



**Regulation Matters:
a CLEAR conversation**

Episode 30: The Board's Role in Reopening Regulated Services

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Line Dempsey: Welcome to our podcast, Regulation Matters: a CLEAR conversation. Once again, I'm your host, Line Dempsey. I'm currently the chief compliance officer with Riccobene Associates Family Dentistry here in North Carolina. I'm on the CLEAR board of directors, as well as the current chair of the National Certified Investigator Training committee with CLEAR.

Welcome back to our frequent listeners. For those of you joining us for the first time, let me give a brief introduction to CLEAR. CLEAR is the Council on Licensure, Enforcement and Regulation. We are an association of individuals, agencies, and organizations that comprise the international community of professional and occupational regulation. Our podcast is a chance for you to hear about timely and relevant topics in the regulatory community. Today I'm joined by several people. First of all, I've got Sara Chambers, who is the Division Director with Alaska Division of Corporations, Businesses, and Professional Licensing. Gina Fast who is the executive director of the Minnesota Board of Cosmetology and Adam Higginbotham, Deputy Executive Director with the Nevada State Board of Cosmetology. We're glad to have you with us. Welcome.

Guest speakers: Thanks, Line. Good to be here. Thank you so much. I'm glad to be here.

Line: Excellent, well I do appreciate you all taking time to join me today. Here it is, June 1st, as we record this, and we are all dealing with the coronavirus pandemic. I will say, the regulatory community is certainly having to make a lot of quick decisions and modifications to how we actually do things in order to respond effectively to the changing needs. CLEAR has offered obviously several webinars and a podcast episode that we have done before highlighting the regulatory response to the pandemic. Obviously, a lot of regulated industries have been shut down for some time. Today I wanna speak with our guests about the regulatory board's role as states and jurisdictions now start to reopen some of those industries such as barbering, cosmetology, massage therapy, dentistry, among others.

I know I've actually been really looking forward to a haircut, so I'm pretty excited about that this week. But we've all been involved with developing these guidelines for some of the professions that are reopening their services, and I know for us in North Carolina, it was a little different in that when the governor did his executive order, we were not restricted from our practice. We were actually

mandated to be open. Many offices chose to close; some eventually, through the board's guidance, did emergency only. But we finally started getting back open with probably a lot more emphasis on OSHA and CDC requirements. But let me start I guess with Gina, how are things reopening in your state? So, are the rules about reopening set by the state governor or by the board? And I guess following up with that, what kind of input has your board had in the process?

Gina Fast: Thank you. So, it's June 1st today, as you said, and today is the first day that salons in the state of Minnesota have been allowed to re-open. So it's quite an exciting day that salons get to open their doors. And including with the opening today, there's also a limit of the salons can only be open at 25% of the fire capacities. So that has been one of the biggest challenges of the last couple of days is establishing the 25%.

So in relation to the re-opening process, as the salons and the executive orders were issued and continued to keep salons closed, the board worked to come up with... we were hoping to release three different pieces of information. And that would be, one would be a guidance for COVID reopening. A second document would have been a salon manager or salon leader toolkit, which would be a whole host of information, website links to videos, to the CDC, to OSHA, Minnesota Department of Health, that would help with learning how to don and doff masks, whether you're supposed to use gloves, and all sorts of different resources at the salon leaders' fingertips. The other document that we released as a part of that timed perfectly with COVID is what we are calling our Stay Clean, Stay Safe campaign, and that is related to current existing laws and rules in the Board of Cosmetology for infection control, just released in a much more user-friendly format and checklist.

So as we developed those, we were working with the governor's office and the administration to see what this process is going to look like when we got to June first, today. And so as the month of April wore on and the month of May came, it became more clear that the administration was going to take an approach that they were going to be publishing a guidance for personal services. So that would include cosmetology, barbering, tattooing, tanning services, almost any service that was considered a personal service. So we are grouped in that document, which was released by the Department of Health, our Economic Development departments, as well as our Department of Labor in particular, OSHA. And to that document, the board had little to no input on. So the guidelines in which the salons open today, be at the 25% capacity that I mentioned, or any of the mask requirements or any... there's no restrictions on services, but the ideas for how to perform services more safely is all in the guidance document. And it's primarily housed with our Department of Economic Development.

Line: That's very interesting. Well, Adam, I guess since you're also involved with the board of cosmetology but obviously in a different state, how have those things been for you guys?

Adam Higginbotham: So with our structure, Governor Sisolak, the governor of Nevada, he created a group called LEAP, which is the Local Empowerment Advisory Panel. And LEAP, along with the governor's Medical Advisory Team, which is MAT, they were the deciding factor of when industries would re-open. The final say was with them.

We were instructed earlier on to provide representatives of the LEAP panel with our enhanced sanitation guidelines in response to COVID-19. We started working on our enhanced sanitation guidelines in response to COVID-19 on the week of March 23, which was exactly one week after we were told to close the salons. We started creating the reopening guidelines and we were referenced in the final guidelines from the Governor's state of Nevada phase one and phase two reopening guide guidelines for specific industries.

And the Nevada governor opened up the hair and nail service industries on May 9th, while the skin care industry and the schools of cosmetology didn't open until May 29th. But our enhanced sanitation guidelines were referenced by the Governor and his two teams in the reopening guidance.

Line: Gotcha. Now Sara, way up in the upper regions of Alaska and coming from a different perspective, because I guess you're covering corporations, businesses, and professional licensing - how has it been different there?

Sara Chambers: Well, aside from just the climate, we have 43 different regulations within our Division. So as far as cosmetology, I'd echo everything that Gina and Adam have said. It was a very similar foundational structure for healthcare and non-healthcare. For example, when we started reopening, the governor who, also much like Adam and Gina were saying, the governor retained the mandate power, and all of the official rules and responsibilities that weren't already in power to the boards came through the governor through these reopening mandates. And our governor had a package approach called Reopen Alaska Responsibly, and it was a phased approach, like many states are taking. And as of May 22, Alaska is fully open. We're already done with all of our phasing. I think Alaska has been considered the most open state at this point because we've already re-opened everything.

So those mandates, with a couple of exceptions, have shifted to guidance. So for our healthcare, which would include dentistry, which would include all medical procedures, nursing, chiropractic and so forth, our healthcare does have some mandates in place and those have really not been phased. They came out in April and have been clarified with the partnerships of the board. So our 21 healthcare boards have all decided in one form or another what is really relevant guidance that they can provide to the Governor's office through our Incident Command Center and Health and Social Services and give that feedback on how to interpret those generalized mandates for their particular industries.

And we can talk more about that coming up, but certainly there were certain medical procedures that caused more consternation than others, and our boards have really been instrumental in advising the decision makers on how to interpret. We also have had huge struggles with PPE and getting enough testing supplies. So, in Alaska - many states have very rural areas - that takes on a new meaning in some areas of Alaska, so it's been really difficult to obtain testing supplies and that has informed our reopening process.

Line: So this has kinda led me to a really interesting perspective, and I think it'll be interesting to come

back to Sara, since you guys have completed your phases. So let me go back even back to Gina again. And, Sara, listen in on this 'cause I wanna see if any of this is familiar. But when you guys are now starting to reopen cosmetology day one today for you all, what have been, so far, the concerns that professionals have raised, professions that you regulate? Are they eager to re-open, are they anxious about public safety, or somewhere in between? Certainly here in North Carolina, they kinda feel about halfway, especially as we have restaurants start to open back up a little bit, some restaurants are choosing not to open up because they don't think it's financially viable, whereas others are chomping at the bit, no pun intended. How has it been for professionals in cosmetology? Are they ready to open, are they not? Where are they?

Gina: Well, yes, so the state of Minnesota has roughly 5,500 salons and about 33,000 licensees, and the vast majority of licensees through this process have been really focused on reopening and how they're going to do this. I think the individuals that the Board has heard from are kind of on the opposite spectrum of, we're not ready to reopen or we should have never closed. And so it's looking at how to balance those ideas, as well as to have them focus on the plans of how they need to reopen.

And so through the guidance document from the governor's office, the guidance for personal services in Minnesota, each business needs to lay out a plan, which hopefully will help them walk through the steps of, before they open their business, they need to make sure they have adequate masks. And in Minnesota, they can wear a cloth mask; they don't need to have a surgical disposable mask. They would potentially need a face shield. So there have been concerns of being able to obtain the PPE that is needed. We have, I would say, more of our estheticians have been concerned about exposure in the types of services they do. We have continuously told them that this is a choice to open today; they don't need to open today.

So I think the biggest concern, and I kinda mentioned this in the first response, was the square footage. I think that the 25% square footage was a little bit surprising, too. It came out for both cosmetology or anything in personal services as well as restaurants. The next component was, how do I open my salon with only 25% of the licensees being able to work? And is it affordable now, even if I have all of the PPE and everything ready to go? Can I afford to even open my salon at this time? So that's kind of been the biggest hurdles we've had in Minnesota.

Line: So I guess I'll follow up that question to you real quickly. So if a barber shop only has three cars, are they allowed to open one chair?

Gina: Yeah, (laughing) so we have gotten to know our state Fire Marshal quite well. This was a relationship we have formed with them, and they have been super gracious. They've actually come out with a document that tells salons then how to do their square footage, how to measure it, as well as they can round up. So if you could only have .75 of a person, that means you can have one. And the other clarification that had come out is that the fire code is only for clients and guests of the establishment. It does not include licensees.

We don't know how long we will be in what the governor is calling this phase and the next. Once we're through this phase, then my understanding is we'll go from a 25% capacity to an increased capacity, whether that be 50% or something different. I guess it could always go lower, too. But yes, you can round up so you can have a full person in. We also have been hearing of businesses being open much longer than they traditionally would to try to service as many clients as they could.

Line: Sure. Well, Adam, how about in Clark County and the rest of Nevada?

Adam: Originally, the primary concern that we heard from licensed beauty service professionals, it was their financial concerns. That was our initial feedback that we got, which the Nevada State Board of Cosmetology can't assist them with that. We are a consumer protection agency that delivers testing, licensing, inspection, and education services to mitigate the infection risks and malpractice and safety risks for consumers of beauty services.

However, even though the majority of the beauty service industries were eager to get back to work, the reasons for wanting to get back to work were varied. We did hear from some that didn't feel safe to get back to work, but they were a much lesser group in volume than those that wanted to return. The board's role in reopening was to provide the enhanced sanitation guidelines to the Governor and his team so they could review how the beauty service industry could potentially return to work in a COVID-19 world. From the agency's perspective of where our concerns were on that side, on the agency side, not from the licensed beauty service professional side, it was the disinfectant supply chain, making sure that salons had enough disinfectant when reopening resumed. We didn't have the concerns that we thought that we would have with salons with the disinfectant. We were pleased to find that the majority of our salons had enough disinfectant available to perform the services.

Line: That's interesting. So I guess, Sara, now that you guys have been through this, you've been able to look back I guess in hindsight. The concerns that were raised by professionals initially - did it turn out to be much, I don't know what the right word is, strength to that? Were they right in thinking that, or were they handled well? Like for example, what Adam was just saying where there was concern about not having enough materials for sterilization and cleaning and it ended up being okay. So what's the perspective now of looking back in time?

Sara: Well, we're still in the early stages of being fully open, so I think there still are struggles and especially in healthcare. The biggest concern that we faced across all of our professions, whether healthcare or non-healthcare, whether personal services, were just that licenses wanted to do the right thing.

That's the phrase we've been using is, people want to do the right thing. And whether that means do the right thing as far as what's the safe thing, the right thing from a public health perspective, or do the right thing regarding just compliance with the mandates. And so, that played out for our boards and our agency in doing a lot of interpretation that certainly, like Gina and Adam have said, there were people who were ready to get to work and we may have some enforcement discussions about folks

who jumped the gun somewhat on some of the mandates and weren't following them.

And on the other side, folks who were refusing to reopen because they didn't think it was safe, especially when we were in those early phases of 25%. And I love Gina's example of rounding up. So we had a lot of those types of interpretations that I was going back and forth with Health and Social Services and our Incident Command asking, is this, like she mentioned with the fire marshal, okay, how do we interpret this? Is the fire marshal, the square footage relative to our staff or to the licensees or to customers? And then for healthcare professionals, certainly big questions about managing waiting rooms. We have pre-screening criteria, which were a mandate and now have moved for non-healthcare professions moved to suggested guidelines, but for healthcare certainly are still required that patients have to be pre-screened, employees have to be screened.

And really just compliance with all of these and interpreting them, because people get a lot of information from a lot of sources these days. And our boards were finding that there was a lot of discussion happening in Facebook groups and in peer groups and industry groups and fewer people looking to the Board for that guidance. And so we were really trying to strike a balance that was all over the place at times.

Line: So Sara, I guess from that perspective, what have been the biggest challenges faced by your board in either establishing or even communicating the guidelines to your licensees?

Sara: Well, we've definitely discovered that our email systems need to be improved. We need to be able to move more quickly. We changed our policy during the established declared public emergency on public noticing board meetings. That's been a struggle because, like most of our boards, we can't move on a dime. Board meetings have to be public notice. And it's economies of scale - we're doing all of the same things that all states are, but we have probably much fewer licensees, and so we have fewer staff and we really lean on our volunteer boards for guidance; they are the professionals. And so being able to turn on a dime, being able to lean on our boards.

And then the technology aspects. Getting things out on our website is pretty easy, but if industries are looking at Facebook or looking at peer groups or looking at industry associations and not on our website, then that shows some areas that we need to upgrade and change to become a little bit more flexible and nimble in this quickly changing pandemic situation. And emergencies happen occasionally in Alaska. So the last one was a major earthquake, and that was two years ago. So we're looking at some infrastructure changes to reach people where they are and help demonstrate the value of our board to licensees. I've already learned a lot from Gina and Adam just on this call.

Line: Excellent. Well, Gina, you touched a little bit about this in your last answer when you were talking about the established size and how they did that, but have there been issues or I guess, what have been the biggest challenges you guys have faced in establishing your current guidelines?

Gina: Yeah, thank you. As I mentioned, the guidance was developed and released from the Governor's

office through his cabinet level agencies, and I think the biggest challenges that we have been is the Board being able to be prepared to respond to questions from our licensees. And that also includes, we haven't had enough time to be able to be prepared to respond to the questions related to the guidance. And as I'm sure with many, with Nevada and with Alaska, the licensees traditionally engage, if they have a license with the Board, that's the entity in which they're gonna communicate most of their questions to, be it from unemployment to tax questions, to how do I get my law and rule books. They're coming to the Board of Cosmetology and then we help them from there in a traditional, non-COVID environment. And I think what has been really hard for us is the guidance document that was released has a lot of interpretation to it. Licensees get to make a lot of decisions as well within it.

And so once the document was released, we were basically seeing it for the first time when it was released to the public. And of course our inbox was flooded and we were looking to these agencies to find who has these answers. Because if it's not the Board of Cosmetology's guidance, we didn't feel that it was within our scope to be able to respond to what we thought the answers were. And so the approach we took is to forward the emails off to the different entities to try to gather as much information back, and we have created a single resource on our website that is trying to address the FAQs. And like Sara was saying, is whether it's being nimble or the email systems not working quite right.

We also just in the capacity of how many people are emailing us with very detailed questions, we had made the decision to put out a single document and we're just referring the emails to that document. And if your question's on it, that's great; if it's not, we're still working to try and get you an answer. But I would say that that's been our biggest challenge is that traditionally, as the board moves through its operations, that controlled a lot of the process, which then the outcomes, we're very well-versed in. And this one we just really had no ability to prepare and frankly, I was really struggling with that. The Board of Cosmetology isn't servicing its licensees in the manner in which we should, because we can't give them the answers. So I would say that the preparedness and the time it takes to get the answers. And many times lawyers are writing these answers, and our licensees, they need practical responses. Not that they can't interpret a legal answer, but they need a yes and no; they don't need a state statute to go cite for us to go cite. So it's been pushing back to get them the answers they can use in their salons and translated as fast as they can.

Line: Right, sometimes they just need an answer. Well, Adam, how about you?

Adam: Well, Nevada started developing the reopening guidelines during the week of March 23, one week after we closed. We didn't experience too many challenges in establishing or articulating the enhanced sanitation guidelines in response to COVID-19 for the licensees. Our operations, it's pretty technologically organized. Our staff is diverse, knowledgeable, and we have local and national resources that help the Board develop the ideas for the guidelines, with the Minnesota Board being one of those resources that we reached out to for more information while performing or preparing our guidelines.

As soon as we had the guidelines, we had a board meeting. We emailed the enhanced sanitation guidelines the week before the board meeting was held so they could provide their suggestions on those sanitation guidelines, and there was an online form available for them to provide feedback to those guidelines prior to our board meeting. And 68% of the people who completed the form, they voted to adopt the guidelines without any changes. We did make a terminology change in the final document, from the draft to the final, which clarified that limiting blow dryers is only a cautionary step for salons, and it's not a requirement.

And we were able to communicate our enhanced sanitation guidelines by email and through social media to our licensees. We communicated in English, Chinese, Spanish, as well as Vietnamese. We created the written documents, infographics too with less words to better communicate with our demographic. And we also created a video, both in English, Spanish, Vietnamese, and Chinese, to communicate some reopening suggestions. And on top of that, we established a new team that does health and safety consultations. This is a service that a licensee can schedule with us and we'll either come out to their salon or we'll do it by video where we'll communicate our enhanced sanitation guidelines to them and be open for a question and answer session. And over 40 salons have utilized this service so far this month. And it's just our way of providing some suggestions so they can mitigate the infection risks, the malpractice and safety risks, and the social distancing requirements to mitigate the COVID-19 risks as well.

Line: Adam, I guess, what would you say is the most important lesson that you've learned through this process?

Adam: Technology kept us connected and available to the beauty service industry professionals and the consumers of beauty services. We're very fortunate to have the technological structure that permitted our staff to work from home and answer phones from home. All of our services remained available, with the exception of in-person testing services during COVID-19. Another thing that we learned is the consumer awareness IQ increased, and they're demanding clean and safe beauty services in response to COVID-19.

Line: How about Gina? What would you say the most important lesson you learned was?

Gina: In some ways, it's very similar to Adam with a little bit different take. I would say listening to our licensees. Many of these, and I failed to mention at the beginning about the licensees' concern of a paycheck was first and foremost one of the biggest questions we had gotten. And I think that while unemployment and going through the unemployment process is completely outside of the Board of Cosmetology functions, we felt an obligation to try to help them get to the places they needed to go to, whether the federal government or the state of Minnesota, and to continue to provide them the resources, the websites, the phone number. So I think it was really just listening to our licensees and not just sending them off to another agency, but hearing them, communicating with them, and just being there for them. I would say that's been one of the biggest components. We've utilized... we've leveraged social media. I think our social media is generally the second or third behind the Governor's

office in trends on a weekly basis at this point. It's just our posts get pushed out to so many people, be that the licensees or the public. So we really leveraged our Facebook messaging or Facebook, as well as our website and our government delivery through our emails.

I would say that's been probably our biggest lesson. And it takes a lot of staff to be able to do that. It takes a good team, and a team that is willing to as well, partner together to create the same messaging back from any other staffers that respond to questions.

Line: Well, that's great. And Sara, let's finish up with you. What has been the most important lesson you guys have learned through this process?

Sara: Definitely collaboration and communication. And I would echo everything that Gina and Adam said. From the healthcare perspective, we initiated two new structures that I think were really, really helpful in getting where we needed to go for licensee interpretation and mandates. One example was creating a board chairs weekly meeting. And so all of our healthcare board chairs, really all 21 of our boards, were invited. The chairs were invited to engage at the same time every week for an hour, and the focus was really on healthcare, so they could talk about different struggles, interpretations, understandings with each other.

They weren't a decision-making body, so they didn't need to... they were open to the public, but we didn't need to worry so much about the public noticing. That group really took issues - like in healthcare, aerosolized procedures are the big issue and availability of testing supplies and PPE. Our dentists board chair really coalesced a group of stakeholders from Health and Social Services to the industry to dig into dentistry aerosolizing procedures, and where our other healthcare (medical and nursing) took a different route but also pulled together different partnerships from Health and Social Services, from the industry, from the Board of Nursing, from the Medical Board and our epidemiology section.

And these collaborations didn't exist really in a fulsome way before this, but now we have these deep relationships, and almost friendships I guess, between these groups. And another example was getting the Board of Massage Therapists and the Board of Chiropractic Examiners in several meetings together to make sure that their mandate interpretations were aligned and using a lot of the same language, because often massage therapists work in chiropractic offices, and we wanted to make sure that if a chiropractor was an employer that he or she understood the board's mandate on massage therapist and sort of that hierarchy of following the law, and that massage therapists understood the chiropractic perspective, but also what they were beholden to by the land. And that developed some excellent relationships that I think we will be able to lean on in the future. So it's a very positive important lesson.

And we are putting together sort of a turn-key what-to-do in the case of the next pandemic or the next public health emergency, and we'll be packaging that for all of our boards so we can have some consistent languages and consistent guidance.

Line: That's really excellent. It's great that you guys are even looking towards the future. Well, I think this has been a great discussion. I personally wanna thank each of you, Sara, Gina, and Adam, for your time and being a part of this podcast. It is always wonderful to have the opportunity to talk about these issues and learn about what's happening today in the field of occupational and professional licensing. So I do wanna thank you each for speaking with us today.

Guest speakers: Thank you. Okay, thanks for having us.

Line: And thank you also to our listeners. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. Again, thank you to our frequent listeners. But if you're new to the CLEAR podcast, you can subscribe to that on a couple of different areas. We're available on Podbean, iTunes, Apple Podcast, Google Podcast and Google Play, Stitcher, Spotify, and TuneIn. So if you've enjoyed this podcast, please leave a rating or comment in the app. Those reviews help us improve our ranking and make it easier for new listeners to find us. Feel free to visit our website at www.clearhq.org for additional resources as well as a calendar of upcoming training programs and events.

Finally, thanks to CLEAR staff, specifically Stephanie Thompson, our content coordinator and editor for this program. I'm Line Dempsey, and I hope to be speaking to you again very soon.

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