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BEFORE THE HEALTH LICENSING AGENCY
OF THE STATE OF OREGON

In the Matter of the

Amendment of Oregon Administrative Rules:

331-105-0030, 331-205-0020, 331-205-0030, 331-215-0000,
331-215-0010, 331-220-0020, 331-405-0030, 331-415-0000,
331-415-0010, 331-505-0000, 331-505-0010, 331-525-0000,
331-530-0000, 331-565-0000, 331-570-0000, 331-601-0000,
331-601-0010, 331-601-0020, 331-630-0000, 331-705-0060,
331-800-0020, 332-020-0000, 332-020-0020, 338-005-0030,
338-010-0038, 338-010-0050, 817-030-0020, 817-035-0010,
817-035-0050, 817-040-0003.

)
) SUMMARY OF PUBLIC
) HEARING TESTIMONY AND
) WRITTEN COMMENTS,
) WITH RECOMMENDATIONS
) OF HEARINGS OFFICER
)
) PUBLIC HEARING HELD ON:
) July 23, 2008
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BACKGROUND

A public hearing was held for the purpose of receiving comments about the amendments to rules proposed for fee changes for the following professions regulated by the Health Licensing Agency (“Agency”):

- Athletic Trainers, Board of
- Body Piercing Licensing Program
- Cosmetology, Board of
- Denture Technology, Board of
- Electrologists, Permanent Color Technicians and Tattoo Artists (Advisory Council for)
- Environmental Health Registration Board
- Hearing Aids, Advisory Council on
- Midwifery, Board of Direct Entry
- Respiratory Therapist Licensing Board
- Sex Offender Treatment Board

Prior to the hearing, the Agency originally filed a Notice of Proposed Rulemaking Hearing and a

1 Statement of Need and Fiscal Impact with the Secretary of State which was published on July 1,
2 2008 in the *Oregon Bulletin*. Interested persons were invited to offer oral testimony and written
3 comment on the proposed amendments. The Notice provided that the last day to submit written
4 comments was July 22, 2008 although the hearings officer stated during the hearing that all
5 comments submitted on July 23, 2008 would be considered and that late filed comments would be
6 considered if timely submitted before the preparation of this summary. Written comments were
7 submitted prior to the public hearing but no comments were submitted thereafter. Oral testimony
8 was presented at the public hearing.

9 The public hearing was conducted on July 23, 2008 beginning at 9:05 A.M. and ending at 10:06
10 A.M. in the Rhoades Conference Room on the third floor of the Veterans Affairs Building located at
11 700 Summer Street, NE, Salem, Oregon. The hearing was conducted by Bert P. Krages, attorney,
12 who served as the Hearings Officer.

13 **REASONS FOR PROPOSED CHANGES**

14 The Oregon Health Licensing Agency has conducted an analysis of its cost allocation processes
15 which included assessing the costs, level of complexity in delivering services, and other factors
16 affecting how it directs its resources to the various programs that are regulated by the Agency. The
17 Agency believes that the new cost allocation methodology will simplify its accounting systems,
18 streamline its business processes, and result in generally lower fees with respect to persons or
19 entities who seek to be licensed to practice in fields regulated by the Agency. Therefore, the Agency
20 has proposed to amend its rules to implement the fees that have been determined in accordance with
21 this analysis.

22 **SUMMARY OF PROPOSED RULES**

23 The proposed amendments to the rules address fee changes charged to applicants, practitioners,
24 and business licensees. In general, the Agency is proposing to reduce fees for authorizations to
25 practice (licenses, registrations, certifications) while raising fees for certain services
26 such as application processing and examinations. The specific changes applicable to each program
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1 can be found in the attached Notices of Proposed Rulemaking and the Proposed Rules.

2 **WRITTEN COMMENTS AND DOCUMENTS**

3 The Agency received written submissions from over forty persons. The submissions are
4 discussed by program.

5 ***Board of Athletic Trainers***

6 Victoria Mosse stated that the proposed fee schedule appears to be reasonable and increasing the
7 fees for the application process to cover the increased staff hours makes sense. She believes the two
8 year renewal cycle is a good idea.

9 Jeremy Ainsworth supports the proposed fee schedule. However, he believes that the fees are
10 disproportionately high in comparison to fees charged to licensees in other programs such as
11 physical therapists.

12 Erin Russell expressed support for lowering the fees but commented that the fees seem to be
13 among the highest in the State for allied health care providers.

14 ***Body Piercing Licensing Program***

15 Desta Spence of Adorn East strongly opposes the proposed fee increases for body piercing
16 technicians and noted that such technicians typically earn about \$10 per hour and the high
17 unemployment rate in the field means that practitioners must often settle for part-time work. She
18 stated that the fee increases pose an unnecessary burden on an already beleaguered profession.

19 Lisa Blue strongly opposes the proposed fee increases and noted that the fees for tattoo artists
20 will be cut in half. She noted that their services have not been changed and wonders why the fee is
21 being increased.

22 ***Board of Cosmetology***

23 Peggy Valentine stated that the recent restructuring raised her renewal fees beyond an excessive
24 amount and the that increasing fees so soon after a previous increase seems like thievery. She stated
25 that the Agency should be ashamed of itself.

26 Corrie High Eastburn, a shop owner in Oregon, stated that proposed increases would pose a great
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1 hardship and that he pays four kinds of fees to government entities in the course of operating his
2 business. He believes that annual renewal is easier than biannual renewal.

3 Cindy Long, of the College of Hair Design Careers, expressed gratitude for phasing in fees for
4 examinations and initial licensure but opposes the fee increases for initial licensure because of the
5 hardship to students. She believes that some fees are out of line and that they send a message to
6 students to get their education out of state and obtain licensure through reciprocity.

7 Amy Vaillancourt-Sals wrote on behalf of several concerned students at Phagan’s School of Hair
8 Design to request reconsideration for the proposed fee increases and how they affect students who
9 are working towards entering the field. She notes that many students work at outside jobs and are
10 experiencing financially-trying times. She attached a list signed by 117 other students who share her
11 concerns.

12 Heidi Zuniga, of Springfield College of Beauty, expressed support for phasing in fees associated
13 with initial licensure, but believes it is unfair to pass the burden of cost allocation onto entrants into
14 the field.

15 Brady Fenton a new graduate, requested that the proposed fees be reconsidered with respect to
16 renewals because some persons, such as those in correctional facilities have mail controlled by a
17 mail room and thus have difficulties with receiving and sending mail.

18 Karen Baker a student at the Capitol School of Design, opposes the increased testing and late
19 fees. She describes as the proposed late fees as “dramatic.”

20 Bobby Aslin, a student at the Capitol School of Design, opposes the proposed testing and late
21 fees.

22 Tanya Greenfield, a student at the Capitol School of Design, opposes the proposed testing and
23 late fees and states that they will discourage cosmetologists from renewing their licenses.

24 Kimberly Peterson, a student at the Capitol School of Design, opposes the proposed testing and
25 late fees and states that the proposed fee structure sets up students who cannot afford such fees for
26 failure. She believes the agency should consider the financial circumstances of regulated persons
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1 when setting fees.

2 Sharon Carlson stated that annual renewal of licenses is preferred and that the high fees has
3 made her drop several licenses.

4 Sharon Durr, who works freelance, stated the proposed fees disproportionately affect freelancers
5 who provide services to seniors and shut-ins.

6 Judith Culp, with the NW Institute of Esthetics, stated that the proposed fee increases make
7 sense.

8 Mary Pozzi, supports the proposed fee increases and hopes that more inspectors can put in the
9 field to improve education and compliance. She suggests putting all licenses on one sheet of paper to
10 reduce costs.

11 ***Board of Denture Technology***

12 No written comments submitted.

13 ***Advisory Council for Electrologists, Permanent Color Technicians and Tattoo Artists***

14 Sheila Ahern wrote in support of the proposed fee changes.

15 ***Environmental Health Registration Board***

16 Annette Paplush questioned why a hairstylist pays less for a license than an environmental health
17 specialist and stated that a two-year renewal cycle does not make sense for people who are retired or
18 about to retire.

19 Michael McLuckie stated that a two-year renewal cycle does not make sense for people who are
20 going to retire shortly and also feels that the renewal fee is too high considering that some EHS
21 workers earn less than \$30,000.

22 Robert Reardon stated that he did not like the idea of offering only a two-year license and would
23 like the option of a one-year license.

24 Bill Emminger, provided extensive written comments that incorporated input from several
25 licensed practitioners. The general gist of the comments was that the State of Oregon is way out of
26 line with respect to fees assessed by other states. Several complaints were expressed with respect to
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1 the quality of services that the Agency has provided to registrants and applicants. Complaints were
2 also directed towards the amount of the fees in comparison to those assessed in other regulated
3 professions such as nursing.

4 ***Advisory Council on Hearing Aids***

5 No written comments submitted.

6 ***Board of Direct Entry Midwifery***

7 No written comments submitted.

8 ***Respiratory Therapist Licensing Board***

9 Lia Morrison, supports the two-year license renewal cycle and believes it will simplify keeping
10 track of continuing education units.

11 Lexus Lexus expressed approval of the decreased fees.

12 Georgia Peru expressed support for the reduced fees and two-year license renewal cycle.

13 ***Sex Offender Treatment Board***

14 Dixie Stevens, division director of Morrison Child and Family Services, expressed concern that
15 the proposed fees are prohibitive in cost, that the grandfather provisions do not cover a variety of
16 qualified professionals, and that treatment providers in rural areas will not be able to meet the direct
17 services requirements.

18 Drew Ceasar commented that the proposed fees would keep people from becoming licensed. He
19 noted that the fees charged to Licensed Clinical Social Workers are about \$200 and that
20 psychologists can demand higher fees.

21 Galyn Forster stated that the proposed fees are way out of line and that fees similar to those
22 charged to Licensed Clinical Social Workers should be considered.

23 Kathy Nordahl stated that the proposed fees are extremely high and practitioners in rural
24 counties would likely opt out because of the cost.

25 Dan Knoepfler, president of the Washington Association for the Treatment of Sexual Abusers,
26 stated that the proposed fees are comparable to those paid in Washington.

1 Scott Brown stated that the fees are functionally absurd and that agencies will not be able to
2 afford them.

3 Brad Dehler stated that the proposed fees will only hurt and that there are few sex offender
4 therapists who will be entering the profession during the next few years.

5 Kay Lorraine, a private practitioner, stated that the proposed fees are excessive and
6 unreasonable. She believes that they would pose an unfair burden on practitioners who do not work
7 for an agency or other government entity.

8 ORAL TESTIMONY

9 Thirteen persons testified at the public hearing.

10 ***Body Piercing Licensing Program***

11 Adam Renk testified that it is difficult to earn a living as a body piercing technician and the
12 proposed fee increase is extreme and poses a hardship. He also stated that the absence of a
13 temporary license option is burdensome and makes it difficult to conduct business at fairs and other
14 transient events. He opposes the two-year license renewal cycle. He noted that tattoo artists pose a
15 more serious public health risk than body piercing technicians yet they pay lower fees.

16 ***Board of Cosmetology***

17 Aimee Claiborne, a student at College of Hair and Design, testified that the fee increases for
18 testing and applications are much too high considering the budget constraints on most students. She
19 noted that schools set budgets for students at the beginning of their education and suggests that the
20 fees be allocated among current and prospective practitioners so as to facilitate entry into the field.

21 Starla Herman, a student at Phagan's, testified that she attends classes for 48 hours and works 25
22 hours and is barely making it. Most entrants start out at minimum wage. The high testing fees will
23 cause people to refrain from cosmetology services, increase defaults on student loans, and
24 effectively penalize students because they are the ones who are just starting out.

25 Lonnie Moore, a practitioner, complemented the prior testimony by the students and proposed
26 that cosmetology be deregulated because it does not pose serious health risks. He also suggested that
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1 the Agency lower its costs by using more economical cars and cutting staff. He believes that the fee
2 increase is self-serving and that the tort system is an adequate means by which customers can
3 remedy any injuries they suffer. He stated that cosmetologists are not killing people and that the
4 Agency is thus not serving the public. He believes that students are being deceived and that schools
5 anticipate that all graduates will get all the certifications offered by the Agency.

6 Dianna Meanna, a cosmetology student, opposes the fee increase because students are struggling
7 as things stand. She recommends that part of the fee burden be shifted to practitioner licenses to
8 facilitate entry. She described the proposed testing fee increases as astronomical.

9 Amy Vaillancourt-Sals testified that most students do not come from well-to-do families and that
10 they had no idea of the proposed fee increases when they started school. She also noted that the
11 economy is in a recession.

12 Karen Dieckman, owner of six Phagan's Colleges, commented testing is expensive for students
13 and the proposed fee increases will cause students to defer examinations and entry into the field. She
14 also stated that deferred entrance will have a long-term effect on the field and that failure by schools
15 to meet a sixty percent licensure rate and 70 percent placement may affect accreditation.

16 Tammy Kennedy, of the Capitol School of Hair Design, opposes the increases and specifically
17 thinks that the proposed changes to late fees is unreasonable. She noted that life events can affect
18 decisions to renew and that other regulated fields have inactive status categories or a cap on late
19 fees.

20 Micheal Snook stated that his issues had been addressed by other commenters and that inactive
21 status has been discussed. He stated that the effect of the proposed increase in fees on practitioners
22 would be minimal.

23 Heidi Zuniga, of Springfield College of Beauty, testified that budgets for students are set when
24 they start school and that fee increases are disruptive. She stated that she wonders how often will
25 fees be increased and asked when will it all stop. She expressed appreciation for phasing in the fee
26 increases with respect to current students.

1 Will Shepard testified that he started school in 1979 and thought his income would be higher. He
2 said most cosmetologists are paid low and there is a high turnover. He believes that more
3 practitioners are breaking the rules and wanted to know what the Agency can do for practitioners.
4 He has never seen an injury caused by a cosmetologist, He said the multiple-license process is
5 burdensome and unfair; and the fees are too high.

6 Jennifer Martin, who runs a beauty school in Albany, testified that many practitioners are
7 dropping practice areas because of fees. She stated that fees are going up too fast and too high.

8 *Advisory Council on Hearing Aids*

9 John McCulley, executive director of the Oregon Speech and Hearing Association, supported the
10 proposed fee changes and expressed appreciation for the cost review.

11 **HEARING OFFICER'S COMMENTS AND RECOMMENDATIONS**

12 The recommendations of the hearings officer are set forth by program areas in which comments
13 were provided. In addition, some general recommendations applicable to all programs are provided
14 at the end of this section.

15 *1. Board of Athletic Trainers*

16 The comments were generally supportive and no recommendations are being made.

17 *2. Body Piercing Licensing Program*

18 The comments expressed concern with respect to the economics of the practicing in this field
19 and that the proposed fee increase would impose a financial hardship on regulated parties.
20 Comments also noted that fees for tattoo artists were being reduced whereas the fees for body
21 piercing technicians were being increased. The fee increase is significant on a percentage basis but
22 the net increase amounts to only \$37.50 per year. It is unclear to the hearings officer whether this
23 amount of increase would in fact pose a significant hardship but it does amount to about one-half
24 day's income for a practitioner earning \$10 per hour.

25 *3. Board of Cosmetology*

26 The bulk of the comments were that the proposed increases in fees associated with initial
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1 licensure would pose a hardship and barrier to entrance that would be experienced by new
2 practitioners. While there is an appeal to the argument that it might be more appropriate to allocate
3 some of these fees to active licensees to reduce the overall costs, it should be noted that the Agency
4 did not solicit comment on this issue, and had such comment been solicited, practitioners may have
5 opposed such an allocation. It is recommended that the Board give some additional consideration to
6 this issue and perhaps obtain additional information through its public outreach program if the Board
7 deems further action desirable.

8 ***4. Advisory Council for Electrologists, Permanent Color Technicians and Tattoo Artists***

9 The sole comment was in support of the proposed fee changes and no recommendation are
10 provided by the hearings officer.

11 ***5. Environmental Health Registration Board***

12 The comments were directed to the issues of the high fees relative to other states and the
13 proposed adoption of a two-year renewal cycle. Without detailed information regarding the amount
14 of oversight provided in Oregon relative to other states, as well as information concerning the
15 general qualifications required for registration in other states, the hearings officer does not feel he
16 can soundly address the issue of the fees assessed in Oregon as compared to other states. The Board
17 may want to give further consideration to this issue.

18 ***6. Advisory Council on Hearing Aids***

19 The sole comment was supportive and no recommendations are being made.

20 ***7. Respiratory Therapist Licensing Board***

21 The comments were generally supportive and no recommendations are being made.

22 ***8. Sex Offender Treatment Board***

23 The comments were directed to what are perceived as very high fees and do give the hearings
24 officer concern that such fees could adversely affect the implementation of this new program. It is
25 recommended that the issue of fees be revisited in this light and that the Board consider whether the
26 level of fees is likely to create a disincentive for licensure and thus adversely affect revenues for the
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1 program.

2 **9. General Issues**

3 There were some comments expressed that seem to be generally applicable to all the programs
4 considering that each of the programs proposes to adopt a similar structure for fees. The first issue
5 concerns the two-year license renewal cycle. In this regard, the option of a single-year license does
6 not sound unreasonable provided that the fees are assessed to take into account that the
7 administrative costs of processing a single license are likely to be greater than the costs associated
8 with a two-year license. The Agency and its boards may want to give consideration of establishing
9 such an option. For example, it might be appropriate to have a single-year license for which the
10 amount of the fee lies somewhere in the range of one-half to the full amount of the fees assessed for
11 a two-year renewal.

12 The second issue concerns late fees. In many cases, the imposition of a late fee on a monthly
13 basis would cause the late fees to exceed the renewal fee if a practitioner was a few months late in
14 applying for the renewal. This hardship could be addressed by placing a cap on late fees once they
15 reach a certain amount. Similarly, the Agency may want to consider allowing for a waiver of late
16 fees when a renewal is requested late because of extraordinary circumstances beyond the control of
17 the person seeking renewal. In some instances, provisions allowing for a practitioner to be placed in
18 an inactive status would address such hardships and possibly reduce the Agency's costs in dealing
19 with situations where life events compel a practitioner to discontinue active practice for a period of
20 time. Therefore, it is recommended that the Agency give some consideration to whether the late fee
21 provisions could be modified to take into account hardship situations where the person requesting a
22 renewal is late for reasons other than negligence or inexcusable neglect.

23 **CONCLUSION**

24 Wherefore, the written comment and public testimony having been considered, the Hearings
25 Officer recommends generally that the proposed amendments be adopted. However, the Agency
26 may want to give further examination to some of the issues raised by commenters as set forth in the
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1 preceding section.

2 Dated: August 7, 2008

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4 Respectfully submitted,

5 s/Bert P. Krages II
6 Bert P. Krages II

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8 Attached as exhibits:

9 Proposed Rules
10 Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact
11 Written Comments
12 CD Recording of Hearing