

KANSAS BOARD OF COSMETOLOGY
BOARD MEETING

MINUTES OF NOVEMBER 14, 2011

REGULAR BOARD MEETING

The November meeting of the Kansas Board of Cosmetology was held at the Board office, 714 SW Jackson, Suite 100, in Topeka, Kansas. The meeting was called to order by Ms. Allene Owen, Chair. Also in attendance were Ms. Eileen McDonald, Vice Chair, Ms. Marie Plinsky, Member, Ms. Nicole Jonas-Piper, Member; Mr. Roger Dean Holmes, Jr., Member, Mr. Charles Householder, Jr., Member; and Ms. Shimika Kennison, Member. Ms. Athena Andaya, Deputy Attorney General; and Ms. Chiquita C. Coggs, Executive Director for the Board, were also in attendance. Minutes were recorded by Ms. Laura Gloeckner.

ITEM I. PUBLIC COMMENT.

Laurie Mason and Erin Sutton of Eric Fisher Academy appeared before the Board for Public comment. Ms. Mason stated that field study request challenge for schools is that the state Board only meets every other month and students are missing out on experiences. Ms. Mason requested that the Board allow a certain number of hours for field study without prior approval or allow for the field study requests to be sent in for approval after the event has taken place although in doing that they would have to risk being denied the hours.

Ms Mason went on to the topic of apprentice licensing. Ms. Mason states that there was a discussion at last board meeting about changing apprentice licensing. She states that she thought that in the last year the timing was changed as to when the apprentice application was to be submitted to the state and who was going to be in charge of paying for it. At her school right now the Admissions Department fills out the apprentice application with the student. When the student comes for the first day of class, the applications are sent in for the entire class and the school sends in one check. The students pay the school for the apprentice license as part as the student kit. Ms. Mason stated that has worked very well.

Ms Mason then went on to discuss Prometric challenges. Ms. Mason stated that the school does not get feedback except for the pass fail report every six (6) months. Ms. Plinsky asked what feedback they are looking for from Prometric.

Ms. Mason stated that her understanding is that the blood spill procedures are being taught from the CIB (candidate information bulletin) written procedures. The school does not observe or go through practical training regarding blood spill but students are tested in the practical portion of the state board exams for blood spill. Ms. Mason stated that NIC gives instructor training at least once a year. Currently with Prometric the instructors are not being educated on the testing process. Currently the students are getting jobs straight out of school and working on their temporary licenses. If they do not pass a portion of the test their license is revoked and they lose their job. Ms. Mason posed the question as to whether we can find a better way to test students so that they are preparing them and equipping them to pass the test. She stated that they feel like as a school their hands are tied because they are teaching off of a piece of paper what needs to be done hands on.

Ms. Plinsky requested Mr. Householder's opinion regarding blood spill procedures.

Mr. Householder stated the blood spill procedure on the CIB for cosmetologists does not really attack the essence of it. He stated it also doesn't seem like it is under OSHA certified training.

Ms. Mason stated that the CIB is vague. Students aren't passing blood spill and they are unable to identify why or where they are going wrong.

Ms. Plinsky asked if a state inspector has come to do an infection control class at their school. Ms. Mason stated that an inspector is coming tomorrow to teach the class and the inspector has come before. Ms. Plinsky asked if the school is more successful after the state inspector comes and reviews blood spill procedures. Ms. Mason stated yes initially but that they have not changed anything since then and that is confusing.

Ms. Plinsky stated that every student is different.

Ms. Mason stated that she was aware of that and there was a high rate of failure in September. Mr. Householder asked what a high rate of failure is. Ms. Mason stated that she does not know the percentage but that typically 16 to 17 students do not pass but in September they had 28 that did not pass the blood spill portion of the test.

Ms. Owen presented Ms. Mason with the blood spill procedures handout that is put in front of the student during the testing. Ms. Mason verified that they do put this procedure handout in front of the student but that she still feels that this should be taught hands on.

Ms. Mason went on to state that she does not feel like the information has been updated on the test. She gave an example regarding the Theory portion of the test and the law book. They had received some feedback from a student reporting that one of the questions on the Esthetics test is regarding the hour requirements for an Esthetics license which was changed from 650 to 1000 hours almost two (2) years ago and is still not updated reflecting the change.

Ms. Owen stated that Prometric is meeting November 29, 2011 to review all of the test questions.

Ms. Mason stated that on the CIB for Esthetics program the practical exam references are stated as Milady Standard Fundamentals for Estheticians 9th edition 2004. She says that they are teaching out of Milady 10th edition and Milady is getting ready to come out with the 11th edition in 2012. Ms. Mason stated that sometimes it changes a lot and testing is not up to date. Ms. Mason did not research this issue on the cosmetology side.

Mr. Householder asked Ms. Mason whether every school is having the same high percentage or just hers.

Ms. Mason clarified that Mr. Householder was referring to the blood spill testing. Her understanding is that the fail rate is usually around 16-17 and overall it was 28 in September and that was for all schools not just hers. Ms. Mason stated that it depends on when the schools start having graduates testing. Some schools start students monthly and some schools start students three (3) times a year.

Mr. Householder asked if her school was disproportionately high. Ms. Mason said that yes their school was higher than it has been in the past.

Ms. Mason stated that she would like more communication from the testing agency so that if they are doing something incorrectly they can have the opportunity to correct it. She stated that their goal is to provide their students for a career in the cosmetology industry and she feels they are doing a disservice to the students if they are not passing the state board. She wants to make sure they are teaching them what they need to know to pass the state board exams and she would like to get all the tools that she possibly can as a school, not just her school but all the schools, to make that happen. She would like more reports back from Prometric and more frequent reports from the testing agency instead of once every six months. Ms. Mason said that in the NIC presentation they stated that they do reports on a monthly basis.

Ms. Mason asked if the public comment could be changed to the end of the meeting so that they can ask questions regarding what was discussed during the Board meeting. She verified that they are not allowed to talk from the audience during the meeting and there are issues discussed at the board meeting that they cannot comment on until two (2) months later.

Ms. Plinsky stated that the reason the public comment is first is because there is no defined time that the Board meeting ends and if it is done at the beginning they have a defined time for public comment.

Ms. Florez asked Ms. Andaya if there was something in Roberts Rules that would allow for that time from the audience. Mr. Householder stated that you can always call to go out of order. Ms. Andaya stated that it would not be Roberts Rules but the Open Meetings Act. Ms. Mason asked how they can interject with out being disrespectful to Board.

Ms. Owen suggested that if there are things on the agenda that a person is interested in that they should request public comment.

Ms. Mason asked if the Board can post the meeting agenda online. She stated that she knows that she can call and request it from Ms. Gloeckner but posting it would be easier.

Ms. Owen stated that the Open Meetings Act does not require that be done.

Ms Mason stated that it was just a suggestion that would make it easier for them. Ms. Mason stated that there are a lot of schools out there that would like to be more involved and asked if there is anyway to get notifications of changes being made?

Mr. Householder stated that anytime there is a regulation change there is a notification sent out. He stated that there is ample opportunity.

Ms. Mason verified that she needed to come to the Board meetings and reads the Board Meeting Minutes to stay on top of changes with the Board. She then asked if there is any feedback given regarding public comment.

Ms. Owen asked the audience if there were any other comments for the remainder of the public comment time.

Shareen Davis from Wichita thanked Ms. Mason for bringing up those issues. She said that regarding Mr. Householder's question on pass-fail statistics sometimes they do not identify a pattern until months afterwards because the students don't always come back and report whether they passed or failed the tests. Ms. Davis stated that she owns schools in three (3) states and her schools in the two other states use NIC. She said that NIC gives a monthly report with scores broken down by students and subjects so that they can identify areas of weakness in the schools. She called Prometric to ask about instructors not passing the instructor exams and the computer incorrectly stating that the student had passed the exam only to find out officially from Prometric they had failed. Prometric said they would look into it. She said that Prometric said they were testing off of 2001 Milady for the instructor's exam and that the school was teaching off of 2011 Milady. Ms. Davis said that she had spoken to Board office staff person LeAnna who stated that it is not easy to update it. Ms. Davis said 11 years is a long time not to update. She went on EBay to get Milady 2001 to have her instructors study it so that they can pass the instructor's test. Ms. Davis stated that when she calls Prometric they tell her to talk to the Board and when she calls the Board they tell her to talk to Prometric.

Ms. Owen asked when the schools get the pass-fail report.

Ms. Florez verified that the pass-fail reports are sent out every six (6) months. Ms. Davis stated that with NIC they do an annual conference where they tell the schools what has changed. She feels like now they are only as good as the last person that took the test that will come back and give them information.

ITEM II. CALL TO ORDER.

The meeting was called to order by Ms. Allene Owen, Chair.

ITEM III. APPROVAL OF BOARD MINUTES FOR SEPTEMBER 12, 2011

Motion to approve the Board minutes for September 12, 2011. (Householder/Plinsky). Motion passed unanimously.

ITEM IV. FINANCIAL REPORT

YTD FY 2011 receipts and expenditures

Legislative action for FY 2012 and FY 2013

FY 2012 budget reductions

Ms. Florez stated that the handout is the revenue and expenditures recap from the beginning of the fiscal year. The Board reviewed the series of reports for July, August, September, and October. Ms. Florez stated that they were not in the packets because she wanted to be able to include October in the reports. Had the report been included in the Board packets October would have been omitted.

Ms. Coggs stated that online renewals are low and wants the board to consider how to boost online renewal participation. Ms. Owen asked if the salon owners are aware that they can renew online. Ms. Florez stated that it is posted on the website and is stated on the renewal that is sent out. Ms. Plinsky asked if the online participation is growing. Mr. Householder pointed out that it actually appears to be shrinking from 22% to 16%. Ms. Florez suggested that maybe it is the additional fee for renewing online. The renewal fees vary depending on the different amounts. Ms. Owen stated that she wouldn't think that shop owners would mind such a minimal fee and that maybe people are leery about inputting their credit card data online. Mr. Householder stated that the three dollar (\$3) fee is a big deal to tattoo artists. They are not going to pay three dollars (\$3) to renew when they can mail it for 44 cents. Mr. Householder stated that was a Board item from the last Board meeting and the Board considered the possibility of reducing the online costs or the Board absorbing the fee.

Ms. Coggs said that the Office of Administration and the Governor's office recommend that the Board reduce agency fees. Ms. Plinsky asked if she were to pay by mail she would get one price and if she renewed online would she pay a different price? Mr. Householder stated that it would turn out to be the same price and the Board would just be meeting the difference. Ms. Plinsky questioned whether the Board can do that because it doesn't seem like everybody is equal. Ms. Andaya stated that there is a provision that allows for that.

Mr. Householder questioned why there is a \$20,000 spike in September for salaries. Ms. Florez stated that she would look into it.

Mr. Householder questioned other fees 576900 of \$10,000. Ms. Florez stated that the Board has to pay an annual fee for up keep at the state capital complex.

Mr. Householder clarified that it is almost \$831,000 for the 2013 budget. Ms. Coggs stated that nothing had changed in the budget from when it was submitted last year.

Ms. Plinsky asked if the inspectors are maintaining the mileage expected on their cars. Ms Coggs answered that they are and added that when they turn in their cars for replacement the mileage is beyond what the state requires to replace them. Ms. Coggs stated that the mileage is pretty much on target and the only exception would be that an inspector was off for medical leave for awhile and in that case the mileage would be down.

Mr. Householder asked about a budget increase in the classified temporary position of \$20,500. Ms. Coggs stated that part of those salaries budgeted are because she would like to recoup the position that was lost when Governor Brownback took office and there was a sweep of all vacant positions. The Board lost that position but that did not mean the work load in the office decreased. She stated that is the reason for hiring the unclassified position in and then maintaining the classified position as well.

Mr. Householder asked about the temporary positions. Ms. Coggs stated that there was a summer intern and that the Board has continued with that temporary position.

Mr. Householder made note of the expenditure of group health insurance increasing \$14,000 and then another \$6,000 increase on top of that.

Mr. Householder also noted that the unclassified temporary worker went from \$2,900 to \$10,500. Ms. Coggs stated again that is an effort to recoup the position lost because it was left vacant. Ms. Plinsky asked how the Board could get that position reinstated. Ms. Coggs stated that the Board would have to go to the legislature and the Board's budget analyst has recommended that the Board not attempt to do that at this time. The recommendation was to use the unclassified position as long as it is approved by the Governor's office which has already taken place.

Ms. Andaya questioned whether the Board is allowed to have another unclassified position other than the Director's position. Ms. Coggs stated that it was approved by the Governor's office

Mr. Holmes asked if Ms. Coggs has made any progress on changing the renewal dates for the facilities and whether she has thought about what savings would come about for labor costs. Ms. Coggs stated that she has thought about it but has not been able to work on it yet. It is on her priority list.

Mr. Householder asked whether all the salary increases are for temporary workers in hopes that the office can recoup the position that was taken away. Ms. Coggs stated that the Board had salary increases because there were staff members that moved from one position to another position with a different job description in a higher pay grade.

Ms. Andaya stated that as legal counsel she must point out that KSA 74-2702 requires that employees of the Board of Cosmetology be classified service of the Kansas Civil Service Act. Ms. Andaya went on to read the law. She stated that even though the Governor's office approved the unclassified position that the Board may still be in violation on the law. Ms. Andaya explained if that person who is acting as an employee has a challenge it would normally go under the civil service act. For example if that person were disciplined and disagrees they would have procedural rights under the civil service act to appeal the decision of the Board. In the statute it states that all employees except for the executive director should be in the classified service.

Mr. Householder asked if the Board would qualify under qualified immunity under the Governor. Ms. Andaya stated that she would say no because the Board is acting outside the scope of the Law. Ms. Plinsky stated that the Board needs to get in line with the law.

Ms. Coggs stated that we need to recover that classified position. Ms. Andaya suggested that the Board redefine the unclassified position to classified. Ms. Coggs and Ms. Plinsky asked how that is done.

Mr. Householder stated that if the position was removed then the Board would probably have to petition to get it back. Ms. Andaya suggested consulting the Department of Human Resources regarding how to fix the situation. Ms. Plinsky and Mr. Householder stated that the budget would then need to be redone. Ms. Coggs stated that the unclassified position was done with the direction of the Department of Administration. Ms. Owen asked if this is true of all agencies or just specific to the Board of Cosmetology. Ms. Andaya stated that she is only familiar with this agency. She then went on to clarify the role of the Executive Director in that the position carries out the day to day operation of the Board in reviewing and approving applications. If there are any discrepancies or new issues that the Board has not made a decision about then it is to be brought before the Board to decide. The Executive Director carries out the direction of the Board.

Ms. Andaya asked if the Budget submitted was presented to the Board in advance. Ms. Coggs stated that the Budget would have been approved last year by the Board prior to her appointment by the Governor.

ITEM V. NEW BUSINESS.

Introduction of New Board Member Nicole Jonas-Piper:

Ms. Owen introduced new Board Member Nicole Jonas-Piper. Ms. Owen suggested that the Board Members all introduce themselves. Ms. Owen introduced herself stating that she is from Great Bend and she is a cosmetologist.

Ms. McDonald introduced her self and stated that this is her third Board Meeting. She is from Olathe Kansas and she represents the general public and is also the Vice Chair.

Ms. Gloeckner introduced herself and stated that she is the Secretary to the Board and this is her second Board Meeting attended.

Ms. Kennison introduced herself and stated that she represents the Schools and this is her second Board meeting as well.

Ms. Holmes introduced himself and stated that he represents the tanning segment of the Board of Cosmetology.

Mr. Householder introduced himself stating that he is from Kansas City and that he represents the Body Art practitioners in the state of Kansas.

Ms. Plinsky introduced herself stating that she is from Topeka and the oldest member of the Board of Cosmetology and is a retired cosmetologist but still maintains her license.

Ms. Andaya asked how long Ms. Plinsky has been on the Board.

Ms. Plinsky replied that she has been on the Board since Governor Graves was in office and appointed her. She stated that it has been fun and educational.

Ms. Jonas-Piper introduced herself and stated that she is a citizen member; she is from Topeka originally, traveled the country with the military and just came back to Topeka in October.

Ms. Andaya introduced herself stating that she is the Board's legal counsel.

Ms. Coggs introduced herself stating that she has been with the Board for five (5) months.

Ms. Owen welcomed Ms. Jonas-Piper and suggested that if she has any questions to call the office.

Ms. Jonas-Piper stated that she works at the Juvenile Justice Authority as the Executive Assistant and their office is located upstairs from the Board of Cosmetology office.

Ms. Coggs introduced the new staff member Alexandria Blasi as the unclassified position the Board was previously discussing. She has taken over the responsibilities that Ms. Rice had before leaving the Kansas Board of Cosmetology.

Ms. Blasi introduced herself and stated that she is a JD/MBA, a licensed attorney in the State of Kansas, admitted to the Bar, and a graduate of Washburn University. Ms. Blasi is the first JD/MBA joint student that they have graduated in a very long time. She is from Topeka and went to Topeka High School. She has traveled extensively. Her experience in cosmetology is limited to the fact that she participated in the Ms. America system and paid her way through college a little by doing that. She was the first runner up to Ms. Kansas in 2006. She is excited to be at the Board. She is pleased to report that just from the time that she has been here she has gone from work being back-logged in the legal office since June to being current to the beginning of October. Her goal is to have paperwork turned out of the legal office with in two (2) weeks.

Field Study Request, Eric Fisher Academy Wichita, Salon Observation December 20, 2011:

Mr. Householder asked what the student to instructor ratio is. Ms. Owen stated that it is 25:1.

A motion was made to approve the field study request for five (5) hours.
(Plinsky/Householder). Motion approved unanimously.

Field Study Request, Kansas City Kansas Community College, Design Essentials, Kansas City, MO, November 14 (6 hrs):

Motion to approve the field study request for six (6) hours. (Plinsky/Householder). Motion approved unanimously.

Field Study Request, Eric Fisher Academy Wichita, Carpenter Place Help-Portrait December 10, 2011:

Motion to approve the field study request for four and one half (4 1/2) hours. (Plinsky).

Mr. Householder stated that he will not second the motion because the form was not signed by the instructors. He stated that someone would have to second the motion in order for the Board to discuss this. He stated that it says specifically at the bottom the signature is supposed to be of each supervising instructor and the application was clearly filled out with one hand.

Ms. Owen requested that someone second the motion so that the Board can move on with the discussion. Mr. Householder suggested that Ms. Plinsky withdraw her motion to approve the photo shoot. Ms. Plinsky withdrew her motion to approve.

Ms Owen asked if the form is filled out correctly and the instructors signed the form would it then be approved. Mr. Householder stated that someone has to make a motion for the Board to be able to discuss it.

Motion to deny the field study request on the grounds that the instructors did not sign the form. (Householder/Plinsky).

Ms. Owen asked if anyone would like to discuss. Ms. Plinsky clarified that it is a matter of a signature and asked Mr. Householder if he thinks that the three signatures on the form are all written in the same hand. Mr. Householder said the whole form was completed including signatures with the same hand.

Ms. Kennison asked if they could resubmit the form. Mr. Householder stated that they would have to resubmit but at this point the Board needs to call for a vote of the motion on the floor.

Ms. Owen asked for a vote on the motion. Motion passed unanimously.

Ms. Kennison asked if they can approve the Field Study Request based on resubmission to the office. She asked if anyone of the office staff could verify the signatures. Ms. Kennison asked if they can have it faxed by the end of the day. Mr. Householder stated that it would be out of order and someone has to make an exception to rule out of order. Mr. Kennison asked if that can be done. Ms. Andaya proceeded to review the law book.

Mr. Householder stated that originally no field studies counted towards student's hours and that the hours in the schools were the only hours counted. The schools petitioned the Board stating that the Board was denying the students real world experience. He stated that Board is not denying the students real world experience just denying that they be credited toward their hours. He clarified that the students could still go receive the experience they just would not receive credit towards their hours from the Board for the experience. Mr. Householder stated that it is hard to say how many hours each student gets credited for Field Study requests.

Mr. Householder asked if students transfer a lot from school to school. Ms. Plinsky and Ms. Kennison stated that because of financial aid that is not easy to do.

Mr. Householder suggested that the Board take a recess to allow Ms. Andaya time to look in the law book regarding the denial of the Field Study request in question. Ms. Owen called a recess for 10 minutes.

Ms Owen called the meeting to order and stated that legal counsel has advised that the Field Study request be approved in an open meeting therefore the Field Study request will have to stay denied. Ms. Owen reiterated that it doesn't mean that the students cannot do the Field Study it, just means that the students cannot receive credit toward their school hours for it.

Ms. Davis asked what the rules are regarding the Field Study request that has not been approved wanting to clarify that the licensed instructor still has to go out with the students but they just don't get credit for the hours. Ms. Owen confirmed Ms. Davis's clarification.

Letter from Board Member Marie Plinsky:

Mr. Householder moved to table this item in order to go into executive session.

Ms. Andaya stated that he would need to make a motion to do that and give the reason. The reason must be one of seven (7) to be able to go into executive session. She then went on to explain that the maker of the motion must be comfortable that the reasoning fall under one of the following categories: personnel matters, protect the privacy interest of employees, consultation with attorney, employee/employer negotiations, confidential matters regarding financial affairs or trade secrets, matters effecting students, or acquisition of property. Ms. Andaya asked Mr. Householder if his reason to move to executive session falls under any of the categories listed.

Mr. Householder stated that his reasons fall under two (2) of the categories. Ms. Andaya stated that the question is whether the Board goes into executive session now or tables the item to take it up at a later time in the Agenda.

Motion to go into executive session for the next item on the agenda because it involves personnel issues and it involves advice from the counsel. (Householder)

Ms. Plinsky asked who would be in attendance. Mr. Householder stated the Board members, attorney, and the Board secretary.

Ms. Andaya clarified that the Board secretary would not be included in the executive session. Only the Board members and the legal counsel, the recorder would be turned off as well. No action can be taken just discussion and in order for action to be taken the Board must come back on record.

Mr. Householder added to the motion a 15 minute time frame. Motion Seconded (McDonald) Motion passed unanimously.

Ms. Owen stated that the Board will be going into executive session for 15 minutes.

Ms Owen called the meeting to Order. Ms. Owen asked if there is a motion to continue executive session for five (5) more minutes.

Motion to continue the executive session for an additional five (5) minutes on the same grounds to answer two (2) questions that were not addressed. (Householder/McDonald). Motion passed unanimously.

Ms. Owen called the meeting back to order.

Board Staff Rules and Expectations:

Ms. McDonald would like an opportunity for new Board members to be able to get some feedback and words of wisdom from Board members that have been on the Board for a long time.

Ms. Owen stated that every month felony reviews are taken. Anyone that has a felony must appear before the Board to show rehabilitation. Ms. Owen requested that the Board come in December and have an orientation prior to the felony review.

Ms. Andaya wanted to clarify whether the meeting would be a staff meeting. Ms. Owen confirmed that it would be a staff meeting/orientation. Ms. Owen requested a consensus from the Board to have a staff meeting/orientation on the second Monday of December. Ms. Jonas-Piper stated she may not be able to attend because she is expecting around that timeframe.

Ms. Owen stated that the staff meeting will be at 9:00am on December 12, 2011.

Prometric would like to present to the Board January 9, 2012:

Ms. Owen asked if this item on the agenda was just informational. Mr. Householder requested that the Prometric presentation be listed under public comment not under new business as the NIC presentation was. Ms. Coggs asked if the presentation would then be limited to 30 minutes. Mr.

Householder stated that meeting start time could always be pushed back in order to accommodate the presentation. Ms. Owen asked Ms. Andaya if that was acceptable. Ms. Andaya stated that it is.

KAR 28-24-14- Prohibition of alcohol in salon:

Ms. Coggs stated that she has had several calls from salon owners wanting to verify that the law stated that they could not have alcohol in their salon during hours that they were not open in an area where salon services are not provided. These owners requested that Ms. Coggs seek clarification from the Board and from the Attorney Generals Office and at least one of those persons requested this as opposed to going to a private attorney to seek clarification.

Ms. Plinsky asked if they want alcohol while the salon is not open.

Ms. Coggs presented an example of one of the salon owners that had called Ms. Coggs and stated that she is a salon owner and she wanted to have an open house for her business. She would be doing it on Sunday and she would like to serve Margaritas at her open house she asked Ms. Coggs if she would be fined for doing that. Ms. Coggs stated that this question has come up more than one time but that that would be a specific example. Ms. Coggs went on to clarify that this is in an area of their salon in which services are not being provided on a day when services are not being provided. In the statute it states that alcohol cannot be in areas where services are being provided.

Ms. Plinsky asked if they would just be doing this in the lobby or reception area. Mr. Householder asked if there is any exception on that the way it is written. Ms. Coggs stated that there needs to be change in the written law to clarify.

Mr. Householder asked if the print out that the Board members had were printed off the website and if so whether they were up-to-date. He stated that the Body Art Statutes and Regulations were not up-to-date on the website. Ms. Gloeckner confirmed that the print out of the regulation was up-to-date.

Ms. Andaya stated that the Director had asked her about this earlier and that she told the Director that this is a question that the Board should not answer and that a private attorney would need to tell the person whether or not that would be illegal. Ms. Andaya stated that not only does the Board have their statutes but there are other statutes concerning alcohol and that the Board cannot be providing legal advice about to a private individual. Ms. Andaya stated that the person(s) inquiring about this need to seek the advice of a private attorney. She does not believe that this has been interpreted in any way to indicate what facts would be implicated. As of now there is no exception as the Law is written. Ms. Andaya states that as the question was posed to her it was asking whether or not they can do that. This question would fall under legal advice and they would need to seek out a private attorney for that not the Board.

Ms. Coggs stated that she did not offer any advice to the individual. Mr. Householder stated that the Board can change regulation but not statutes. Ms. Kennison asked then whether the person would be fined or not. Ms. Coggs stated that if they were reported and investigation would be launched and if the report was confirmed they would be fined. Ms. Kennison pointed out that the law states where services are being provided.

Mr. Householder stated that technically they could serve beer. He states that the regulation states alcoholic beverages so technically they could serve the premixed Margaritas that are cereal malt beverages and be outside of the scope of this regulation. Ms. Andaya stated that is assuming that is the definition of what alcoholic beverages is.

Mr. Householder stated that the definition of alcoholic beverages is defined in the State of Kansas ABC's. The ABC's have completely different categories for alcoholic beverages and cereal malt beverages. Ms. Andaya states that is not legal advice that should be followed.

Mr. Householder stated that he does not suggest that but also reiterated that the law does not say CMB's. Mr. Householder went on regarding the portion of the regulation stating the smoking eating or possessing any beverage or preparing any food qualifies under OSHA. For OSHA anything hands to mouth or hand to face during a procedure is enough for them to shut someone down on

the spot. Ms. Kennison clarified that the regulation states no smoking, eating, or possessing alcoholic beverages and does not say anything about water or any other beverages. Mr. Householder confirmed that and stated that with OSHA in a procedure area during a procedure a person cannot drink anything, handle contacts, chew tobacco, smoke cigarettes, or eat.

Ms. Owen asked if there is any resolution on this issue.

A motion was made that the board cannot advise individuals on this and that they seek private counsel. (Householder).

Ms. Coggs stated that she got a response from the attorney general's office stating that. Ms. Andaya asked if this is an action item. Ms. Coggs stated that it is in that she is seeking regulation change in order to clarify this issue.

Motion was seconded (Plinsky). Motion passed unanimously.

Ms. Coggs clarified that the ruling of the Board was that Ms. Coggs cannot provide advice concerning this issue and the person must seek an attorney.

The Board members confirmed this.

KAR 69-4-12- Additional hours for apprentice licensure vs. including on original:

Ms. Coggs stated an issue that came before the board was that a student had acquired within the minimum training period 1600 hours instead of 1500 hours and requested that he be credited by the Board for the full 1600 hours with out having to pay for an additional apprentice license.

Mr. Householder clarified that the student wants the additional 100 hours to be on his official record. Ms. Owen asked if the school was charging him for those extra hours. Ms. Coggs stated that the school did not charge extra for the hours because they were with in his training period.

Ms. Plinsky asked for clarification on what the student wants.

Ms. Coggs stated that the student wants the Board to recognize him for 1600 hours and not just 1500 hours. Some states require a different amount of hours and the student wants the full amount of hours for his official record. Ms. Coggs states that normally the student would have to pay the additional apprentice fee for another apprentice license for the additional hours that did not appear on his official record.

Ms. Plinsky clarified that the student chose to stay an additional 100 hours and it was covered under the student's tuition.

Ms. Kennison asked why the hours were not reported on the official record in the first place.

Ms. Jonas-Piper asked whether the 1500 hours is the standard hour requirement and anytime a student goes over 1500 hours they have to pay an additional apprentice license fee.

Ms. Kennison stated that the student should not have to if it is done with in the time frame allotted for the apprentice license.

Ms. Coggs stated that maybe the school does not think they have the authority to submit over 1500 hours on one apprentice license.

Ms. Kennison stated that the school needs to be notified that they can do that.

Ms. Florez asked if this negates the reason for having an additional apprentice license.

Ms. Jonas-Piper stated that he didn't need one because he was within the first time period.

Ms. Owen gave permission for a person to speak from the audience. It was stated by this person that it has always been her understanding that anytime they go over the 1500 hours even if the license is not expired they are required to send in for a new apprentice license for the extra hours.

Ms. Florez confirmed that has been the policy of the Board up to this time.

Ms. Coggs stated that these are policies that the Board does not have clarification for that should be published.

Ms. Kennison asked if this is a policy that is published.

Ms. Andaya stated that policies of the Board should be published and that is in the law now.

Ms. Kennison stated that if the policy that the student has to apply for a new license in order to receive additional hours has not been published then the school should be able to release those hours to the Board and the student should be allowed to receive credit from the Board for those hours.

Ms. Florez stated that it depends on the definition of additional training that is in the law booklet. Ms. Owen asked what that definition is.

Ms. Jonas-Piper stated that the minimum training states period not hours. She states that it seems that because of that as long as the hours are with in the minimum training period they should be counted.

Ms. Coggs and Ms. Kennison concurred.

Mr. Householder stated that the reason that it states minimum training period and not hours is because between esthetician, nail tech, and cosmetologist there are different hour requirements.

Ms. Coggs clarified that the assumption is being made that minimum training period represents the minimum hours for that specific industry.

Ms. Jonas-Piper again stated that it does not address hours specifically just the period of training.

Ms. Owen stated that the students should pay the fee if they go over the hours.

Ms. Plinsky stated that she disagreed and that whatever amounts of hours are completed in the certain time period should be recognized by the Board. The requirement for new license should only be required and considered additional training if they are acquiring it outside of the time period allotted.

Ms. Kennison stated that reading from the law book it states more than the minimum period and that it does not refer to hours just the period.

Ms. Andaya stated that the regulation states training period she referenced the history of the regulation which states authorized implemented by KSA 65-1903. She stated that the Board would need to refer to the statute in which it states that the course of instruction and practice shall not require less than 1500 clock hours or may elect to base a course of instruction and practice on credit hours. Ms. Andaya concludes that the minimum training period would encompass both of the options of hours as well as practice. Ms. Andaya stated that is what the minimum training period is because that is the statute that the regulation was made to implement.

Ms. Coggs clarified that it is a minimum.

Ms. Andaya stated that the course of instruction in practice shall require not less than 1500 clock hours.

Ms. Kennison stated that it says "not less" not "not more".

Ms. Owen stated that the student may make application to pay the fee for an additional training license.

Ms. Andaya asked if once the student has reached the 1500 clock hours are they graduated or do they continue to do the instruction until the end of the time frame.

Ms. Florez stated that some people continue to stay in school in order to reach the license requirements of another state for example California is 1600 hours. They continue to train in Kansas to obtain the hours required for licensure there but while they are obtaining the additional 100 hours it is the Board's intent that they be licensed under an additional training apprentice license.

Ms. Owen stated that they need to pay the fee for an additional training license for anything over 1500 hours.

Ms. Plinsky asked whether the motion would state any student wishing to go over the minimum 1500 hours would need to apply for an additional training license.

Mr. Householder asked whether this would only count for cosmetology and not for nail tech or esthetician licenses.

Ms. Florez stated the additional training license is available for any cosmetology professions.

Motion that any student going over the minimum training required would need to pay for the additional apprentice license. (Plinsky/Householder) Motion passed unanimously.

Request from Instructor Marsha Hutton for approval of five (5) CE hours:

Mr. Householder asked for the certificate showing the hours requested.

Ms. Florez stated that Ms. Hutton had obtained Infection Control hours two (2) days prior to the expiration of her license and she would like them to be to her new renewal period. Ms. Owen stated that in the past that has not been permitted. Ms. Florez confirmed that is correct in the past the requirement was that the CE be obtained with in the renewal period.

Ms. Plinsky stated the concern that if this is allowed it brings an issue as to whether four (4) days is to early or four (4) months and it becomes to arbitrary and capricious.

Mr. Householder asked if it is defined in cosmetology as it is in Body Art.

Ms. Florez stated that it is to be with in the two (2) year renewal period.

Mr. Householder stated that in Body Art it is clearly defined that it cannot be rolled over into the next renewal period.

Ms. Florez stated that she is not aware that it is that specific in cosmetology.

Mr. Householder requested the documentation showing how many hours the training was. He stated that 69-15-12 is where it is stated specifically in regulation for Body Art that continuing education cannot be rolled over into the next renewal period.

Ms. Florez read under the statute 65-1903 regarding the renewal of Instructor licenses. She noted that it does not give specifics.

Ms. Kennison asked what the Board deems satisfactory for continuing education going on to state that they need a certificate, hours and syllabus.

Mr. Householder stated for tattooing the practitioner has to provide the time, date, location, and syllabus as to what is being taught, and the instructor must be deemed qualified to teach the class.

Ms. Kennison asked who is approving continuing education for the Board.

Ms. Florez stated that the previous Director Mary L Davis was officially approving all the continuing education. Since the new appointment of Ms. Coggs the continuing education has been allocated to her. She stated that she was trained under Mary L. Davis regarding the continuing education for the last three (3) years.

Ms. Kennison asked what the process is regarding the approval of an educator for a continuing education course.

Ms. Florez stated that the qualifications of the educator are reviewed along with the subject outline of the class insuring that they are qualified to teach the subjects for the course. The outline is also used to determine whether the course falls under the practice of the profession, teaching skills and methodology or infection control.

Mr. Householder stated that for Body Art it is stated that the continuing education must be submitted all at once with the renewal.

Ms. Owen stated the concern that if this is allowed it will continue to happen repeatedly.

Ms. Plinsky stated that it is not a harmful thing for a practitioner to have additional continuing education in blood-borne pathogen training.

Motion to deny the request of Marsha Hutton to move her hours forward into the next licensing period. (Plinsky/Jonas-Piper) Motion passed unanimously.

Ms Andaya stated that the Board is charged with the responsibility of public health, safety, and welfare. Part of the Board's duties is not only to participate in meetings and review financial statements but also to make determinations on licenses. Ms. Andaya pointed out that this is what has been done in the case of Marsh Hutton. The Board has made a final action and Ms. Hutton has the opportunity when the order goes out to her to challenge the Board's decision.

Carolyn Richardson request:

Ms. Coggs stated that this has been brought to the board per Ms. Richardson's request. She has not been able to take the continuing education classes that were approved by the Board. This was an ongoing correspondence that had taken place for about two (2) to three (3) weeks with a final request from Ms. Richardson to not renew anything of hers if we were not going to renew her instructor license. She has contacted the Governor's office and wanted to contact the Board members as well. Ms. Coggs stated that Ms. Richardson felt that Ms. Coggs was rude in that after numerous emails and time invested from the staff and Ms. Coggs relaying the same information repeatedly that Ms. Coggs did inform Ms. Richardson that enough time had been spent on this and as soon as she met the requirements that her license would be renewed.

Ms. Kennison asked if Ms. Richardson was present.

Ms. Coggs stated that she believes Ms. Richardson lives in Georgia but would like to keep her Kansas practitioner and Instructor licenses renewed but Ms. Richardson stated that she cannot afford to obtain the approved continuing education requirements that the Board has placed on the renewal of her instructor's license.

Ms. Coggs stated that the Governor's office did call the office regarding this. Ms. Coggs reported that Ms. Richardson stated to her that due to the economy she could not afford the continuing education required and that Ms. Richardson stated she was speaking on behalf of all the instructors that live in different states other than Kansas.

Ms. Plinsky asked what action is requested of the Board.

Ms. Gloeckner stated that Ms. Richardson is requesting that the Board give approval to renew her Instructor license with the continuing education submitted.

Mr. Householder asked for the documentation regarding the continuing education in question.

Ms. Gloeckner stated that some of the continuing education Ms. Richardson submitted was approved. There was a 15 hour Teaching Skills and Methodology course that was denied.

Ms. Florez stated that there was no testing at the end of the course. The course was good material and relevant to Teaching Skills and Methodology. It was about 80 pages long and was supposed to be 15 hours of credit but there was no exam in order to obtain a certificate, anyone could scroll to the last page and fill out the information, pay a \$50 fee and receive a certificate. Ms. Florez went on to state that she does believe the state of Georgia accepts this course for continuing education.

Motion to deny request for hours of continuing education for Ms. Richardson under KSA 65-1903 (Householder/Plinsky). Motion passed unanimously.

Body Art Training Verification:

Ms. Gloeckner stated that there is no standard format set forth by the Board in submitting verification of Body Art training. Ms. Gloeckner presented different examples to the Board of what has been submitted in the past. Ms. Gloeckner stated an application can take at least two (2) hours to review. In some cases it can take much longer if the hours and days have not been

calculated by the applicant. Currently a notarized statement is sent by the trainer verifying the completion of the required hours. If a log of training is sent in the Board staff must by way of spread sheet go through each day of the 1200 hours and calculate the hours to verify that they meet the hourly requirements of each subject. If the statement from the trainer breaks down the hour requirements set forth by the Board per subject within the official statement, then a log of training is not required to approve the application. Ms. Gloeckner presented different examples of forms that could be used as a standard format. Ms. Gloeckner asked the Board for clarification as to whether or not they would like her to go through and actually verify and add up the hours of training herself, or whether the verification from the trainer is adequate for the application; and that if the training is in question at that point request logs of training for the Board to verify. Ms. Gloeckner asked the board to consider defining a standard format in which the verification must be submitted to the Board.

Mr. Householder stated that the training is extremely important. The 1200 hours is well below what can be considered national acceptance for an apprentice program.

Mr. Holmes stated that in 2010 there were 100 licenses for Body Art and in 2011 there are 149. He asked Ms. Gloeckner how many she is actually getting for which she has to do this.

Ms. Gloeckner stated that since Ms. Rice left she has reviewed three (3) applications and done one (1) exam.

Mr. Householder states that the problem with the proposed formats is insuring that the training is actually being done. Cosmetology has a text book and an established syllabus and the tattoo industry does not have that. There is a lot of push back within the industry because the tattoo market in Kansas has grown 50% in one year. Mr. Householder stated that is an enormous amount of growth and not sustainable for an industry. Outside of Kansas it has grown as well. Other states are getting large increases. Many states only require a fee to be able to license, no verification of training is required. Mr. Householder stated that there are kits that you can buy online for tattooing. Tattooing has a rich and colorful history and students that make it through the training can appreciate that. Mr. Householder stated that there is no documented epidemiology, and that Hepatitis or Aids has been transferred through tattooing. Mr. Householder stated that there is a problem with being able to provide documentation that goes back to one single incident. Mr. Householder shared with the Board a personal experience with a family member being infected with an unknown origin and hospitalized 45 days after receiving a tattoo and dying 14 months later of liver failure as a result of hepatitis infection. There was no documentation to go back to the initial tattoo. With that being said Mr. Householder stated that the Board wants to insure that the public is getting the best trained artists that are out there. There is no written program out there that everybody is required to go through. There have been several attempts by organizations such as the Alliance for Professional Tattooist and Alliance for Professional Piercers who have developed a syllabus outlining a three (3) year program for tattoo artist and 24 month program for piercers. Mr. Householder asked whether the Board wants to instill more legislation upon a sect that is already concerned that the Board is not keeping up with the illegal practice of unlicensed practitioners. Does the Board want to go forward into the tattoo industry and see if the practitioners will take the opportunity to regulate themselves? Mr. Householder stated he has not had adequate time to collaborate with all Kansas Body Art Practitioners regarding the request. Mr. Householder states so far no one thinks the request unreasonable but there is a concern how the Board will insure that the trainers are not just turning the apprenticeships out for money. **Mr. Householder requested that this item be tabled until the next Board meeting** to enable more Body Art practitioners to look at the forms and come up with different versions. Mr. Householder stated that one form in question is not far off from what some trainers are already using.

Motion to table until the January 9th Board meeting. (Householder/Plinsky) Motion passed unanimously.

A tattoo artist from the audience stated that she has never seen the tattoo log and had suggested at one point that one be made. She believes it is a good idea to have an agreed upon format.

Consider Nicole Jonas-Piper to sign order with Marie Plinsky is not available:

Ms. Owen stated that sometimes there are orders that need to be signed and sometimes Ms. Plinsky is not available and in the past other Board members did not live in Topeka to be able to sign the orders. New Board member Ms. Jonas-Piper does live here so there is a request that she be permitted by the Board to sign as well.

Motion to allow Ms. Jonas-Piper to sign. (Householder/Holmes). Motion passed unanimously.

Henna Tattoo Artist Laura Kumle:

Ms. Kumle made a presentation to the Board. She is from Great Bend Kansas and has been practicing Henna Body Art for the past three (3) years. Ms. Kumle provides services for private appointments, events, and carnivals. Ms. Kumle does Henna natural colors, face painting, not permanent. She is seeking permission to practice her art in salons in Kansas.

Ms. Kennison asked if there is anything in the laws regarding cosmetology that would prevent her from being able to do this. Mr. Householder stated that there is nothing defining this so it does not fall with in our bailiwick. Ms. Owen asked if there is any kind of allergic reaction who would be responsible. Ms. Kennison stated that the salon owner would be.

Mr. Householder stated that it does not go under the surface of the skin so it would not fall under tattooing. Mr. Householder asked if it is any different from face painting and temporary tattoos.

Ms. Kumle stated that she mixes her own Henna paste so she knows exactly what is in it. She uses 100% pure Henna powder, lemon juice, tea, and essential oils. Ms. Kumle stated that allergic reaction to Henna is extremely rare. Ms. Kumle mixes all her own gilding paste using spiky hair gel, cosmetic gray glitters, micro powder, body glue, and crystals.

Mr. Householder clarified that it was only topical.

Ms. Kumle confirmed that it is only topical. She went on to state that she was taught by Mary Kay that when they use a tool to apply something to the body it falls under cosmetology and she is wanting to practice in a salon which also falls under cosmetology.

Ms. Plinsky asked what tool she uses. Ms. Kumle stated that she uses a Henna cone. It is similar to what would be used to decorate a cake only much smaller. Ms. Plinsky asked what she does with the Henna cone once it has been used on someone. Ms. Kumle stated that she could sterilize it with an alcohol swab.

Mr. Householder stated that you cannot sterilize something with alcohol.

Ms. Plinsky asked if it is metal or plastic and whether it is disposable. Ms. Kumle stated that it is plastic and disposable. She could just dispose of it. Ms. Plinsky asked if she could just change the tip. Ms. Kumle stated that she does not think she would be able to.

Mr. Householder stated that by OSHA standards it would have to be fully disposable.

Mr. Plinsky stated that the cone would have to be thrown away after use on a person. Mr. Kumle agreed and stated that smaller cones are easier to use anyway. Ms. Plinsky stated that she would not be able to put it on hair without having a cosmetology license.

Ms. Kumle asked if she would be permitted to prepare Henna paste and other plant based dyes for cosmetologist to apply to hair. Mr. Householder stated that there is nothing that limits suppliers in that way.

Mr. Plinsky agreed and again stated that she could not apply it to hair.

Ms. Kumle stated that she understood.

Ms. Andaya requested that she have time to do legal research regarding the definitions of cosmetology, esthetician, and tattooing to be able to give a legal opinion regarding whether the service in question falls under any of those definitions.

Motion to table until the January Board meeting to allow time for legal to research in order to give an opinion as to whether the Board has any authority over the Henna Body art Services. (Householder/Jonas-Piper). Motion approved unanimously.

VI. OLD BUSINESS

Review of tanning laws/regulations.

Review of the disciplinary action process as it pertains to tanning facilities: Methods of checking bed temperature. Hot beds report.

Mr. Holmes stated that the FDA does not give any temperature guidelines. Mr. Holmes stated that there is no indication as to the history of the temperature regulation and the reasons behind it. He believes the regulation came from a comfort perspective and the concern for pregnant women and the dangers in raising their body temperature to a point that it would cause discomfort to the fetus. He stated that it has nothing to do with the UV light and it is temperature related only.

Mr. Householder asked about the concerns of temperature regarding bacteria growth.

Mr. Holmes stated again that there is no indication as to why the regulation is there.

Mr. Holmes revisited the issue of where and how the bed temperature is being taken. He stated that the inspectors currently use meat thermometers placed directly on the bed itself to get a temperature reading. Mr. Holmes stated that the Board is not using any measuring device in order to insure that the thermometers being used are taking the correct temperature reading. He used an analogy of when a person gets a speeding ticket they can question the device used to determine their speed in the same way if a person has received a fine from the Board regarding a temperature reading they could do the same.

Ms. Coggs stated that Ms. Rice did research and in some other states they propose that if the thermometer is placed directly on the acrylic it is not an accurate reading. This is the method that is being used at this time. Ms. Coggs stated that the recommendation of the other states was that the ambient temperature is the true temperature and that the thermometer should be held at a raised level off the surface of the bed in order to get an accurate reading.

Mr. Holmes stated that there are a number of different kinds of thermometers. He would like to take different temperatures at different places on the bed. He stated that the thermometers that the state inspectors are using are different than the ones that he has been using.

Ms. Coggs stated that currently people are not being fined for high bed temperature and there is a discrepancy between the thermometers they are using and those that the state inspectors are using of up to 14 degrees and sometimes more.

Ms. Owen asked whether or not the ventilation in the room of a facility that is very busy can affect the temperature readings.

Mr. Holmes stated that yes there are a number of factors. According to the statute the salon owner can request that the inspector wait a period of time in order to allow the bed to cool before taking a reading. Mr. Holmes stated that humidity can be a factor; direct sunlight, lower or higher ceiling, ventilation, fans, and the bed's top cover height can all be factors in the temperature reading of the bed. Mr. Holmes stated the Board should make sure that the device that is being used is accurate.

Mr. Holmes stated that he also wants to continue to work on the requirement of a certified technician on staff at all hours of operation and the ability to be able to provide proof of certification in other forms other than the actual paper certification.

Ms. Coggs stated that the hot beds issue still needs to be addressed.

Mr. Holmes stated that he would like to take the thermometer that the state board is using and do some testing on it. Mr. Householder asked if the thermometer is certified. Ms. Owen stated that she assumed so. Mr. Householder asked if there is a letter of certification that comes with the thermometer. Ms. Florez stated that she did not know.

Mr. Householder stated that in response to Mr. Holmes's analogy, the radar that is used for determining speed is certified and that is how the device stands up in court when it is questioned. Each one has a serial number and is checked for calibration to make sure it is within the

appropriate parameters. Mr. Householder stated that the thermometer used to record ambient air temperature readings in the case of fatal accidents or homicides is a certified thermometer.

Mr. Holmes stated that there is a calibration device that the Board could look into and how often it would need to be calibrated. Mr. Householder stated that for the radars used for detecting speed the radar is checked at the beginning and the end of the shift.

Ms. Plinsky stated in response to the temperature not being taken on the acrylic that the acrylic is where her body is touching so that is where she would feel heat and the temperature should be taken on the acrylic.

Mr. Householder stated that Ms. Coggs presented information that puts that in question.

Mr. Coggs stated that she is unfamiliar with where the bulbs are located on the beds and unfamiliar with tanning and how the acrylic temperature would affect her.

Ms. Kennison and Ms. Jonas-Piper asked whether the temperature on the acrylic is hotter. Mr. Holmes stated that is the assumption but he has not tested yet. Ms. Owen stated that it was just stated that the temperature on the acrylic would be raised.

Ms. Jonas-Piper stated in that case if the Board is looking for a maximum temperature then the temperature of the acrylic would be the maximum temperature.

Mr. Holmes stated that the issue has been that it is a fineable offense so to insure that the devices are in the correct temperature range they are being checked on a regular basis in the facility. In some cases beds that have been checked for temperature by facility and appear to be in compliance are considered out of compliance when a state inspector comes and takes a different temperature reading with a different thermometer. Therefore the question becomes which device is correct.

Mr. Householder asked if there is anything in OSHA or CDC regarding tanning bed temperature.

Mr. Holmes stated that he did not know and he will look.

Ms. Coggs stated that she believes that the regulation arises from the FDA stating that any tanning bed temperature below 100 degrees is safe. Ms. Coggs stated that a representative from the FDA clarified that they only make the above statement but do not regulate temperatures.

Mr. Holmes addressed literature that was included in the Board packets regarding the dangers of UV rays in tanning beds. He stated that this is propaganda that creates alarm about the tanning industry. He would like the Board to understand that the tanning industry cannot make any therapeutic or medical claims; they can only make cosmetic claims. He used as an analogy in the 1970's health clubs were not permitted to make claims regarding exercise being good for a persons health, they could only make claims regarding the improvements of how a person looked. Mr. Holmes stated that there are a number of biased statements being made today that he would like to share with the Board.

The world health organization took a group of 23 studies and concluded that if a person uses an indoor tanning device it increases the risk of skin cancer by 75%. Mr. Holmes stated that is an alarming percentage. He stated that the percent is accurate but if the study consisted of 100,000 people and 1 person out of this number got skin cancer that would be considered the base line. Then if there was a second study group of 100,000 and those people had used indoor tanning and the number went from 1 person to 1.75 persons per 100,000 people, the increase is 75%. Mr. Holmes stated that presenting the results as a 75% increase is much more sensational than saying that a person's risk rate changes from 1 in 100,000 to 1.75 in 100,000. A group of epidemiologists was asked to take the above study and break it down into sections. The study was broken into three (3) sections, home tanning units, tanning salons, and medical photo therapy in dermatology offices. In home tanning the increase was 1.04, in tanning facilities the increase was 1.06, and the largest increase was 1.96 in dermatology offices. There were other variables that were not taken into consideration in this study such as skin type, past genetics with skin cancer, number of moles on the body, and sunburn history. Mr. Holmes stated that there are groups that are taking this information to create other information that is not necessarily accurate.

Mr. Holmes also presented a release from a Norwegian researcher that found by study that the health benefits from ultra violet radiation outweigh the risks. Today they are finding that if women got more Vitamin D up to 70% of breast cancer could be prevented. Vitamin D is obtained through UV exposure. Mr. Holmes reiterated that he cannot make medical claims regarding the tanning industry but did want to take the opportunity to share a more balanced view of the tanning industry. These findings were brought about due to legislation that was passed in the State of California.

Motion to table until the January meeting to allow for review of the information. (Householder/Plinsky). Motion passed unanimously.

Field Study request form revision (Decision regarding more timely decisions for Field Study Requests):

Ms. Coggs stated that this includes the consideration to enable schools to request hours after the event has taken place referred to on the new form Ms. McDonald is revising; and also for the Board to consider meeting by teleconference on the off months to enable the Board to make decisions on matters such as this on a monthly basis. Ms. Coggs asked Ms. Andaya if that would comply with the open meetings act.

Ms. Andaya stated that the Board has met by teleconference before. Those that have requested notice must be notified and if it is the Board practice to post the agenda online that must be done as well. The public would have to be given the ability to be able to phone in.

Ms. Coggs stated that it would allow the Board to be able to review and approve field study requests in a timelier manner.

Ms. Plinsky asked about the progress of the new field study request form that would enable the schools to request the hours after the event took place. Ms. Plinsky suggested that they could do it both ways in that they could get it preapproved or approved after.

Mr. Householder stated concern of opening the door to being able to approve it after the event and everyone would then submit it in that manner.

Ms. Plinsky stated that is the gamble that they would have to take if they chose to submit it after the event took place.

Ms. McDonald suggested that the Board get feedback from the schools regarding obstacles that have been encountered in the past regarding Field Study Requests.

Ms. Jonas-Piper suggested that they still be required to submit the request before the event but would not be approved until the next Board meeting with the understanding that they may or may not be approved for the hours.

Ms. Owen stated that they would then have to make sure that they complete the field study requests accurately.

Ms. McDonald stated that in doing the request after the event there could be a reporting out process in which the school could present what they learned from the Field Study in order for the Board to really assess whether they should get hour credit.

Ms. Owen stated that as it is now they have to guess what they will gain from the field Study and there is no follow-up to ensure that they actually learned anything or what they learned. For instance when they are visiting salons many times they are just walking in and out of the salons and everything does not always go as scheduled. Having someone report the field study after the fact could be beneficial.

Ms. McDonald asked if it would be appropriate to solicit the schools input on the form. Mr. Householder stated there would be nothing wrong with doing a market study regarding the form. Ms. Plinsky stated that the schools could have relevant input and suggestions regarding the layout of the form and what would be helpful to them. Ms. McDonald asked if the office should generate this feedback request or if she can do it on her own.

Mr. Householder stated that it would fall along the lines of committee. For example Mr. Holmes is responsible for organizing the tanning sect and it would be well with the Board members' authority to form a committee regarding certain issues. Mr. Householder asked if it would be a standing committee or just a one time committee.

Ms. Owen confirmed with Ms. McDonald that the Board approves of her moving forward with requesting feedback from the schools regarding Field Study Requests. No action is being taken at this time on this item.

Consider and vote on bi-monthly teleconference or monthly meetings:

Ms. Coggs requested an additional Board meeting in that the Board would meet alternating one month in person and one month by teleconference.

Ms. Plinsky stated that next month the Board is meeting for a staff meeting.

Ms. Coggs asked if the Chair of the Board can cancel Board meetings when they are not needed.

Ms. Andaya stated that she believes that has to be an action of the Board. There has to be a motion and a vote.

Mr. Householder asked what is done when there is no quorum.

Ms. Andaya stated in that case you cannot take any action.

Ms. Owen asked for a decision from the Board as to whether they would meet monthly.

Ms. Kennison asked if they would be able to make decisions during the teleconference.

Ms. Andaya stated that it would be just like a regular Board meeting where decisions are made.

Ms. McDonald stated that the pro would be that if they were willing to meet monthly they would not have to have powerhouse meetings and would be able to respond more quickly.

Ms. Coggs stated that it would also change the budget in that the Board members would need to be paid for the extra Board meeting.

Ms. Andaya read statute regarding reimbursement of Board members for participating in Board Meetings.

Ms. McDonald re-emphasized the benefits of being able to move on items more expeditiously and the negative side is it would cost more for the budget. Ms. McDonald asked if this extra cost is accounted for in the budget.

Ms. Coggs stated that she does believe the budget can handle the extra meetings. Ms. Coggs added that with an approving vote concerning the extra meetings the extra costs would be anticipated and accounted for in the next budget.

Ms. Jonas-Piper asked how often an extra meeting is needed or whether this is more of an issue of having to do it only when necessary.

Ms. Coggs stated that she believes this is more of an issue of being able to act on Field Study Requests in a timelier manner.

Ms. Kennison stated that if that is the case and if the form that Ms. McDonald is working on to enable the schools to submit after the event then the extra meetings would not be needed.

Motion to table until the board can get the disposition of the Field Study Requests to consider the viability of the proposed monthly meetings. (Householder/McDonald). Motion approved unanimously.

Ms. Jonas-Piper asked if there are instances where Board meetings are called in between the regularly scheduled Board meetings.

Ms. Plinsky stated that they have done that before and if it is done it has to be posted on the website and people that have requested notification must be notified within two (2) weeks of the Board meeting.

Ms. Florez stated that the people are supposed to be notified with in a reasonable amount of time which does not necessarily mean two (2) weeks, it can be hours before.

Ms. Andaya confirmed that this was true and gave the example that from the legislative well they give notice of five (5) minutes and that is considered adequate notice.

Online fee reduction for renewals.

Ms. Coggs stated that the Board still needs to act on whether they will reduce the online renewal in order to encourage online renewals.

Ms. Plinsky asked why it costs more to renew on line.

Ms. Coggs stated that it is outsourced with Kan pay and that is their charge.

Mr. Holmes suggested that there are other incentives that can be put into place such as in changing the calendar year of renewal can only be done if they renew online. Reducing the fees may help but what else can be done to encourage online renewal and making it easier.

Ms. Owen stated that in her area it is mostly rural. People from older generations are less likely to renew online. She stated that only about five (5) salons in her area out of 30 have computers.

Ms. Coggs stated communicating more via email may help encourage online renewal.

Mr. Householder asked how continuing education would be verified when renewing online.

Ms. Gloeckner clarified that Instructors and Body Art Practitioners cannot renew online due to the continuing education requirement.

Mr. Holmes asked if Ms. Coggs has reached out to any other agencies in regards to this issues and how they are handling it. Ms. Coggs stated that she has not yet.

Ms. Plinsky asked what kind of budget restraint it would cause to take on the three (3) dollar online fee for renewal. Mr. Holmes stated that the Board would be spending a lot more in labor for processing.

Ms. Coggs agreed that it is something to be considered. She stated that the legislature is requesting that we look at reducing fees.

An audience member interjected stating that she does not feel it an issue of fee as much as an issue of public awareness. She stated that communication by email would help create the awareness of the availability to renew online.

Ms. Coggs stated that the idea that the problem is the fee is speculation and might be cleared up with the survey that will be going out soon.

Mr. Holmes asked if this is information that the inspectors could share with salons when they are in the salons.

Ms. Coggs stated Human Resources has not completed the validation study yet regarding the survey and when that is done it will be ready to go out.

Mr. Holmes asked if renewals go out to all licensees.

Move to table item until the January meeting (Plinsky/Householder). Motion passed unanimously.

Ms. Owen called to adjourn the meeting.

Ms. Andaya stated that the Board does not want to adjourn the meeting because she is doing a presentation through lunch.

Ms. Owen stated that they are not adjourning they are just moving on to lunch while the meeting continues.

VII. Lunch- Athena Andaya: KOMA/KORA (Kansas Open Meetings Act and Kansas Open Records Act):

Mr. Householder stated that the Body Art regulations have not been updated to reflect the current requirements of the Board regarding continuing education for Body Art Practitioners.

Ms. Andaya gave a presentation on KOMA/KORA. The history of open meeting is that the commissioners must sit with the doors open and conduct an orderly meeting. The purpose is to make sure that the actions and decisions of the Board are public as it is a public agency. There are exceptions such as when the Board is serving in the quasi-judicial function it is exempt from the open meetings act. KAPA is the administrative procedure act when the Board is in the quasi-judicial body function. The Kansas Open Meetings Act (KOMA) was established in 1972 and has been amended. Board meetings must be open to the public because representative government is dependent upon an informed electorate. If an allegation of violation of the open meetings act was brought against the Board, the person bringing the allegation would need to file action in the civil court. The allegation is normally investigated by the local prosecutor. The Attorney General's office would be able to conduct an investigation but usually it is left to the local prosecutor. A determination would be made of whether there was a violation. If it is determined that there was no violation it is the end of the matter. If there was a violation there would be a step toward correcting it informally.

Public body actions are public. If the board wants to close a meeting to make it not public the board must have a specific reason that qualifies to go into executive session. A Board member must make a formal motion that must be seconded. The Board cannot make decisions in the executive session. The Board may exclude non-board members from the closed meeting. The Board must indicate what time the open meeting will resume. The Board must go back in to open session to request more time for executive session if the session goes over the stated time frame. Board members are subject to KOMA. Open meetings must be, in the case of a gathering, with a majority of the board meaning five (5) people for the purpose of discussing the business affairs or body of this agency. For example if Chiquita had a question she wanted to ask Board members she has to be careful not to violate the open meetings act. It takes communication within the body that is interactive. If Chiquita sent an email to up to three members, there is no violation but there is a serial communication danger. If the communication includes up to five (5) Board members regarding the same subject it could be considered a violation of KOMA. If the sender specified not to respond or communicate about the subject it would not be interactive and therefore would not be considered a violation. In regards to the open meeting taking place, if someone in the public has requested notice they must get it. If no one asks for notice it does not have to be given. If it is posted on the website Ms. Andaya suggests there be a disclaimer regarding the information being subject to change. No formalities are required on the request for notification. The request for notification is good for one fiscal year. Although the meeting agenda is not required if one is made it must be made available to everyone.

KOMA does not address meeting procedures; it only states that the meeting must be public. Public comment is not required, there is no right for the public to speak, only the right to be present at the meeting and listen. Enforcement is civil statute not criminal and can be enforced by a citizen, the County Attorney, or the Attorney General. Only the County Attorney and the Attorney General may issue subpoenas. If a person under investigation refuses to cooperate the Attorney General or County Attorney can issue a subpoena to require cooperation. Remedies for violation of KOMA would be to void the decision or policy that was made during the violation, injunction (stopping action), Mandamus (forcing action), or Declaratory judgment. The Kansas administrative procedure act comes into practice when there is a question as to whether action should be taken on a license by way of summary procedure order. The licensee has the ability to appeal any action of the Board with the office of Administrative Hearings. An Administrative law Judge makes the decision as to whether the decision of the Board should be held. The deliberative process of the Board is not open but the decision is. The Open Records Act (KORA) requires a custodian and a policy in writing. Whatever records that an agency keeps are open unless the agency closes them such as health records. Statutes provide discretionary closure. There are 52 exceptions that allow for this closure. When a request is received the custodian must respond with in three (3) days. If

an open records request is denied you must state the statutory exception. Any record passed out during an open meeting is an open record.

Mr. Householder asked if there can be closure of information in an open meeting if it is proprietary information.

Ms. Andaya confirmed that it would fall under one of the 52 exceptions such as trade secrets.

Ms. Coggs asked if information between states is open record concerning open investigations.

Ms. Andaya clarified if the findings are valid and substantiated by the Board of the other state and because it is a record that would have been asked for in order to determine whether the person could be licensed in Kansas, the record would have to be reviewed on an individual basis and any information that is not open would have to be redacted. Some records are mixed records; items such as Drug and Alcohol evaluations have to be redacted.

Mr. Holmes asked if he communicated with the director regarding his assignment and findings would he be in violation of the open meetings act.

Ms. Andaya stated that would not be a violation.

Ms. Holmes asked if he can communicate with other Board members outside of the open meetings.

Ms. Andaya stated that as long as the communication is with four (4) members and under it would not be a violation. She also added that as long as the conversation is not related to the business of the Board they can all gather and it would not be a violation of the Open Meetings act.

Mr. Holmes stated that a violation could be as simple as discussing meeting items during a break from the open meeting. Ms. Andaya confirmed this is correct. Ms. Jonas-Piper stated that it is also dependent on whether the communication is interactive.

Ms. Andaya stated that statute provides that staff meetings are not subject to the Open Meetings Act. If policies are determined at that time they would need to be published. Ms. Andaya recommends discussing the policy in the staff meeting and making the final decision regarding the policy during an open meeting. Deliberations and drafts are not public records but final actions and final documents are.

VIII. Executive Director Report:

Consideration of requiring schools to report student hours completed by the 10th of each month (two schools closed with in one year):

Ms. Coggs stated that two (2) schools closed this year. Students that had not finished training were not able in some cases to get their hours. Ms. Coggs understands that when a student has not completed payment they do not get the hours. Ms. Coggs would like to implement a requirement for the schools to report hours of students every month as opposed to just the final operating report to provide protection for the students in the event of schools closing. In polling other states as to what states require reporting on hours on a monthly basis or upon completion of program comes out to be about 50-50. This is only an issue if the schools suddenly close for what ever reason. Ms. Coggs proposed a spreadsheet reporting form that would cut down on extra manpower and provide uniformity for school reports.

Ms. Plinsky asked if Ms. Coggs is proposing that the student's hours be released to go to another school when they are not financially up to date with the current one.

Ms. Coggs stated no if the student has not paid for the hours they should not be released by the Board to other schools. She emphasized that there were going to be instances where exceptions will have to be made. If the Department of Education were requesting the hours in order to determine whether the student is eligible for financial aid then the Board should consider releasing the hours to the Department of Education.

Mr. Householder asked if more than two schools have closed.

Ms. Coggs stated that Cutting Edge closed and there are students that still do not have their hours. Ms. Coggs stated that our mission statement outlines protecting the consuming public and she considers the students to be a part of that consuming public.

Ms. Owen stated that there was a school closing in the past and when she heard rumors of the school closing she contacted the KBOC Director who had no knowledge of the closing. Ms. Owen went on to state that schools are supposed to contact the Board immediately because of licensing and students. In this case the students had paid in full and it was determined that the school owner had to pay the other school for the students hours. The school then claimed bankruptcy. The students only had two months left and were able to get their licensing before the school that didn't get paid sent a letter to the Board asking the Board to deny licensing to these students because payment had not been made by the bankrupt school.

Ms. Kennison suggested a progress report supplied to the student listing hours. She stated it would need to be confirmed with the school that balance is paid before the hours are officially released.

Ms. Andaya stated that the reporting of hours is on page 35 in the law book for cosmetology.

Ms. Coggs stated that this item is for the Board's consideration not necessarily for an action at this meeting. There were states that were reporting monthly but due to the paper work involved it was stopped. They did not have an electronic system set up in order to submit the hours.

Mr. Householder asked if there would be fines and fees attached to what Ms. Coggs is implying.

Ms. Coggs stated that she has not taken it to that level yet and is waiting for the Board to even consider doing it first.

Ms. Owen asked if that would have to be set by statute.

Ms. Andaya stated that the purpose of the collection of the data is not clear to her. Regulation in place regarding the reporting of hours is to help the Board see that the students have fulfilled the requirements for licensing. She does not see that keeping any records other than that would be necessary.

Ms. Owen stated in some cases when a school closes the students cannot get record of their hours and that is a problem.

Mr. Holmes asked if the schools could be or are required to disclose financial records for renewal of their license.

Mr. Householder stated that that would be outside of the regulatory Board's scope. The student and the school enter a contract and if that contract is breached it is something that should be brought before the district court not the Kansas Board of Cosmetology.

Ms. Jonas-Piper stated that this is being considered in the case that a student be able to have records for financial aid to be able to transfer from the closed school to another school in order to continue their education.

Ms. Coggs confirmed that is the majority of the problem.

Ms. Blasi stated that there have been problems with schools having students complete their training never having been licensed as an apprentice. Having the school report on a monthly basis would enable the Board to have an additional check point in this area.

Ms. Owen stated that it would be easier if the schools could report hours monthly and would also be an added protection for the students. Most schools are not going to close unless there is a major financial issue. Ms. Owen stated that she does not understand why the school would not want to release the student's hours.

Mr. Householder questioned whether it would be due to incomplete refunding.

Ms. Owen stated that if the bill is not paid then they don't get a license but when a school closes and the student has paid and their records are lost that student has to start over from scratch.

Mr. Householder asked how many schools have closed in the last five years. The Board was unsure as to the amount. Ms. Owen stated that it does not happen very often. Ms. Coggs stated that it was an exception rather than the rule.

Mr. Householder questioned why the Board would implement legislation for an exception.

Ms. Owen stated that the Board is only discussing the issue and not implementing anything at this point in time.

Mr. Householder stated that although his heart goes out to the students there is value in a system that is designed to make someone fail such as the Marine Corps and other similar training programs because it forces the best to rise to the top. Mr. Householder stated that requiring the schools to report hours to the Board on a monthly basis is over-regulation by the government.

Ms. Kennison stated that they are already required to record the hours monthly within the school. Mr. Nicole-Piper stated that it would be more for the Department of Education. She stated that if the school is already recording the information it would just be a matter of handing it over to the Board.

Ms. Coggs stated that she would like to add that although it is not the Board's responsibility to be a back up system for the schools this would be an added benefit because systems do fail.

Ms. Jonas-Piper asked how the Board knows whether a student is in a school practicing without an apprentice license.

Ms. Kennison stated that the Board does not know unless an inspector finds out during an inspection of the school or someone reports it to the Board.

Ms. Gloeckner stated that it is also caught when the student makes application for licensure and the Board finds that they have never received an apprentice license for the training they completed at the school.

Ms. Owen stated that when that happens there are fines associated with that violation. She also stated that anyone who receives a felony conviction must appear before the Board to get an apprentice license and again to get their practitioner license. Ms. Owen stated that it should be the schools' responsibility to make sure the student has the apprentice license.

Ms. Kennison stated that there has been discussion as to whether the apprentice license is the school's responsibility or the student's responsibility.

Ms. Owen stated that this has been an on going discussion and has been taken before the legislature. There was a situation where a student was practicing in a school with out an apprentice license and the school was fined. The school took it to court and the Judge ruled that according to how the law is written it is the student's responsibility. The Board worked on a revision to more clearly identify the school as the responsible party and took it to the legislature and it was denied because they read it differently than the Judge. Ms. Owen stated that now the understanding is back to the way it was before in that the schools are responsible for making sure the students have their apprentice licensing.

Consumer awareness posting of the Board's disciplinary action – status:

Ms. Coggs stated that the Board had requested that disciplinary actions be posted on the website. Ms. Andaya has submitted a disclaimer to post along with it but it is not up yet because the information is not in a format that can be posted to the website. Ms. Coggs stated that it will be done with in the next week or two (2).

Ms. Andaya clarified that only the disciplinary action was going on the website not the complaints.

Updated disciplinary action report:

Updated complaints report:

Ms. Coggs asked the Board to clarify what format they would like the disciplinary and complaint reports to be in.

Ms. Blasi stated that she does not like the format as of now and would like the Board to be specific about exactly what they want and she can design the new format. Board members proceeded to express thoughts on what should be on the report as follows:

Salon/practitioner Name

Address (Facility address not personal address if possible)

Type of complaint/description

Information put into separate categories as far as Body Art, Cosmetology, and Tanning facilities.

Case number

Date of complaint

Date of hearing

Date of the disposition and the final disposition

Mr. Householder stated that if a person wants more facts regarding the complaint they can request it under KORA with that case number.

Ms. Plinsky stated that she is happy to have the reports back especially since there are new Board members that need to be aware of what is coming into the Board office.

Mr. Householder asked why there are notes stating that Chiquita closed investigations.

Ms. Coggs stated that this would be cases in which the Board has received a complaint against for an example and unlicensed tattoo artist providing services. The person that the complaint is against would receive a letter stating the allegations and would be informed that they have ten (10) days to respond to the letter. In the case that the person responds stating that they are not providing services, the allegations are false, or the Board is unable to attain any supporting evidence, the Board can go no further and the case is closed per the notation that Chiquita closed the case.

Mr. Householder stated that in the past an investigation was done by Ms. Rice.

Ms. Coggs stated that the procedure for investigation is still done; it is just not necessarily noted specifically on the notes in the data base.

Ms. Kennison questioned the investigation procedures.

Ms. Blasi clarified that at some time in an investigation there comes a point in which the Board is unable to obtain any facts and the case must be closed and the Board must move on. She went on to state different procedures for investigations. She stated that anonymous complaints that are not backed with any facts or evidence are not adequate to take any legal action with.

Ms. Coggs went on to state the reasons regarding notations of closure on complaints.

Mr. Householder stated that the final disposition should be listed on the disciplinary action report not on the complaints report.

Ms. Coggs stated that the complaints are actually closed.

Mr. Householder suggested the wording "not sustained" as opposed to "closed."

Ms. Blasi stated that the option of no action taken is not given under status on the data base. Ms. Blasi expressed the need for consistency in regards to the input of information.

Mr. Householder asked what the options were.

Ms. Blasi listed some options and then offered to do a print out of the options available if the Board is interested.

Ms. Jonas-Piper asked if a complaint does not say closed is it open.

Ms. Blasi stated that in the office now closed means that the office has completed their action in regards to that complaint.

Ms. Jonas-Piper stated that there are many where it does not appear to have any action taken, closed or otherwise.

Ms. Owen explained that it could be on the disciplinary report as to what action was taken or it could be still in ongoing investigation.

Mr. Householder asked if there is anyway just to make a complaint invalid issue such as a bad haircut or prices being charged.

Ms. Plinsky suggested options of “not a board issue” or “not governed by the Board.”

Ms. Blasi stated that she believes that there is an option that is “outside Board authority.”

Prometric Exam Review Workshop, New dates- November 29-30, 2011. Subject matter experts. – Testing schedule:

Mr. Owen stated that she received a call about being present and going through all the questions. She could not do it.

Ms. Coggs directed the Board to review the list of subject matter experts.

Ms. Owen stated that this is an informational item and not meant for action.

Performance measurement process for the Director:

Ms. Coggs stated that the Board is not required to do this.

Mr. Householder stated that due to it being a personnel issue it should be discussed at the Board staff meeting.

Ms. Coggs stated that Board members should review the performance goals she has listed for herself and if the Board members have anything they would like to add or disagree with to discuss it at the upcoming staff meeting.

Ms. Plinsky stated that the FARB convention is an interesting group of regulatory Boards from all over the United States and it is beneficial. They discuss how to deal with falsified records.

Ms. Owen stated that there will be a Board staff meeting/orientation on December 12, 2012 at 9am. Ms. Jonas-Piper stated that she may not be able to attend personally and may have to call in to the meeting to attend.

Ms. Owen stated that there needs to be one other person to sit on the disciplinary Board.

Mr. Householder stated that he would sit on the disciplinary Board if it concerns Body Art. Ms. Owen stated that he would need to sit for cosmetology as well. Mr. Householder agreed.

XI. Adjournment-Next regularly scheduled Board meeting, Monday January 9th, 2012

Motion to adjourn. (Jonas-Piper). Motion passed unanimously.

(Date for the remaining 2012 Board meetings- March 12, 2012, May 14, 2012, July 9, 2012, September 10, 2012, November 11, 2012))

Board panel review of felony convictions upon adjournment of meeting

Board panel review of pending disciplinary action