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Mr. Jun Maiquis
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Via email and mail: jun.maiquis@alaska.gov

Ms. Cynthia Spencer
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Via email and mail: cynthia.spencer@alaska.gov

RE: HB 131; 12 AAC 09.006—The Nail Technician Licensing Changes.

Dear Mr. Maiquis and Ms. Spencer:

Fortier & Mikko, P.C. represents a licensed manicurist regulated through the Board of Barbers and Hairdressers (“the Board”). Our client, however, desires to remain anonymous due to fear of retaliation. This letter concerns an erroneous interpretation of 12 AAC 09.006, as conveyed through a fact sheet posted on the Board website and mailed to licensed manicurists.¹ Finally, additional issues surrounding HB 131 and 12 AAC 09.006 warrant your attention. They are (1) a potential misuse of official office by the prior Board chairperson, Glenda Ledford; and (2) concerning evidence of discriminatory motive behind the new testing requirement for manicurists.

1. The Board Intended “Grandfathering” for Existing Manicurists with Work Experience.

Attached are meeting minutes from the October 10, 2016 meeting of the Board of Barbers and Hairdressers.² It is very clear that the Board did not intend to require currently licensed manicurists who could pass the manicuring examination with 250 or

¹ Exhibit 1.

² Exhibit 2.

more hours of work experience to attend 250 to 300 hours of instruction at a manicuring school.³ The Board requested that 12 AAC 09.006 be amended to allow for “grandfathering.”⁴ Mr. Maiquis was going to confer with the Department of Law and get back to the Board on how to amend the laws to reflect the Board’s intent.⁵ We request that Mr. Maiquis advise on the status of this.

2. The Legislature Intended “Grandfathering” Existing Manicurists with Work Experience

The legislative history of HB 131 demonstrates the legislature also intended for “grandfathering” to apply to licensed 12-hour manicurists with 250 hours of work experience who pass the examination.⁶ For example, Rep. Shelly Hughes expressed concern that the bill contained no requirement that existing manicurists be grandfathered in and asked whether the Board would be amenable to substitute some work experience to qualify for the proposed 250 training hours.⁷ Glenda Ledford, the Board Chairperson, offered her belief “that those manicurists who can pass the state examination for the nail technician license that will be put in place should be able to resume under their licenses.”⁸ There was substantial discussion about exempting current licensees from the educational requirements in exchange for their work experience.

3. DCCED’S Interpretation of 12 AAC 09.006 is Arbitrary and Capricious.

Contrary to the clear intent by the legislature and the Board, DCCED distributed literature to manicurists containing an erroneous interpretation of 12 AAC 09.006. This misstatement of the law is also maintained on the Boards website.⁹

DCCED allows existing licensees to qualify for the examination with 250 hours of work experience, but is requiring them to attend 250 hours of instruction in manicuring after

³ *Id.* at pp. 29-34. When advised by Ms. Spencer that a manicurist would still be required to complete 250 to 300 hours of training to apply for the nail technician license, the Board expressly stated “that it was not their intent to require additional training from manicurists who could provide the 250 hours of work experience and pass the written examination.” Board member Jeannine Jabaay stated that “grandfathering” had been included in the first draft of the bill—which was the only draft the Board saw.

⁴ *Id.* at p. 30.

⁵ *Id.*

⁶ Exhibit 3 (HB 131, HOUSE L&C COMMITTEE (April 10, 2015)).

⁷ *Id.* at p. 18.

⁸ *Id.*

⁹ https://www.commerce.alaska.gov/web/Portals/5/pub/BAH_Manirenewal.2017-2019.pdf (last accessed March 16, 2017).

the manicurist has passed the examination.¹⁰ This is contrary to AS 08.13.100(a), which provides:

[T]he Board shall authorize the issuance of a license for the practice of barbering, manicuring, or esthetics to each qualified applicant who has passed an examination under AS 08.13.090 and meets other applicable requirements under this chapter.¹¹

There is no other requirement for 250 hours of instruction under AS 08.13 *et seq.* other than AS 08.13.080(4) which “250 hours of instruction in manicuring” to be successfully completed before sitting for the manicuring examination.¹² Accordingly, the curriculum for the manicuring school is education on the subjects of the exam.¹³ But here, the intent was to create an exception to AS 08.13.080(4) to “grandfather” existing licensees by substituting 250 hours of work experience in lieu of manicuring instruction as the condition for the examination. There is no authority (nor does it make sense) to require licensees with adequate work experience to attend 250 hours of manicuring school after they have passed the manicuring examination.

DCCED’s interpretation of the new laws governing manicuring is arbitrary and capricious. By law, the general control in the vocation of manicuring is vested in the Board, not DCCED.¹⁴ The Board clearly did not intend this result.

4. The Educational Requirement Derives From a Conflict of Interest and Is Not Feasible.

Assuming, *arguendo*, that DCCED’s interpretation is lawful and aligned with the intent of the Board and the legislature (which it is not), there are serious problems with the new legislation and regulations:

1. The schools are expensive. I am informed they are an upwards of \$4,000.
2. There are no manicuring schools licensed by the Alaska Commission for Postsecondary Education (“ACPE”).¹⁵ The law mandates the schools be accredited by ACPE to qualify for a nail technician license.¹⁶

¹⁰ Exhibit 1.

¹¹ (Emphasis supplied).

¹² *See also*, 12 AAC 09.108, which requires verification of training to sit for the nail technicians license examination.

¹³ *See*, 12 AAC 09.148—establishing the manicuring curriculum.

¹⁴ AS 08.13.030(a).

¹⁵ *See*, 12 AAC 09.125(a)(6). *See also*, 12 AAC 09.002(m)(2)(A).

3. While ACPE recognizes zero schools, the Board only recognizes three schools in Alaska.¹⁷ One is in Anchorage. Another is in Juneau. One is in the Mat-Su Valley. The schools are not available statewide and cannot accommodate the number of students that will need to attend. Sarah Chambers, acting director for the State of Alaska Division of Corporations, testified before the legislature that at the end of FY 2014, there were approximately 1,261 licensed manicurists in the State of Alaska,¹⁸ but only twelve of the 1,261 licensees hold the advanced manicuring endorsement—less than 1%.¹⁹ Thus, three schools will need to educate 99.1% of Alaska’s manicurists in a relatively short period of time.

4. The school in the Valley, Glenda’s Training Center, LLC, is 100% owned by Glenda Ledford.²⁰ Ms. Ledford was the Board’s chairperson when HB 131 was introduced and signed into law. Ms. Ledford is a well-known, public supporter of former Rep. Lynn Gattis.²¹ Rep. Gattis referenced Ms. Ledford’s service on the Board when she introduced the HB 131. Thus, Ms. Ledford used her official capacity to introduce legislation for which she derives direct, financial gain.²²

5. The Testing Requirement Disproportionately Impacts Minority Immigrant Manicurists Without Serving Any Demonstrated Public Purpose.

The premise for HB 131 is that the lack of formal training and testing in the manicuring industry threatens public safety and minimizes professionalism. Thus, the increased barriers to entry and renewal set forth in HB 131 are justified. But here, in introducing HB 131, Rep. Gattis admitted that Alaska’s manicurists already have the 250 or more hour training. She said:

...many nail technicians are Asian and most were trained in the Lower 48...It was not uncommon for practicing nail technicians to have acquired 250 to 400 hours of training, which is very different from the minimal 8-12 hours of training required in Alaska.²³

¹⁶ *Id.*

¹⁷ Exhibit 4.

¹⁸ Exhibit 3 at p. 13.

¹⁹ Manicurists with the advanced manicuring endorsement are automatically eligible for the nail technician license.

²⁰ Exhibit 5. Chairperson Ledford formed Glenda’s Training Center, LLC two days before HB 131 took effect.

²¹ Exhibit 6.

²² This may constitute a violation of AS 39.52.120—Misuse of Official Position.

²³ Exhibit 3 at p. 5.

Chairperson Ledford said “she believes that many of the 12 hour licensees have been to California and other places and have at least 250 hours of training...but have currently opted to apply for the manicurist license [but not the advanced manicurist license].”²⁴ Thus, Rep. Gattis and Chairperson Ledford, the two proponents of the bill, admit that many of Alaska’s manicurists already possess the knowledge pertaining to health, safety, and hygiene, but have simply not taken the examination. The obvious reason for not taking the exam: a language barrier, as “many nail technicians are Asian...”

Rep. LeDoux identified this issue right away and inquired into whether the manicurists could take the test in their native language.²⁵ Ms. Ledford referenced the “testing” for the 12 hour license course and stated she “assumed that these individuals must have taken the exam for certification in their native language or they were able to take the exam orally to qualify.”²⁶ Deanna Pruhs, another Board member, discussed “that applicants that have already passed the twelve hour exam could likely pass this one.”²⁷

But prior to HB 131, AS 08.13.040 read “the board may not require an applicant for a licensure as a manicurist to take or pass an examination conducted by the Board for the field of manicuring...” Thus, the assertion that a language barrier was not a concern because manicurists had already passed one test is demonstrably false. These Board members knew, or should have known, that less than 1% of manicurists had taken a test.²⁸

The examination is a timed, written exam. The only languages the written exam is offered in are English, Spanish, Vietnamese, and Korean.²⁹ The only option for the verbal examination is English.³⁰ We believe the passage and enforcement of HB 131 suggests a discriminatory purpose against Alaska’s minority and immigrant population, and results in personal enrichment for Board member Glenda Ledford at the expense of this hardworking community.

In summary, DCCED should publically repudiate its erroneous interpretation of 12 AAC 09.006 because it is arbitrary, capricious, and violates AS 08.13.100(a) and AS

²⁴ *Id.* at p. 16.

²⁵ *Id.* at p. 11.

²⁶ *Id.* at p. 18.

²⁷ *Id.* at p. 11.

²⁸ Ms. Pruhs and Ms. Ledford are authorized to practice manicuring under their hairdressers license. At the time HB 131 was passed, there was no licensed manicurist on the board.

²⁹ Exhibit 7. Rep. LeDoux was particularly concerned about Hmong and Laotian manicurists in her constituency. These languages are not offered.

³⁰ *Id.*

08.13.030(a). The changes to AS 08.13 *et al.* should be repealed. There is no compelling public safety interest advanced in requiring 250 hours of education at a non-accredited school for manicurists that have already received this education in another state and/or have an equivalent amount of work experience. The exam should not be required until it DCCED is able to reasonably accommodate everyone who will foreseeably take the exam. This is particularly so where there has been no showing that that there is a legitimate public safety and professionalism problem which could be remedied by the new requirements and the legislation is tainted by potential misuse of public office.

Please advise whether DCCED intends to rescind its erroneous interpretation of 12 AAC 09.006 and whether it is agreeable to repeal or stay the changes enacted by HB 131 until such time as the issues associated with the legislation can be resolved.

Very truly yours,

FORTIER & MIKKO, P.C.



Rachel B. Lauesen

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Encl.

Cc: Gov. Walker; Rep. LeDoux; Rep. Hughes; Rep. Tuck; Rep. Drummond; Rep. Claman; A.G. Lindemann; the Board of Barbers and Hairdressers; Dir. Hovenden; Joshua Decker (Alaska ACLU).