

**ARKANSAS
STATE BOARD
OF COSMETOLOGY**

**FEE STRUCTURE
COMMITTEE**

MEETING REPORT

SEPTEMBER 24, 2007

FEE STRUCTURE COMMITTEE MEMBERS (PRESENT)

Patricia Turman, Chair

LaJoy Gordon, Board Member

Ann Pickering, Board Member

Barbara Ward, Board Member

Cathy Caver-Blade, President

Kathy Wittum, Director

Erika Gee, Legal Counsel

COMMITTEE MEMBERS (NOT PRESENT)

OTHER PARTICIPANTS IN ATTENDANCE

Bob Philyaw

Scottie Burchett, Board Member

Meeting Report

The Fee Structure Committee met today to continue reviewing the Board's Rules to make recommendations on revisions that are necessary for bringing the rules into compliance with recent law revisions. In addition, this Committee will recommend changes to the civil penalty guide that is currently used by the Board during its review of disciplinary cases. The meeting was called to order at 9:00 a.m.

The meeting began with Ms. Gee explaining the fees are not in the law or rules at this time, so the Board has the following options on proceeding:

1. The Board can enact an emergency rule where the procedures for a formal rule change are waived because it is temporary and would be effective for only 120-days. The Board would set fees where they want them and proceed with an emergency rule process.
2. The Board could continue charging the fees that have been in place and not raise them until the rules are properly promulgated.

Committee members discussed the process and the fact that there are many opportunities being presented to the public for comments concerning rule revisions.

The discussion also included changes to the civil penalty guide and whether the Board wants to put it into the rules. The decision was made to not place the guide into the rules, but rather propose a guide similar to what is currently in place with make changes to the specified fines as necessary.

A review of proposed Rule 1.8 commenced and comments were made on the following parts:

- b. Ms. Gee suggested generalizing the party to which payment would be made for the practical and written examinations, as the vendors may change. Therefore, the references to a specific vendor will be replaced with "*private-testing entity.*"
- d. Director Wittum commented that under the proposed revision a reciprocity applicant would be required to pay a \$90-one-time payment to the Board, plus the payments to the private-testing entity in the event the applicant has to take the practical and/or written examinations. She stated she wants to ensure the Committee is aware the one-time payment to the Board is separate and apart from the examination costs. The issue was discussion and Committee members acknowledged their awareness of this fact.
- e. Ms. Gee stated under the rules if a change is made to the establishment it is considered a new establishment, so she questioned if a relocation would require the \$100 one-time payment the same as when it was first licensed. Director Wittum responded that it would and she reminded the Committee that the license design would be more expensive to produce than the paper copy previously required. Ms. Gee suggested adding language to the draft that clearly explains the fee includes name changes and relocations. The issue was discussed and the Committee members agreed to the \$100 one-time payment would apply to relocations as well. It was also clarified that the establishment licenses would contain a photograph and be the badge-style, just as the practitioner licenses.

h. Ms. Ward questioned if the draft language would include a name change to a school. Director Wittum stated this has typically required a pro-rated fee for the remainder of the year; however, this practice has generally stemmed from the language in Rule 5.4. Ms. Gee suggested placing a fee in the new fee structure addressing these type changes to a school; therefore, the Committee recommends making revisions in Rule 6 where new and purchases of an existing school are noted.

During the discussion concerning schools, Ms. Gee commented about the need to provide a bond. She stated under the current rules a school owner is allowed to sign an affidavit providing for an individual surety as opposed to purchasing a bond to protect students enrolled at the school in the event the school closes. She explained that an individual surety is difficult for a student to collect on and she does not believe this is technically in compliance with the intent of the law. The Committee reviewed the relevant provisions in the rules, which are Rule 6.4(A)(3) and Rule 6.6(A)(5), and they recommend striking these provisions from the rules.

Ms. Gee also suggested changing the word “*accredited*” to “*licensed*.”

j. Ms. Gee informed the Committee that in her legal opinion the Board does not have the authority to regulate establishments or people operating in a demonstrator role. She explained that in A.C.A. §17-26-103(c) states, “This chapter does not prohibit the recommendation, demonstration, administration, or sale of cosmetics by any person not claiming to be a cosmetologist.” She stated she understands the Committee’s concern about these issues, but wants it understood what her legal opinion is since she does not believe the Legislators will like the proposal to regulate demonstrators. The Committee discussed whether this included the cosmetic counters at retail stores and other places, such as Glamour Shots. Ms. Gee stated it does include them, as the service they provide is more of an administration of cosmetics and not a demonstration of cosmetics. She stated she understands the demonstrator permit and regulation has been in the rules, but it has not been enforced before. She stated she believes someone will bring up this issue during the legislative process to promulgate the rules and the Committee and Board needs to understand what her legal advice is on this issue.

Committee members questioned if the law could be revised in the future that would allow regulation in the area of demonstrators to which Ms. Gee stated yes and explained how the Board would need to proceed in that regard.

Ms. Gee stated the only demonstrator’s she believes the Board can legally regulate are wig demonstrators, because any others are cosmetic in nature. She stated she does not believe the existing regulation (Rule 2.3) or the proposed regulation complies with the law.

At the conclusion of the discussion on this issue, the Committee’s recommendation is to remove the demonstrator fee and the demonstrator provision (Rule 2.3) in light of the legal advice.

After reviewing the draft language, the Committee discussed the other law revisions requiring changes for this Committee to review, which are:

- a. A.C.A. §17-26-319(g) allowing for a lifetime license to be issued to certain persons;
- b. A.C.A. §17-26-319(d) allowing for a medical waiver in certain instances; and
- c. A.C.A. §17-26-323 and 17-26-104(c)(5)(C) allowing for health and safety workshop to be developed in disciplinary cases.

Director Wittum stated the Committee needs to discuss the medical waiver. The intent of the language was to allow a licensee to be exempt from the costs associated with reinstating a license in the event the licensee was suffering from a medical or long-term condition. She explained this issue was reviewed recently when a lady contacted the office and stated this had happened to her and she wanted to reinstate her license. Unfortunately, what was learned in this review was that a licensee must still examine if the license is lapsed for five years or more, just as with the previous language. Ms. Gee confirmed this to be the case and stated A.C.A. 17-26-319(e) mandates for re-examination once a license is lapsed for five years or more. For this reason, there will be no changes necessary in the rules to address this law change.

Committee members discussed A.C.A. §17-26-319(g) and the creation of a lifetime license. The decision was made to incorporate language in Rule 1.8 addressing this and to require no fee for the first lifetime license issued. A licensee will be required to pay the \$20 duplicate fee per license for any duplicate copies in the event they are requested. In addition, Committee members discussed a licensee whose license is lapsed but they meet the qualifications of a lifetime license. The decision was made to require the license be brought current before a lifetime license would be issued.

Director Wittum stated a letter would be issued to licensees meeting the above qualifications to advise them of this fact and to verify the address on file is accurate. In addition, the licensee will be required to provide a photograph for the lifetime license.

Ms. Gee directed Committee members to A.C.A. §17-26-104((c)(5)(C) requiring the Board to establish a health and safety training. After discussing this new concept for the Board, Committee members decided to separate penalties between license violations, health and safety violations and any others and establish a grid referencing first, second, third and so on violations. Ms. Gee suggested having something flexible and possibly setting a range instead of a specific amount.

During the discussion of the above, Director Wittum encouraged the Board to move away from the “\$1 per day” concept for two reasons: 1) it is very easy to make a calculation error; and 2) it is impossible to know if the person was working during the time period in which he/she is being penalized.

Committee members discussed how best to address license violations, in particular with first-time offenders. A suggestion was made to send first-time offenders a delinquent notification letter and give them a time period in which to renew the license or face disciplinary action by the Board. Ms. Gee stated this is consistent with practices followed by other licensing boards.

Ms. Turman asked Director Wittum for her opinion on this issue, as she has experienced it on the administrative level. Director Wittum stated she believes the hearing order is confusing to recipients because it only addresses the civil penalty and not the licensing or reinstatement fees that must also be paid in order to bring the license current. She stated the Access database will be equipped with the functionality to calculate all fees required to be paid by a licensee and generate an invoice. In addition, Ms. Gee suggested implementing an incentive for a lower civil penalty if it is paid by a certain date.

Director Wittum also stated it will be possible in an Access database to generate a report on a monthly basis to learn who is delinquent and a letter can be sent to those people giving them a deadline to bring the license current or advise the Board of their inactive status. Failure to respond to the letter would result in

a hearing order being issued for those who still appear on the delinquent list when it is generated the next time.

Director Wittum stated at the NIC national conference she learned there are several states that revoke a license when issues are not satisfactorily addressed. Another concept discussed during the conference was to place a salon or practitioner on probation and send the inspector in unannounced on a monthly basis. Committee members liked this idea but were concerned about the hardship it would place on inspectors. The discussion included comments about implementing a practice to more closely monitor habitual offenders and extending the time for an inspector to visit those who consistently pass inspection. Establishing a grading system was discussed that could include an “A” and “B” list and those deserving of a place on the “A” list would not be inspected as frequently as those appearing on the “B” list. North Carolina’s concept to broadcast violators in the news was discussed, which Ms. Gee pointed out is consistent with how restaurants are handled. She stated the Board would have to identify what would be deserving of an “A” grade. She also stated that salons and practitioners would challenge a “B” grade more, so the inspectors would have to be fair in their inspection process.

Ms. Gordon commented that previous discussions have included the Board releasing Public Service Announcements (PSAs) to inform the public about issues or people of concern. She commented there are numerous people working out of their home. The discussion then turned to the safety of the inspectors in addressing these type situations.

Committee members stopped for a short break at approximately 11:00 a.m. and reconvened in order to review the penalty guide currently used by the Board. Each of the below items were categorized in the following manner:

- 1 = Most severe violation
- 2 = Moderately severe violation
- 3 = Least severe violation

Ms. Gee stated if the Committee would share what category the infractions fall in from their perspective, then she and Director Wittum could draft a penalty guide for further review. Committee members noted which violations on the guide should be combined and/or removed, and their decisions are as follows:

<i>Category based on severity of violation</i>	Rule No. 4.2 (A) Enforcement	<i>Penalty currently used</i>
1	Adherence to infection control procedures	\$250
1	Inspection of facility allowed	\$200
1	Photo ID presented, if requested Comment: once photo-licenses have been issued	\$200
1	Salon license current	\$25 +
1	Salon is licensed	\$150
1	Practitioner is working in a licensed salon (not owner)	\$50
1	Practitioner license current	\$25 +
1	Practitioner is licensed	\$250

	Unlicensed practitioner ineligible for reciprocity Comment: inspectors are not aware of eligibility for reciprocity	\$75
	Practitioner unaware of the use of his/her license Comment: should not be an issue once photo-licenses are distributed	\$500
1	Electrolysis performed by a licensed electrologist	\$500
1	Hair/Skin services performed within scope of practice Comment: combine with below	\$100
	Nail/Hair/Skin services performed w/i scope of practice Comment: combine with above	\$250
1	Electrolysis performed within scope of practice	\$500
1	Non-electrologist adhering to laser guidelines	_____
	If no, is licensee employed by a physician If yes, what is the physician's name	_____

Rule No. 4.2 (B) Consumer Information

2	Health & Safety Rules posted in reception area	\$5
1	Salon license posted in reception area	\$5
1	Practitioner license(s) is visible posted at station(s)/reception	\$5
	All posted licenses are current Comment: duplicate	\$5
	— If not, licenses surrendered/confiscated Comment: duplicate	

Rule No. 4.2 (C) - Physical Facilities of Salons

1	(1) Hot and cold running water	\$25
	Water supply properly maintained	\$250
1	(2) Plumbing properly maintained	\$250
	(3) Toilet facilities available	\$25
	Completely enclosed with door	\$25
	Clean/odorless and in good repair	\$25
	Supply of toilet paper	\$25
	Receptacle for waste	\$25
	Not used for storage	\$25
2	(4) Handwashing facilities available	\$25
	Hot & cold water	\$25
	Hand-cleaning soap at each lavatory	\$25
	Sanitary towels/hand drying device	\$25
	Receptacles for waste nearby	\$25

		\$25
2	(5) Drinking water available Cups, glasses, etc. disposable	\$25
1	(6) Garbage/refuse disposed of regularly	\$25
1	(7) Free of rodents/insects	\$25
3	Open windows/doors, etc. screened	\$25
2	(8) Floors, mats, clean/repared	\$25
2	Walls, woodwork, dec. mat. Clean/repared	\$25
2	Equipment, furnishings fixtures clean/repared	\$25
3	Ceilings clean/repared	\$25
1	(9) Working area floor covering non-absorbent	\$25
1	Working area floor covering in good repair	\$25
3	(10) Floor mats non-absorbent/easily cleanable	\$25
3	Carpet only in non-working areas/good repair	\$25
3	(11) Work area contains sufficient lighting	\$25
1	(12) Ventilation is compliant to rules mechanically vented to outside	\$250
	Salon free of excessive fumes/odors, etc.	\$25
	(13) Minimum Equipment - have & maintain	\$25
	Comment: combine all in this section and take out references to "sufficient"	\$25
	a) Sufficient number covered waste receptacles	
	b) Sufficient liquid sanitizer w/EPA approved disinfectant for instruments/supplies	\$25
	c) Sufficient closed receptacles for soiled towels	\$25
	d) Sufficient airtight containers for sanitized instr.	\$25
	e) Sufficient closed cabinets to hold clean towels	\$25
1	(14) Animal in salon If yes, is it a service animal?	\$75
1	(15) Persons massaging inflamed, infected or erupted skin are using proper protection	\$25
2	(16) a - Clothing of practitioner clean	\$25
1	b - Practitioner washed hands before services	\$25
1	(17) a - Headrest covered for each client	\$25
	b - Shampoo bowl cleaned before/after each use kept in good repair condition sanitary	\$25
	c- Treatment tables sanitized before/after each use	\$25

		\$25
1	(18) a - Towel discarded after each use	\$25
	b - Towels properly laundered by compliance to rules and disinfected	\$25
	Laundering Method:	
	1—by commercial means	
	2—by facilities on premises	
	Laundry facilities on premises:	
	Used only for operation of salon	\$25
	Separate from working area	\$25

During the discussion, Committee members discussed including in the penalty guide penalties against students and schools. The discussion included how to address situations when students are afraid to come forward on issues concerning schools. This issue is being addressed by the Grievance Committee and did not result in an in-depth discussion.

Director Wittum announced the 2nd floor conference room is reserved for committee meetings on Monday, October 22nd, and requested committee members put that on their calendar.

After no additional comments were forthcoming from participants, the meeting was concluded at 12:05 a.m.

*** End of Report ***

Report prepared by:

Kathy Wittum, Director