

**MINUTES OF THE COSMETIC THERAPY
ADVISORY COMMITTEE**

Call to order: Mr. Wayda called the meeting to order at 10:05 AM on Wednesday, August 20, 2003.

Committee members present: Earl Butcher, Mary Solanics, Jeanne Sweeney, and Vickie Mickey

Committee members absent: None (1 vacancy)

Guests present: Karen Rossi, CT; Freda James Forkapa, RN, CT

Staff members present: Mark Wayda, Kay Rieve, Penny Grubb

I. Minutes Review and Approval

Mr. Wayda asked if there was any objection to approval of the minutes for the CTAC meeting of February 19, 2003. Ms. Solanics moved acceptance of the minutes; Ms. Mickey seconded. There being no objections, the minutes were approved.

II. Next Meeting

Mr. Wayda asked if the Committee would be able to attend a next meeting on the regularly-scheduled third Wednesday for the month of October. Several members were unable to attend that day. After a discussion of dates, the Committee decided to postpone until November 19, 2003 from 10:00 a.m. until 1:00 p.m., with the room to be decided.

III. Administrative Issues

Mr. Wayda asked if the members had all received, signed and returned to the Board their contracts for FY 2004. All members indicated that they had complied.

IV. CT Exam and school issues

Ms. Rieve informed the committee that 6 students had taken the June CT exam—5 first time takes and 1 retaker. 2 of the 5 first time takers passed the exam, as did the retaker. Ms. Rieve indicated that there were no plans currently in place to make significant changes to the exam.

Ms. Solanics indicated that she would like the Board to instruct the students to use a steel or gold probe rather than an insulated/Teflon coated probe. Mr. Butcher indicated that there was no consensus in the

community regarding the probe, but that he found instructions to use non-insulated probes for purposes of the exam acceptable.

Ms. Solanics also raised the issue of the students' understanding of the proper angle of insertion for the probe. Ms. Sweeney indicated that the proper angle of insertion has to be determined on a hair-by-hair basis. Ms. Solanics indicated that the problem is that the examinees just go straight in rather than selecting an angle based on the hair, and that if the angle is not correct, most of the other exam points will be incorrect. Mr. Wayda noted that this information has been transmitted to the schools.

Mr. Butcher indicated that the students have all had positive feedback on the exam process. He indicated that the work that has been done on the exam has made a world of difference.

Ms. Rieve indicated that she is pleased to hear that the exam is being well-received, but that she will continue to review procedures including exam scripts. There was a suggestion that perhaps the written portion of the exam could include some questions on angle of insertion in order to spur the thought processes of the students; Ms. Rieve indicated that she would also review the written portion of the exam.

Ms. Solanics raised another issue with the practical exam, that of students requesting the student to hold the ground. The ground is only required for certain types of procedures, but the students do not appear to know which procedures do require it.

The conversation turned to the issue of student communication with the proctors. Ms. Sweeney indicated that students have a fear of speaking with the proctor. The exam environment can be tense, and there is some history of students being told at some level that they may not speak to the proctor. Mr. Wayda asked for an explanation of the exam process currently, and he was informed that the pre-exam script does contain language indicating to the students that they should be relaxed and treat the exam setting as though it were just another patient, including that they should feel free to communicate with the proctor as they would a patient in a private practice setting. Mr. Wayda indicated that he wanted to review that pre-exam script to determine if additional or different language might more effectively convey that message. Mr. Wayda asked Ms. Rieve if there was any problem with providing the pre-exam script to the committee. She indicated that it was not a problem as regards the pre-exam script. Mr. Wayda asked Ms. Rieve to send the script to the committee members for their review prior to the November meeting, and indicated that he would make review of the pre-exam script an agenda item for the November meeting. Ms. Rieve also pledged to put more information about the exam on the CT subweb.

Mr. Butcher indicated that the field does not provide many hard and fast rules, leaving some uncertainty regarding what is going to be required on the exam. Providing more of that information on the web site would be beneficial.

The next CT exam is scheduled for December 5, 2003.

The issue was raised regarding the financial viability of schools. Ms. Rieve reported that LCC had closed, leaving only one CT school in Ohio. Mr. Butcher reported that schools are financially unable to survive because the margins are just too small. His school would not be able to survive if it were not underwritten in part by his clinic.

An issue raised was the minimum 1-year requirement for the CT educational program. Mr. Wayda indicated that the CT curriculum rule, on the agenda later, would reduce to 9 months the minimum educational program. Mr. Butcher indicated that would not have a significant impact because the amount of time required is not a significant factor in schools costs.

It was asked if there might be a way to dovetail A&P education with that for MTs so that an MT school might be able to provide the A&P education for a CT program. Mr. Wayda indicated that such a structure would certainly require a change in the rules unless the MT school also offered the CT education and conferred the diploma in CT. There would also need to be considerable work in both the CT and MT community to establish A&P requirements that apply to each practice, and then those different practices would have to be homogenized.

V: CT Sales Tax

Mr. Wayda drew the Committee's attention to the agenda materials on the tax CT services. He explained that the biennial budget bill, H.B. 95, contained a provision to expand the sales tax base to include CT's are now, therefore, required to collect and remit sales tax for all hair removal treatments not done specifically on the order of a physician.

Mr. Wayda drew the Committee's attention to the agenda packet in which there were print-outs of the FAQs from the Medical Board's CT subweb.

The Committee expressed their surprise at learning about the tax requirement. The community had not been aware of the new requirement until quick recently.

Mr. Wayda indicated that the representative of the CTAO had been in contact with the representative for AMTA-O and that the organizations

were working together to exempt the licensees. He concluded, however, that even if such a legislative solution were forthcoming, it would be months at least until such relief arrived, and until such time, CT's had an obligation to collect and remit the tax.

The Committee discussed some of what it saw as difficulties with the new law, first and foremost, that it taxed medical procedures as Cosmetic Therapy is considered a limited branch of medicine under Ohio law. Moreover, the Committee sees inconsistencies in requiring taxes for hair removal, but not for hair cutting, shaving, etc.

The Committee sought clarification on the physician order exemption. Mr. Wayda explained that the statute says that if there is a physician's order for the treatment, tax is not owed. Mr. Wayda further related his conversations with the Department of Taxation who advised that practitioners think about this in terms of the documentation that would be required to prove the existence of the exemption. The recommendation is for a patient specific, written order for the service. It should contain the patient's name and some statement that the physician requests the CT to provide hair removal services for that patient.

The question arose as to those cases in which CT's and physicians share office space. Again, relating the comments from the Department of Taxation, Mr. Wayda indicated that if a CT is working for a physician, the patients are the physician's and patient billing for the CT service is through the physician's office, the services are covered under the physician's exemption. If, however, the CT and the physician are merely sharing space and the CT is acting as an independent contractor, the taxes should be collected and remitted. If the CT works for the physician, but also sees patients independent of the physician, the taxes would be required for those patients being seen independently. Also, it is important to note that physician's have responsibilities under other sections of the Revised Code to evaluate a patient before ordering treatments, so a physician's just writing a note to cover your patients might get you out of the tax, but that physicians have a responsibility to see and evaluate patients before writing a treatment order.

The Committee sought clarification regarding who qualified as a "physician" for purposes of tax exemption under the new tax code. Mr. Wayda indicated that the language in the Revised Code mentions "physicians" and "chiropractors," and that the Department of Taxation has interpreted that to mean MDs, DOs, DPMs, Chiropractors and Dentists. The Committee asked if that meant that dentists could write an order for a laser treatment to be carried out by a CT. Mr. Wayda indicated that the tax code cannot be read to expand any practitioner's scope of practice beyond that authorized in other parts of the code. Chapter 4731-18 of the

Administrative Code restricts to physicians—defined as an MD, DO or DPM—the authority to delegate the use of a laser for hair removal. A dentist’s order for hair removal would be limited to the dentist’s scope of practice and would have to be limited to the electrolysis modality.

Mr. Wayda further clarified the purpose of the Medical Board FAQ’s has been to provide information on what the obligations are for Board licensees under the new tax language. Moreover, the Board’s information is based on what it has been told by the Department of Taxation (DOT)—the DOT reviewed the FAQ’s before they went on the Board’s website. Mr. Wayda wanted to make it clear that the DOT enforces it’s own statutes and so it is what they say that counts.

Members of the Committee also related that the CT community had not received written notice from the DOT, and Mr. Wayda reminded the Committee that the Board’s FAQ’s on this issue were an attempt to provide information, but that individual CT’s would be well-advised to seek advice from an attorney or accountant regarding their individual situations.

Ms. Mickey commented on the potential unfair competition between CT’s working independently and CT’s working under a physician’s order or in association with a physician, or for CT’s who simply flaunt the law. Mr. Wayda related that the DOT is happy to enforce the law and provides a reporting process.

Ms. Mickey commented on the increased administrative burden businesses will face under the new tax requirements. Mr. Wayda reiterated that such complexities argue for consultation with accountants and/or attorneys. The Committee noted that it would be valuable for independent CT practitioners to take some classes on business processes to help them deal with the new tax requirements, but that it is difficult because Medical Board rules (4731-1-08) prohibit counting such “non-clinical” courses for CCTE credit. The Committee asked that 4731-1-08 OAC be placed on the agenda for discussion at the next meeting.

Mr. Butcher asked about the requirements of schools to collect sales taxes for hair removal procedures performed in school clinics. Mr. Wayda indicated that, pursuant to discussions with the DOT, “state” schools, like Stark State, LCCC, etc., are exempted from the sales tax due to a broader exemption to sales tax enjoyed by government entities. Schools registered under the Proprietary School Registration Board would be subject to the tax requirements.

VI: Proposed rule 4731-1-09—CT Curriculum Rule

Mr. Wayda called the attention of the Committee to the amended draft language of the Curriculum Rule. He indicated that three changes had been suggested since the last time the committee had addressed the issue.

First, in paragraph (A) (2) (b), the language used to say, “including hygiene,” and, based on the Committee’s previous discussions, addition language was added. The new language includes “infection control” as part of the hygiene requirement.

Second, in (A) (2) (e), two new sentences were added, based on previous committee discussions, regarding recordkeeping and auditing related to administration of externships. These additional sentences were meant specifically to address an issue raised by Mr. Butcher regarding the need to maintain administrative control.

The issue of total number of hours was raised—because of the requirements of the Board of Regents, LCC indicated they could not have a 750 hour program. As a result, the total hours required, in the rule, were backed off from 750 to 700. With the demise of LCC, Mr. Wayda wondered if the rule should go back to 750 hours? The committee indicated that it was the pedagogically responsible thing to do, and that it would have positive impacts regarding reciprocity with other states.

The committee had an extended discussion of the financial viability of CT schools, a concern made more acute by the fact that only one school now exists in Ohio. Ms. Sweeney asked about the possibility of expanding the CT scope to include esthetics and bringing those licensees under the Medical Board. Mr. Wayda indicated that it was not an issue under consideration by the Board and that he did not believe the Board would embrace such a proposal.

The committee discussed whether the CT schools have authority under the statutes to deny admission to the school based on any criteria—entrance exam, physical restriction, etc. Mr. Wayda indicated that the Medical Board enforces minimum standards of “age of 18 and a high school diploma or equivalent.” Mr. Butcher indicated that he believed that anti-discrimination laws kept the schools from using such standards. Mr. Wayda indicated that he did not know if any other laws applied to school admissions. Mr. Wayda asked Ms. Rieve to get information from the Career Colleges and Schools Board on the issue.

The Committee voted unanimously to recommend to the Limited Branch Committee the submission of the Curriculum rule, as amended, to the formal rule making process.

VII: Scope of Practice Issues

Several scope of practice discussions erupted spontaneously throughout the course of the meeting. Those discussions have all been included in this section of the minutes.

The first issue has to do with the use of the designation “C.T.” Ms. James-Forekapa related an experience in which she had been in a hospital and saw a person with a badge that had the name and the designation “C.T.” She asked the employee what C.T. meant, and was told it meant “Clinical Technician.” In further conversation, Ms. James-Forekapa was told that the technician had received training as an EMT (3 months training and a diploma), then the hospital does training and employs the clinician. In this case, the person was giving IV’s and performing other nursing tasks for significantly less money.

Ms. James-Forekapa then related that the Cleveland Clinic had developed a similar type of training program for lasers, leading to a discussion of the proper use of lasers and delegation of the use of lasers by physicians. All members of the committee related instances in which they knew or suspected that physicians were permitting unlicensed people or, in some cases, estheticians, to use lasers for various purposes in treating patients. Physicians seem to believe that they have authority to delegate the use of lasers to anyone they choose.

Mr. Wayda indicated that the rules (4731-18-03) explicitly state that a physician may only delegate the use of a light-based medical device like a laser to a PA, an RN or LPN, or to a Cosmetic Therapist, and then only under strict limits outlined in the rule. Mr. Wayda further indicated that any licensee who has knowledge of such an occurrence has a duty to report to the Board. Ms. Mickey indicated that she oftentimes hears about such things second hand; Mr. Wayda suggested that she should still file a complaint if she believes what she has heard to be true and the Board would handle it from there.

Ms. Rieve indicated that for PA’s, there has to be a plan approved by the Board to allow the delegation, and then there must still be on-site supervision. For nurses being delegated the use of the laser, the requirement is also for on-site supervision. If the delegation is to a CT, and if the CT has 50 hours of training in the use of the laser, the supervision can be off-site. The issue that remains is that doctors and hospitals believe that they can allow non-authorized persons to use lasers. Laser sales reps are telling the doctors that the doctors can train anyone they want to use lasers.

Committee members also mentioned that they are seeing a number of patients who suffer laser burns from the hands of unlicensed users. Mr. Wayda again indicated that it is vitally important that such cases be reported to the Board because the Board does not have much evidence of such patient harm. Committee members protested that they do not have permission from the patients to file the reports, such permission being required by HIPPA; Mr. Wayda indicated that the Board is exempted from the HIPPA limitations and is authorized to receive patient-specific medical information if needed in the course of an investigation. It is not necessary, however, for the person filing the complaint to also get the medical records. The Board will subpoena records if it needs them in investigation of a case.

The committee turned its attention to the scope of practice. Mr. Wayda indicated that he had two specific questions that he would like to have addressed by the committee.

First, Mr. Wayda referred to a letter he had received from a medical practice inquiring why, for laser hair removal, CT's may function under off-site supervision, but RN's require on-site supervision (pursuant to 4731-18-03 OAC). Mr. Wayda asked first, then, what was the practical difference between on-site and off-site supervision.

Ms. Mickey indicated that in her practice, the physician does the sees every new patient for laser hair removal, does the H&P, etc., then gets the CT. Together, the physician and the CT do a "test spot" with the laser, calibrating the settings until they reach their clinical end point. At the point, the physician gives permission to the CT to proceed with the treatment and may leave the room at that point. The physician is also responsible for charting all information including the laser settings being used. Mr. Wayda pressed for greater detail in the difference between on-site and off-site supervision. Ms. Mickey explained that there is a sort of "apprenticeship" period and an additional 50 hours of training in the use of the lasers prior to a physician deeming the CT capable to act outside the line of sight of the physician.

The committee further indicated that a CT has 600 hours of specific training in hair removal, an additional 50 hours of laser training. They are specialists in hair removal, which is a different situation from nurses working with a physician on hair removal.

The committee indicated that on-site means to them, in the office, though not necessarily in the room. The committee indicated that off-site in this context is much the same as off-site in the PA context—within 60 minutes of the location and continuously available for communication if needed.

Mr. Butcher asked why nurses are included in the delegation rule at all, because permanent hair removal is not in the scope of practice of nursing. Ms. Mickey agreed, indicating that there is insufficient control regarding the expertise of nurses being used by physicians to practice hair removal. Mr. Butcher indicated that there should be some research as to where the RN scope of practice ends.

Ms. Sweeney indicated that the Cleveland Clinic is permitting private interests to provide weekend courses in laser training for LPN's and RN's, resulting in a designation of Certified Laser Technician (CLT), and that the Clinic doctors then permit the RN's and LPN's with the CLT designation to apply lasers without any supervision. Ms. Sweeney indicated that she told the Clinic doctors that ONLY CT's who have taken the 50 hour training can operate with off-site supervision, and RN's and LPN's MUST have on-site supervision. The Clinic responded that it is nonsensical because nurses "know more" than CT's. Ms. Sweeney asked which was the proper thinking, and Mr. Wayda responded that the rule language appears very clear, and the rule language was the proper approach.

Ms. James-Forkapa indicated that there are many laser clinics where you never see a doctor. Ms. Rieve indicated that if that is the case, the committee members should file a complaint on those establishments with the Medical Board.

Ms. Sweeney asked why the RN's and LPN's are not required to have the 50 hour additional training that the CT's are required to have. The Committee responded that no one has to have the 50 additional hours, but that a CT has the option to take the 50 hours to qualify for off-site supervision.

Ms. Mickey indicated that she had received an inquiry from an esthetician regarding the use of Intense-Pulsed Light Therapy devices. Mr. Wayda indicated that the Medical Board and Cosmetology Board had come to an understanding on light-based medical devices. Cosmetologists and estheticians do not have scope to use light-based medical devices, pursuant to 4731-18-02 OAC.

Ms. Mickey asked about the cross-over issues between CT's and Cosmetologists. She has an interest in what types of skin preparations the CT can do in preparation for epilation. Ms. Mickey indicated that she attended a Medical Board approved CCE course that included much of the skin preparation techniques like massage, use of topical preparations, etc. Her question was how could that be outside the Scope of Practice if it was approved by the Board for CCE. Ms. Rieve indicated that this was

an issue of concern for her, and that she would like to have a larger discussion on the CCTE approval process.

Mr. Wayda said that much of the scope issue depends on what the procedures are that the CT wants to do. Massage techniques are explicitly listed in the CT scope of practice, and so may be done. It is difficult to see how other techniques—microderm abrasion, conditioning, etc.-- would be part of the CT scope because there is no specific language authorizing other practices “adjunctive to” the hair removal procedures. Ms. James-Forkapa explained how microderm abrasion can clean debris from the follicles to clear the way for epilation, and moisturizing can aid in hair removal as well.

Mr. Wayda indicated that the staff attorneys would need to be asked about some of these scope issues, and that Mr. James Rough, Executive Director of the Cosmetology Board, would be attending the next CTAC meeting to discuss some of these cross-over scope issues.

VI. Adjournment

The meeting adjourned at 1:15 p.m.

I certify that these are true and accurate minutes of the August 20, 2003 meeting of the Cosmetic Therapy Advisory Committee.

Mark Wayda (for the Committee)