summary of the motivational and educational content to benefit

the students."

Paragraph three, "The maximum number of off-campus hours is outlined below, as well as the curriculum section from which the off-campus hours may be substituted. Off-campus hours shall not exceed two (2) percent of the required hours of each course of study. The maximum course of study for Cosmetology would be 30 off-campus hours, curriculum section Shop Department ; Manicuring would be 12 off-campus hours, curriculum section Career Development; Aesthetics would be 12 off-campus hours, curriculum section Instructor's discretion; Electrology would be 12 off-campus hours, Instructor's discretion; Instructor, which would be your teacher-training off-campus hours 12, Instructor's discretion."

Do you want me to continue since the bottom of it does continue?

MS. POWELL: I don't think so.

MS. TURMAN: I can go along with this, but this is what concerns me. If it's just for the school, whichever wants to, to provide this insurance, who is going to have to keep up with this? Kathy and the staff is, because

somewhere along the line it's going to have to be monitored. It's going to be a total nightmare as far as that's concerned. Our staff is just about filled to the level so they're just doing just about everything they can do right now. Do you think we need to add another responsibility of maintaining an insurance, whoever has insurance and whoever has to do that, to our staff? Do we have to monitor that also? I think this is something that we really, really need to look at because I have been there. I know what can go along with insurance.

MS. POWELL: Mr. Jochums, do you have something that you could input on that to answer her question?

MR. JOCHUMS: Well, number one, we've got a motion on the floor. Neither one, the current regulation, either draft, the one proposed or the one we have, requires any records of insurance. In this office, I don't think we keep insurance on the day-to-day operations.

MS. TURMAN: Right.

MS. POWELL: So --

MR. JOCHUMS: So I think -- I kind of think



insurance is a non-issue. March Madness is going on. Tens of thousands of college students are going all over the country. Some of those kids are in bands or some such official school business. They figure out a way. And if we're saying that people going to these colleges can't get the same kind of treatment that people who go to a university do, that seems a little unfair. I think that insurance is a not -- it's certainly an issue, but it's not an issue for you. It's their issue and schools that don't want to do it can just clearly make that a policy, part of a contract, you aren't going to any hair shows. As for the rest of them, I don't see, number one, that this board has any true liability and that number two, we need to let the schools make the business decisions they want to make. But it's your policy call.

MS. POWELL: Does that answer your question?

MS. TURMAN: Yes. That answered it.

MS. POWELL: At this time, I need --

MR. KEENE: I need clarification. Only in state?

MS. MCKINNEY: Well, the initial mark-up in the new rule revision it says only in Arkansas.

MR. KEENE: Well, I think we need to discuss that.

MR. JOCHUMS: Why don't you-all try to discuss how to amend the motion you want to make off-the-record.

(WHEREUPON, after an off-the-record discussion, the proceedings were resumed as follows, to-wit:)

MR. JOCHUMS: I think on the floor, there's a motion to amend 6.13, unless there's further discussion of the public hearing --

MS. POWELL: The public hearing is closed.

MR. JOCHUMS: Although, you still have to -

- MS. POWELL: I know. And that's why we started with the discussion. Which way should we go with this?

MR. JOCHUMS: Well, since you're changing the rule, maybe you should let these people talk. There's liable to be some response, but that's up to you. You're the chairman.

MS. POWELL: All right.

MS. AKARD: Madam Chairman, what is the -- what -- what is -- what is she --

MS. POWELL: Excuse me.

MS. MCKINNEY: I don't have a problem with rereading the motion for them.

MS. POWELL: First of all, I have a motion on the floor and I also would like to close the floor. But before doing so, I do recognize that I have a person that would like to speak. So if you would like to go ahead and approach, please. I think everyone else has had an opportunity to speak, so this will be a last minute one. Go ahead.

MR. MULLINEX: Thank you, Madam Chair. And thank you to the board. I've been to all the hearings that you've had on this. And even out at the Legislature and I commend you for all you've done.

I think I'd like to say on this issue, that we were here and discussed this and I appreciate the people that came today and brought the attorney to try to derail it.

MS. POWELL: State your name, please.

MR. MULLINEX: I'm sorry. Ted Mullinex, with Mullinex and Associates.

And I can appreciate that, because that's what debate is all about is to come and try to

stop it. But I think I'd like for you-all to look at it from the standpoint of the business for a moment. It should be the opportunity of the business owner and the school owner to make that determination, if indeed, they want to do this. If this -- the attorney back here, I commend him. And they're looking for anything they can to sue over and they'll find something if it's not this. But you're also placing a school owner who wants to be progressive and take that student to a school or to a beauty show where they can see new techniques being used. My daughter just finished beauty school and I hope that she will stay up on the latest trends, because you know what? I like to be kind of stylish, as old as I am. And I want my daughter and whoever, if I go to that beauty shop, I hope they have been. And I hope that my daughter went to a school that was progressive enough to send somebody out if they wanted to. I think the board, you're fully protected. That is the choice of that school. And to your own attorney's credit, he just said I don't think the insurance is an issue in this. And I just appreciate if you dismiss

this rule and amend it, then you're taking away the privilege of some of the schools who might want to be progressive. If some of the other people don't want to go, don't go.

And I appreciate the opportunity to speak to you.

MS. POWELL: Thank you, Mr. Mullinex. The public hearing is closed. The floor is closed.

Is there anymore discussion on this motion for revision on discretionary student hours?

MR. KEENE: One comment, I guess I'd like to make, is on the having just the --

MS. POWELL: Mr. Keene. Go ahead.

MR. KEENE: -- having it to be just in state. For those schools that are on the borders, Texarkana, Ft. Smith, Fayetteville, I think it would be unrealistic to expect those schools to bring students to Little Rock when there would be better places that are more accessible to them. The rest of it, I think I'm in favor of. I would like -- I -- but to just hold it to a local, which is what you're saying. By keeping it in the state event, I think is really unrealistic, considering we have a huge number of schools that border this

state.

And it's still up to the schools whether they want to take part in this or not.

MS. POWELL: I concur. You know, I would like to see Arkansas reap all the harvest of all this money that's going to be going out there. I mean, if anybody's going to get it, I want Arkansas to get it. I'm just a little bit selfish that way, but I do understand that we do have schools in other parts of the state and I just happen to be centrally located. But I do know that my school in Batesville, you know, would be an issue because the travel to come to Little Rock is, you know, a costly event. And so I have to say that there are places, like Ft. Smith, I mean, right there's Oklahoma. You know, and I know some people would have to be considered that way.

Ms. Turman?

MS. TURMAN: Madam President, I agree. Thank you for -- I agree because I think sometimes -- I don't think we were looking at that, but I think we have to be concerned about the schools and the safety of that student. We're all thinking about the safety of those

students. I agree. I mean, because I do --

MS. TRAYLOR: That's our job.

MS. TURMAN: That's our job to make sure that student is our number one concern. And I think I agree that if that student doesn't have to travel. I would like to keep the funds in Arkansas, but when you look at it that way, I think, because that's our major concern, should be of our board is that student.

MS. POWELL: Well, maybe the school owner will bring them --

MS. TURMAN: Right.

MS. POWELL: -- you know, to come somewhere close to Arkansas and keep them in the state, if they can. Ms. Traylor?

MS. TRAYLOR: Madam Chairman, you know its just sitting in a lot of people's craw around here, I've been on this board for a long time. I know when these laws were written. There was five people that went over to the State and those Congressmen, the Representatives, they worked diligently on these rules and the laws. And I -- I just have a problem with the board breaking their own laws. If that's what the law says, then we need to follow it, until --

you know, but the law wasn't written to benefit one or two schools. It was to benefit everyone. And you know, it seems to me that they don't want to get the hours in the school. It seems so they're not wanting to teach in the school. They'd rather send them off somewhere else to get their education. And you know if they want to go, I don't have a problem with it. I don't have a problem. I just don't think that this board has any right to -- or any business sitting here sanctioning when a school owner can take those students where ever. We don't care where they go. I don't. But I want them to get -- don't want them to have to pay for hours that they've already paid for. That your and mine tax money has already gone to pay for.

(Applause.)

MS. POWELL: Please, let's not have any outbursts from the floor, please. Ms. McKinney?

MS. MCKINNEY: Madam Chairman, I would like to withdraw my motion and restate a new motion, if I may. Will -- Pat, will you withdraw the second?



MS. TURMAN: I do.

MS. MCKINNEY: Okay. I move that the board reconsider the implementation of Director Wittum's proposed regulation of March 6, 2006 new revised rules mark-up 6.13 as submitted in its entirety, with the exception of "hours can be accrued will be left up to the discretion of the schools whether they chose in or out of state activities."

MS. POWELL: I have a motion to --

MS. TURMAN: Second.

MS. POWELL: -- and a second. Is there any discussion?

(No response.)

MS. POWELL: All those -- are you -- pardon me?

MS. TURMAN: I wanted to discuss something about the hours that the student are charged.

MS. POWELL: Ms. Turman?

MS. TURMAN: Okay. This is what concerns me. I don't want the students to be charged --

MR. JOCHUMS: Is this discussion against this motion?

MS. TURMAN: No. I don't --

MR. JOCHUMS: Well, let's take care of this

first.

MS. TURMAN: Okay. Nothing else.

MS. POWELL: I have a motion and a second to accept Director Wittum's proposal of 6.13 with the exclusion of -- the option of in-state or out-of-state left to the discretion of the school/instructor.

All those in favor, raise your right hands.

(Show of hands.)

MS. POWELL: It's unanimous. Motion carries.

MR. JOCHUMS: Madam Chairman, if you'll adopt the rules and regs now.

MS. POWELL: You mean we need to do this part about the --

MR. JOCHUMS: The whole thing -- the regulations --

MS. POWELL: Oh, okay.

MR. JOCHUMS: -- all the changes.

MS. POWELL: Okay. And to adopt the rule revision package as it is, with the exception of the inclusion of Director Wittum's 6.13.

All those in favor to adopt the rule revision --

MR. JOCHUMS: You need a motion.

MS. POWELL: I'm sorry. I need a motion.

MS. MCKINNEY: I'll make that motion.

MR. DOWNEY: I'll second.

MR. KEENE: I'll second.

MS. POWELL: All those in favor, raise your right hand.

(Show of hands.)

MS. POWELL: And it's unanimous, again. Motion carries. We're going to take a fifteen minute break at this time. We'll reconvene at 9:45.

(WHEREUPON, after a short break was taken, the proceedings resumed as follows, to-wit:)

MS. POWELL: Hearing our -- Director Wittum is going to go ahead and copy --

MS. WITTUM: Does anyone want copies of an actual one?

MS. POWELL: -- of the proposed -- well, it's the actual, original 6.13.

MS. WITTUM: If you'll raise your hands.

(Showing of hands.)

MS. POWELL: This is the one that was proposed at our last board meeting.

MS. WITTUM: If I can get the board members top share, because I may not have enough for

everyone.

(Multiple discussions taking place.)

MS. POWELL: At this time, we would like to ask Misty Borkowski to give clarity on -- clarification on our rule, our motion at the time that we adjourned our meeting.

HEARING OFFICER: I'm Misty Borkowski. And just to summarize what just happened, is the board has passed the rules and regulations as proposed. 6.13 has been changed. It does allow schools to have the option to offer to their students extracurricular out-of-state or in-state tuition credit hours, and also those students cannot be charged the tuition costs associated with the extracurricular hours. That doesn't include costs associated with the trip, room/board, meals or other expenses. It is a tuition charge that the school cannot charge the student. And I think that that's what sounded like the majority of you had concerns about. I hope that clarifies for the public what just happened.

MS. POWELL: At this time, I turn the meeting over to our attorney.

UNKNOWN SPEAKER: Can I get some

clarification of the thinking of why the schools couldn't charge the students. What is the thinking?

MS. TRAYLOR: They've already paid for the hours in the tuition.

MS. POWELL: Okay. Is that sufficient?

UNKNOWN SPEAKER: Yes.

MS. POWELL: At this time, Mr. Jochums.

MR. JOCHUMS: Let me just ask, are we done with our rule thing?

MS. POWELL: Yes.

MR. JOCHUMS: We're moving into the other hearings?

MS. POWELL: The public hearing is closed.

(WHEREUPON, the public hearing was closed and proceedings continued in the administrative hearing portion of the meeting as follows, to-wit:

#### HEARINGS

MR. JOCHUMS: We have two respondents here. In one case Ceclia de Leon?

MS. DE LEON: Yes, sir.

MR. JOCHUMS: Would you come up to the table, please.

And I also believe that Kimberly Nguyen is

here?

MS. NGUYEN: Yes.

MR. JOCHUMS: Okay. Is Thanh Van Nguyen here, as well?

MS. NGUYEN: Yes.

MR. JOCHUMS: Okay. And what about Tham Tran?

\*\* : He have a doctor --

MR. JOCHUMS: He's not here.

\*\* : -- doctor note, yeah.

MR. JOCHUMS: Okay. We have three respondents and so if, at this point, our hearing officer will take over from here. I would like to take Cecilia de Leon, first. She's been here the longest and so we could give her the benefit of going first.

MS. BORKOWSKI: We're going to have three hearings today and we'll call them individually, but first, I want to set out that the Arkansas Board of Cosmetology has set a hearing today concerning the matters specified in an Order and Notice of Hearing.

I'm Misti Borkowski, an attorney, and I will serve as the hearing officer in this matter.

It is 10:53 a.m. on March 27, 2006. We are located in the Main Street Mall, south basement conference room and we're going to call first, Case No. 06-105, Cecilia de Leon doing business as Cecilia's.

Is the respondent present?

MS. DE LEON: Yes.

MR. JOCHUMS: Let me stop you for a minute.

Can we swear them?

MS. BORKOWSKI: Okay. Who are the other -- Ms. de Leon --

MR. JOCHUMS: These here.

MS. BORKOWSKI: Okay. Who else is going to testify?

MS. DE LEON: Nobody.

MS. BORKOWSKI: Nobody. And you guys are here in what matter?

MR. JOCHUMS: This is Cecilia de Leon, HO# 06-105.

MS. BORKOWSKI: And we have two inspectors that are going to testify. Is there anyone else?

MR. JOCHUMS: No.

MS. BORKOWSKI: If you guys could be sworn in by the court reporter.

(Witnesses sworn.)

MS. BORKOWSKI: And is it Ms. Leon or Ms. de Leon?

MS. DE LEON: Ms. de Leon.

MS. BORKOWSKI: Ms. de Leon, are you represented by counsel today?

MS. DE LEON: Yes. No.

MS. BORKOWSKI: Okay. And did you receive a copy of the Order of Notice and Hearing?

MS. DE LEON: Yes.

MS. BORKOWSKI: And are you ready to proceed in this hearing today?

MS. DE LEON: Yes, ma'am.

MS. BORKOWSKI: Counsel for the State, please introduce yourself for the record.

MR. JOCHUMS: My name is Arnold Jochums. I'm an assistant attorney general. I'll be presenting this matter before the board this morning.

MS. BORKOWSKI: Okay. And for the respondent's benefit, as well as, the benefit of any others who may have not appeared in an administrative proceeding previously, let me explain that the board will base its decision solely on the evidence presented here today.



This includes sworn testimony and other evidence which may be admitted.

The hearing is held under the Administrative Procedures Act and, therefore, the strict rules of evidence do not apply. The board members themselves know nothing of the case except what appears in the Order and Notice of Hearing. For that reason, if there's anything that you have submitted to the staff or the staff has in its possession or you have in your possession that you want the board to consider, it will have to be offered into evidence here today or it will not be considered.

If at any time during the course of the hearing you have any objections or question about the proceeding, please bring it to my attention, and I will address the issue.

All participants to the hearing should be aware that these proceedings are subject to the State Freedom of Information Act, and as such, all parts of the hearing, including the deliberations of the board are open to the public.

Are there any preliminary matters or

exhibits to be discussed or offered at this time?

MR. JOCHUMS: Yes, Madam Hearing Officer, I would like to make the Order and Notice of Hearing an exhibit in this matter. And additionally, there's attached four pages, a two-page board inspection report in a form that's filled out, as well as, two pages of handwritten inspector's notes, which would be exhibit two.

MS. BORKOWSKI: Ms. de Leon, do you have any objection?

MS. DE LEON: No.

MS. BORKOWSKI: Okay. This will be admitted. It's the Order and Notice of Hearing, an inspection report and inspector's notes. This will be admitted as Exhibit "1".

Do you have copies for the board?

MS. WITTUM: They have copies.

(WHEREUPON, HO#06-105 Exhibit No. "1", were marked to append and introduced into evidence.)

MS. BORKOWSKI: Is Counsel for the State ready to proceed?

MR. JOCHUMS: Yes, ma'am.

MS. BORKOWSKI: And Ms. de Leon, are you

ready to proceed?

MS. DE LEON: Yes.

MS. BORKOWSKI: And do either of you wish to make an opening statement?

MR. JOCHUMS: I just want to briefly tell you, this involves an allegation that Ms. de Leon has operated an unlicensed establishment and that there were health and safety violations noted. And we'll be hearing from Inspector Caudle and Bland. And if one of you would, pull your chair up here, closer to the witness chair, I guess. Why don't we start with --

TESTIMONY AND EVIDENCE

GIVEN ON BEHALF OF THE STATE BY

INSPECTOR PAT BLAND,

having been called by and on behalf of the State, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOCHUMS:

Q Please state your name.

A Pat Bland.

Q Are you familiar with a location known as

Cecilia's?

A Yes, I am.

Q And where is that located?

A That's on Elm Street in Hope, Arkansas.

Q Okay. Now, I neglected to ask, are you an inspector for this board?

A Yes, I am.

Q And have been for some years?

A Yes, sir.

Q Okay. Can you tell us about your contact with this location that led to the notice of hearing in this case?

A Yes, I can. I had received a complaint that there was a beauty salon in operation at this facility. And on October 9, myself and Inspector Caudle went to visit.

Q Okay. Let me stop you for a second. Was there a sign that said beauty salon?

A No. No, there was no sign.

Q And from what you were saying -- tell us a little bit more about where it was physically located.

A Okay. The street this is located on, Elm Street, the building itself has a glass front and doors to it, two separate doors. And in the front it is -- they have furnishings that they sell. And then there is a little grocery -- I believe, is it Hispanic?

MS. DE LEON: Yes.

BY THE WITNESS:

A -- grocery store next door. And then down the hallway is where this salon was located, inside this building.

Q Okay. Go on with your explanation about your visit.

A Okay. Sheila and I had arrived at this location and we parked up the street, oh, I'd say, four or five doors down so we could observe any traffic that might be going in and out of this building. And we did see several people enter the building. We saw one man coming out of the building, making the gesture of rubbing his head. And to a hairdresser, especially if it's a man that's kind of shaking the hair off. But, anyway, so we -- after about fifteen minutes, we entered the building. And we asked the lady in the front if there was salon located in the building. She immediately went back and got Ms. de Leon from the back. And we asked her, and she said, yes, there was one. So we proceeded down the hallway and for sure, there was a salon located in the building.

At that time we looked for a license.

Q Okay. Let me stop you just for a second. When you say there was a salon, what are you telling this board, what did you see?

A Okay. Well, down this hallway there was a separate entrance of glass doors. You walked through these doors and then there is the salon. It was a reception area. You walk through another door and there is the salon itself.

Q So it had beauty chairs and --

A Absolutely. Hydraulic chair, dryer, curling irons, blow-dryers, clippers, mirrors, brushes, combs, perm rods, color, perms. It was a beauty salon.

Q Okay. Thank you. Tell us more of your observations.

A Okay. And then Sheila and I did introduce ourselves as inspectors. And when we got to the salon itself, we asked Ms. de Leon for a license, practitioner and salon. And she had neither. And of course as we were there, we went around and checked the trash can and we checked to see if there were towels. And there were. There were dirty towels there that appeared to be very recently used. In the trash can there was a neck strip with cut hair. There was hair on the clippers. Ms. Cecilia, herself, was not doing hair at that time. I did not see an appointment book. Ms. Caudle did ask her husband if he did hair. And he said he occasionally cut his brother's hair. And she asked him if he had a license. He said no. And I think that Ms. de Leon is

licensed from another country, if I'm not mistaken.

Aren't you?

MS. DE LEON: I -- he saying that he --

MS. BORKOWSKI: Hold on, Ms. de Leon.

MR. JOCHUMS: We'll get back to you.

MS. BORKOWSKI: Yeah, we'll let you talk in  
just a minute.

MS. DE LEON: Okay.

BY MR. JOCHUMS:

Q Now, I mentioned before that this location was  
written up for several health and safety violations.

A Absolutely.

Q Can you go over those with the board?

A Sure. First of all, there was no practitioner or  
establishment license. There were no paper towels or  
hand-drying device in the bathroom. No copy of rules  
and regulations. No labeled containers for used  
instruments or clean ones. There was a fresh bottle of  
Barbicide and a Barbicide jar, but there was none mixed  
up. I said clippers were left out on the styling  
station and they had hair in them.

Q And you did check with -- or the office knew that  
this place was not on your books as having a license?

A I'm sorry?

Q You had already -- you had checked with the office?

A Oh, absolutely, yes, sir.

Q And they did not know that this was an establishment nor did it have a license?

A Yes. Right. That's correct.

Q And they were not able to show you any practitioner license either?

A No, sir.

MR. JOCHUMS: I have no other questions for the witness.

MS. BORKOWSKI: Ms. de Leon, do you have any questions for this witness, specific questions for this witness?

MS. DE LEON: No, not -- not really.

MS. BORKOWSKI: We'll get you in a second. Are there any questions from members of the board for this witness?

(No response.)

MS. BORKOWSKI: If not, you may call your next witness.

MR. JOCHUMS: Okay. I'll call Ms. Caudle.

TESTIMONY AND EVIDENCE

GIVEN ON BEHALF OF THE STATE BY

INSPECTOR SHEILA Caudle,

having been called by and on behalf of the State, and having been first duly sworn to tell



the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOCHUMS:

Q Please state your name.

A Sheila Caudle.

Q Did you have occasion to be with the other inspector, Inspector Bland, when she went to Cecilia's?

A I did.

Q And did you -- briefly, without repeating everything she said, would you tell us your observations?

A We had just decided to set out and watch the front to see if there was any goings and comings. And we did see some coming in and out. We walked into the store and it was set up as Ms. Bland said. It was like a Hispanic shopping store in the front and then in the back there was furniture and things like that. And I asked the young lady up there if there was a beauty salon in there. And she went to get Ms. Cecilia. And we asked if there was a salon there and she said no. And I asked if she minded if we looked around and started walking toward the back. And at that point, she told me, yes, there was a salon. And we walked back and there was a full set up salon with a reception area,

with waiting chairs for patrons waiting, shampoo bowls, styling chairs, ample supplies to provide service to clients. I -- while Ms. Bland was doing her inspection, I did talk to Ms. de Leon's husband. And he had -- after I'd looked in the trash can and seen a neck strip and hair in there, he said that he had cut his brother's hair that morning. And I asked him if he had a barber's or cosmetologist's license and he said no. At that point, I told Ms. de Leon what she needed to do to get a salon license for that location. And she had told us that she was licensed in another country and what she would need to get her license transferred to the State of Arkansas.

Q Did anyone say anything about appointment books or --

A We looked for an appointment book and we asked for an appointment book, but there was not one.

Q Was this set up for more than one cosmetologist?

A Yes.

MR. JOCHUMS: I have no other questions for the witness.

MS. BORKOWSKI: Ms. de Leon, do you have any questions for this witness?

MS. DE LEON: No.

MS. BORKOWSKI: Are there any questions for

this witness from members of the board?

Yes, sir.

MR. DOWNEY: Ms. Caudle, did you notice any type of advertisement and --

BY THE WITNESS:

A There was none.

MR. DOWNEY: There were no signs or --

BY THE WITNESS:

A None that I seen. The only things that we seen was the -- there was a -- the sign for the store, itself, the front part of the area which was the store. There was a sign out there. And that was the only advertisement that was there. Now, inside the salon there were wall charts, a barber's chart for men's haircuts, and a chart for lady's hairstyles on the wall.

MR. JOCHUMS: Did you notice what the sign on the front of the store said?

BY THE WITNESS:

A I did and I've have to see if we wrote it down. I asked them what it meant, in fact, when we was there because it was in Spanish.

MS. BORKOWSKI: Any other questions from members of the board?

(No response.)

MR. JOCHUMS: If there are not, I have no

additional witnesses at this time.

MS. BORKOWSKI: Ms. de Leon, do you have -- besides, maybe, your explanation, do you have anyone that you want to testify on your behalf.

MS. DE LEON: No. It was just my husband and I that was there.

MS. BORKOWSKI: Okay. Is he -- are you going to have him testify?

MS. DE LEON: No. I don't know. I the one responsible for what they say, but I -- we work together at the store, but I don't know.

MS. BORKOWSKI: Mr. de Leon, were you sworn in when we did the swearing?

MS. DE LEON: No.

MR. DE LEON: My English not too well. You'll have to speak a little slow.

MS. BORKOWSKI: Were you sworn in, raise your right hand with the other witnesses?

MR. DE LEON: I wasn't into the --

MS. DE LEON: No. (inaudible in spanish).

MR. DE LEON: Oh, -- (shaking head back and forth.)

MS. BORKOWSKI: Okay. Can we swear you in?  
(Witness sworn.)

MS. BORKOWSKI: Okay. Ms. de Leon, you can

give your explanation and we'll take that as testimony.

MS. DE LEON: Okay.

MS. BORKOWSKI: We'll allow you to explain to members of the board.

MS. DE LEON: Yes. They come in on Sunday morning, in October. And I -- they -- I was in the back of the store with my husband. We was putting together some furniture. When I walked to the hall, and I was going into the store -- and I have a lady that works for me, that she speaks no English. When these two lady was standing and asking her, you know, is a beauty salon about the time I was walking in there. And that lady say, no English. When I walked and say, Good morning. And they asked me if I have a beauty salon, at first I say no. And they say, you don't mind we take a look at them. And I say, yes, ma'am, come in. That lady didn't went over there and get me. I was just happened to be -- to get in the store when they when they was asking all about the beauty shop. And they -- we started walking, yes, ma'am, the lights of the beauty salon, it was -- they was on because he washed his hands where

he was working and yes, it was a towel in there. But I explained to the lady that I had the salon, I bought the equipment three years ago, because I was going to rent it for this lady, that had a license. And she wanted me to, for me to rent the place. I fixed it. I put floor and I -- we paint the walls and everything. Yes, it was a set up for the salon, but she never did. She backed out after this when I have it ready, because she got pregnant and she said that her husband don't want for her to work. So we left everything as it is, like that. Everything. But I don't know how to cut hair. I told her that I learn to cut hair long time ago in my country, when I go over there on vacation. Because I live here in the United States for 25 years. So I cannot go and get a license over there because that means that I have to stay one year. I don't know how to cut hair. And when she opened the trash can, she saw some hair. And it's true. He cut my -- his brother's hair the night before, not the morning because nobody was helping him putting the furniture together. They was working and we stayed there. We live

in Mt. Pleasant and we drive from Hope to Mt. Pleasant to Hope. It's like a hundred miles. And we have a room, because I own the building. I bought the building. And we make a little room, and we stay over there the whole weekend, because we have a bathroom with a shower. You know, we fixed it up, you know, so we can stay there the weekend so we don't have to go back and forth driving a hundred miles. So I fixed my hair over there in the morning. I put my make-up over there. Just one -- a lot of things, but all the -- all the stuff that was there in the beauty shop, that lady left over there. It's a pain because I spent a lot of money fixing the shop and she never did work over there. So we left everything like it is. But I don't ever -- I mean, anybody can ask somebody over there if I ever do any hair or any perms or color to my customers, my customers in the store. So nobody can say that I do it. I don't know why they say they did. Sometimes the people, when they go over there, I get food and furniture place. And they go over there and they walk to the hall and they see the shop. And they probably thought, you

know, that I -- that we do hair over there. I don't know how called the board, and say, you know, that we was operating there, the beauty shop. So that's all I gotta say, you know.

MS. BORKOWSKI: Does your husband have anything to add?

MS. DE LEON: I don't know.

MR. DE LEON: Well, I cut the hair of my brother because he help me out to put together the furniture. But he got long hair, so I told him, I told him he needs a hair cut. I did it. I don't know how, you know. I just cut him, only two or three. I don't remember. That's it. And why was hair over there?

MS. DE LEON: And the State, you know, if they saw somebody walking out the store shaking their hair you know, they should've went at the time and see if I was getting ready or taking anything, you know, the scissors or something. If they had the proof that somebody was walking out of the store, they should've could in, in a minute and find me and see if I was sleeping or something. Because I was with my husband helping him put in the furniture when I happened to come into the store and they was



asking the lady that works for me, they said, it's a beauty salon. She didn't went and got me. She was behind the, you know, the showcase when they was talking to her.

MR. JOCHUMS: Let me ask you a couple of questions. What business do you do in that building?

MS. DE LEON: I have a Mexican store. I sell --

MR. JOCHUMS: A Mexican store?

MS. DE LEON: Yes, sir. I sell like phone cards, music. We rent movies. I sell clothes, books, anything, you know, that I -- and I just recently put furniture. It's not a big place for furniture, you know. It's maybe about this size of a room and I have some dining room sets and living room and that's about it. I don't have time to do any hair. I just -- I make more money running my store and the furniture than any hair.

MR. JOCHUMS: And how long have you had the store?

MS. DE LEON: Eleven years.

MR. JOCHUMS: You've had that store eleven years?

MS. DE LEON: Uh-huh. I have another business, too, I told her. There's my store and there's another building and it's in the other one that we owned it, so, too.

MR. JOCHUMS: Now, did -- I think that you told us that you put this salon in three years ago?

MS. DE LEON: No, I -- yes. A lady, she used --

MR. JOCHUMS: Was going to work for you?

MS. DE LEON: Yes. She's -- she's licensed and she said she was going to open -- if I had plenty of room, so I can keep her a beauty salon in there. And I say, yes. So we changed the carpet. We put floor and we paint the walls and we have everything ready for her and by the time she was going to open -- she never -- she say that she wasn't going to work because she got pregnant and then her husband don't want for her to work. So she never get opened at all. So I bought everything from her. And we left it just like it is. Just like that.

MR. JOCHUMS: So you go out and get the equipment and the --

MS. DE LEON: And it's only one chair and a mirror and a hair-dryer. And that's all. And a shampoo bowl and that's all we have.

MR. JOCHUMS: Do you have other employees that are sales people in this store?

MS. DE LEON: Yes, I have one or two. Well, we have -- well, I work, myself with another one. And he works, hisself, in the other business with another lady.

MR. JOCHUMS: But somebody is there, for example, when you're somewhere else or --

MS. DE LEON: Oh, yes. Uh-huh, yes.

MR. JOCHUMS: You said you live a hundred miles from there.

MS. DE LEON: Uh-huh, yes. No. No, my business is only open on weekends, Friday, Saturday and Sunday.

MR. JOCHUMS: The store is only open on weekends?

MS. DE LEON: Yes, both of them. Both them. I mean, it's closed. We don't work at all during the week.

MR. DE LEON: We spend Saturday and Sunday -- I mean, Friday night and Saturday night.

MR. JOCHUMS: Okay. I have no other

questions.

MS. BORKOWSKI: Are there any questions from members of the board.

BOARD MEMBER: How much hair was in the trash can and how many trash cans?

MS. Caudle: If it was just one head, it was a lot of hair.

BOARD MEMBER: How many towels?

MS. Caudle: I'd say probably, at least, ten. There were several. It was a towel bin.

MS. BLAND: More than one towel was in there.

MS. Caudle: Yes. And they had definitely been in use.

BOARD MEMBER: Were they the standard towel, salon towel?

MS. Caudle: Salon towel.

MS. MCKINNEY: And they were soiled?

MS. Caudle: Soiled towels in the bin. There were some clean towels up in the cabinets.

BOARD MEMBERS: Were there any prices on the walls?

MS. Caudle: No.

MS. BORKOWSKI: Any other questions?

MS. POWELL: Yes. Ms. de Leon, you said your business is only open on a Friday and Saturday and Sunday?

MS. DE LEON: Yes, ma'am.

MS. POWELL: So this would explain why the inspectors were there on a Sunday. And just -- do you have a license to practice hair in another country or another state or --

MS. DE LEON: No, I don't.

MS. POWELL: Any other license?

MS. DE LEON: No.

MS. POWELL: Do you -- does your husband have a license?

MS. DE LEON: No.

MR. DE LEON: No, ma'am.

MS. POWELL: And who does you hair?

MR. DE LEON: I cut the hair to my brother.

MS. POWELL: You cut your brother's hair?

MR. DE LEON: Yes, ma'am.

MS. POWELL: Do you cut your hair?

MR. DE LEON: Day before.

MS. POWELL: Do you cut your hair?

MS. DE LEON: She's asking you some question.

MR. DE LEON: Sometimes I trim a little

myself, you know, a little too long of a hair, but that's it. I go to the beauty shop in Mt. Pleasant, barber shop.

MS. POWELL: Okay.

BOARD MEMBER: I have a question. You said that you have one full time employee and she does not speak any English. Is that why she did not come with you as a witness because you didn't have an interpreter?

MS. DE LEON: No. She's working. I'm here by myself because I don't -- how do I want to waste their time if they working. I only use her for weekends. She's working, both of them are working, so how I'm going to waste her time to come all the way from here?

BOARD MEMBER: But if that would benefit you, don't you think that would've been worthwhile, for a day?

MS. DE LEON: Well, --

BOARD MEMBER: It would benefit you.

MS. DE LEON: She can speak not English, so I don't --

BOARD MEMBER: Oh.

MS. DE LEON: I didn't want to waste any time.

BOARD MEMBER: So you would have had to have an interpreter?

MS. DE LEON: Uh-huh. And I called a lawyer but it would've cost me more to pay him to come over here, you know, to pay the ticket. So I just -- I just here by myself in defense.

MS. TURMAN: It was the -- who stocked your haircolor and all that, if she never did come to work for you, who stocked your business?

MS. DE LEON: It's not a stocked. It's a few colors in there and few perms that is old. I throw them away after they, because I realized that I was -- I didn't never thought that I was going to get in trouble for that. So after they left, I take everything --

MS. TURMAN: But I mean, did she stock it or did you?

MS. DE LEON: She stock everything, yes, ma'am. She stocked everything. She was ready to work in there, but she called me one day and she said that she wasn't going to. And I said, what we going to do with all this stuff, you know? So I pay \$400.00 to her and I kept everything, with the hair-dryer and the chair and whatever she had with all the perms, and

the colors. Because I pay for the shampoo bowl, and the floor and everything that I -- and the connection for the water. It comes from my part.

BOARD MEMBER: But did you -- were you anticipating hiring another?

MS. DE LEON: No. Because I mean, there is nobody over there hardly in Hope that has license that want to do any hair. Nobody come over and ask me again if I want to rent the place.

BOARD MEMBER: There were supposedly towels that had been used, can you explain how and why --

MS. DE LEON: Yes, ma'am. I explained to the lady. It wasn't only one towel wet, because what he -- like I say, everything is -- it was closed. I turn the light on because the beauty shop is here and you walk, maybe, three feet from it and there's the other door for the furniture. So we was putting furniture together. And then he came over and turn the lights on and washed his hands. That's why it was wet. And so the towel was there.

BOARD MEMBER: So there was only one towel



--

MS. DE LEON: Yes, uh-huh.

MR. DE LEON: I used it.

MS. DE LEON: It was early in the morning. And they stay over there, they say, for fifteen or twenty, or fifteen minutes. And they saw several people getting out of the store, but not from the beauty shop. Because like I say, on Sunday morning, they get up -- probably, the people they saw was probably the ones that bought a phone card or something like that. But they never saw me doing any hair. And that lady that was working in the store, she was behind the showcase, I think. And she never went and got me like she says because she wasn't going to leave the store by itself. I was just happen to walk in and they was asking the lady is there a beauty salon in there.

MS. MCKINNEY: I have a question for the inspectors. This bin of soiled towels. How many could you determine would have been that day or would've been previously soiled?

MS. BLAND: I don't know how you'd determine that. You'd -- I don't --

MS. MCKINNEY: Well, I mean, if they're old

towels, they're dirty. They're dry. They're -  
-

MS. BLAND: They weren't smelly, like moldy, you know, like if you'd left a towel in a bin for a several days, how they would -- they smell. I didn't --

MS. Caudle: They were just damp.

MS. MCKINNEY: All ten were damp?

MS. Caudle: No, I didn't --

MS. MCKINNEY: That's what I'm trying to discern is how many were freshly soiled towels and how many could have been there for a week or whatever?

MS. Caudle: We couldn't tell.

MS. BORKOWSKI: Are there any other questions from members of the board.

BOARD MEMBER: Did you use a neck strip on your brother-in-law?

MR. DE LEON: Sorry?

BOARD MEMBER: Did you use a neck strip on your brother?

MR. DE LEON: No.

MS. POWELL: I have a question. And you were -- when the inspectors came into the facility and you were first approached and you

were asked where was the beauty shop in this building, why did you say no?

MS. DE LEON: No. She asked me if there was a beauty shop -- if it was working and operating. I say no. And then she said, do you have a beauty shop. I said, yes, ma'am. Do you mind if I want to take a look in there. I say, yes, ma'am. And we walk over there.

MS. TURMAN: It may be a small thing, but according to our inspectors it said hair on clippers and a neck strip and cut hair in the trash can. If you didn't utilize the strip, how do you --

MR. DE LEON: The stuff over there? It was not really. I just put a little thing to put my brother's hair, but I never used nothing else.

MS. TURMAN: I mean, how did you --

MS. DE LEON: I didn't see any hair at all on the floor. I know there was hair in the trash can, but it wasn't like she say, a lot of hair. No. Huh-uh.

MR. DE LEON: My brother got long hair.

MS. TURMAN: I want to know about the neck strip. The inspectors say --

MS. DE LEON: I don't know.

MS. TURMAN: -- that they saw a neck strip.

MS. DE LEON: I don't know there was a neck strip in there.

MR. DE LEON: No.

MS. DE LEON: Huh-uh. I didn't check and I didn't see any hair in the clippers, so I didn't see any hair.

BOARD MEMBER: Did you use those clippers on your brother?

MR. DE LEON: No, ma'am. Clippers were from a long time. I throw this away. This is a long long time.

BOARD MEMBER: You threw the clippers in the trash a long time ago, is that what you're saying?

MR. DE LEON: No. After they come over. We don't do no business is the bottom line. She does make-up for her on weekends. And I cut a couple of times, a couple of times for my brother's hair. And that's it. We don't do no business. We don't know how.

MS. BORKOWSKI: Are there any other questions from members of the board?

(No response.)

MS. BORKOWSKI: Would either of you like to make a closing argument? Mr. Jochums, would you?

MR. JOCHUMS: No.

MS. BORKOWSKI: Do you need to make a closing statement?

MS. DE LEON: I mean, for this to be over with? Yes, ma'am. Because I just don't have time, you know, because I live so far away to come over here and I just want to get this over with. Yes.

MS. BORKOWSKI: All right. Right now the record will be closed and complete, except for the board's recess for deliberations and decision. Remember that the deliberations are subject to the Freedom of Information Act and are open to the public. We are now off the record for deliberations.

(WHEREUPON, a break was taken while the board deliberated and made its decision.)

MS. TRAYLOR: \*\* \$585.00, payable to the board within 90 days of -- as I understand, they still don't have a license for it.

MS. POWELL: Yeah. They're not going to have a license. There's nothing to license.

MS. MCKINNEY: I second.

MS. TRAYLOR: Within 90 days.

MS. POWELL: I have a motion and a second.

Is there any discussion?

(No reponse.)

MS. POWELL: All those in favor of the --  
what was the fine?

MS. TRAYLOR: Five, eighty-five.

MS. POWELL: Five, eighty-five.

(Discussion.)

MR. JOCHUMS: I take it that your motion is  
that they're found guilty of all the  
allegations?

MS. TRAYLOR: Finding them guilty.

MS. POWELL: All those in favor, raise your  
right hand.

(Show of hands.)

MS. POWELL: All those opposed?

(No hands shown.)

MS. POWELL: Motion carries.

MS. BORKOWSKI: Let the record reflect that  
the the motion was made and seconded and the  
decision of the board is for a fine of civil  
penalties in the amount of \$585.00 to be paid  
within 90 days. This decision will be reduced

to writing and service will be made or attempted upon all parties. If the respondent cares to appeal the decision, an appeal can be taken under the Administrative Procedures Act. If there are no other questions or comments, the hearing with regard to Cecilia de Leon is concluded and the record is closed.

(WHEREUPON, the proceedings resumed in the next hearing and were had and done, to-wit:)

MR. JOCHUMS: Now, if you can come up here. Mr. Nguyen and anybody else that's -- what was your name, sir?

UNKNOWN SPEAKER: (inaudible).

MS. BORKOWSKI: What case number is this one?

MR. JOCHUMS: I think we want to consolidate this. I wanted to make sure he was here.

MS. BORKOWSKI: Okay.

MR. JOCHUMS: We're going to have 06-099, Van Nguyen; 06-100, Kimberly Nguyen doing business as California Nails. And although not present, I also want to add in 06-101, Tham Tran. It's my understanding that all of the charges happened out of one investigation, so I

want to consolidate the verdict in the hearing today.

MS. BORKOWSKI: So Tham Tran is not present?

MR. JOCHUMS: I think that that person is not -- well, we can ask some questions and find out if they know anything about --

MS. BORKOWSKI: Okay. This is the matter of -- the three matters that we're going to consolidate here beginning with Case No. 06-99, Thanh Van Nguyen. Is that the correct pronunciation? Case No. 06-100, Kimberly Nguyen and Case No. 06-101, Tham Tran.

The board -- the Arkansas State Board of Cosmetology has set a hearing for today concerning these matters. These matters are specified in the Order and Notice of Hearing.

I'm Misti Borkowski, an attorney, who serves as the Hearing Officer today. This part of the hearing is being held on March 27, 2006 in the Main Street Mall, basement conference room. Are the respondents present and, if so, please introduce yourself for the record.

MS. Caudle: Say your name.

MS. NGUYEN: My name Kimberly Nguyen.



MS. BORKOWSKI: Ms. Nguyen. And who else is present?

MR. NGUYEN: My name is Thanh Nguyen.

MS. Caudle: And they just gave me a statement, here, from Tham Tran, from the Arkansas Children's Hospital, where her son is in the hospital with heart surgery or --

MS. BORKOWSKI: Okay. Do you want to perhaps continue that, or how do you want to handle that?

MR. JOCHUMS: I'd say let's continue the number than had Tham Tran in it and let's just take up the other two. I think that's a legitimate excuse.

MS. BORKOWSKI: Yeah. We're going to amend this hearing to exclude from the hearing, Case No. 06-101, Tham Tran based on the document representing that her son is in the hospital in the Heart Center at Children's. So we'll deal with that later.

Thanh Nguyen, are you -- this? Is he 06-99, Thanh Van Nguyen?

MR. JOCHUMS: Yes.

MS. BORKOWSKI: But it's Nguyen? Is the last name different?

MS. Caudle: That's the pronunciation.

MS. BORKOWSKI: But that's not how she pronounced it.

MR. JOCHUMS: I'm not sure.

MS. BORKOWSKI: Okay.

MR. JOCHUMS: Let me do a little introduction.

MS. BORKOWSKI: Sure.

MR. JOCHUMS: Apparently what we have here is -- Kimberly is the shop owner. And she was initially charged with having two employees, this is a manicure shop, doing work without a license. It was later discovered that both of them had licenses, however, it's also a violation of your law not to post your license. The only thing we're here on today is the failure to post the license of Thanh Van Nguyen. And the shop, itself, also had some health and safety violations, so we will all address that, but that's what the nature of the hearing is this morning. And I think, probably, in terms of exhibits the Order and Notice of Hearing on 06-099 and 06-100 and the attached inspection reports would be introduced.

MS. BORKOWSKI: Kimberly and Thanh, are you ready to proceed in this matter today?

MS. NGUYEN: Yes.

MR. NGUYEN: (Nodding head.)

MS. BORKOWSKI: And did you receive a copy of the Order of Notice and Hearing?

(No response.)

MS. BORKOWSKI: Did both of you receive a copy of the Order and the Notice of Hearing?

MS. NGUYEN: Yes, ma'am.

MR. NGUYEN: (inaudible).

MS. BORKOWSKI: Did you receive a copy?

(Ms. Nguyen speaking to Mr. Nguyen.)

MR. NGUYEN: Yes.

MS. BORKOWSKI: Okay. For the respondent's benefit, as well as, the benefit of others, we're going to over something that we did in the last hearing, just briefly.

This board will base its decision solely on the evidence presented here today. This includes sworn testimony and other evidence which may be admitted. The hearing is held under the Administrative Procedures Act and, therefore, the strict rules of evidence do not apply. The board members, themselves, know

nothing of the case except what appears in the Order and Notice of Hearing, for that reason, if there's anything you wish to be considered by this board, you will need to have it introduced into evidence.

If at any time during the course of the hearing, if you have any objection or questions about the proceedings, please bring it to my attention and I will address the issue. All participants to the hearing should be aware that these proceedings are subject to the State Freedom of Information Act and, as such, all parts of the hearing including the deliberations of the board are open to the public.

For all who are going to be witnesses in this matter, please raise your right hand and be sworn by the court reporter.

(Witnesses sworn.)

MS. BORKOWSKI: Mr. Jochums, did you wish to have that order and notice of hearing as an exhibit?

MR. JOCHUMS: Yes. Well, although it's a consolidated hearing, they will be both be Exhibit "1" in their respective files.

MS. BORKOWSKI: Do you want to do -- how about we do "1" and "2" their separate Notices of --

MR. JOCHUMS: Okay.

MS. BORKOWSKI: Kimberly's will be Exhibit "1" in this matter. Thanh's will be Exhibit "2". And you may call your first witness.

MR. JOCHUMS: Inspector Caudle, who is already at the table.

TESTIMONY AND EVIDENCE

GIVEN ON BEHALF OF THE STATE BY

INSPECTOR SHEILA Caudle,

having been called by and on behalf of the State, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOCHUMS:

Q Please state your name for the record.

A Sheila Caudle.

Q Did you have occasion to go to California Nails and did that lead to today's hearing?

A Yes, sir.

Q Where is California Nails?

A It's on Camp Robinson.

Q In North --

A In North Little Rock.

Q -- Little Rock? Okay. And as I understand it, this is a manicure location?

A It's a manicure salon, yes, sir.

Q Tell the board about your visit on August 11th.

A Well, it was just a routine inspection on August 11, 2005. And when I went in there was two young men and one young lady working there. I asked for photo ID's and that's why I had wrote date of birth down. This is probably Thanh Van Nguyen, but this is not the person that was working there that day. That's why the date of birth is wrote on this form. It was a younger gentleman that was working with this (indicating) gentleman. And this gentleman didn't have an ID, because he had had his license suspended for DUI, is what he had told me. But this was not the gentleman working there that day. There was also some health and safety violations.

Q Could you go over those.

A There was no license posted. The floor needed to be cleaned. The manicure tables needed to be cleaned. The treatment tables, the manicure tables, were very dirty, had not been cleaned. And the used buffers and nail files that could not be disinfected needed to be

disposed of after each use, if they could not be disinfected, and they were not.

Q Now, let's go back a little bit. Who was actually present when you were there?

A This was -- these people out here now, this is the only person, standing back here (indicating) that was present in the salon that day.

Q So the shop owner was not there?

A The shop owner was not there.

Q Okay.

A They did call her and I did talk to her on the phone.

Q Okay. Now, did you later learn, or did the office learn, that in fact there were licenses for Thanh Van Nguyen, Kimberly Nguyen, and Tham Tran?

A As far as what the office learned, I don't --

Q Okay.

A I had called in for a date of birth and that's why the date of birth is wrote on my inspection form. Because the date of birth given to me at the office, since they could not present me an ID, I asked for date of birth. And the young man gave me the date of birth 11/20/1955. And the young man was probably in his 20's. Now, this (indicating) is one that was there, but there was another young man there who claimed to be Thanh Van

Nguyen. This person (indicating) was not there on that day.

Q I believe that the hearing officer made Mr. Nguyen's, the notes about his case, Exhibit "2" and that's where you've got written down --

A Yes.

Q 11/20/1955.

MR. JOCHUMS: I have no other questions for the witness.

MS. BORKOWSKI: Okay. Do either of the respondents have questions for this witness?

(No response.)

MS. BORKOWSKI: Do you have any questions to ask the investigator?

MS. Caudle: Do you have any questions for me?

MS. NGUYEN: Ah, no, ma'am.

MS. BORKOWSKI: Okay. Any questions from members of the board for this witness?

(No response.)

MS. BORKOWSKI: Mr. Jochums, you may call your next witness.

MR. JOCHUMS: Yes. Kathy?

TESTIMONY AND EVIDENCE

GIVEN ON BEHALF OF THE STATE BY



KATHY WITTUM,

having been called by and on behalf of the State, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOCHUMS:

Q Kathy Wittum, you're the Director of the Board?

A Yes.

Q Do you have a copy of the notice there in front of you?

A Yes.

Q Okay. When this matter initially got forwarded to central office from the investigator, did the staff make a calculation of what the appropriate civil penalty would be if charges were proved?

A Yes.

Q Based on the understanding that the investigator told you that the individuals were not licensed?

A Yes. That total was \$450.00.

Q Okay. And that's in Mr. Van Nguyen?

A Yes.

Q Okay. With regard to Kimberly, did you make a similar calculation?

A Yes. The initial total was \$780.00.

Q \$780.00 -- now, did you send out a typical request that they pay the civil penalty?

A Yes.

Q And what kind of response did you receive?

A We received our hearing notice letter back, indicating that they wanted a hearing. And attached to it, both to Mr. Nguyen's and Ms. Nguyen's were copies of the licenses for these people.

Q So then with the knowledge that, in fact, -- or apparently the people were licensed, did you make a recalculation of what the appropriate civil penalty would be and is that on each of their notices of hearing?

A Yes, it is. For Mr. Nguyen, it was adjusted to \$5.00 for not posting his license. And for Ms. Nguyen, it was adjusted down to \$85.00, for not posting both of the licenses and for health and safety violations.

Q Okay.

A Now, I do need to point out that an error was made when we were adjusting those figures. Because looking back at the inspection reports on both of the -- it looks like the inspector's were refused ID. And the penalty for refusal to present ID was not calculated in the adjusted.

MR. JOCHUMS: I have no other questions of

Ms. Wittum.

MS. BORKOWSKI: Do either of the respondents have any questions for this witness?

(No response.)

MS. BORKOWSKI: Any questions?

MS. NGUYEN: No, ma'am.

MS. BORKOWSKI: Do any members of the board have questions for this witness?

(No response.)

MS. BORKOWSKI: Mr. Jochums, you may call your next witness.

MR. JOCHUMS: I have no other witnesses to present.

MS. BORKOWSKI: Okay. The respondents that are here -- you may give your testimony simply by discussing or telling the board your perspective, or your story. If you would like to talk to the board and tell them what your story is, your explanation.

MS. NGUYEN: That's the reason, you know, because I have a young child that goes to school, so I'm not there often. And -- I can look at that, before I worked in town, but now I'm not. But when I'm there, but you know, I

try harder when -- they -- when they came and I already come back and check with them about that. But you know that happened when they go. See, she came and I'm not there. So after that, I told them, we -- that's the old building. And right now, sometimes the raining, really look old building. So I already remodeling. Most of the time and she came and we start to do it. So that happened like we don't close before we post the license on the wall, but then now we take it out. And so that is happened but I know that's my fault. That's the law. We cannot do that. But the -- I hope that your board understands sometime happen, you know, like we remodeling the shop. So I -- I think you just very good about the law. So whatever you want to do, I take it. Because I don't tell -- you know, most of Vietnamese manicurist so we don't speak English so good. And so we try to explain, but I have seen lady and gentleman and they say (inaudible) -- we have license. Look like that lady, she -- she have a kid and home (inaudible) and they come. They don't speak English so good, so that happen so

misunderstood. She look like she say something. And I say, why you come from Oklahoma. But they have to ask for your license. You just say, you do that, if you don't carry. I don't know why we have the license, but will say, well, common sense, they say, you know? They afraid, you know? They don't feel comfortable to talk. I don't know why. You know, some mistake about don't have so good English, like me, I don't speak English good enough. Sometimes you miss the (inaudible) I got there one time about they wanting me for like, we happen, the customer didn't know I work without the license. But it's not they don't have license. They have the license from another state to come and not to transfer and not the Arkansas license yet. And they take it and you know sometimes I approach or we help together. Like they need the job and they need the money, you know. So that's what happened before but I helping, you understand. But we -- right now, with me, I owner, I in debt, I need someone out here that have their Arkansas license to work. If they don't have it, I don't pay them. I don't want

any problems. So I'm sorry, but that happens. That's why.

MS. BORKOWSKI: Do you have any questions for Ms. Nguyen?

MR. JOCHUMS: Yes. You do own the shop?

MS. NGUYEN: Yes, sir.

MR. JOCHUMS: And in the past, you got a warning?

MS. NGUYEN: Uh-huh.

MR. JOCHUMS: And you understand that a Oklahoma license won't work or a Texas license?

MS. NGUYEN: No. Yeah. I understand that.

MR. JOCHUMS: So if somebody comes in and says I want to work at one of your stations, you ask them for a license?

MS. NGUYEN: Yes.

MR. JOCHUMS: You said that is your practice?

MS. NGUYEN: Yes, sir.

MR. JOCHUMS: And were you saying the reason the licenses weren't on the wall was because you were remodeling the store?

MS. NGUYEN: Yes, sir.

MR. JOCHUMS: What were they doing? Were they painting, wallpaper, what was going on?

MS. NGUYEN: Yeah, we do whole shop, like the flooring and the wall painting. We do all -- all ready now, with like (inaudible). We take it off. We redo whole wall. And the floor, we do. Whole new thing.

MR. JOCHUMS: Okay. Now, do you have -- you do nails yourself, or are you just the owner?

MS. NGUYEN: I work there sometime, but just not owner.

MR. JOCHUMS: Part-owner?

MS. NGUYEN: But I have the license to work.

MR. JOCHUMS: You do have the license to work there?

MS. NGUYEN: Yes, sir. Okay.

MR. JOCHUMS: And the other thing I heard you say, is they don't speak English so good. Were you talking about the people who come to work there or were you talking about somebody else?

MS. NGUYEN: Some they come to go and sometimes they, you know, they don't speak English so good, so we -- either I don't speak English good either, but we try to get them to

understand. I'm sorry. I --

MR. JOCHUMS: What is the language that you're comfortable speaking?

MS. NGUYEN: Vietnamese.

MR. JOCHUMS: Vietnamese. Okay. Now, are you -- you asked for a hearing today. The board sent a letter saying you could pay a fine, but you wanted to come talk with the board, right?

MS. NGUYEN: Yeah, because --

MR. JOCHUMS: Is there something that you want them to do or you're asking them -- think about that for a minute and we'll come back to it.

MS. NGUYEN: Because I -- I -- I'm not really understand her visit, so I ask them to come to help me. And I stay over here, I have to pay for the violations for him and another one. And so -- because at that time, we don't have the license up. So, you know? And so I -- I want to know exactly what happened today and how much I have to pay and what do or whatever. Because that's the thing. You know. License. Oh, my God. They have the license. Well, that's a problem, you know.



MR. JOCHUMS: Okay. Let me ask you a question. The man sitting next to you, what's his name?

MS. NGUYEN: Thanh Van Nguyen?

MR. JOCHUMS: Are you related?

MS. NGUYEN: No.

MR. JOCHUMS: Okay. You've got a similar last name.

MS. NGUYEN: Yeah. Just like the Smith, you know, same last name, but we don't stay together.

MR. JOCHUMS: And how long has he worked for you?

MS. NGUYEN: Myself?

MR. JOCHUMS: Well, how -- I mean, how long has he worked in your store, California Nails?

MS. NGUYEN: He -- he work about six months. A month he off and after that he come back and work again. So look like two years.

MR. JOCHUMS: Total?

MS. NGUYEN: Yes, total of two years.

MR. JOCHUMS: Is he working there now?

MS. NGUYEN: Yes.

MR. JOCHUMS: Okay. I have no other questions.

MS. BORKOWSKI: Any questions of this respondent by members of the board?

MS. TURMAN: Are you saying that this gentleman that is here now, that somebody else is utilizing his license?

MS. Caudle: Yes, ma'am. Also I can give you history on the salon. On November 6, 2003, Ms. Nguyen bought the salon. She was sent a civil penalty for practicing outside her scope of practice, more overly she was doing eyebrow waxing. On May 28, 2003, she was fined for allowing unlicensed people to work in her salon. On January 10, 2003, she was fined for allowing unlicensed people to work in her salon. And then August 11, which is what we're dealing with today.

MS. TURMAN: Ms. Nguyen, were you aware that this gentleman was letting someone else utilize his license?

MS. NGUYEN: Because at the time that she came in, I'm not there. So after that they have sent the letter and let me know and they tell me about this. But I have the -- you know, sometimes it's not as easy and (inaudible) whatever, you know. But they did

say man that worked for me and another young woman, she at the hospital right now. And sometime I will call Han there and you know, but --

MS. TURMAN: Since you're the owner, do you not hire all your personnel? Are you -- except these gentleman did not have a license and this gentleman allowed him to utilize his license?

MS. NGUYEN: No, ma'am. He work for me long time.

MS. TURMAN: I know, but the other gentleman who was working in the salon the day that the inspector come in -- I hope I'm not -- I'm trying to be -- it stated that this gentleman's license was being utilized by someone else.

MS. NGUYEN: He work for me long time and customer can tell. We can prove that he work for me long time.

MS. TURMAN: Okay. But someone else was using his license that day. How do you explain that?

MS. Caudle: May I? There wasn't a license posted. The other person working there that day was using his name and date of birth.

MS. TURMAN: Okay. Okay. Sorry.

MS. POWELL: Did the other person just verbally give you the name and date of birth? He didn't show you any form of ID?

MS. Caudle: Had no ID.

MS. POWELL: And was the other person practicing?

MS. Caudle: Yes.

MS. POWELL: And the other person said he was him?

MS. Caudle: Yes.

MS. POWELL: And this gentleman or this lady were not there?

MS. Caudle: No.

MS. POWELL: But this gentleman was?

MS. Caudle: This -- this guy was.

MS. POWELL: He was there?

MS. Caudle: Yes.

MS. POWELL: But he wasn't the one that --

MS. Caudle: No.

MS. POWELL: -- said he was him?

MS. Caudle: No. He had his license.

MS. POWELL: Okay. So --

MS. Caudle: Do you know the name of the young man I'm talking about?

\*\* : I'm not unsure, you know, --

MS. Caudle: But there was another young man there.

\*\* : People hang out, one of his and one of mine hanging out.

MS. Caudle: They just hang out and they just work when they visit?

\*\* : No.

MS. POWELL: Ms. Caudle, are you saying the other person that was there, that used this gentleman's name and date of birth, that he was not practicing?

MS. Caudle: Yes, he was.

MS. POWELL: Oh, he was working on the public?

MS. Caudle: Yes, ma'am.

MS. POWELL: What was he doing? I'm sorry.

MS. Caudle: He was polishing the nails.

MS. POWELL: In her salon?

MS. Caudle: In her salon, using his name.

MS. POWELL: Okay. And you asked -- and what happened to this person?

MS. Caudle: I tried and tried to get an ID. He told me he didn't have an ID. In fact,

he even told me he didn't have his ID, but of course, he gave me the excuse why he didn't have his, and so I couldn't get --

\*\*: Suspended for like two years.

MS. Caudle: And of course, I've seen his face before and I knew who he was. But I just ID'd everyone.

MS. POWELL: Can you --

BOARD MEMBER: Can you -- I'm sorry. Can you tell us who he is?

MS. Caudle: I don't know his name. I just know his face and what salon he works with.

MS. POWELL: Okay. When you went -- you're saying that Kim Nguyen was not there?

MS. Caudle: She was not there.

MS. POWELL: I'm not -- then we're -- then how do we get the not refusing to show the license?

MS. Caudle: Refusing to show what license?

MS. POWELL: Refusing to produce identification?

MS. Caudle: From the man that gave me the date of birth of 11/20/1955 and --

MS. POWELL: Okay.

MS. Caudle: -- claimed to be Thanh Van

Nguyen.

MS. POWELL: Okay. That person was refusing to show the ID?

MS. Caudle: Yes, ma'am.

MS. POWELL: Thank you for clearing that up.

MS. Caudle: You're welcome.

MR. JOCHUMS: Let's say Mr. Nguyen say something since we're talking about his case, too.

MS. TURMAN: Since this gentleman was sworn in, may I ask him questions? He was sworn in?

UNKNOWN SPEAKER: I was sworn.

MS. POWELL: Yes.

MS. TURMAN: Are you telling me that you simply allow a restuarant employee --

UNKNOWN SPEAKER: No, no, no. They don't practice with us.

MS. TURMAN: But they can come in --

UNKNOWN SPEAKER: They come in and chat just half of the time and, you know, they always hang around, but no, they don't practice.

MS. POWELL: What was your name?

MR. NAM NGUYEN: My name is Nam Tran.

MS. POWELL: N-A-M?

MR. NAM NGUYEN: Yes, ma'am.

MS. POWELL: Nam? Do you have a last name?

MR. NAM NGUYEN: Ah, yes. Nguyen.

MS. POWELL: Nguyen. Nam Nguyen.

MS. TURMAN: So you're telling us -- you're telling me that this gentleman was not working on a client when the inspector came?

MR. NAM NGUYEN: Yes, he was. He was on the front desk and I was on the side desk.

MS. TURMAN: But he was a restaurant employee?

MR. NAM NGUYEN: No, this man (indicating) is not. I'm just talking about the other guy that was coming in and sometimes, you know, the inspection, the one inspection get in the room, if they see, you know, any person that in the working area, they will ask everybody license, but they not actually working there. Just sometimes they just sit there to chit-chat, you know. That's basically it.

MS. TURMAN: But the inspector said this gentleman was not there.

MR. NAM NGUYEN: He work there all the time. He work from Monday through Saturday.



All the time. As matter of fact, his mailing address at the shop, so.

MS. POWELL: I don't -- I'm sorry. Are you saying that -- you're saying that the gentleman that the inspector spoke to --

MR. NAM NGUYEN: Yes, ma'am.

MS. POWELL: That she says was polishing fingernails.

MR. NAM NGUYEN: Yes, ma'am.

MS. POWELL: Are you saying he was polishing fingernails?

MR. NAM NGUYEN: I am not sure the memory that what was happening at that time, you know, because it's been a while back. But I'm positive that he's a full-time employee.

MS. POWELL: He's a full-time employee of Ms. --

MR. NAM NGUYEN: He's always there.

MS. POWELL: -- Ms. Kim's salon?

MR. NAM NGUYEN: Yes, ma'am.

BOARD MEMBER: Who?

MR. NAM NGUYEN: This gentleman right there (indicating).

MS. POWELL: This gentleman (indicating)?

MR. NAM NGUYEN: Yes, ma'am. This man work

there. He's a full-time employee.

MS. POWELL: Yes, yes. But I'm talking about the other gentleman.

MS. Caudle: The young man --

MS. POWELL: -- that was there the day you were there when these two people were not there -- when the inspector came.

MR. NAM NGUYEN: When the inspector come, we work there everyday, you know, at that salon. Only me and him run the salon.

MS. POWELL: Him (indicating)?

MR. NAM NGUYEN: Yes.

MS. Caudle: So you weren't even working that day --

MR. NAM NGUYEN: Yes, I was. I sign my name.

MS. Caudle: You --

MS. POWELL: Okay. So you were there and you're saying he (indicating) was there?

MR. NAM NGUYEN: Yes.

MS. POWELL: She's saying he was not there. And you're saying that he was there?

MR. NAM NGUYEN: He was there.

MS. POWELL: This (indicating) is the gentleman that was polishing fingernails?

MR. NAM NGUYEN: He does everyday.

MS. POWELL: But he's not -- you mentioned other people that came in from the restuarant business.

MR. NAM NGUYEN: Yes. They were not in the nail area at all.

MS. POWELL: They weren't polishing nails?

MR. NAM NGUYEN: No. They don't know anything about that.

MS. POWELL: It was him (indicating) you saw polishing fingers?

MR. NAM NGUYEN: Yes. If it was polishing, then he was. They weren't polishing.

MS. POWELL: But the inspector did not see him there?

MS. Caudle: Not on that weekend. Not on this particular visit.

MS. POWELL: Okay. Ms. West?

MS. WEST: Yes. I want to direct a question to you (indicating) and ask you, Ms. Nguyen, Kim Nguyen, and ask you about the remodeling. Do you have to have a license to remodel? Is there anywhere on record that you --

MR. NAM NGUYEN: No, because it's just

painting. You don't have to have a license to do that.

MS. TRAYLOR: Have a building permit.

MS. WEST: Okay. Like a building permit?

MR. NAM NGUYEN: A building permit only when -- it only occur when, like, when we building a wall or something.

UNKNOWN SPEAKER: That's right.

MR. NAM NGUYEN: Or getting into something, you know, ducking into the wall that's fire safety or electrical safety, then you do need a permit or have your license to do that, but not for painting.

MS. WEST: Okay. And when did it start and is it finished?

MR. NAM NGUYEN: Yes, it's finished. It's --

MS. WEST: It is finished?

MR. NAM NGUYEN: Yes, ma'am.

MS. WEST: Can you tell me a date, approximate date of when it started?

MR. NAM NGUYEN: I'm not sure.

MS. NGUYEN: Can give you a month.

MS. WEST: Yes, even the month. Can you tell me the month that it started?

MR. NAM NGUYEN: The month was -- I know it was slow season so it's supposedly been through July through October. We plan on that, the salon season to getting stuff all together.

MS. WEST: So that's of 2005?

MS. NGUYEN: Yes, ma'am.

MS. WEST: Okay. And Ms. Caudle, when did you visit there?

MS. Caudle: August of '05.

MS. WEST: August --

MS. Caudle: August 11th.

MS. WEST: August 11th. And did you notice the remodeling?

MS. Caudle: They had painted the walls.

MS. WEST: Okay.

MS. Caudle: We had trouble finding the salon license.

MS. POWELL: Ms. McKinney?

MS. MCKINNEY: Yes. I need some clarification, please. And on Mr. Nguyen may be able to answer that, but through testimony it is my understanding that at the time Ms. Caudle made her inspection, that we had two individuals with the same first name, the same last name, and the same birth date? Is that

what I heard through testimony?

MR. NAM NGUYEN: No, ma'am. In the paper for the finding, only finding Kimberly, which is the owner, have to respond for the license.

MS. Caudle: No, no. No, no. But my question is, because from your testimony --

MR. NAM NGUYEN: Yes, ma'am.

MS. MCKINNEY: You are telling me that this (indicating) Mr. Nguyen --

MR. NAM NGUYEN: Yes, ma'am.

MS. MCKINNEY: -- was there?

MR. NAM NGUYEN: Yes, ma'am.

MS. MCKINNEY: From testimony, Inspector Caudle has told me that this Mr. Nguyen (indicating) was not there. It was a younger man, but he knew Mr. Nguyen's complete name and knew Mr. Nguyen's birth date. Then it went back to you again and you said they were both there.

MR. NAM NGUYEN: No. I didn't say they were both there.

MS. MCKINNEY: So I need clarification through Mr. Nguyen. On the day of the -- Mr. Nguyen, on the day of the inspection, when Inspector Caudle came into the nail salon, were

you working?

MR. NGUYEN: (No response.)

MS. MCKINNEY: Were you working?

MR. NGUYEN: I work on --

MS. NGUYEN: (Speaking Vietnamese to Mr. Nguyen.)

MS. MCKINNEY: No, no. No.

MS. NGUYEN: (Speaking Vietnamese to Mr. Nguyen.)

MS. MCKINNEY: When she came.

MS. NGUYEN: (Speaking Vietnamese to Mr. Nguyen.)

MR. NGUYEN: Oh. Yes.

MS. MCKINNEY: You were working?

MR. NGUYEN: Yes.

MS. MCKINNEY: The woman next to you, when she walked in the door, you were there?

MR. NGUYEN: Yes.

MS. MCKINNEY: Okay. So you were there. Did you know the other gentleman that had your name and your birth date?

MS. Caudle: He doesn't speak hardly any English.

MS. MCKINNEY: He speaks hardly -- okay. Well, I speak no Vietnamese, so --

MS. NGUYEN: I can try.

(Ms. Nguyen speaking Vietnamese to Mr. Nguyen.)

MS. Caudle: He only understands very little.

(Multiple discussions.)

MS. BORKOWSKI: Any other questions?

BOARD MEMBER: Yes. I have a question.

MS. BORKOWSKI: To the inspector, when you asked him -- or when he gave you his birth, did you ask for that?

MS. Caudle: Yes. He responded and when I ask for the date of the birth, that's why I called the office to see if that license matched a date of birth that he had given me. And it did match for that licensee, but it didn't match the age for the young man that I was talking to.

BOARD MEMBER: I guess what I'm trying to get at, I have observed that he speaks hardly any English and he doesn't understand hardly any English, so if he responded --

MS. Caudle: He does -- when is your birthday?

MR. NGUYEN: Nove -- November 20, '55.



MS. Caudle: 1955. Okay. But he understands that. What is your address? Where do you live?

MR. NGUYEN: I live -- hmm. I --  
(inaudible).

BOARD MEMBER: Ask his name and his birth, again, would you?

MS. Caudle: Give me your full name.

MR. NGUYEN: Tranh.

MS. Caudle: Full name.

MR. NGUYEN: The shop?

MS. Caudle: No, your name.

MR. NGUYEN: My name?

MS. Caudle: Uh-huh.

MR. NGUYEN: My name Tranh.

MS. Caudle: Okay. Spell it for me.

MR. NGUYEN: T-N-A-A-ah.

MS. Caudle: Okay.

MR. NGUYEN: Nguyen.

MS. Caudle: Okay. Middle name?

MR. NGUYEN: Van.

MS. Caudle: Okay.

MR. NGUYEN: Nguyen.

MS. Caudle: And your birth day?

MR. NGUYEN: It's in November 20, '55.

MR. JOCHUMS: Let me ask the inspector a question.

MS. Caudle: Yes.

MR. JOCHUMS: You've been around and I'm -- this gentleman (indicating) was there?

MS. Caudle: Yes, he was. Well, but --

MR. JOCHUMS: The one that is standing up.

MS. Caudle: -- he was not working that day, I don't believe.

MR. JOCHUMS: He was not doing any work. You didn't ask him if he had a license for that reason.

MS. Caudle: I knew that he worked there, but he just pulled up to check on the shop.

MR. JOCHUMS: He was not. He's (indicating) not the other person?

MS. Caudle: No, he was not.

MS. BORKOWSKI: Any other questions for any of the witnesses, members of the board?

(No response.)

MS. BORKOWSKI: Do you need to make a closing statement?

MR. JOCHUMS: I would say that if our board inspector says somebody is not there, we probably need to acquit him of all charges. I

know somebody else says he was, but if --

MR. NAM NGUYEN: He was there.

MR. JOCHUMS: It's hard for me to say that we could convict him of anything. Obviously, there is some violations on the young lady and we can levy the appropriate fines.

MS. TRAYLOR: Now, wait a minute. I don't understand that. The inspector said he was there.

MR. JOCHUMS: No, she said --

MS. Caudle: I said he was not there.

MR. JOCHUMS: -- he was not there.

MR. JOCHUMS: If he's not there, then he can't be guilty of practicing without a license.

MS. TRAYLOR: And this man said he was.

MS. MCKINNEY: My confusion is did you not ask him if he was there and then he told you yes?

MS. Caudle: Uh-huh.

MR. JOCHUMS: After he was prompted by --

MS. Caudle: After he was prompted by --

MS. MCKINNEY: After he was prompted by her. Okay.

MR. JOCHUMS: She interpreted, so I don't

know what she said to him.

MS. MCKINNEY: Okay. Now, that -- that is why -- okay. Mr. Jochums, you are referring to 06-099?

MR. JOCHUMS: Yes.

MS. MCKINNEY: So first, we're going to address 06-100.

MR. JOCHUMS: Well, I don't care which order you do them in, but --

MS. BORKOWSKI: Are we done with the witnesses?

MR. JOCHUMS: Yes.

MS. BORKOWSKI: Okay. We're done with the witnesses. The record will be closed and complete except for the board's recess for deliberation and decision. The deliberation are subject to the Freedom of Information Act and are open to the public. We're going to go off the record for deliberations. I ask that the board, when they make these motions, make findings of fact and conclusions of law based upon the information asserted in the Order and Notice of Hearing and distinguish between the two cases the 099 and the 100 and make complete and separate motions and decisions. I turn

this back over to the President.

(WHEREUPON, a short break was taken while the board deliberated and was resumed as follows, to-wit:)

MS. POWELL: Ms. McKinney?

MS. BORKOWSKI: Okay. Let's go on the record for the 06-100 matter. And if you will, make your motion on the record for the record.

Can you make the motion on the record?

MR. KEENE: All for the -- the 100?

MS. BORKOWSKI: All -- yes, for the 100.

I'm sorry.

MR. KEENE: I move to find the respondent guilty. I order that she pay a fine of \$500.00 payable within 30 days.

MS. BORKOWSKI: And this was respondent, Kimberly Nguyen, 06-100?

MR. KEENE: Yes.

MS. BORKOWSKI: Do I hear a second?

MS. TRAYLOR: I second.

MS. POWELL: I have a motion and a second.

All those in favor, raise your right hand.

(Show of hands.)

MS. POWELL: All those opposed?

(No hands shown.)

MS. POWELL: One abstention, Mitzie McKinney.

MS. BORKOWSKI: Let the record reflect that the decision by the board has been made. It will be reduced to writing and service will be made and attempted upon all parties.

If the respondent, Ms. Nguyen, Kimberly Nguyen, cares to appeal the decision, appeal can be taken up with the Administrative Procedures Act.

We're going to go off the record again, for the deliberation of the board regarding 06-99.

(WHEREUPON, a short break was taken while the board deliberated and was resumed as follows, to-wit:)

MS. BORKOWSKI: We're back on the record. And if you'll make your motion for the record, please.

MS. GORDON: Finding the allegations being true that he did not have an operator's license posted on the date that the inspector was there, that he should be found guilty and fined \$5.00 for not posting a license. That's on Case No. 06-099, Thanh Van Nguyen.

MS. POWELL: I have a motion. Do I have a

second?

MR. DOWNEY: Second.

MS. POWELL: All those in favor, raise your right hands.

(Show of hands.)

MS. POWELL: All those opposed?

(Ms. Traylor and Ms. McKinney were opposed.)

MS. POWELL: There was no abstentions.

MS. BORKOWSKI: Let the record reflect that the decision has been made by the board. It will be reduced to writing and service will be made or attempted upon all parties.

If the respondent in 06-099, Thanh Van Nguyen, cares to appeal the decision, appeal can be taken under the Administrative Procedures Act.

If there are no other questions or comments, this hearing is concluded and the record is closed.

MS. BORKOWSKI: Mr. Jochums, I don't believe we have another hearing.

MR. JOCHUMS: No, we do have another hearing.

MS. BORKOWSKI: Okay. We have another

hearing.

MS. POWELL: We're going to take a five minute break.

(WHEREUPON, a short break was taken after which the proceedings resumed as follows, to-wit:)

MS. BORKOWSKI: We're here now, today, in the matter of Deborah Serrano d/b/a Quest Group, LLC, doing business as Supercuts Arkansas 80320, Case No. 06-064. We are here today as the Arkansas State Board of Cosmetology has set a hearing for today concerning this matter specified in the Order and Notice of Hearing. I'm Misti Borkowski, an attorney, and I will serve as the hearing officer in this matter.

Is the respondent present here, today?

(A person steps forward.)

MS. BORKOWSKI: Are you Deborah Serrano?

MS. RODGERS: I am Cary Rodgers. I am the manager of her salon.

MS. BORKOWSKI: Okay. And you're here today on behalf of Ms. Serrano?

MS. RODGERS: Yes.

MS. BORKOWSKI: Have you received a copy of



the order and notice of hearing?

MS. RODGERS: Yes.

MS. BORKOWSKI: Are you ready to proceed in this matter?

MS. RODGERS: Yes.

MS. BORKOWSKI: Are you represented by counsel?

MS. RODGERS: No.

MS. BORKOWSKI: Okay. Counsel for the State, please introduce yourself for the record.

MR. JOCHUMS: I'm Arnold Jochums. I'm here for the board in this matter.

MS. BORKOWSKI: Okay. For the respondent's benefit, as well as, for the benefit of any others who may have not appeared in an administrative proceeding previously, let me explain that the board will base its decision solely on the evidence presented here today. This includes sworn testimony and other evidence which may be admitted. This hearing is held under the Administrative Procedures Act and therefore, the strict rules of evidence do not apply. The board members themselves know nothing of the case except what appears in the

order and notice of hearing. For that reason, if there's anything that you wish to be considered by the board, you should have it entered into evidence here today or it will not be considered.

If at any time during the course of the hearing you have any objections or questions about the proceeding, please bring it to my attention and I will address the issue. All participants to the hearing should be aware that the proceedings are subject to the State Freedom of Information Act, and as such, all parts of this hearing including the deliberation of the board are open to the public.

Who will appear today as witnesses in this matter?

MR. JOCHUMS: These two ladies. Okay. If you will be sworn in by the court reporter.

(Witnesses sworn.)

MS. BORKOWSKI: Are there any other preliminary matters or exhibits to be discussed or offered at this time?

MR. JOCHUMS: Madam Hearing Officer, I want to offer as an exhibit, the Order and Notice of

Hearing and the August 2005 inspector's report and an April 2005 inspection report. We can make those all in one exhibit if that's all right. They have been previously provided copies.

MS. BORKOWSKI: Any objections?

MS. RODGERS: No.

MS. BORKOWSKI: No? Okay. This packet will be admitted into evidence as Exhibit "1".

(WHEREUPON, Exhibit "1" to HO#06-064 was introduced and admitted into evidence without objection.)

MS. BORKOWSKI: Do either of you wish to make an opening statement?

MR. JOCHUMS: Just a word -- I'm going to present Inspector Horner, who will tell about her visits to the Supercuts and she will be giving some testimony about health and safety violations. And those are the kinds of issues with regard to this hearing.

MS. BORKOWSKI: Okay. Why don't you go ahead and call her.

MR. JOCHUMS: Okay. Inspector Horner.

TESTIMONY AND EVIDENCE

GIVEN ON BEHALF OF THE STATE BY

INSPECTOR HORNER,

having been called by and on behalf of the State, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOCHUMS:

A Yes.

Q Please state your name.

A Rose Horner.

Q And are you inspector for the Board?

A Yes.

Q And did you have occasion to go to the Supercuts location in Fayetteville?

A Let me get my dates right. Yes, April 14th and then the last would have been August 23rd.

Q Okay. I referred to Supercuts in Fayetteville, but is it actually -- it's license number -- Supercuts by the Quest Group LLC?

A Yes.

Q Okay. Now, this is -- is this a hair salon?

A Yes, it is.

Q Have you been there on a number of occasions?

A Yes.

Q Tell us about your two visits involving this salon.

A Okay. In August of last year, I went in to do a routine inspection and I found the clipper and clipper guards had -- like in a -- there was a container with a towel in the container and there was lots of hair. And I made a note that they needed to clean that. And some of the station drawers had hair in them. And my previous visit, I had wrote up that hair in drawers needed to be cleaned, combs and brushes were in the drawers, so I felt like that hair contaminated the combs and brushes and they weren't all clean.

Q Okay. Was the store left a copy of your inspection report?

A Yes.

Q Tell us a little bit about this location. Is it freestanding, is it in the mall, or what is it?

A It would be kind of strip-mall, I think, like.

Q And how many stations, approximately, do they have?

A Six or eight.

Q Okay. Is there anything else that you can think of that the board needs to know with regard to this establishment?

A No.

Q Thank you.

MR. JOCHUMS: No other questions.

MS. BORKOWSKI: Ms. Rodgers, do you have

any questions of this witness?

MS. RODGERS: No.

MS. BORKOWSKI: Any questions of this witness by members of the board?

(No response.)

MS. BORKOWSKI: Mr. Jochums, you can call your next witness.

MR. JOCHUMS: I have no other witnesses.

MS. BORKOWSKI: Ms. Rodgers, if you're going to testify, you may go ahead.

MS. RODGERS: Okay. My name is Carey Rodgers. I'm the manager at the salon in question. There are seven stations in my salon. And at the time, I'm not sure, there were four of us, so I have three empty stations. I know that I was there at one time that they found, specifically the one with the clippers guard, that was my clipper guard, in a container with a towel. She mentioned it to me and I went and cleaned it and changed the towel out, took it out, put cleaner in the container and put the guards in there. So that has been -- that whole issue has been taken care of. Like I said, that was actually me that did that.

As far as the hair in the drawers and on the counter-tops, I've cleaned the drawers where there was actually someone working in the station at. There are, like I said, usually other stations that aren't -- we throw our extra stuff in, brushes that don't fit in roll-abouts or whatever, we just put in there because they're not used. I'm not exactly sure if every station was open or just the ones that someone worked at or what the case may be. I was not there at that one specific time, but as far as, you know, everything goes. We do our best to keep -- you know, on average we do twenty haircuts per stylist a day. So in order to keep all the hair out of drawers and all the hair off the counter-tops and this and that and the other, you know, we do our best to do that. With the clipper guards and hair and stuff like that on the clipper guards, every station -- or every stylist I should say, has a can of disinfectant. We spray our clippers, our guards, our scissors, every time we use them. So it's disinfected at the time of each use. It -- I find it near impossible to keep all hair out of the drawers and off the counter-

tops, especially at the rate that we do hair. There have been times that, you know, I know that I sit around and I do nothing or whatever during the day, but at the same time, like I said, on average we do about twenty haircuts a day. And I do find it very difficult all hair out of the drawers and off the counter-tops. But you know, and like I said, that was the issues. So as far as what we can do on our end, I have fixed the -- or taken care of the clipper guard container situation. And the hair on the counter-tops, whereby I've even gone and bought a vacuum that fits down in our drawers to suck it all out any time we can do that, any time we get a chance to do it.

So, yeah, that's basically it.

MS. BORKOWSKI: Any questions from Mr. Jochums?

MR. JOCHUMS: Yeah. How long have you been the manager?

MS. RODGERS: About two-and-a-half years.

MR. JOCHUMS: Okay. During that time has this particular location been written up at all by the board?

MS. RODGERS: This is it. As far as I



know.

MR. JOCHUMS: Now, does your owner own some other locations?

MS. RODGERS: Approximately 96.

MR. JOCHUMS: Others in Arkansas?

MS. RODGERS: Others in Arkansas, possibly nine.

MR. JOCHUMS: Is my understanding correct that the board here, or the board staff, sent a letter at the time of this -- or some time after the August violation with a penalty and the owner chose to come have a hearing, is that right?

MS. RODGERS: He asked me to, yes.

MR. JOCHUMS: On behalf of your employer, do you know what the owners wanted you to ask the board to do?

MS. RODGERS: We actually --

MR. JOCHUMS: Are you seeking leniency or are you seeking --

MS. RODGERS: I don't --

MR. JOCHUMS: -- denying the allegations?

MS. RODGERS: No. I'm not denying anything. As I've said, everything that's in here, you know, I've done my best to correct.

As far as why he wanted me to come, I don't know if he knew, you know, that he could just pay a fine or if someone actually had to come. He lives in Arizona and we talk a lot by telephone. This was sent to him in Arizona and faxed to me and he said, "You need to be there." So as far as, on this, you know --

MR. JOCHUMS: You're offering that explanation. I have no other questions.

MS. BORKOWSKI: Any questions of this witness by the board?

MS. PICKERING: I have one. You're talking about the hair that's found in the station drawers. Do you keep those open during the day or --

MS. RODGERS: Those are closed -- I mean, they are because they contained clippings and things like that. They're open from time to time so --

MS. PICKERING: So that hair comes from clipper guards.

MS. RODGERS: Yeah. It's from cutting hair throughout the day and being open -- I said, we've just bought a small little vaccuum that's got a hose on it to fit in those. Our drawers

have -- each drawer has three sections. Those sections can be removed to use the whole entire drawer or -- so each section, it just depends on each stylist preference. So, but, the drawers are to remain closed at all times, basically.

MS. BORKOWSKI: Any other questions by members of the board?

(No response.)

MS. BORKOWSKI: Do you have any other witnesses?

MS. RODGERS: No.

MS. BORKOWSKI: Okay. Do either of you wish to make a closing statement?

MR. JOCHUMS: No.

MS. RODGERS: No.

MS. BORKOWSKI: Okay. The record will be closed and complete except for the board's recess for deliberations and decisions. Note that the deliberations are subject to the Freedom of Information Act and are open to the public. We are now going to go off the record. Once a motion has been made and finalized, we'll go back on the record and make that motion on the record.

We're now off the record for deliberations.

(WHEREUPON, a short break was taken while the board deliberated and was resumed as follows, to-wit:)

MS. BORKOWSKI: Okay. We'll go on the record for the decision.

MR. DOWNEY: Finding the allegations being true, I move to order the respondent to pay the fine -- a fine in the amount of \$75.00, payable within 30 days of receiving the board's order. Failure to pay the fine as ordered will result in suspension of the respondent's shop license 30 days from receipt of the order and continuing for a period of 90 days from the date of the respondent. And this is on HO#06-064.

MS. MCKINNEY: Second.

MS. POWELL: I have a motion to assess a civil penalty. And it was seconded by Ms. McKinney. Is there any discussion?

(No response.)

MS. POWELL: All those in favor, raise your right hand.

(Show of hands.)

MS. POWELL: All opposed?

(No hands shown.)

MS. POWELL: Any abstentions?

(One hand shown.)

MS. POWELL: One abstention, Sherron West.

MS. BORKOWSKI: Let the record reflect that the decision has been made. It will be reduced to writing and service will be made or attempted upon all parties. If the respondent cares to appeal the decision, appeal can be taken under Administrative Procedures Act. If there are no other questions or comments, this hearing is concluded and the record is closed in regard to Hearing Order 06-064.

MR. JOCHUMS: At this time, is anybody else here for a hearing?

(No response.)

MR. JOCHUMS: No? Okay. We'd like to recommend a motion on the individuals that were scheduled and did not appear and did not seek a continuance. Our standard notice form that each of these individuals received contained this language, "The board will consider the respondent's failure to appear at the hearing or to obtain a continuance as the desire not to contest the factual allegations contained in

this notice. In that case, the board may impose appropriate sanctions in the respondent's absence."

What I'll do is I'll read off the name and the number. In your agenda list for the nine o'clock hearings -- let me explain. At the end of the list, a young lady, Lucille Coleman with Blytheville Academy of Cosmetology, that one had been granted a continuance. Earlier this morning, we granted a continuance in Tham Tran, that was 06-101. And we have one other case, one involving Marina Alfaro, 06-089, who actually -- we checked her notice. It said one o'clock, so she's not late yet.

So what we need a motion for is: Ivan Lee, 06-066; Hoang Xuan Nguyen, doing business as Lovely Nails, 06-083; Vernon Withers d/b/a High Profile, 06-093. And all of -- each of these in the agenda packet in the far right hand column has the staff's recommended penalties.

MS. BORKOWSKI: Yes, sir. And what about Kelli Collins?

MR. JOCHUMS: Kelli Collins?

MS. BORKOWSKI: 106?

MR. JOCHUMS: Oh, that's right. I

neglected to read here, Kelli Collins, 06-106.

MS. POWELL: Ms. McKinney?

MS. MCKINNEY: I move that we accept the fines as posted in this mail on these hearing cases: One 06-066; 06-083; 06-093; and 06-106 - - I believe that's all of them.

MR. DOWNEY: Second. We'll need to add the administrative fees to that, because they don't show up.

MS. POWELL: That's true.

MS. MCKINNEY: I'll rescind the motion.

MS. POWELL: Amend the motion.

MS. MCKINNEY: And I'll amend it to include the \$25.00 administrative --

MS. POWELL: Additional fee to each one of those?

MS. MCKINNEY: Yes.

MR. DOWNEY: Second.

MS. POWELL: I have a motion and a second. All those in favor, raise your right hand.

(Show of hands.)

MS. POWELL: It's unanimous. Motion carries.

MR. JOCHUMS: Also Madam Chairman, we have the portion with respondent's who have waived

their right to a hearing. And the first name on that list is Ella Baker, 05-038. The last name on the list is 06-117, Nail Time. You'll notice on the far right, the civil penalties is stated. And we need a motion approving these.

MS. MCKINNEY: I so move.

MR. DOWNEY: Second.

MS. POWELL: I have a motion and a second.

All those in favor, raise your right hand.

(Show of hands.)

MS. POWELL: Motion carries.

MS. BORKOWSKI: Let the record reflect that the decision of this board is unanimous. The decisions will be reduced to writing and service will be made or attempted upon all parties. If any of the respondent's care to appeal, appeal can be taken under the Administrative Procedures Act. If there are no other questions or comments, this hearing is concluded and the record is closed.

MR. JOCHUMS: I think that other than one possible hearing at one o'clock, we are done with the hearing portion of this meeting. Since it's noon, we may want to adjourn so everyone can be back at one.



MS. BORKOWSKI: If she shows up and you need me to come back over, just give me a call.

MR. JOCHUMS: Okay.

MS. POWELL: Meeting adjourned until one o'clock.

(WHEREUPON, a lunch break was taken, after which proceedings were resumed as follows, to-wit:)

MS. POWELL: We need a motion to for the approval of minutes for the October, December, January and February Exams and the November Board Meeting and Exams, as well as the Special Meeting on March 6, 2006.

MS. MCKINNEY: I so move.

MR. KEENE: I'll second.

MS. POWELL: All those in favor, raise your hand.

(Show of hands.)

MS. POWELL: It's unanimous. Motion carries.

MS. WITTUM: If you'll all take a moment to look in your black box. The black box is taking the place of the crinkled envelopes that you all have been using, for I'm not real sure how long. In the -- in your box there is a

folder that contains the financial information for this fiscal year. It's too much for you guys to go over here at this meeting, but take this, look over it and let me know if you have any questions about it.

Past the purple sheet in the folder are two sheets that you may want to pay attention to. The first one was prepared by our budget analyst, Ginger McDaniel. She has assured me that she monitors our budget and will let us know if she feels like we're ever in danger of running out of money. That was reassuring to those of us who are still trying to learn that system over there.

Past that sheet, is a sheet that Gordon is able to print off of the ACES system now. I just want to point out that these two -- these two sheets will not necessarily be consistent because of timing issues. ACES will reflect, sometimes, bills that we send over that Ginger wouldn't have knowledge of at that particular point in time, so just keep in mind that those balances are not intended to balance. And if you have any questions about any of this information, you can email me or let me know.

MS. MCKINNEY: Director Wittum, did I understand that we're to take these and keep up with them?

MS. WITTUM: Those are your copies.

MS. MCKINNEY: Not the documents.

MS. WITTUM: The box is your box. If you want to leave it here, you can. I'll provide a place.

MS. MCKINNEY: Okay.

MS. WITTUM: If you want to take it with you, you may do that, as well.

(Multiple conversations going on at once.)

MS. POWELL: We are going to discuss the NIC Conferences.

MS. WITTUM: The Regional Conference will be April 30 through May 1 in Wilmington, North Carolina. National will be August 26 through 28 in Portland, Maine. The Regional is one that I need to know who's going -- or who wants to attend.

MS. POWELL: Any of those of you that are in -- that are planning on attending that Regional on April 30 through May 1, Kathy is going to need to know who you are so the applications can be sent.

MS. WITTUM: I've got to get the registrations in this week.

MS. TRAYLOR: Do you have a copy of that registration?

MS. WITTUM: Yeah. You should all have a copy of it. I sent it --

MS. TRAYLOR: I got one.

MS. WITTUM: Yes. Yes.

MS. TRAYLOR: I mean, I got one at home.

MS. WITTUM: Well, I can fill it out for you.

MS. TRAYLOR: Okay.

MS. POWELL: So anybody that's debating on --

MS. WITTUM: Okay. If y'all could just let me know, by say, end of tomorrow, then that should give me enough time to get everybody registered, okay?

We don't have to do anything for the National just yet. The dates were just for your information if you didn't know the dates on that.

MR. KEENE: Do you want to approve the financial report?

MS. WITTUM: Well, since you haven't had a

chance to look over it --

MR. KEENE: She sent it to us.

MS. WITTUM: -- no. We just got this pulled together. Gordon and I have been working on it, so.

MR. KEENE: So then we don't have one for -- what was it? March, April and -- no.

MS. WITTUM: This goes from July of last year through February. And once March is concluded we'll get March's prepared and sent to you. Now, I gave you, at one of the earlier meetings last year, I gave you a copy of the whole ledger. And you all said that was too much information.

MR. KEENE: Oh, okay.

MS. WITTUM: So we put it in a different format and condensed it down.

Do you want to go into the meetings or the --

MS. POWELL: I think we need to go ahead while we can. The hearing officer is here, so we can go on into the hearings.

MS. BORKOWSKI: Now, Arnie, this is going to be a default hearing?

MR. JOCHUMS: No, the people came.

MS. BORKOWSKI: Oh, okay. This is 06-089?

MR. JOCHUMS: Yes, ma'am.

MS. BORKOWSKI: Okay.

ADMINISTRATIVE HEARING

MS. BORKOWSKI: This is the Arkansas State Board of Cosmetology. It is 1:17 p.m. on March 27, 2006. We are in the Main Street Mall basement conference room. And this is in the matter of Marina -- Marina?

MS. ALFARO: Marina.

MS. BORKOWSKI: Marina Alfaro, Order -- Case No. 06-089. The board has set a hearing today concerning the matters specified in the Order and Notice of Hearing. I'm Misti Borkowski, an attorney, and I will serve as the hearing officer in this matter. Is Marina Alfaro is present?

MS. ALFARO: Yes.

MS. BORKOWSKI: And did you receive a copy of the Order and Notice of Hearing for today?

MS. ALFARO: Yes.

MS. BORKOWSKI: And are you ready to proceed in this matter?

MS. ALFARO: Yes.

MS. BORKOWSKI: Okay. Are you represented

by counsel?

MS. ALFARO: No.

MS. BORKOWSKI: I see that you have someone sitting at the table. Will you introduce them?

MS. ALFARO: A person that she going to translate me. I'm new. I don't --

MS. BORKOWSKI: Okay. Can you give us your name?

MS. SLIGH: My name is Jennifer Sligh.

MS. BORKOWSKI: Jennifer Slack?

MS. SLIGH: Sligh, S-L-I-G-H.

MS. BORKOWSKI: Okay. And you're here to translate?

MS. SLIGH: Yes.

MS. BORKOWSKI: Okay. Will you tell me if I need to slow down or pause for you to translate?

MS. SLIGH: Yes.

MS. BORKOWSKI: And are you represented by an attorney?

MS. ALFARO: No.

MS. BORKOWSKI: Counsel for the board, please introduce yourself for the record.

MR. JOCHUMS: My name is Arnold Jochums. I'm assistant attorney general presenting this

board's case in this matter.

MS. BORKOWSKI: Okay. For the respondent's benefit, as well as, for the benefit of any others, who may not have appeared in an administrative proceeding previously, please let me explain. The board will base its decision solely on the evidence presented here today. This includes sworn testimony and other evidence which may be admitted. This hearing is held under the Administrative Procedures Act, and therefore, the strict rules of evidence do not apply.

She didn't need any translation on that?

MS. ALFARO: No.

MS. BORKOWSKI: The board members, themselves, know nothing of the case except what appears in the Order and Notice of Hearing. For that reason, if there is anything you wish them to consider it will need to be introduced into evidence here today or it will not be considered. If at any time during the course of the hearing, you have any objection or question about the proceeding, please bring it to my attention and I will address the issue. All participants to the hearing should



be aware that these proceedings are subject to the State Freedom of Information Act and as such all parts of the hearing including the deliberation of the board are open to the public.

Those who will be witnesses in this matter, please raise your right hand to be sworn by the court reporter.

(Witnesses sworn.)

MS. BORKOWSKI: Are there any preliminary matters or exhibits to be discussed or offered at this time?

MR. JOCHUMS: At this time, I just want to make the Order and Notice of Hearing Exhibit "1" in this matter.

MS. BORKOWSKI: Okay. Do you have any objection to the -- I guess, it's the Order and Notice of Hearing as Exhibit "1". Do you have any objection?

MS. ALFARO: No.

MS. BORKOWSKI: Okay. We're going to admit that as Exhibit "1".

(WHEREUPON, Exhibit "1" to HO#06-089 was introduced into evidence without objection and marked to append.)

MS. BORKOWSKI: Do either of you wish to make an opening statement?

MR. JOCHUMS: This is a case that involves allegations of operating an unlicensed establishment and also not having an Arkansas license.

MS. BORKOWSKI: Mr. Jochums, you may call your first witness.

MR. JOCHUMS: Yes. I'm going to do something a little out of the ordin -- I'm going to call on Kathy just to tell you a little procedural background on this case so we understand where we are.

TESTIMONY AND EVIDENCE

GIVEN ON BEHALF OF THE STATE BY

DIRECTOR KATHY WITTUM,

having been called by and on behalf of the State, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOCHUMS:

Q Please state your name.

A Kathy Wittum.

Q And you are the director of the State Board of

Cosmetology?

A Yes.

Q This case actually began before you probably worked for the board, but --

A Yes.

Q -- are you familiar with the case from the administrative standpoint of how it was handled and how it was --

A Yes.

Q We'll be hearing some testimony later about what the respondent was doing. What I want to elicit is some information regarding how it was handled after the inspector's report was received. How did the board act on that?

A The case was put on the board's agenda. Since the respondent did not appear, the board chose to continue it and ask the inspector to hand-deliver the Notice of Order to her so she would know to be here.

Q And then that was done prior to them being here today?

A Yes.

Q Okay. And did you have occasion, that is the staff here in Little Rock, to make any check as to licensure in other places or states?

A No. Now, there was a letter that was submitted to

the office from New York City. I don't know who initiated that request. That would have been -- it would not have been me. The letter is from the State of New York and indicates that the respondent is licensed in the State of New York. And there -- they board has been made aware of these two correspondence.

Q Is that a cover letter from the Documentation Unit and the follow-up print-out. It looks sort of like an affidavit from Kathleen McCoy about licensure?

A Yes.

Q On mine, it looks like a person has had a license but does not now, is that what you see?

A That's what it appears.

Q And you said the board already has this in there paperwork?

MR. JOCHUMS: I'd like the make the cover letter and the license support Exhibit "2".

MS. BORKOWSKI: Okay. It will be admitted.

(WHEREUPON, Exhibit "2" to HO#06-089 was introduced into evidence without objection and was marked to append.)

MR. JOCHUMS: Thank you. That's all the questions I have for Kathy.

MS. BORKOWSKI: Okay. Ms. Alfaro, you have an opportunity to ask questions of this

witness. Do you have any questions for the director?

MS. ALFARO: No. I have my copy record from New York. And this --

MS. BORKOWSKI: Okay. Do you have any other witnesses?

MR. JOCHUMS: Yes. Inspector Caudle.

MS. BORKOWSKI: Oh, I'm sorry. I didn't allow the board an opportunity to ask any questions.

(No response.)

TESTIMONY AND EVIDENCE

GIVEN ON BEHALF OF THE STATE BY

INSPECTOR CAUDLE,

having been called by and on behalf of the State, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOCHUMS:

Q Please state your name.

A Sheila Caudle.

Q And you are the staff inspector that did the inspections that led to the Notice of Hearing in this matter?

A I am.

Q Are you familiar with the respondent, Marina Alfaro?

A I am.

Q Okay. And tell us about your knowledge of her as it relates to cosmetology.

A I live around the Conway area. And through shopping or whatever in the Conway area, I had noticed this salon that was not in my book, but was operating there in the Conway area. So in April -- well, I don't have my inspections on here, so I'm going to -- sometime in April of '05, I had went in there and there was another young lady working in the salon and she told me that Ms. Alfaro was the owner. But there was no salon license and I didn't find any license posted at her station as being licensed in the State of Arkansas.

So I called the office and they told me that they didn't have any such person listed as being licensed in this state. In the meantime, the other young lady that was working in the salon quit working there because there was no salon license and went to work in another salon and I ran across her down the road inspecting. And I couldn't get back into the salon, so at some point I went back into the salon and Ms. Alfaro and her husband was there that night. The only time I could get

in was late at night. And I told her what she would need to do to get a license in the State of Arkansas and that she also needed a license for her salon.

She said that she had started the process to get her license sent here from New York. And then Ms. Wittum told me that I needed to serve the Cease and Desist. And she had moved from that location to another location. Well, it just so happened that she moved right next door to another salon. And they told me that she was working next door, was there not anything that I could do about it.

Q Let me just stop you a second. The first time you were there was in April?

A I don't have my inspection sheet.

Q But earlier in the year, then seven months later you went --

A I went back in the afternoon and told her what she needed to do to get licensed. And then on March 2, I went in to serve the Cease and Desist Letter for her to appear here today and she had moved locations from Oak Street to Washington Street in Conway.

Q Okay. And you had a return visit to that original location and found them open again, is that correct?

A Yes.

Q Go on.

A That's it. On March 2, I went in to her new location and served her the Cease and Desist letter for the hearing here today.

Q Okay. Now, you served it at a beauty salon?

A At a beauty salon --

Q Were there people --

A At a beauty salon, at a different location.

Q Were there people in there --

A Her, her husband, and a grandchild, I'm assuming.

Q Did they have customers?

A Not at that time, no.

Q But it was definitely a salon?

A Definitely a salon.

Q Had the usual equipment and --

A Reception area, work area, yes, sir.

Q Appointment book?

A Did not look for appointment book.

Q Okay.

A All I was doing was serving the letter.

Q Okay. The early -- the Notice here says April, so they probably corrected it. And then you mention a second, separate visit in September. Were those at the same physical location or are those two different locations?

A Those were the same locations in April and



September.

Q Okay. So what you're telling the board is that as recently as March 2 of this year, the lady seated to your left, has a beauty salon that does not have a license and she does not have a license?

A That is correct.

Q And --

A To my knowledge.

Q And the days you were there, there was beautician that did have a license?

A No, sir.

Q Is that correct?

That's correct.

Q Okay. And on one of those early visits did you see customers, clients?

A Without my inspection sheet --

Q You just don't remember, okay.

A I can't answer that.

MR. JOCHUMS: I have no other questions for the witness.

MS. BORKOWSKI: Do you have any questions of this witness, Ms. Alfaro?

MS. ALFARO: No.

MS. BORKOWSKI: Do members of the board have questions of this witness?

MS. TURMAN: Did you go back and check on -

-

BY THE WITNESS:

A In September it says, on my inspection report, she had a New York cosmetology license, was working on a license. Had no shop or operator license and has been open here for a while. Shop will approve when application is completed and sent with fee for the salon application. But she was working on a client at one point.

MS. POWELL: What's the date of that?

BY THE WITNESS:

A That was in September of '05.

MS. POWELL: September of '05.

MS. TURMAN: How about when you went in to serve the letter, you know, was --

BY THE WITNESS:

A There was no one in there. Her husband, her, and I'm assuming, a grandchild. A small baby.

MS. POWELL: So within this year from April '05 to March of '06, she's moved, since we've got -- we're talking about two different salons.

BY THE WITNESS:

A Two different locations, yes, ma'am.

MS. POWELL: Operating as a cosmetology establishment?

BY THE WITNESS:

A Yes, ma'am.

MS. POWELL: Both unlicensed?

BY THE WITNESS:

A Yes, ma'am.

MS. POWELL: And they're fully equipped for salons?

BY THE WITNESS:

A Yes, ma'am. A very pretty salon.

MS. POWELL: But they're just not licensed?

BY THE WITNESS:

A They aren't licensed.

MS. BORKOWSKI: Any other questions for this witness?

(No response.)

MS. BORKOWSKI: Ms. Alfaro, if you would like to testify before the board and tell them whatever you need to tell them, you can.

MS. ALFARO: I open the beauty salon February 2005. Two months later, I got sick. I have a brain aneurysm. I mean, I was going in the hospital. I had two months -- when she went first time, she find an extra friend of

mine. She working. She have her license. Out here.

MS. BORKOWSKI: Can you speak up just a little bit.

MS. ALFARO: When she went the first time, I no was there because I was sick. I was in the hospital. I had a brain aneurysm. I was in coma. I didn't work for seven months. Friend of mine, she take care of the place because I was staying open. I need pay my rent. She work for me. I'm buying. I rent the chair. The second time when she went there, she find another person, but she have a license. She have the name and I have the proof she got license from here. The third time when she went there and she find me. I started working. When she went the second time, she leave us a letter. And she told me I need a license from here. And I came here before I opened my business and when she went there, I came here. I have papers, too. Instead of doing my paper from New York, they send me a letter, they tell me that my license was expired. And I came here and this opened. And they tell me you need a current license.

You gotta apply again. And I apply again. And they say the New York letter anymore. I just waited for my license from here. Now I have it. But I didn't know when I came here I didn't know I need a license for a business because in New York, we don't need it. And I think that was with my license from New York. I didn't know to do it. I knew when she was there.

MS. BORKOWSKI: Mr. Jochums, do you have any questions for this witness?

MR. JOCHUMS: How long have you been a cosmetologist?

MS. ALFARO: Twenty years.

MR. JOCHUMS: Where did you go to school?

MS. ALFARO: I went to school in my country and then in California, then New York.

MR. JOCHUMS: And where are you from originally?

MS. ALFARO: Guatemala.

MR. JOCHUMS: You also went to school in California?

MS. ALFARO: Yes.

MR. JOCHUMS: Did you get a California license?

MS. ALFARO: No, I just -- and I moved to New York and I did. I have my license from New York.

MR. JOCHUMS: According to the thing from New York, you were licensed from '99 until 2004?

MS. ALFARO: Yes.

MR. JOCHUMS: When did you leave New York?

MS. ALFARO: When?

MR. JOCHUMS: When did you move to Arkansas?

MS. ALFARO: Uhm -- 2004?

MR. JOCHUMS: The inspector was at your shop in April of 2005, and you said that you were home. You were sick in the hospital?

MS. ALFARO: Yes.

MR. JOCHUMS: Who was there when she came?

MS. ALFARO: Colleen.

MR. JOCHUMS: Her name is Colleen?

MS. ALFARO: Yes.

MR. JOCHUMS: What's the name of your shop?

MS. ALFARO: En Style Salon.

MR. JOCHUMS: En Style Salon, okay. And then in September, when the inspector visited, who was working? I didn't understand that.

MS. ALFARO: (inaudible.)

MS. CAUDLE: Ms. Alfaro was working on that time and she was on my inspection form --

MR. JOCHUMS: I'll recall you. Did you say that you now have an establishment license?

MS. ALFARO: No. I moved there right now. I waiting from my license from here.

MR. JOCHUMS: Okay. Have you applied for the new address? Applied for a shop license with the new address?

MS. ALFARO: No, because it's not ready yet. It's because it's not ready.

MR. JOCHUMS: Okay.

MS. WITTUM: We have reciprocity papers on her. We're handling that but I don't think the reciprocity has been finished.

MS. CAUDLE: She has a license right here.

MS. WITTUM: She does?

MS. CAUDLE: She does.

MS. WITTUM: Okay.

MS. CAUDLE: In her name.

MS. ALFARO: (inaudible.)

MR. JOCHUMS: I have no other questions of this witness.

MS. BORKOWSKI: Any questions by Ms. Alfaro

by members of the board?

MR. DOWNEY: Yes, I've got a question. Have you ever been before this board before, Ms. Alfaro?

MS. ALFARO: Here? No. When I came here in January 2005, no. Let's see.

MS. CAUDLE: No.

MR. DOWNEY: I noticed that you have a license there, do you have a shop license now?

MS. ALFARO: No. Not yet, because I was waiting for this.

I waited for this day.

MR. JOCHUMS: Let me take it out of order and go back to Sheila.

TESTIMONY AND EVIDENCE

GIVEN ON BEHALF OF THE STATE BY

INSPECTOR CAUDLE,

having been called by and on behalf of the State, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOCHUMS:

Q Ms. Caudle, you've been present and heard some of the testimony of the respondent. And also, I noticed



that you obtained a copy of your inspection report.

After reviewing those, do you recall when you first at her first shop?

A Two times I was the first shop, April 28, '05 and Sept 8, '05.

Q And did you make notes of who was present when you were there on April 28?

A Yes. On April 28, Colleen Springer was the practitioner that I could not recall the name of earlier that was there. And then on September 8, Ms. Alfaro was the only one there.

Q Okay. Was Ms. Alfaro there the first time?

A No, she was not.

Q She was not there in April. And she was there in September and she was performing services?

A Yes, sir.

Q Do you have anything else that you would like to clear up through your testimony?

A Like I said, the shop will approve in the new location. The measurements and everything I have here is for the old location, but she's no longer there. But it will approve when everything is -- she gets a license and applies for a license for that location.

Q An actual establishment license does not require that you be a cosmetologist?

A Correct. Anyone that owns a salon.

Q So she could've applied for the license and used licensed employees earlier?

A That's correct.

MR. JOCHUMS: I have no other questions for this witness.

MS. BORKOWSKI: Any other questions of any of the witnesses from members of the board?

MS. TRAYLOR: Is she now a licensed cosmetologist?

MS. ALFARO: Yes.

MS. POWELL: Yes. She's gone through reciprocity and it's completed. And she now has a 2006 license.

MS. BORKOWSKI: Do you want a copy of that admitted as an exhibit?

MR. JOCHUMS: No. I just want to clarify in their minds that she has a license.

MS. BORKOWSKI: Okay. Ms. Alfaro, would you like this to be admitted as an exhibit?

(No response.)

MS. BORKOWSKI: Would you like for the board to consider this as an exhibit on the record?

MS. ALFARO: Yes.

MS. BORKOWSKI: Can we do that?

MR. JOCHUMS: Sure. We can. We can make a copy and give her back the original.

MS. BORKOWSKI: Okay.

MR. JOCHUMS: She has to post that, so she'll want to keep that.

MS. BORKOWSKI: Right. Right. Let's have a member of the staff make a copy of this and we'll admitted as Respondent's Exhibit "1" to HO# 06-089.

(WHEREUPON, Respondent's Exhibit "1" to HO# 06-089 was introduced into evidence without objection and marked to append.)

MS. POWELL: Isn't the establishment license the issue here?

MR. JOCHUMS: Well, she has a license but she didn't have a license in September. And there were other times that she didn't.

MS. POWELL: Right. For that year or whatever.

MR. JOCHUMS: That certainly may be some mitigation.

MS. POWELL: Do I understand her establishment is still not licensed?

MR. JOCHUMS: Correct.

MS. POWELL: Nor has it ever been?

MR. JOCHUMS: Right.

MS. POWELL: But she has completed reciprocity and now maintains a 2006 cosmetology license, correct?

MR. JOCHUMS: Correct.

MS. POWELL: Ms. Turman?

MS. TURMAN: Thank you, Madam President. I understand that -- I don't understand that -- this. I don't understand why, even though you were licensed and you had an establishment in New York, do you realize that -- but you didn't have to have a license for a hair salon in New York. Did you check to see what was required by the State of Arkansas before you opened your salon?

MS. ALFARO: When I came here we didn't know nothing. I went at City Hall and asked for what I need to open a business. And they tell me you just need to come here and get the license.

MS. TURMAN: But didn't you think about contacting the Cosmetology Board to see what we require when you open an establishment?

MS. ALFARO: I didn't know I had to ask for

license for a business only for hairdresser's license. I asked for it.

MS. TURMAN: You asked for your regular cosmetology license?

MS. ALFARO: Yes.

MS. TURMAN: And that's --

MS. ALFARO: I gave them form and they send me a letter like I need. They said fill it out at home. I did and never respond. Never sent me letter back. Just when I came here, they tell me, oh yeah, you need a recip -- I don't know. At that time I'm very sick. I lose my mind. I was sick. When I start working in September, I started working because I get better. But I already had my papers for my license. They say you need a current license from New York. So I send it here. I send my license.

MS. POWELL: Ms. McKinney?

MS. MCKINNEY: Just to clarify. Has she started her application for an establishment license?

MS. POWELL: No. That's never been addressed.

MS. MCKINNEY: But she's still open and

working?

MS. POWELL: Yes. She's still open and working.

MS. GORDON: Did you say she's still working?

MS. POWELL: Yes. She's still working. You're still practicing, correct?

MS. ALFARO: I --

MS. POWELL: You're working now?

MS. ALFARO: No. I move already to a different place last month.

MS. POWELL: Last month?

MS. CAUDLE: Somewhere else? Where did you move?

MS. ALFARO: Washington.

MS. CAUDLE: Where we were the other day?

MS. ALFARO: I have some problem with the hot water and I can't work with that. It's not finished yet.

MS. POWELL: There was a Cease and Desist letter sent to you on June of '05. And the certified receipt for the Cease and Desist Letter was returned to the office unclaimed. Where were you in June of '05?

MS. ALFARO: I was down there.

MS. CAUDLE: She was still on the --

MS. POWELL: Pardon me?

MS. CAUDLE: She was still at the original Oak Street address in June of '05.

MS. POWELL: Oh, okay.

MS. ALFARO: And at that time I was sick. I couldn't work.

MS. POWELL: But you didn't see her then?

MS. CAUDLE: I seen her in September still at that old address on Oak Street. In April I was there. She was not there. In September, I returned and that's when I met her. And that was all on Oak Street. In March, when I served the Cease and Desist, she is on Washington Street now. And when she moved to Washington Street, I don't know.

When did you move from Oak Street to Washington Street?

MS. ALFARO: Last month.

MS. POWELL: So you're on Washington Street now, in a salon?

MS. ALFARO: Yes.

MS. POWELL: And you're practicing, correct?

MS. ALFARO: No.

MS. POWELL: You're not doing hair?

MS. ALFARO: No, no.

MS. POWELL: Well, then what salon are you in? I mean, are you in a -- you said you were in a salon, right?

MS. ALFARO: Yes.

MS. POWELL: On Washington Street?

MS. ALFARO: On Washington. I moved last month. We're fixing everything.

MR. JOCHUMS: I think she's saying that they aren't seeing customers yet.

MS. POWELL: Okay. So you've got a building. Okay.

MS. ALFARO: We are taking care of my grandchildren there. If I working, I cannot take care. We don't have signs yet. We don't have --

MS. SLIGH: She's not advertising yet.

MR. JOCHUMS: But you are not working?

MS. ALFARO: No. I was waiting for my license because she told me last time you cannot work.

MS. BORKOWSKI: Any other questions from board members?

(No response.)



MS. BORKOWSKI: Do you wish to make a closing statement?

MR. JOCHUMS: No.

MS. BORKOWSKI: Do you wish to make a closing statement?

MS. ALFARO: No.

MS. BORKOWSKI: The record will be closed and complete except for the board's recess for deliberations and decision. The deliberations are subject to the Freedom of Information Act and are open to the public. We are now off the record for deliberations.

(WHEREUPON, a short break for deliberations by the board was taken, after which proceedings were resumed as follows, to-wit:)

MS. BORKOWSKI: We're back on the record for the board's decision.

MS. POWELL: Mr. Keene.

MR. KEENE: Finding the allegations being true, I move to order the respondent to pay a fine in the amount of \$690.00 payable within 30 days of receipt of the board's order. Failure to pay the fine as ordered will result in a suspension of the respondent's cosmetology practitioner's license beginning 30 days from

receipt of the order and continuing for a period of 90 days from the date the respondent relinquishes her license to the board.

MS. POWELL: I have a motion.

MS. PICKERING: Second.

MS. POWELL: And a second. Is there any discussion?

(No response.)

MS. POWELL: All those in favor, raise your right hand.

(Show of hands.)

MS. POWELL: All those -- well, it's unanimous. Motion carries.

MS. BORKOWSKI: Let the record reflect that the decision is unanimous. It will be reduced to writing and service will be made or attempted upon all parties. If the respondent cares to appeal the decision, appeal can be taken under the Administrative Procedures Act. If there are no other questions or comments concerning this matter, consider this hearing completed. And the record is closed.

(Multiple conversations taking place.)

MS. POWELL: Our next item of business is going to be on the NIC Conference Site Survey

Form -- Host for 2008 Conference.

MS. WITTUM: We received an email from Deborah Norton. It went out to all states and they were just soliciting any state who is interested in hosting the conference in 2008. And I just need to know if you want to put Arkansas on the list.

MS. POWELL: I know we had considered it when we were last year.

MS. TRAYLOR: (inaudible). Hot Springs. One time.

MS. POWELL: We have had it here in Hot Springs here before. Do you remember what year that was?

MS. TRAYLOR: The year I was Treasurer.

MR. KEENE: It was before I came on, so it's been nine years.

MS. MCKINNEY: '90, '91.

MS. POWELL: I know that we have the Clinton Library now, and everything. So I know we discussed it when we were in D.C. last year, so I don't know if y'all think that we would want it --

MS. TRAYLOR: We need to ask Kathy is she up to it?

MS. WITTUM: Well, 2008 is a little ways away, so we can work on it.

MS. POWELL: Well, it's just two years.

MS. PICKERING: Why don't --

MS. POWELL: Why don't we just consider --

BOARD MEMBER: Let's do it.

MS. POWELL: -- let's give it some thought and not commit to it.

MS. TRAYLOR: You'll have to put a bid in.

MS. POWELL: Right.

MS. WITTUM: Right.

MS. TRAYLOR: Let's check out a hotel --

MS. WITTUM: Well, right now, I think their intent is just to find out the states who are interested. As in, it will probably move to another level.

(Multiple conversations taking place at once.)

MS. TRAYLOR: We need to find out the cost of the hotel rooms and --

MS. WITTUM: Well, I can find out from Deborah, what-all information they would need. I just --

MS. TRAYLOR: We had it at the Hilton in Hot Springs.

MS. WITTUM: Okay.

(Multiple conversations taking place at once.)

MR. KEENE: We'd have to form a committee to check hotels, and entertainment areas.

MS. WITTUM: We would have to be selected before we went to all of that.

MR. KEENE: No. Because the more information you have to give to that committee, the better the chances are going to be.

MS. WITTUM: Okay.

MR. KEENE: You want to get as much information together and have it at least ready to submit.

MS. POWELL: Let's see. We have --

MS. TRAYLOR: Well, I'll tell you it's real hard to have it in another state.

MS. POWELL: Well, this will give the board time to think about this and meet back again here in May. And if we find this is something we want to do, we can form a committee and have ample time to get some prices and things together.

MS. TRAYLOR: We could, you know --

MS. POWELL: For Kathy to submit.

MS. TRAYLOR: -- brochures of what, you know, different things. They like all of that stuff.

MS. POWELL: Okay.

MS. WEST: Generally, the Chamber of Commerce in our area, here in Little Rock or in North Little Rock, will do it as well. They will help a great deal. You know, all's you got to tell them is how many people and they can pretty well count it up from the get go.

(Multiple conversations taking place at once.)

MS. GORDON: Are you letting Deborah know now, whether or not we're going to consider doing it or not?

MS. WITTUM: No.

MS. GORDON: Is that what's she saying -- is that what you're saying?

MS. WITTUM: I'll find out from Deborah when they have to have the information in.

MS. TRAYLOR: You have to have it before the conference.

MS. WITTUM: Which one.

MS. TRAYLOR: Someone will have to present it at the conference.

MS. POWELL: At the Regional?

MS. TRAYLOR: No.

MS. WITTUM: Okay.

MS. POWELL: Okay.

MS. WITTUM: We've still got plenty of  
time.

MS. POWELL: We'll think about this. All  
I'm asking you to do is individually, as a  
board, think about this until our next board  
meeting in May.

MS. TRAYLOR: We'll see how much --

MS. WITTUM: Get ready for the battle.

MS. POWELL: Then be here and present it on  
May.

(Multiple conversations taking place at  
once.)

MS. WEST: Is there a lot of expense to the  
host city?

MS. POWELL: No.

MS. WEST: It's just legwork?

BOARD MEMBER: You're a board member.

MR. DOWNEY: And school owners.

MS. POWELL: You have to be here as a board  
and you have to work.

MS. TRAYLOR: You have to be here. You

have to work the registration tables. You have to be the gophers and -- now, Deborah is the conference coordinator. And Ross always helps here. And he does a excellent job at it. I mean, he's there. You never have to worry about him. He's always there.

MS. POWELL: And I think our state has a lot to offer, so.

MS. TURMAN: Yeah.

MS. TRAYLOR: Only thing, we don't want to do a bus ride.

(Chorus of laughter.)

MS. WITTUM: The continuing -- next thing on the list is continuing education. I've come across a list that I presume Linda prepared that gives some pre-approved sponsor's for the continuing education seminars. I would just like clarification from the board as to whether or not these are still the -- the pre-approved sponsors. I have Pivot Point International, Cosmetology Educators of America and out beside it I have, Education Committee of The American Association of Cosmetology Schools. NAACA's workshop on accreditation standards and MiLady's Career Institute, MiLady's seminar and



workshop division. Now, I have come across a memo that Deborah had sent to all of the cosmetology schools in '97. It said in February 28 of '97 that the NAACAs workshop on accreditation standards does not apply to financial aid workshops that people may attend. So I just need to know is this still an up to date list? Are these people still pre-approved?

MS. TRAYLOR: I don't know. I think we'd have to really look at it.

MS. WITTUM: Have these people changed? Any of this changed?

MS. TRAYLOR: Administrations change everywhere, all over. They don't have the same people running things.

MS. WITTUM: Okay.

MS. POWELL: What about that one, Kathy. The -- the one here about NAACAs workshop on accreditation standards.

MS. TRAYLOR: That should not be approved -  
-

MS. POWELL: Well, NAACAs --

(Multiple conversations taking place at once.)

MS. POWELL: -- always has been approved, as far as the NAACAs meetings, I thought. Where you did your -- like when you did -- I'm trying to decide if this is two issues here that we're talking about. One being a financial aid workshop like you do with your servicer, say, Deborah John or somebody. I realize that's not -- well, I thought and I mean, I may be wrong. Maybe I am, but I thought NAACAs workshops were accredited towards continuing ed.

MR. DOWNEY: They've always been --

MS. POWELL: I thought it was.

(Inaudible.)

MS. POWELL: Pardon me?

BOARD MEMBER: It was.

MS. POWELL: But, now, we're talking about two different things here. I know that I see it in the same sentence there, but when you say financial aid workshop, to me, that is different than NAACAs, 'cause NAACAs is not a financial aid anything. I mean it's not financial aid based. I mean, is it? Or am I wrong?

MS. TRAYLOR: Each school can use whatever

financial people they want to.

MS. POWELL: Right. I think -- in her note that she wrote there, I think she's letting us know that if you're doing your Deborah John workshop -- that's who I use, so I'll say that. I use Deborah John as a third-party servicer, but I don't receive any Con Ed hours for that, 'cause that is strictly financial aid training.

MS. TRAYLOR: That's for your personal school.

MS. POWELL: Uh-huh. And now, of course, I guess, also, to go to the Department of Ed -- if you went to the Department of Ed and had another -- you know, the regionals that they have and everything -- pardon me?

MS. MCKINNEY: Like the region reps will do ours.

MS. POWELL: Right.

MS. MCKINNEY: Because that would be -- that would address a broader base than you going one-on-one with your servicer and them telling you what you need to do within your business. So Region 6 addresses all the issues that are up and issues that are pending and issues that may happen.

MS. POWELL: Are we talking about educational issues or are we talking about financial aid?

MS. MCKINNEY: We are talking about -- well, I mean, technically, if you want to get it, it would be educating your school owners. That's where it would be at. I mean, yes, I would consider it education. But it would be a different degree of education.

MS. POWELL: Have Department of Ed, Regionals, or the Nationals -- have you ever -- have they ever been approved for Con Ed hours?

MS. MCKINNEY: Well, Jane, also it depends on where you go. If you left and went to -- and I can't re -- somebody want to help me? Atlanta, what region?

MS. POWELL: They're Region 2.

MS. MCKINNEY: Is that 2 or 3? Now, when they do theirs, it is strictly education because they even -- they do their presentations but then they break out in groups and -- because I went to one, and you're literally in a class. You have a teacher. The teacher talks. They give you assignments and they give you so many -- so much time to

complete it. And like the one that I was in was on Professional Judgment and then they gave you sheets of paper and you had to literally write down what you would consider proper documentation.

MS. POWELL: Yeah, the Professional Judgment is a financial aid issue.

MS. MCKINNEY: Yes, the issue is going to be financial aid. How it's presented, it could be a conference or it could be education. So I mean if you want to consider this, I think it should be on a case by case basis depending on how it's presented.

MS. TRAYLOR: I think that's a good idea.

MS. MCKINNEY: How it's presented. Because like I said, between the two regions, one was more literally what I would call education because if you wasn't paying attention and following directions and you couldn't do the assignment and then you had to -- everybody had to present in the entire class.

MS. POWELL: Well, I just want to clarify that this continuing ed is to educate instructors on teaching principles and educational.

MS. GORDON: Financial aid can't do that.

MS. POWELL: Financial aid has nothing to do with that. I think -- when they were in -- when they allowed NAACAs to be a part of this pre-approved sponsor, I believe, was because they dealt with issues that was relevant to all schools and it wasn't financial aid issues. It was things like contracts, catalogs, curriculum, lesson plans, course outlines. So I believe that's what makes us educators. I didn't see that NAACAs had a foundation where they should be pre-approved. I'm -- what I'm trying to do here is confirm what I thought NAACA's reason for being on here was.

And then two, try to clarify for Kathy, possibly, why that statement there is written right there next to NAACAs. It's not that NAACAs offers anything financial aid. That's a different issue.

MS. WITTUM: So of the --

MS. TRAYLOR: Kathy, read those again.

MS. WITTUM: Pivot Point, Cosmetology Educators of America, and beside it, it says, Education Committee of American Association of Cosmetology Schools, NAACAs, and MiLady's

Career Institute.

MS. MCKINNEY: Madame Chairman?

MS. POWELL: Yes?

MS. MCKINNEY: Also in the past, they have -- the office has and when there was a expected instructor who went to a university or you know, community college after school, they were going and taking biology, business math -- and that was always approved because they could pull something from it to take back and in some way apply it to what they were doing.

MS. POWELL: And that is covered in our rules regulation. It does cover colleges and universities.

MS. MCKINNEY: It --

MS. POWELL: But this is just sponsorship we're talking about right now.

MS. MCKINNEY: Right. Correct me if I'm wrong, is NAACAs not -- in the last workshop I went to, I think Chris, you were there. Did they not remove the wording that you didn't have to have four hours of teaching methodology, now? Is that not --

MS. POWELL: They have removed that.

MS. MCKINNEY: They have removed that --

it's just eight hours. I mean when you go --

MS. POWELL: For NAACAs?

MS. MCKINNEY: -- for NAC -- I mean that you don't have to have four hours of your twelve hours per year to have to be devoted to teaching methodology. They've broadened that.

MS. POWELL: It's up to your personal needs, your future needs, what your future needs.

MS. MCKINNEY: Right.

MS. POWELL: I still think these, Pivot Point and MiLady and the National Cosmetology Association -- and NAACAs, I think that those are pretty -- our foundation, so --

MS. WITTUM: Are there any others that should be added?

MR. DOWNEY: I think there should be a stipulation --

MS. POWELL: They were in the old rule. That's probably why.

MS. TRAYLOR: And they have no products that they sell.

MS. WITTUM: Do you want to add NCA?

MS. TRAYLOR: I think I would because I think there's a lot of people --



MS. POWELL: Because they weren't in the old rules, so I would.

MS. TRAYLOR: -- and that is strictly a teaching thing. You know, they work.

MS. POWELL: Well, they were previously approved for --

MS. WITTUM: Is there something that you want to request the board to add, Chris?

MS. STRAHN: No. We're hooked up with Career Institute.

MS. WITTUM: Okay.

MS. STRAHN: I would just like to clarify what pre-approved means.

MS. POWELL: When you said you were with Career Institute, is that not the same as MiLady?

MS. STRAHN: Yes, it is. That's what I was telling Kathy is, I, you know --

MS. POWELL: Well, I just want to clarify that we're talking about the same thing.

MS. STRAHN: Right. We are. I just would like --

MS. POWELL: I mean, because in case MiLady was to implement another program -- I mean, right now they have the Master Educators

Program. They may implement something else, so we're talking about MiLady as a whole.

MS. STRAHN: Right. I just -- my question is what does pre-approved mean, because I actually just -- we, my staff and I went to a two-day seminar and when I sent in the request, I was denied. We were told we couldn't get hours for it, the two days of Master Educator this time, because I didn't send it in 90 days in advance. But I also, sent the one in for July, so basically we're doing the same class but because of the time-frame, a 90 day time-frame, I was denied these 16 hours, but I was approved the other 16 hours in June. And my question is what does pre-approval mean? I don't -- I don't understand that.

MS. POWELL: Well --

MS. WITTUM: It's --

MS. POWELL: Go ahead.

MS. WITTUM: If I could explain, when a request came in for approval, the continuing education requirements currently say that the request -- the application for program approval must be submitted to the board 90 days before the proposed program date. That's in one

section of the continuing education rule. In another part of the rule, it talks about these sponsors and who can actually be a sponsor.

I take this to mean that the request for approval that Chris sent in for both of these events, the one in March and the one in June, if I recall correctly, had to be submitted within the 90 days. Her sponsors didn't have to be approved in this application process because they were pre-approved.

MS. POWELL: And the program, itself, has to be submitted 90 days prior to.

MS. WITTUM: Right. And that's what I think needs to be clarified, because I take it that the sponsors are a separate issue than the application for the program event altogether.

MS. JONES: So even though -- Madam President.

MS. POWELL: Ms. Gordon.

MS. JONES: So even though the sponsors are pre-approved, you still have to do --

MS. TRAYLOR: Not all of them.

MS. JONES: -- we have to be pre-approved before we can go to them?

MS. WITTUM: You have to get approval for

the program. And then as part of that, most people have -- also get approval for the sponsors. That's a component of the pre-approval for the Con Ed event. But these particular people here, who have been pre-approved sponsors, we don't have to worry about them. They're going to be approved as sponsors.

MS. JONES: So do I still have to give you a 90 day -- do I have to get 90 day approval before I can attend a class that's pre-approved by --

MS. WITTUM: No, the people who are putting on the event have to get the 90 day approval or submit the request for approval.

MS. STRAHN: The good news is it didn't matter to us, because we've got so much education already. But as I said, I had that one girl in Ft. Smith that I wanted to take and she needed the hours because I need some help in Ft. Smith. And you declined it because it wasn't submitted 90 days in advance, when Career Institute was doing the program. And it's like I told Kathy, it's just another example -- and don't get mad. There's no good

way to say this, but it's another example about suddenly doing what the law is or what the law states with no prior notification.

MS. TRAYLOR: That law's been there forever.

MS. STRAHN: It may have, but it hasn't been followed, Ms. Traylor.

MS. TRAYLOR: Well, that's what I thought. It was followed --

MR. KEENE: So it is our fault.

MS. STRAHN: It never was followed in the office.

MR. KEENE: It's our fault.

MS. POWELL: Let's don't debate. I need order please. Ms. Turman?

MS. TURMAN: Okay. That's what we heard several times when we went to -- and I'm directing this to you, Ms. Strahn. When we went before the Legislators, that's what we heard, that the board was not consistent. The board was not consistent. So therefore, we do have this regulation and so that's what we're trying to do, become consistent. It's going to take -- we can't keep going back to what happened 30 years ago. That did happen 30

years ago.

MS. STRAHN: No, it happened last year.

MS. TURMAN: Well, I understand. But it clearly states that we do have that.

MS. STRAHN: It's not clear, ma'am.

MS. TURMAN: It clearly states that application for program approval --

MS. STRAHN: No.

MS. TURMAN: -- must be turned in to the board within 90 days. And so you know, what we're trying to do, we're not trying to be hard to get along with or anything. We are trying to be consistent. I think you've heard me say that several times today, because I agree sometimes. But we can't keep going back to the past. We've got to look forward and say, okay, we're going to be consistent. We're going to be fair to everyone. I thought that's why we went before the Senate Subcommittee. We've got to learn to compromise and we've got to be fair and we've got to be consistent. That's what we're trying to do now. And if we can't -- if we give it to you for 90 days when you didn't submit that paperwork, that's not being consistent. I know it's difficult to start --

we've got to start somewhere. And that's what I wanted to do, to be consistent.

MS. STRAHN: Well, I --

MS. TURMAN: We're not trying to be mean. I'm not trying to be mean, but I think you know that. But you know, we have got to start somewhere to get this ball -- the ball of wax flowing. We're going -- because that wasn't the way it was before. We kept going back. Some people got to give it to some people and some others couldn't, but we want to be consistent with everybody. So that when you become before this board, you know what to expect or you submit paperwork. So I make a move that we leave it as it and --

MS. STRAHN: I --

BOARD MEMBER: I second that.

MS. STRAHN: It was done that way, that's for sure and that's fine.

MS. POWELL: I just want to say -- pardon? I just want to say that I realize that Kathy was looking at a list of the approved sponsors. You know, that list could change at any time. It would be, you know, up to the board to put someone else on or take someone else off

depending on their merit. That's how its placed on there to begin with. And if -- if they're teaching -- you know, you never know -- let's just -- I'm just going to take Letha Barnes, for example, because you all know who Letha Barnes is. You all know her qualifications. And you know, we -- just we said, yeah, come on, teach us. And we love her. But let's just say that she's stopped teaching Master Educator and started doing something else. You know, you can't put -- and it's just a blanket forever. You have to, you know, be sure that you --

MS. TRAYLOR: I would take that out to meet certain qualifications to meet pre-approval.

MS. POWELL: Well, they've proved themselves to this board over the years, they have. That's why MiLady is there. And Pivot Point, that's why they're there. And NAACAs.

MS. WITTUM: Well, and I don't -- I don't think the issues that Chris is bringing up has to do with the sponsors.

MS. POWELL: No.

MS. TURMAN: The 90 days.

MS. WITTUM: The issue is the 90 days and I



read the rules and regs to say that irregardless of the pre-approval for the sponsors that you all have, the application for the event to be approved, for the instructors to receive their Con Ed hours must be submitted within 90 days from that event. That's the reason why that one was denied. And the other one was approved because it was more than 90 days.

MS. STRAHN: I understand that. I understand that.

MS. POWELL: And you've got to figure, too, there's going to be a time-span between this 90 days where a lot of business is going to have to be transacted, too.

MS. STRAHN: This was the difference. It's not a statewide deal. This was for my school and my staff. It wasn't for the entire state. That's why in the past the practice has been you just give at least ten days in advance and we sent the stuff in and then we went. This is not a statewide deal. This was for my staff. And one other school. It was not a statewide function. It was for my staff only.

MS. WITTUM: Did any of the previous

directors give you something in writing?

MS. STRAHN: No. We just did what -- I'm just telling you -- it's -- that's what I was saying before. It's like this is another example of, you know, we're going to do it this way because this is the law. But it's not -- it's just -- we've tot -- I mean, we just never did it that way. Now, for the state thing, I completely understand that because you know, you've got to notify everyone. There is a lot of business that has to transact but not when it's a private. For someone, for your own staff, I don't think it ought to be that way.

MS. WITTUM: Well, and if I may say something and I certainly respect that you may have had the agreement with either Linda or whomever it was --

MS. STRAHN: All of them.

MS. WITTUM: That's one of the issues that I find troubling. You were allowed to do that. How many schools out there were not allowed to do it? And the only way that we're going to be able to be consistent and fair is to follow what's written in here. You know, I don't know what all of the different schools agreements

were with the previous directors. I had no knowledge until you brought it up that you were allowed to do things different than this. But that's -- that's even more reason, in my opinion, it's more reason for us to move towards following these laws and these rules and regulations so that everyone will be treated fairly.

MS. TURMAN: That's all we're trying to do, honestly, Chris, is to make sure that everybody is treated fairly. That's what I tried to tell the subcommittee. And you know that. Because you guys didn't know what to expect and others didn't know what to expect. But if everybody's on the same page then everybody's treated the same and there's no discrepancy in what to expect. That's all I've been wanting to do.

MS. STRAHN: Jane and Mitzie, both, have attended these before. Did you give 90 days notice before?

MS. POWELL: For what?

MS. STRAHN: When you attended some of the Master Educators.

MS. MCKINNEY: I'm unsure. Chris, I'd have to go look it up. I mean, I keep a notebook.

All I know is I process the paperwork. Make a copy and keep it for myself. If you've got a question, I'd be more than happy to go and look at it.

MS. STRAHN: I wish you.

MS. MCKINNEY: We were able to fax them, so everything that I've got that's been faxed has that receipt that the fax machine prints out. So that would be the way I'd have to look. I'd just have to absolutely have to look and see from the date of the event to the date I sent it in, how many days it was. But I know that ten days out, and Chris, this has always been my understanding, was that ten day thing only applied to extracurricular activities for the students. That's the only time I ever thought of a ten day thing is when it dealt with my students. So I'm assuming with my instructors there was more notice. Now, whether it was 90 days, I could not tell you. It could've been 30 or 60 days. I don't know without looking, but I don't have problem with looking.

MS. POWELL: Mr. Keene?

MR. KEENE: I'm afraid we've got another situation of what we just went through with

these extracurricular activity with the board having certain rules or laws and policy that some schools were allowed and some weren't. We just went through going over to the State Capitol, on two different occasions dealing with changes that may or may not have happened, wanting to follow the law book and the rule book the way it's written versus it may or may not have been. Some things may have been for some people. I don't want to see another problem like what we just had. Hopefully, we've fixed it today, I'm not sure we did, but hopefully we've made some progress. I don't want to see another problem like that. If they're -- if we're going to implement this law book, the rules and reg book. Then I think we need to probably give a grace period here and do something like what happened in the Legislature. Something needs to go out to these schools saying that this rule book and this law book is going to be followed from "x" date on.

MS. WITTUM: It shouldn't have to be said.

MR. KEENE: It shouldn't have to be said, but --

MS. WITTUM: It has been said already.

MR. KEENE: -- it is.

MS. WITTUM: We've said it to everyone since I came. We've said it to the Legislators. And my deal with this particular issue, is that this is not something that was a policy that just kind of floated out there. This has been in the rules and regs for at least since the early 90s from what I've been able to tell from going back and researching it.

MS. TURMAN: I would like to make a motion

--

MR. KEENE: I think what the Legislators were saying to us, though, it doesn't matter whether it was a rule and reg, or a policy, or a law, if it has not been followed by this board, meaning this board office or this sitting board, it doesn't really qualify.

MS. POWELL: But we don't know, Cliff, what

--

MR. KEENE: No, we don't.

MS. POWELL: When -- when -- when you want to start it?

MR. KEENE: That's what I'm saying. When

do we want to start --

MS. TURMAN: Madam President, may I address. What is wrong with us -- you know what? When she mentioned the 90 days, I could go right to my book and pull it out because I have studied these rules and regs and things. What's wrong with us looking and what's wrong with everybody else looking at their rules and regulations and reading them before we come to a meeting or refreshing ourselves on what is going on.

MS. TRAYLOR: Or if they have a question, all they have to do is pick up the phone and call the office.

MS. TURMAN: Or pick up the phone and call.

MS. STRAHN: That's the problem, Veda. Because when you pick up the phone and call you get, depending on who answers the phone, you get a different answer. And prior to Kathy coming, whoever answered the phone, there wasn't a problem with us saying, hey, we're going to -- we're taking our staff over here to do this or that. And now, you know, it's all about the law. Well, unfortunately, I didn't feel like it was that necessary to read every

dot -- and neither did you guys, a lot of you guys.

MS. TRAYLOR: -- every day I would call. I get a different person and I get a different answer.

MS. STRAHN: Well, my point is, you can't just pick up the phone, Veda, and get a correct answer. It just doesn't work like that, unfortunately. So and it won't at the school or anything else. I'm not dogging the board, I'm just saying that's been a problem in the past, is you do pick up the phone, and depending on who you speak to, you know. And that's just the way it is.

MS. TRAYLOR: And depending on what school you are, you get a different answer.

MS. STRAHN: Well, I can't speak for other schools. All I can speak for is myself. So.

AUDIENCE MEMBER: I just know that when you email Kathy Wittum, you know, thank God she's here. I just wish everybody would just back off and let her do her job and be done with it. Because you can email her and she will answer that within, sometimes the same day. You must live on that email. I don't know how you do



it. I know I'm not the only one emailing but I know I'm getting a response. And I know I won't do the office because we have a brand new person, Genie, I think her name is. And Shontaye is -- if you've ever sat in there five minutes and watch her do her job, she is in there and the phone rings, the computer's on, people are coming and going. I don't know how she concentrates. But Kathy's got her door. She can close it if she wants to. She's the best source of any information we ever need. I don't know what the problem is. We've got a law book. We've got Kathy. We need to move and do these rules and regulations so we can get off all this. We've spent so much time. It's written there. Just follow them.

AUDIENCE SPEAKER: All we've got to do is follow them.

MS. POWELL: We're going to --

MS. TRAYLOR: You've got to be --

MS. POWELL: We're going to have a ten minute break.

(WHEREUPON, a short break was taken after which proceedings resumed as follows, to-wit:)

MS. POWELL: Ms. Traylor?

MS. TRAYLOR: I think we're about to have a birthday girl in our midst. Tomorrow is Jane's birthday.

("HAPPY BIRTHDAY" sung in unison.)

MS. POWELL: Okay. We'll go into the --

MS. LEE: I wanted to go ahead and add AACE to that. I didn't know if that was something you needed to discuss.

MS. POWELL: At this time, we have not put any of the associations on there --

(Someone talking behind speaker.)

MS. POWELL: No. All we've put on there, I believe, was the national.

MS. MCKINNEY: Excuse me for interrupting. But I thought we had a hearing when Mrs. Lee incorporated and formed her education alliance and it was brought to the board for approval. I mean, I'd have to go back and look in the minutes.

MS. POWELL: I remember that was in the -- it was in the discussion on continuing ed and the continuing ed rule that you have to have a bonafide association.

MS. MCKINNEY: Right.

MS. POWELL: And that she was approved as a

bonafide association by this board through validating her bi-laws and credentials, but I don't --

MS. WITTUM: Well, I was just wondering what about the other associations in Arkansas?

MS. POWELL: I would just -- all I'm -- I'll just say this in a minute and I'll just leave this up to the board. We have as the continuing ed policy faith we have all bonafide associations, universities, colleges, and post-secondary institutions --

MS. WITTUM: We're proposing --

MS. POWELL: -- or proposing, well --

MS. WITTUM: -- secondary --

MS. POWELL: -- right. Proposing for post-secondary institutions to be included. And I just would like to mention -- I personally would like to have the board pre-approve sponsors that are at a national level like NAACAs because if you start listing specific associations that association might be here this year, and it might not be here next year. If y'all want to get this long tallying list, we know what -- we have three or four major associations in our state right now. You know,

maybe it'll grow with this new Con Ed rule revision. Not that that has anything to do with this, but that's my -- not that I oppose that, because I would love to have all of our associations on there. But just remember that when you implement to one, you would implement to all and you would have this ominous list.

MR. KEENE: Isn't this list pre-approved every year?

MS. POWELL: How long has it been since your visited it?

MS. WITTUM: These were done in probably '94 or --

MR. KEENE: You mean now?

MS. POWELL: That's all she's had to go on.

MS. WITTUM: I just wanted to make sure these people were still pre-approved sponsors, because this was back in the 90s.

MR. KEENE: So don't you think it might be a good idea to do this every year and pre-approve the different ones and maybe that's what Ms. Lee is asking for?

MS. LEE: Just so we can do our continuing ed.

MR. KEENE: So do these other organizations

want to also be included on this list that they need to be given that opportunity?

MS. WITTUM: Well, I think if we do it to one, we have to do it to all.

MS. TRAYLOR: We --

MS. WITTUM: I don't have a problem with this being an annual event where we should double check all of the associations. Get -- we could even have requirements or just a sheet that they fill out and let us know that it is still a bonafide association and that's good for a year?

MS. POWELL: Yes, ma'am.

MS. JONES: My name is Karla Jones. And I would like to know if their program is pre-approved and we have a pre-approval list, why then we would have to go back and get a class approved for someone that's on the pre-approved list and why is it 90 days that we have to wait? You know we have to have it in by 90 days. I could see if it was -- if the class we wanted to attend was not on the pre-approved list, I could see it being a requirement for us to send in the 90 day request to attend that class to get approval. But in the past with

the ones that on the pre-approved list, we've been allowed to -- once we've had the class and the certificates and get credit for it and now all of a sudden, we can't get it. And I just want to know what is the point of having a pre-approved list if you then have to go back and get approved again. And also one more thing, sometimes we don't get the -- I may not get the thing in the mail that says, you know, the class is going to be 90 days from now and give me 90 days to send it in. On the last issue that happened, I got the information February 7. I sent it to the board February 8 and it was denied because we didn't get it in 90 days prior. So my point is, what's the point of having the pre-approved list if you then have to go back and get it pre-approved.

MS. POWELL: I think you need to hear the terminology of a pre -- Ms. Wittum is having a list of pre-approved sponsors.

MS. JONES: They're not --

MS. POWELL: Not pre-approved programs.

MS. JONES: Even -- even if we have pre-approved sponsors, if they're pre-approved, I'm assuming that the board has done their research

like Kathy said earlier, she does her research. And I'm sure that you guys have done the research on these people that are on the pre-approved list and know that they are qualified to give these classes. Otherwise they wouldn't be on the pre-approved list. And another point that she made earlier, is who is going to do all this paperwork for all this stuff that we have to do? Well, that's just another added piece of paperwork to get approved for a pre-approved class that's on the pre-approved list. You know, I could see it, there again is, I tell them I want to teach a class. And I'm not on the list, that I'd have to turn this in 90 days prior to get me approved because I'm not on the list that's been pre-approved. That's all I want to know.

MS. POWELL: I think that -- do you have your hand up, Nick?

MR. DOWNEY: No, I'm scratching my head.

MS. WITTUM: We're talking about two different issues. According to the continuing education rules, it requires that the programs be pre-approved. That pre-approval process is to take place 90 days prior to the proposed

program date. Within in that approval, one of the things that you're getting approval for are your sponsors. The sponsors that the board has given a pre-approved sponsor list, so that we don't have to look at the sponsors. If we know that the Career Institute is going to do this program, we don't have to worry about checking out the sponsor as we're evaluating to see whether or not the program is going to be approved. We'll look at everything else to do with the program, but we won't look at the sponsor. If the sponsor is not on this list, then we have to have the information for the sponsor for us to determine whether or not that person qualifies as a sponsor.

MS. TRAYLOR: And that would have to be done in a general board meeting, to approve someone that wasn't on the list, wouldn't it?

MS. POWELL: Well, Kathy can approve someone if she found out their credentials and educational background, then she could implement someone without board approval. This is just a list of your for sure people that you know are approved --

MS. TRAYLOR: If they presented it and



wanted to be a sponsor.

MS. WITTUM: If they wanted to get on the pre-approved list?

MS. TRAYLOR: Yes.

MS. WITTUM: Then that is something that you all at the board would have to --

MS. TRAYLOR: That's what I was --

MS. WITTUM: Yes.

MS. POWELL: Mitzie?

MS. MCKINNEY: I heard Cliff say -- I think if we're going to go in and look at a list I think we need to approve a list for two years. Because any association that's planning to do an educator's event, they've got to plan ahead. Just like our budgets are two years out, I think they should have the same respect of having that two-year window. Well, I could just do -- one example, is when I went and took and got my eight hours to renew my license, the association that I went to already had their date ready for the next year. So what I'm saying is I think we need to give them some leeway, so they're not a year. They need two years so to where they can keep moving ahead of the schedule. Instead of trying to throw

something together in 30 days, 60 days, 90 days, I don't think that's fair.

MR. KEENE: I had a conversation with Kathy about this continuing ed. It was about cosmetologist, not necessarily instructors, but we had instructors here that had told her what the State of South Carolina does and that's once a year they have one board meeting that that's all it deals with is what programs they're going to give for the next year, they're going to allow for the next coming year, two years, three years, five years. It doesn't really make a difference as long as during that time set aside to approve programs. And there's so many. I got on their website and looked and I -- God, there's hundreds of them throughout the state throughout the year. Instead of having pre-approved sponsors, couldn't we just, once a year, or once every two years your board sit down and approve programs.

MS. POWELL: If the programs are coordinated two years out, but I don't think, not all of them, are going to have their programs coordinated two years out if they're

already having a problem getting in the application in 90 days.

MR. KEENE: The sponsor is not the one having the problem.

MS. POWELL: Well, that's not necessarily true.

MR. KEENE: It was true today.

MS. POWELL: Chris?

MS. STRAHN: And this is a course that is in sixteen modules, so, you know, it's a course of study, basically. It's a Master Educator in Cosmetology. It's a course of study. I also have one more question. What do you do with individuals? Do they -- are the individuals that are getting their continuing ed, do they have to file 90 days in advance? I don't think that's the policy for them. So would it be better for me, as the school owner, to just not say I'm taking all my staff to a Master Educator? Would it be better to say, you know, here's your deal, Karla, go get your education. And you know, it's just -- I think that you're handle -- I don't know for sure because we've always done it collectively or corporately, our education. How -- how are the individual

instructors handled? Like if I wasn't with a school, and I just needed Con Ed for -- how do you handle that person?

MS. WITTUM: The individual instructors are not under that time-frame, as far as I can tell. The person who is actually putting on the event is responsible for getting the program approved.

MS. JONES: But it's on the pre-approved list. I mean, my --

MS. STRAHN: I guess I'm not understanding. I know if I -- if I was not with a school and I just went to a -- Patricia did that, my instructor did that, in that Ft. Smith school. She went to Con Ed in San Antonio. She flew down there, got her a hotel room, because she wanted to go to work. And she was approved and that wasn't a 90 day deal. That's what I'm saying. So is it better for us to do it on an individual basis for -- for my teachers, would it be better for me to say just send in 30 certificates, rather than just one saying -- you know. I don't understand the difference.

MS. TRAYLOR: I know, myself, I go through individual. They send out the notices, you

pick out which one you want to attend and which one you think will be the most educational. And go. I mean it's up to us to find those hours.

MS. STRAHN: Okay. And then -- so how long do you have to give the board to get your -- that's my point. You know, do you have to give 90 days?

MS. TRAYLOR: No. We're not taking any students.

MS. STRAHN: We're not talking about students.

MS. MCKINNEY: Chris -- now, Chris, I think the point of confusion is -- and I'll try. I'll give it a try.

MS. STRAHN: Okay.

MS. MCKINNEY: When you presented it as taking a whole group, okay, you're wanted approval for this program to take my whole group to. That's a different thing that just here's a pre-approved list. As an individual I go find whatever's offered. You're asking a particular thing, limited only to your people to go to, and that's what is being addressed. It becomes a program.

MS. WITTUM: In this particular event that you submitted request for approval on. You are, for lack of a better word, the program's host, or the program sponsor, whatever word you want to use. You are coordinating this event for instructors to attend with Ms. Barnes, or whoever it is that's going to present the Master Educator workshop. You have the responsibility, as I see it, to get that program approved for instructors to receive continuing education hours. Now, once you get that approved the instructors who attend don't have to do anything but submit in their documentation that they have attended. And we get calls all the time from instructors wanting to know which events have been approved so that we can go and get our hours from them.

MS. SPEAR: My name is Deanna Spear. And I think I may have kind of stirred up something because I'm confused and I'm asking questions. I am a licensed instructor. I'm on-call for any school that needs me. I'm not on staff full-time anywhere. I have worked at Chris's school. I've worked at Ronnie Burchett's school. I've filled in Wendy at Ouachita. So

whoever needs me, medical leave, maternity leave, can pick up the phone and call and say, hey, I need someone to fill in. I help somebody out. Little Rock School District, Metropolitan, I filled in for their instructor four weeks ago, because she was out on medical leave. So if I need my continuing ed hours and I get stuff in the mail all the time, you know, registration forms, flyers announcing, you know, upcoming seminars or workshops. I fill out my registration form, pay my fee, mail it in. And then I get hours from the school association. So I think -- I don't know if it's a miscommunication or a misunderstanding but I've never had to send anything to you guys to say I need to be pre-approved.

MS. TRAYLOR: You're on an individual basis.

MS. SPEAR: I think -- I think that's where Chris is asking, does she need to go the route of the school or does her instructors need to go individually?

MS. POWELL: When you go as an individual instructor to an event, you go assuming that that program has been approved by the State so

that when you go, you can sign your name in. They will send the verification and validation that you were there back to the State Board office and you will therefore get your eight hours, correct?

MS. SPEARS: Yes.

MS. POWELL: You assume that that event was approved, aren't you? I mean, you don't go -- you don't always call the board. I mean, you may call and say, is it approved?

MS. SPEARS: I've never called the board.

MS. POWELL: Okay. Well, some people do and some people don't, but I'm just saying then, that you're assuming then that it's approved, correct?

(No response.)

MS. POWELL: When you go and you say you want to go to this event, and you're thinking you're going to get eight hours, you're assuming that it's approved.

MS. JONES: Yes.

MS. SPEAR: Pretty much, I'm assuming, yes, but I haven't had a problem with it not being approved and I've got my hours.

MS. POWELL: Right. And it's all -- what



we're saying is that that event that you went to got an approval 90 days before you went. That's why those eight hours were certified. You didn't do anything, did you, except pay and go?

MS. SPEARS: I just did my registration papers, paid the fee, and went.

MS. POWELL: Because the people that put the event on already took care of it. Is there are cell phones, please take them and turn them off.

MR. JOCHUMS: That doesn't make sense, Jane. How does the lady go to San Antonio? They certainly didn't write in here and ask the board to approve their program.

(Multiple conversations taking place at once.)

MS. POWELL: I don't know. I don't know if she got the eight hours, either.

MS. STRAHN: Well, she did.

MS. TRAYLOR: Oh, it was NAACAs schools association.

MS. POWELL: Oh, okay. Well, I don't know. The director would be in charge of whether she got eight hours. I don't know.

MS. WITTUM: When was that?

MS. STRAHN: She went -- I forget the exact date that she went.

MS. WITTUM: So it was last year?

MS. STRAHN: Yes. At the very end of last year. It was the very end.

AUDIENCE MEMBER: When you go as an individual, you're going to something that's been pre-approved for all instructors to attend if they want to. If you want to have an event just for your instructors, then you have to have that program approved. And I think that's where the confusion has come in.

MS. JONES: I have one more question.

MS. POWELL: It's my understanding the event would have to be, to be considered for continuing ed, qualified -- would have to be approved.

MS. JONES: Okay.

MS. POWELL: That's how we're reading --

MS. JONES: We've been attending these classes for three years and every time we've sent them they've asked for, you know, you have to have a qualified instructor, you've got to know who's the person in charge. They need to

know who that person is, their address, where they live, phone number and all that, a picture of them on their bio. Every time I send it in, it's been pre-approved. The only question that I have not got an answer to is why do I have to keep getting pre-approval -- getting approved for a pre-approved program? We've been doing it for three years. We sent off information in. You should have it on file. You've got her picture, her bio, her address, her phone number. All that stuff, it's on your pre-approved list. Why do I have to keep sending it in to get approved for a pre-approved program? That's all I want to know and I haven't gotten an answer yet.

MS. WITTUM: The pre-approval is for sponsors only. The approval --

MR. JOCHUMS: I don't think it says that anywhere.

MS. WITTUM: -- for the programs is a separate application process.

MR. JOCHUMS: I don't think it says that anywhere, though, Kathy.

MS. JONES: It doesn't say that, though.

MR. JOCHUMS: It doesn't say that anywhere.

MS. JONES: It doesn't say that.

MS. TRAYLOR: Can you find that point in the lines of the rules as part of the area of continuing education?

MS. WITTUM: Do you have your mark-up?

MR. JOCHUMS: What I'm looking at, is the rule that still is the rule that says, "instructors who attend a continuing education program that has not been pre-approved shall not receive credit." It doesn't say anything about the -- it says the program is pre-approved. It doesn't say the giver is approved.

MS. WITTUM: Over on the next page -- or do you have the old?

MR. JOCHUMS: I'm looking at the old on page 20.

MS. WITTUM: It says --

MR. JOCHUMS: There's a procedure for program approval, but you wouldn't need that if you were already pre-approved.

MS. WITTUM: It's not -- the programs are pre-approved, but what the board has done is get a list of pre-approved sponsors.

MS. POWELL: We never gave a pre-approval

to programs. We gave them the approved sponsor.

MR. JOCHUMS: I think that's for interpretation. I don't see it saying that. It says "pre-approved program." For that matter it doesn't even say pre-approved programs, so I think --

(Multiple conversations taking place at once.)

AUDIENCE MEMBER: Wouldn't they tell that it was already pre-approved? If I was holding a class for instructors, I would want everyone to know that it was already pre-approved, so that they wouldn't have to take the time or the trouble to send in that information to the State Board. It could already be done and all I'd have to do is -- but I'm not eligible --

MS. TRAYLOR: Right. It's the sponsors that get the approval.

MS. LEE: Letha Barnes doesn't always come to the Master's Educator classes and that's why I think, they probably need that prior approval. I think that may be why y'all are asking for that. Because they may advertise Letha Barnes, but she's got twenty people on

her staff. You know, I don't think that she's the one that comes every time. I may be wrong but I know I've been told the shuffle will come up and we may get her and we may not. So that, I can see why y'all would want it each time to be done because it may be a different person that comes.

MS. SPEARS: If you're spending money to purchase that, wouldn't you ask prior to that, aren't you pre-approved? Wouldn't you ask that question? That would clear it up. That would save you foot-work and the board, foot-work, wouldn't it?

MS. STRAHN: I can assure the board that anybody that works for Pivot Point, or MiLady Career Institute or any one of the NCA or NRC or any of these pre-approved people, would stand to teach a class are very, very qualified. This weekend, I didn't have Letha. I had her daughter Lecia. And she is every -- she is very qualified as well. I don't think you have to fear the people they have on their payroll. You know, these people have written the book we're teaching our students out of. And I don't think they would -- and she went to

San Antonio the week before Christmas and Lecia Barnes was the presenter.

MS. POWELL: Do we need to consider this -- back up on this continuing education pre-approved sponsors. Do we need to --

MR. JOCHUMS: There's no point in being a pre-approved sponsor.

MS. POWELL: Okay.

MR. JOCHUMS: Why do we even have a limit?

MS. POWELL: Well, that's what I'm wondering if we need to have --

MR. JOCHUMS: Unless it's for something for. In my mind, somebody like University of Arkansas that has permission to teach courses, you don't make them bring the curriculum every time.

MS. POWELL: Exactly.

MR. JOCHUMS: You're approved. Do your stuff. And any licensee of ours that goes to one of their programs. You know we're going to make you verify that you went, but you don't review the curriculum every time. Some of these things, I think, it's the same class they give every year, so you wouldn't need the board office to read all that stuff every year.

Which I think that's why it's pre-approved.

MR. KEENE: Would you think that that University's board would approve their class curriculum?

MR. JOCHUMS: I don't think they do.

MS. TRAYLOR: I think they do.

MR. KEENE: I don't think we should have pre-approved sponsors, because it's obviously a big problem. Confusion --

MS. POWELL: Is that a motion?

MR. KEENE: Yeah. I'll make it a motion. I'll move that we no longer have pre-approved sponsors or programs, that once every two to three years, that anyone wishing to have a continuing ed program in the State of Arkansas comes before this board for approval. And that approval will be good for two consecutive years.

MS. POWELL: Will you repeat your motion, Cliff?

MR. KEENE: The motion is to no longer have -- well, let me make two different motions.

MS. POWELL: Okay. That's where I wanted to go.

MS. MCKINNEY: Let's do one at a time.



MR. KEENE: Okay. First motion is that we no longer have pre-approved sponsors or programs.

MS. TRAYLOR: I second that.

MS. POWELL: I have a motion and a second. All those in favor, raise your right hand.

(Show of hands.)

MS. POWELL: All those opposed.

MR. KEENE: Well, there's no need for a second motion, then.

MS. TURMAN: Well, I don't know what happened.

MS. POWELL: I know. My understanding was that the pre-approved sponsor list was for the director, so they didn't have to come to the board all the time, all of the little things that they're having. Now, that was one of your motions, I know, to eliminate and make -- eliminate this list and make this list where it's approved for two years or bring it to the board, which in essence, is doing the same thing as which this list is doing, except this one has NCA.

MR. KEENE: These programs have not been coming to the board in the nine years that I've

been on here. The director, which ever one we've had is the one who always approved or disapprove them.

MS. POWELL: But they were --

MR. KEENE: What my motion said, is from now on they will come before this board, every two years --

MS. MCKINNEY: No.

MR. KEENE: That's what --

MS. POWELL: Mitzie.

MS. MCKINNEY: Madam Chairman, I have a problem with this and I'm sorry, but I cannot see somebody from Pivot Point, flying down from Chicago to ask permission to be a sponsor to a class. I don't see someone coming from the National School's Association or the American Schools Association, now, flying in from Arizona or wherever and asking this board for permission to be a sponsor. I think, you know, I think there would be a qualified list. I think the list is good. I think that it should also be open to our associations that are in the state. I mean, it save in paperwork. It saves on time and it saves on money, because you're asking -- like I said, I don't think

where you can expect our instructor's to get quality instruction to renew their license if you're going to put a noose around their neck and they have to wait year after year and hope that some national association or institution or publisher will be nice enough to get on an airplane and fly down here and ask these ten people to be a sponsor, when they are proven, and especially -- it is a contradiction to this board. How can you ask MiLady or Pivot Point to come in here to sponsor a class when you approve their textbook and that's the only textbooks you approve?

(APPLAUSE.)

MS. MCKINNEY: That's ridiculous.

MS. TURMAN: Madam President?

MS. POWELL: Yes?

MS. TURMAN: Isn't this list only for Kathy to look at so she'll know that these are legitimate sponsors? Not for pre-approved, there just legitimate. So can we use that terminology to say these are the sponsors that Kathy can look at to know that she doesn't have to -- they could be, just anybody, somebody to open to say, oh, I can teach a class. At least

if Kathy has this list, knows that these are legitimate instructors, then she doesn't have to worry. She knows that the classes will be taught. You know what I'm trying to say? And at least just have Kathy to look at it so she knows?

MS. WITTUM: Well, I took this list as being for the director's information purposes. As far as I know, this list has never been distributed to any of the schools. It just makes it easier for the director to not have to look at this particular section when an approval process or an approval application comes in where one of these people are the sponsors.

MS. TURMAN: It doesn't make it -- it does not eliminate 90 day process.

MS. WITTUM: Right.

MS. TURMAN: It just gives you -- that this is a legitimate instructor.

MS. WITTUM: Now, that's the way I see it.

MR. JOCHUMS: I didn't know you saw it that way.

MS. WITTUM: We talked about it.

MR. JOCHUMS: We may have talked about it,

but I didn't understand that a program that once approved had to come in here every time -- every -- if I want to run a program in January, I have to get something by November the year before. If I want to run the same program five months later, I've got to get it in by February. That's what you seem to be saying. That's there's no pre-approval. Each course will be approved as you go along and I don't -- that's not what we talked about.

MS. TRAYLOR: That's not it. The sponsors are approved.

MS. TURMAN: And Kathy just has a list that the sponsor is approved with our board, that they are legitimate sponsors. It has nothing to do with the 90 days. They still have to submit that 90 days prior to go to that -- if they want credit.

AUDIENCE MEMBER: I have on question pertaining to this motion. And I'm not up for an argument or anything. I just need clarification because it hit me. The way he said it, made the motion, -- make me understand whether -- if he makes this motion and it's carried, would that change your rules and regs

on continuing ed?

MS. POWELL: Would that what?

AUDIENCE MEMBER: Change the rules?

MS. POWELL: His motion died.

AUDIENCE MEMBER: It died?

MS. POWELL: Yeah, it died. So --

AUDIENCE MEMBER: I don't care if it died or not, I want to know if it comes back again, would that change anything as far as what we have on paper now?

MS. POWELL: No. I mean, we don't -- right now there's nobody making any change.

(Multiple conversations taking place at once.)

MS. POWELL: Let's take a five minute break.

(WHEREUPON, a short break was taken, after which the proceedings resumed as follows, to-wit:)

MS. POWELL: Meeting will reconvene. Mr. Jochums, why don't you give us your interpretation.

MR. JOCHUMS: Okay. I don't think that -- well, I think number one, there's obviously a disagreement about what some of these terms

mean and I think your rule needs some work. What is a sponsor? To me, these school owners are not sponsors. To me, a sponsor is the people that sell these programs that come in and do it. Now, maybe that's not what rule means. I can understand how they could be confused. That's not how we do it in the law continuing education. I do want to say -- I'm not going to do what you asked me to do. I have something I want to say in word of explanation on how this probably got more complicated that it probably already was. Kathy did call me on the phone, said I have -- I'm turning down an application for a program because they haven't complied with the 90 day rule. And it does say you have to apply 90 days in advance. That's what it literally says. I don't know that it makes any sense, especially if the same program has been approved last week to be given at somebody else's school, but that may be what the literal rule is. And I'm not actually sure what the -- whether this was just a question that somebody from the audience wanted to know what does it mean, or what does it -- you know, how does it

feel. I'm not even sure where this discussion was headed for or why we're even having it, other than -- obviously there's a lot of disagreement about what program means.

MS. POWELL: It's my understanding is that it was brought to the board's attention today by Ms. Strahn for clarification to what is to be considered pre-approved, sponsors, programs, qualifications.

MS. WITTUM: Well, and it was initiated by my request for you all to look at the list.

MS. POWELL: And then there was a two-fold here, yes. There was in -- in conjunction with that, the pre-approved sponsor list, which we jumped into saying that the school owner is the -- I think there's some question on what is a sponsor? If this is a pre-approved program by MiLady, and you pre-approved it in February, then what makes you think you wouldn't approve it for March, April, and May?

MS. TURMAN: Mr. Jochums, I'm sorry. I think I have a problem. This board really wants to do what is right, and you can't give us legal advice on this, where do we go with this? Because I want to make sure that we're



treating the school owners right and we're never surprised by this. So where can we -- you know, what do we do because we want to make sure that we're fair. That's my man goal and it's the board's main goal. I mean, what do we do with a situation like this?

MR. JOCHUMS: Well, I think at minimum, you have to find out to find hour, has this program been approved. Was it approved before this request came in recently? Did you approve it last year? It would tend to make it pre-approved if it was the same program, with the same classes, same hours. I think the rule needs to be rewritten, as in our other problem. It's gotten holes.

Now, it may be that you really want to limit -- let me back up. I think this regulation comes from the old days when nobody wanted to come to Arkansas to do programs. People have discovered that there's big bucks in continuing education. And there are a whole lot of people that aren't not associations. They're universities, colleges, private corporations. How would those people qualify under to be a sponsor on this regulation. So

we need to fix the regulation. I'm a lawyer, there's some private entities, contract law, etc. There's some fact issues that I truly don't know. I don't know if this particular program had been approved before and this was it;'s first time. I think it's important that at least a good portion of the number of people in this room thought pre-approval meant something different. Didn't mention you'd have to come back every time you wanted to get a new class. And the majority of the board seems to disagree, but that could certainly use some clarification in a new rulemaking down the road.

MS. POWELL: There are two things that I see on that same -- on that continuing ed rule. When we're speaking of the universities and colleges on there, it also goes in there a little further, somewhere on there it says, relevant to cosmetology or educational principals. In other words, you could go to college and learn something relevant to your science or you art that would be relevant to cosmetology. And they're not -- you know, I don't know what they're seeing, but that could

actually, just because it's a college or university to cosmetology or our industry.

MS. TURMAN: The 90 day clause is for individuals seeking approval pre-approval of a program. It's the board's acceptance of that organization as continuing ed. It's just plain and simple. That's all there is to it.

AUDIENCE MEMBER: Excuse me, may I ask a question?

Did I understand you to say that when it's pre-approval, that's in order for like, say if I have an association and all I want to do a seminar or class. I have 90 days to get my material in, to get approved by the office to have this class.

MS. TURMAN: Uh-huh. That's all that means.

MS. GORDON: Okay. So now anyone, any instructor that wanted to attend my class, once it has been approved, they will -- they don't have to give 90 days before they come to my class.

MS. TRAYLOR: No, they just come to your class.

MS. GORDON: Well, I'm thinking that some

of the confusion may have been brought into this.

MS. TURMAN: You know I get a list of all the continuing ed classes every year. And I pick out one that I want to go to.

MS. GORDON: I think maybe when Chris was sending in the application for her instructors to attend this class, maybe it was misunderstood or misdome or somewhere, where it was made to believe that she was trying to present the class.

MS. POWELL: She was.

MS. GORDON: Or have the class.

MS. POWELL: She was.

MS. GORDON: Okay. See that's where I've gotten confused at, because I'm thinking that -  
-

MS. POWELL: She sponsored the class.

MS. GORDON: Okay. See, I'm not understanding that she was sponsoring the class. That's what I need clarification on.

MS. POWELL: Well, maybe I'm wrong, but that's what I think.

MS. WITTUM: Let Chris, -- why don't we let Chris answer that.

MS. STRAHN: To me, if I'm sponsor -- okay.  
Maybe I need to look up the word sponsor.

MS. GORDON: Were you sponsoring the class?

MS. STRAHN: I paid for the class.

MS. POWELL: You gave your class.

MS. STRAHN: I only paid for it.

MS. POWELL: I mean, you paid for it and  
you hired someone to come in and give a class.

MS. STRAHN: Yeah, but that's not me giving  
a class.

MS. POWELL: Okay. I know, but you --

MS. STRAHN: I provided -- and when I say I  
sponsored the class, to me as sponsor, is when  
you invite everyone in. You know, it was for  
my staff. You know, it's not -- to me it's no  
different than if I go to the University of  
Arkansas and take a class in biology and submit  
my grades and my -- you know, my do I have to  
say, you know, Arkansas Board of Cosmetology  
can I go to the University of Arkansas and take  
a biology class. Do I have to do that 90 days  
in advance? I mean --

(Board members talking amongst themselves.)

MS. STRAHN: And then you send it back and  
say yes, you can or no, you can't? You know,

I'm just -- I took my staff. I paid for my staff to go to a pre-approved sponsor's class.

MS. GORDON: When you carried your class to this -- you carried your instructors then, for a class that was held somewhere else?

MS. STRAHN: Actually, we went to Texarkana, Shirley Smith that has Mena Beauty College and I had partnered together and we --

MS. GORDON: So you didn't even host the class yourself?

MS. STRAHN: I didn't go out of state, y'all. I wouldn't do that.

MS. GORDON: You didn't sponsor the class. You didn't host the class. You carried your --

MS. STRAHN: To me --

(Multiple conversations taking place at once.)

MS. GORDON: As far as you sponsored it for your instructors, you paid for them to go. That's it?

MS. STRAHN: In June, we are going to -- the one that I've already been approved for. Shirley is bringing her people. She has schools in Texas, Oklahoma, and Arkansas. And she's bringing her people to my campus in Pine

Bluff. Okay? And we paid and they send a teacher in. They bring the materials in.

BOARD MEMBER: But you've already been approved for that class.

MS. STRAHN: Yeah, in 90 days. That's right. Okay, well.

AUDIENCE MEMBER: I went to that class this weekend. And so my question is could I have went to that class and because that it is pre-approved I could submit my certificate to the board and get those hours?

If I go as in instructor like the instructor that was standing here before the board -- that's what she does. She goes to a class that's been pre-approved -- she thinks that it's been pre-approved. She does not really know. But Master Ed is one of the classes that she went to and she got her hours. She did not have to submit anything to the board, but she got those certified hours. So I could've went this weekend and not even asked Ms. Chris about it, but I could've went and I could submit that certificate to the board and get those hours.

MS. WITTUM: You wouldn't get the hours

because I denied the program. I can't speak to what happened last year. I would have to look back through those records and find out what happened with that.

MS. SPEARS: But it's already pre-approved. I mean, the Master Ed is on the list of already pre-approved to our understanding earlier. You said that that list was pre-approved.

MS. WITTUM: The sponsors on this list.

MS. TRAYLOR: The sponsors are approved.

MS. WITTUM: The program is what was denied. Now, what the board needs to do, plain and simple, are you looking at this 90 days here for just programs or are you including the program and the sponsor as one.

MS. TRAYLOR: I don't remember that one way.

MR. DOWNEY: If MiLady decides to sell Lego Blocks in her class and invite a bunch of cosmetologists, I'd like to know that it's Lego Blocks instead of cosmetology that she's talking about.

So that's why we need to look at this, because a lot of these shows come in and want to bring in their products. And that's all



they want to do is sell you products. It's nothing to do with education. That's why we look at the program and not the sponsor.

MS. TRAYLOR: I move that we table this until we have time to sit down and really go over these rules or whatever they want us to do and talk about it. And see if we can come up with more wording. I think the wording is what --

MR. DOWNEY: Well, for some reason or other I missed -- this mark-up, we've gone through it over and over again. And we sit here and look through each and every one and nobody said a thing. Today we sit here and we voted unanimously to pass these rules and regulations and accept them as they are. Now we're going to tear them apart again after they've been passed. If we're going to sit here 'til dark-thirty and still not have anything done.

MS. TRAYLOR: I'm fully in agreement with that. If we're going to approve something, let's approve it and get it over with.

MS. POWELL: Well, I think that it has been approved. I think that's a done deal, but --

MS. TRAYLOR: The problem is getting your

time -- getting your application in the 90 days. I think that's the big problem.

MR. DOWNEY: Well, --

MS. TRAYLOR: And if they get it in, there's no problem.

MS. GORDON: But that's to have the program, right? That's not for me to get my hours?

MS. POWELL: No. We're talking about a sponsor and a -- we're not talking about me going to an event and getting my continuing ed hours somewhere. I'm just a lone instructor, out here. I have nothing to do with this topic.

MR. JOCHUMS: Yes, you do. If you go to a school and it wasn't pre-approved and they didn't --

MS. POWELL: Well, yeah, but --

MR. JOCHUMS: -- get it in 90 days, you're not going to get eight hours.

MS. POWELL: That's right.

MR. JOCHUMS: It may have a lot to do with you as an instructor.

MS. MCKINNEY: What if possibly, just for clarification, and maybe this is where this is

coming from is maybe, the word programs being used and maybe it should say that's an educational sponsor list. And then leave this other down here with program approval.

MS. TURMAN: Just see that as a list. Not approved, just a list.

MS. WITTUM: Well, in my mind it is just a list.

MS. TURMAN: That's what I'm saying.

MS. WITTUM: I don't see it as anything different.

MS. POWELL: Well, she's actually got it here as a continuing education providers list.

MS. WITTUM: That's just a list.

MS. POWELL: Where is your pre-approved --

MS. WITTUM: That's what she told me it was.

MS. POWELL: Oh, she just told you it was a pre-approved list.

MS. WITTUM: And but you all approved it during the minutes on the --

MS. POWELL: We approved these people as education providers. And we didn't approve them --

MS. TURMAN: There's a problem with the

wording.

(Multiple conversations going on at once.)

MS. TURMAN: So we can eliminate the pre-approved and so therefore the 90 day would still --

MS. POWELL: Yeah.

MS. TURMAN: I would like to make a motion.

MS. POWELL: Okay.

MS. TURMAN: I make a motion that we list -- these are simply a list of providers, educational providers. And that we still have to have a 90 day notification for the program.

Does that make sense?

MS. TRAYLOR: I second it.

MS. POWELL: I have a motion to maintain a continuing education providers list -- and that we will maintain a 90 day notification for approval of a continuing education program event.

MS. TURMAN: Right.

MS. POWELL: And I have a second. All those in favor, raise your right hand.

MR. KEENE: Can we discuss that a little bit first?

MS. POWELL: Oh, I'm sorry.

MR. KEENE: Only because I need clarification on what the difference is in the way we're -- what it is right now and what Patricia's motion was. What's the difference?

MS. POWELL: I don't believe that there is -- at my understanding, any difference other than the public perception that there was some type of pre-approval list. Is that -- am I correct?

MR. KEENE: But if it doesn't say that it's pre-approved, the way it reads right now it doesn't say it's pre-approved then what are you changing?

MS. TURMAN: We're not changing anything.

MS. POWELL: We're not changing it.

MR. KEENE: Well, then why have a motion?

MS. POWELL: Well, according to -- am I correct that there is no documentation calling this a pre-approved list?

MS. TURMAN: Right.

MS. WITTUM: I came up with the language pre-approved because you all had approved these at varying times during the 90s.

MS. POWELL: As program education providers.

MS. WITTUM: Yes.

MS. GORDON: Who started that list?

MS. POWELL: We're just going to go with our list. Well, if y'all want to implement something else.

MS. WITTUM: I won't implement anything.

(LAUGHS.)

MS. POWELL: Ms. Strahn?

MS. STRAHN: On page 43, on the mark-up, it says instructors who attend a continuing education program that has not been pre-approved by the board shall not receive credit hours for the hours earned. So it is in the language. And also I received an email from Ms. Wittum that said something about -- I can't remember exactly what it said, but I have it printed. It's in a file. And it says that, you know, you can -- something about being pre-approved sponsor. And so I emailed back and I said, you know, -- may I see the list? And she sent me the list. And then so -- there is language that says pre-approved and it does lead one to believe that you know, as long as you're going within this scope here, that there shouldn't be a problem for you to spend your

money and send your fee and sign up for it.  
The word pre-approved is in the language.

MS. WITTUM: Well, it's -- that was my  
language.

MS. STRAHN: But it's also in this  
language, Kathy, and it's not underlined. In  
other words, y'all didn't just do this.

(Board members looking for page 43.)

MS. WITTUM: Chris, for that -- that  
sentence there is referring to the pre-approval  
for the program that it talks about on the  
following page.

MS. STRAHN: But the language is still  
there.

MS. WITTUM: I agree with you that the  
language is confusing.

MS. POWELL: The language there is talking  
about on the next page where it's supposed to  
apply. But it's not applying as though there  
is a pre-approved list out here or at the  
board. There's not a pre-approved list is what  
we're saying, correct?

BOARD MEMBER: (Inaudible.)

MS. POWELL: We have a list of educators,  
but there has not been a program pre-approved.

MS. STRAHN: What do you mean you don't have a list? I have an email from Kathy Wittum that says these are the pre-approved sponsors that are appropriate.

MS. WITTUM: That was my mistake.

MS. POWELL: I have a motion and a second.

Is there any more discussion?

(No response.)

MS. POWELL: All those in favor, raise your right hand.

(Show of hands.)

MS. POWELL: All opposed? Any abstentions? What are you doing, LaJoy?

MS. GORDON: I'm abstaining.

MS. POWELL: Two abstentions. Motion carries.

Okay. The next item is Discretionary Student Hours: Tulsa Student Appreciation Day.

MR. KEENE: I'd like to make a motion.

MS. POWELL: Mr. Keene?

MR. KEENE: I'd like to make a motion that we approve the hours to the students that went to the Tulsa Student Appreciation Day event last year.

MS. TURMAN: I second it.



MS. POWELL: I have a motion and a second to approve the student extracurricular activities hours for the Tulsa Student Appreciation Day event.

Is there any more discussion?

(No response.)

MS. POWELL: All those in favor, raise your right hand.

(Show of hands.)

MS. POWELL: All opposed?

(No hands shown.)

MS. POWELL: Any abstentions?

MS. POWELL: Okay. Motion carries. Next item is Cosmetology Legislative Changes in 2007.

MS. WITTUM: Before you leave let me give you a copy of what the suggestions are on the law changes. We need to start looking at that so that we can get those together to send over to the session. I have just a draft.

MS. POWELL: Cosmetology examinations. Marcel Iron requirements and shaping and Pin Curl. Placement may be -- scope of practice for Aestheticians and electrologist.

MS. WITTUM: That committee will meet.

The Marcel Iron requirement, you all wanted this put on the agenda following the full overview when we learned that the Marcel Iron is apparently not going to be a requirement as far as NIC goes. So we need to know are we going to leave it?

MS. POWELL: I think we have stuck to the Marcel Iron with NIC was doing the Marcel Iron technique. Now that NIC is no longer doing the Marcel Iron technique --

(Multiple conversations taking place at once.)

MS. POWELL: You know, we are talking technique. We try to -- we still -- you know. We are not doing the Marcel Iron technique. So I guess the discussion here is whether you want to maintain the Marcel Iron. I know I don't really have a preference. I know that a lot of our school owners do have a preference. I know that we used NIC because it was NIC.

MS. TRAYLOR: I don't have a problem with -  
-

MS. MCKINNEY: I make a motion that it is the discretion of the examinee whether they use a Marcel Iron or a thumb-clicker because in

case -- in use for the final phase of the examination.

MR. KEENE: I'll second that.

MS. WITTUM: When you say examinee, are you talking about the board members?

MS. MCKINNEY: No, examinee would be the one taking the exam.

MS. POWELL: I have a motion and a second. Is there any discussion?

MS. TRAYLOR: Yes. I think that we should leave it up to the individual school owner. If they want to teach the Marcel Iron --

MS. PICKERING: Absolutely.

MS. MCKINNEY: Well, --

MS. TRAYLOR: I think you should leave it up to the school.

MS. POWELL: Well, when the student comes to the exam they're going to do what they want to do anyway.

(Multiple board members speaking at once.)

MS. MCKINNEY: I was out of order, and I would, with your permission like to address the audience with school owners out there -- did you not take that that you're going to go back and you're going to say students you can use

this or that?

MS. TRAYLOR: If they don't want their students to do it, that's up to them.

MS. POWELL: The board will not mandate either one. If you wanted to amend your motion to the board not mandating a particular type of curling iron.

MS. MCKINNEY: Okay. I would like to rephrase -- I would like to make the motion that the board does not mandate whether or not an examinee or school use a Marcel Iron or a thumb-clicker, --

MS. POWELL: Spring.

MS. MCKINNEY: -- spring, thank you, but leave it up to their discretion.

MS. TRAYLOR: Second.

MS. POWELL: I have a motion and a second. Any more discussion?

(No response.)

MS. POWELL: All those in favor, raise your right hand?

(Show of hands.)

MS. POWELL: Unanimous, motion carries. Let's talk about the shaping of pin curls.

MS. TRAYLOR: I did not know that know the

new ones had left and right on them.

MS. WITTUM: They do. So we just need to know if we want it to go that way or if y'all don't care. And I did check with NIC and they said that the change was inserted because the examiners could see better and know what is happening whereas some candidates work might be difficult to tell what they have attempted on what side.

MR. KEENE: Well, that's true.

MS. POWELL: The question we're deciding is will the board require the students doing the examination to use this right/left placement of these pin curls that they're doing during examination or can they put their ridge curls on the right side or the left side? And vice versa on the c-shaping with the pin curls. Does it matter to you, the board, in examinations which side that they put these pin curls on?

MS. MCKINNEY: Madam Chairman, and I'll try to get better language this time. I would like to make a motion that a candidate has the choice of putting their ridge curl and/or their two rows of four curls on either the right or

the left. That it doesn't matter. They can do whatever is more comfortable for them.

MS. TRAYLOR: I second that.

MS. POWELL: I have a motion and a second.  
Any more discussion?

(No response.)

MS. POWELL: All those in favor, raise your right hand?

(Show of hands.)

MS. POWELL: Unanimous, motion carries. We have someone that wants to address the board. Kerri Bangert, Development Coordinator with the Arkansas Coalition Against Domestic Violence. Will you come up to the table up here, please?

MS. BANGERT: I know I have a new perspective for all of you in this room and for Valerie, who is the professional that does my hair and nails and everything. And oh, goodness. There's a lot behind it.

What I'm here for is just to -- I know Kathy, Ms. Wittum, excuse me. First of all, my name is Kerri Bangert. And I'm with the Arkansas Coalition Against Domestic Violence. And I appreciate the opportunity to be here to

enlighten y'all with some information. I know Ms. Wittum said she put some information in your packet, but also, I gave you my little marketing package there, too.

I don't want to take up much of your time, but in just -- you can read in there what the coalition is about. I will just briefly tell you that we are a statewide, private, non-profit organization that works on the national and statewide public policy for awareness of domestic abuse. And just trying to make -- it's a societal issue and at the same time its underreported. When I say reported I don't necessarily mean to the police, but underreported, under talked about, and the most misunderstood. And the reason I'm in this field today, is because I was working with at-risk youth on mental health and non-profit and realizing that a lot abuse -- it all went back to the family issues. And I've been with the Domestic Violence since 1995. We opened a program in Conway, Arkansas. That's a little background here, but all the information about the coalition. And we do -- we are a membership organization that the shelter

programs across the state are members and work real closely with that.

And one of the things that we're doing is we're working to bring it more into public awareness. Making the education available. One of the things verified by study, it has been verified that your salon, your stylist, your hairstylist, cosmetologist, whatever that correct term is, is told more about your life and your confidentiality issues than your best friend. And like I said, that's in our informational packet that I did the research on. The national initiative was made called Cut It Out. The program that we're proposing to do in Arkansas is a model of that on a small basis. That would include not making therapists out of hair professionals but providing education across the state in those schools that the owners want it in, to provide education at no charge, to everyone, to whomever you choose, on the red-flags. You know what are -- you know, when someone tells you something, not to go in and tell them get out. Not to say, do this, but to provide information. That there is a place that you



can call that's confidential. And we would provide all of that with the brochures. With that of course, statewide those that chose to be involved would be involved in a statewide media campaign to bring -- because one of the things we know is we need more education and awareness. And I know this gentleman right here and it's not just women's issues. We know men are abused by their spouses as well. And so I didn't want you to think that this is just a feminist group out trying to -- we are open to that and we do help men as well. And the reasons I'm here is just to bring attention to the State Board so you'll know why we're talking to the school owners and what we're doing. To answer your questions and make you aware of that. For you to say we appreciate it. We'd like to have your blessings so we can move forward and not feel like there's going to be any controversial issues with the board. And I've already talked to almost all the owners. There's different levels of interest right now. And that's okay. We're open to that. We have the education component where we would work with the individuals on being able

to provide the information. It would be at no cost to any owner. I know there was a question about going outside of their facility or work or school, but that's not what we're talking about. We're talking about in the schools of doing this there, for your class. You know providing the information. The other thing of course, is the media campaign. I have forwarded this to all school owners by email or by mail by their request. And if for some reason someone is here and did not receive it. You know how the email system is, but there is included in this information, Cut for a Call, the strategic business investment. The return that the school programs can receive. Now that doesn't mean -- because the other tri-fold that I didn't get to yet is working with the fundraising component of it. October is Domestic Violence Awareness Month. And if there was some way that there could be a fundraiser done or a procedure or a percentage after cost donation into the shelter programs. That's the three-prong of the whole program. But that doesn't mean you have to participate in that to get your information in the media, because we

know that the education and awareness are the main thrust and the other will come. And the main reason that we incorporate the fundraising program in there is from the successful programs done in other states. So that's one of the reasons I'm in this position is because of public awareness statewide partnershiping to provide education and also incorporate sponsorship at that level. This is not about my organization that I work for. It's about direct services. I've thrown a bunch of information out there. In the pamphlets you'll find success stories, and some examples of public awareness information and also some posters and things that aren't anything that school owners would say that I don't want.

I want to end with this, a letter from a family we worked with, "Dear Mom, I hope you know that love is the most important thing in life to a person. And right now, you need a lot of love because we are away from home and leaving home is hard. So if you ever need some love, like a talking or if you need a hug. We need to do one of these things at least once a day. And if not that, at least once a week.

If not once a week, every so often, I hope. We can do these things anytime that I can. Because sometimes you need it. Because sometimes I need it. And sometimes when you cry it makes me feel bad too. Because I am your oldest son I will understand your problems when you have them. Read this when you feel bad and maybe you will feel better. I love you, Mom." This is what we're trying to go for. I appreciate your time. And just wanted to share this with you.

MS. POWELL: Our meeting is adjourned.

(WHEREUPON, the proceedings were concluded.)

BEFORE THE ARKANSAS STATE BOARD OF COSMETOLOGY

I, TERESA WINGFIELD, Certified Court Reporter in and for the State of Arkansas, do hereby certify that the proceedings of said March 27, 2006 Board meeting and hearings before the Arkansas State Board of Cosmetology were taken by me in stenovoice and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or

has a substantial tendency to affect impartiality that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide and service not made available to all parties to the action.

CERTIFIED TO on this the \_\_\_\_ day of \_\_\_\_\_, 2005.

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TERESA IDEN, CCR

ARKANSAS SUPREME COURT

CERTIFICATE NO. 646

EXPIRES 12/31/2006