



HEALTH LICENSING OFFICE

Kate Brown, Governor

Oregon
Health
Authority

1430 Tandem Ave. N.E. Suite 180

Salem, OR 97301

Phone: (503)378-8667

Fax: (503)585-9114

www.oregon.gov/oha/ph/hlo

WHO: Health Licensing Office
The Board of Cosmetology
TELEPHONE CONFERENCE CALL ONLY
1430 Tandem Ave. N.E. Suite 180 Salem, OR 97301

WHEN: January 25, 2021 at 10 a.m.

In order to limit the exposure and spread of the COVID-19 virus and adhere to the Governor's social distancing measures the Health Licensing Office (Office) is prohibiting in-person attendance at the Board meeting. All audience members may attend the public meeting by telephone conference call. Conference call instructions are provided below.

What is the purpose of the meeting?

The purpose of the meeting is to conduct board business. A copy of the agenda is printed with this notice. Please visit <https://www.oregon.gov/oha/PH/HLO/Pages/Board-Cosmetology-Meetings.aspx> for current meeting information.

May the public attend ONLY via teleconference meeting?

Yes, however, for the courtesy of all participants on the call all non-board members are asked to **mute** the call until the public and interested parties feedback period.

Approximately five minutes prior to the start of the meeting please follow the directions listed below:

- Dial 1(877)336-1828 and enter the following participants pass code: 4111788 to be connected to the meeting. This phone line will stay connected for the duration of the meeting.

- The teleconference system will notify you that you are connected. For the record, Office staff will do a roll call of all audience members prior to and after the Executive Session.

Audience members are asked to send email to April Fleming at april.fleming@dhsosha.state.or.us stating they are logged on to the conference call and whether they want to make a comment during the public and interested parties feedback period.

What if the board/council enters into executive session?

Prior to entering executive session, the board/council chairperson will announce the nature of and the authority for holding executive session. Board members, designated staff, and representatives of the news media shall be allowed to attend the executive session. All other audience members are not allowed to attend the executive session. Executive session would be held according to ORS 192.660.

No final actions or final decisions will be made in executive session. The board/council will return to open session before taking any final action or making any final decisions.

Who do I contact if I have questions or need special accommodations?

The meeting location is accessible to persons with disabilities. A request for accommodations for persons with disabilities should be made at least 48 hours before the meeting. For questions or requests contact April Fleming at April.fleming@dhsosha.state.or.us.

Approval of Agenda



Health Licensing Office
The Board of Cosmetology
TELEPHONE CONFERENCE CALL ONLY
1430 Tandem Ave. N.E. Suite 180 Salem, OR 97301



January 25, 2021 at 10 a.m.

1. **Call to Order**
2. **Items for Board Action**
 - ◆ Approval of Agenda
 - ◆ Determine additional training requirements for retake examination
 - Applicant # 122303 for Esthetics
 - Applicant # 110380 for Hair Design
 - Applicant # 082182 Nail Technology
3. **Reports**
 - ◆ Director Report
 - ◆ Licensing and Fiscal Statistical Reports
 - ◆ Regulatory Report
 - ◆ Policy Report
 - 2021 Legislation
 - Limited Enforcement Waiver – Esthetics
 - Esthetics Service & Procedure Discussion
 - ThermoClear;
 - Lambprobe;
 - Hyfrecator devices;
 - BB microneedling; and
 - Hyaluron pen.
 - ◆ COVID-19 Status Update
4. **Public/Interest Parties Feedback**
5. **Other Board Business**

Agenda is subject to change.
For the most up to date information visit www.oregon.gov/oha/ph/hlo

**Determine Additional
Training
Requirements for
Retake Examination**

**Applicant # 122303 for
Esthetics**

Issue Statement

Issue:

Determine additional training requirements for applicant #122303 prior to taking the Facial Technology Written Examination for the Seventh (7th) attempt.

Discussion / Recommendation:

To qualify for certification applicants must receive a passing score of at least 75% on the Facial Technology Written Examination which contains 100 questions.

Due to failing the examination on October 5, 2017 with a score of 70% on the sixth (6th) attempt, the Health Licensing Office (HLO) recommends applicant # 122303 complete:

1. 444 hours of training in Facial Technology, which is consistent with the core curriculum set forth by the Higher Education Coordinating Commission, prior to retaking Facial Technology Written Examination for the seventh (7th) attempt. The certification of additional training must be:
 - a. Sent directly to the office, on an official Certificate of Additional Training Transcript (CAT), by a licensed cosmetology career school, **AND**
 - b. Notarized by a commissioned notary. The CAT will not be accepted with only an official stamp or seal from the licensed cosmetology career school, it must be notarized.
2. Complete a Verification of Training Form (VTF). The VTF is to ensure the required training hours are obtained in the specified content areas as specified within the core curriculum. The VTF must be:
 - a. Signed by the applicant and an authorized representative from the licensed cosmetology career school for each day the applicant is in attendance. Authorized representatives from the licensed cosmetology career school who sign the VTF must be on file with the office, **AND**
 - b. Notarized by a commissioned notary. The VTF will not be accepted with only an official stamp or seal from the licensed cosmetology career school, it must be notarized.

**Applicant # 110380 for
Hair Design**

Issue Statement

Issue:

Determine additional training requirements for applicant # 110380 prior to taking the Hair Design Written Examination for the seventh (7th) attempt.

Discussion / Recommendation:

To qualify for certification applicants must receive a passing score of at least 75% on the Hair Design Written Examination which contains 100 questions.

Due to failing the examination on December 16, 2020 with a failure rate of 68% on the sixth (6th) attempt, the Health Licensing Office (office) recommends applicant #110380 complete:

1. 1450 hours of training in Hair Design, which is consistent with the core curriculum set forth by the Higher Education Coordinating Commission, prior to retaking the Hair Design Written Examination for the seventh (7th) attempt. The certification of additional training must be:
 - a. Sent directly to the office, on an official Certificate of Additional Training Transcript (CAT), by a licensed cosmetology career school, **AND**
 - b. Notarized by a commissioned notary. The CAT will not be accepted with only an official stamp or seal from the licensed cosmetology career school, it must be notarized.
2. Complete a Verification of Training Form (VTF). The VTF is to ensure the required training hours are obtained in the specified content areas as specified within the core curriculum. The VTF must be:
 - a. Signed by the applicant and an authorized representative from the licensed cosmetology career school for each day the applicant is in attendance. Authorized representatives from the licensed cosmetology career school who sign the VTF must be on file with the office, **AND**
 - b. Notarized by a commissioned notary. The VTF will not be accepted with only an official stamp or seal from the licensed cosmetology career school, it must be notarized.

**Applicant # 082182 for
Nail Technology**

Issue Statement

Issue:

Determine additional training requirements for applicant #082182 prior to taking the Nail Technology Written Examination for the eight (8th).

Discussion / Recommendation:

To qualify for certification applicants must receive a passing score of at least 75% on the Nail Technology Written Examination which contains 100 questions.

Due to failing the examination on December 14, 2020, with a score of 61 % on the seventh (7th) attempt, the Health Licensing Office (HLO) recommends applicant # 082182 complete:

1. 444 hours of training in Nail Technology, which is consistent with the core curriculum set forth by the Higher Education Coordinating Commission, prior to retaking Nail Technology Written Examination for the eight (8th) attempt. The certification of additional training must be:
 - a. Sent directly to the office, on an official Certificate of Additional Training Transcript (CAT), by a licensed cosmetology career school, **AND**
 - b. Notarized by a commissioned notary. The CAT will not be accepted with only an official stamp or seal from the licensed cosmetology career school, it must be notarized.
2. Complete a Verification of Training Form (VTF). The VTF is to ensure the required training hours are obtained in the specified content areas as specified within the core curriculum. The VTF must be:
 - a. Signed by the applicant and an authorized representative from the licensed cosmetology career school for each day the applicant is in attendance. Authorized representatives from the licensed cosmetology career school who sign the VTF must be on file with the office, **AND**
 - b. Notarized by a commissioned notary. The VTF will not be accepted with only an official stamp or seal from the licensed cosmetology career school, it must be notarized.

Director Report

Licensing and Fiscal Statistical Report

Board of Cosmetology (COS)

Report Date: **11-Jan-21**(data as of most recently closed month to Report Date)

Authorization Statistics

Fiscal Year	Quarter	Barber	Hair Design	Natural Hair Care	Esthetics	Nail Technology	Facility Licenses	Independent Contractor	Freelance	Total Authorizations
AUTHORIZATIONS ISSUED										
2020	Q1	46	211	6	325	199	219	288	107	1,401
	Q2	45	190	7	307	214	174	273	81	1,291
	Q3	30	194	4	318	208	171	285	96	1,306
	Q4	8	34	1	53	22	224	136	43	521
2021	Q1	33	134	13	197	134	231	234	90	1,066
	Q2	20	132	7	201	124	180	187	83	934
	Q3	-	-	-	-	-	-	-	-	-
	Q4	-	-	-	-	-	-	-	-	-
										-
Total:		182	895	38	1,401	901	1,199	1,403	500	6,519
RENEWALS PROCESSED										
2020	Q1	420	2,815	8	1,674	1,483	1,123	1,281	49	8,853
	Q2	291	2,221	7	1,561	1,399	958	1,114	37	7,588
	Q3	307	2,446	10	1,753	1,546	1,014	1,310	56	8,442
	Q4	327	2,671	14	1,863	1,651	975	1,347	73	8,921
2021	Q1	514	2,879	8	1,627	1,544	1,205	1,282	83	9,142
	Q2	312	2,193	6	1,453	1,376	969	1,077	64	7,450
	Q3	-	-	-	-	-	-	-	-	-
	Q4	-	-	-	-	-	-	-	-	-
										-
Total:		2,171	15,225	53	9,931	8,999	6,244	7,411	362	50,396

Board of Cosmetology (COS)

Report Date: **11-Jan-21**(data as of most recently closed month to Report Date)

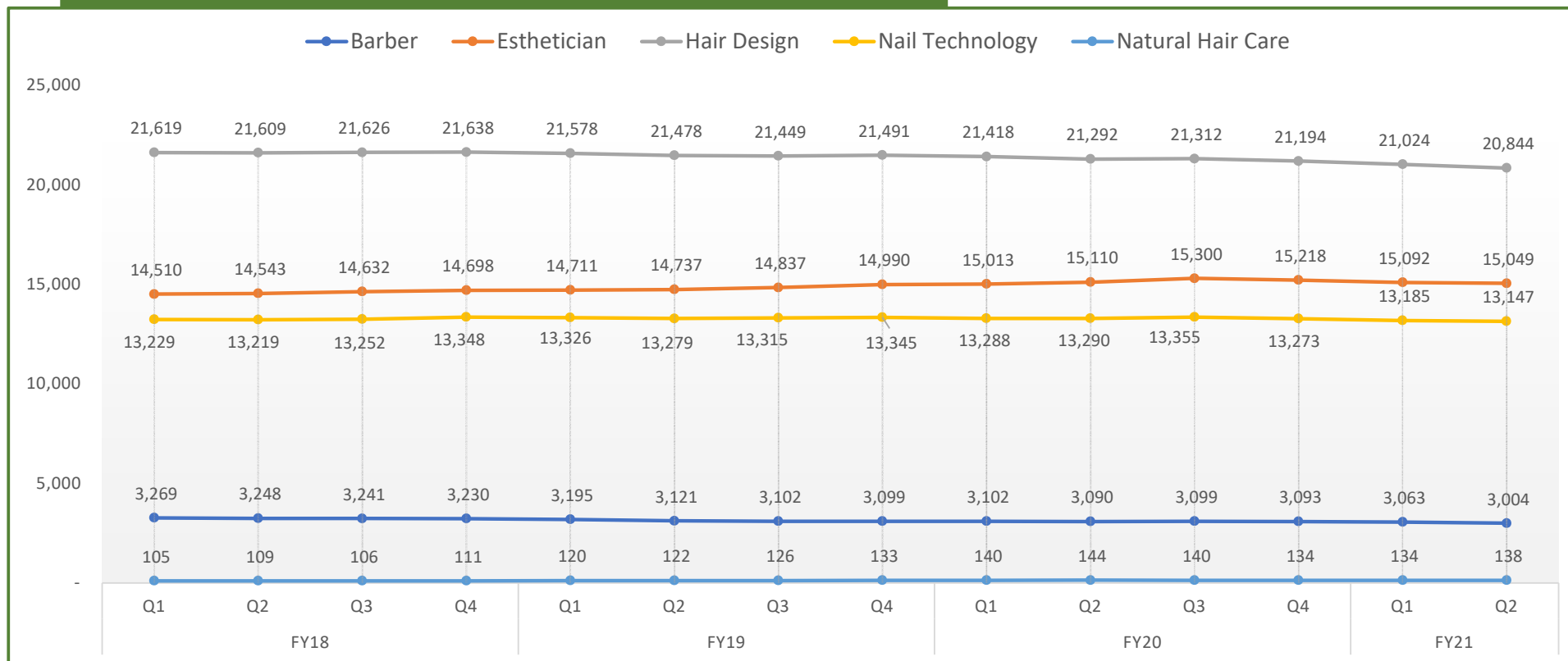
Examination Statistics

Fiscal Year	Quarter	Passed	Failed	% Passed	Passed	Failed	% Passed
		OR Laws and Rules			Barber		
2020	Q1	620	268	70%	46	78	37%
	Q2	609	268	69%	43	46	48%
	Q3	601	283	68%	28	45	38%
	Q4	88	37	70%	8	7	53%
2021	Q1	413	194	68%	31	36	46%
	Q2	385	189	67%	21	27	44%
	Q3	-	-	-	-	-	-
	Q4	-	-	-	-	-	-
Total:		2,716	1,239	69%	177	239	43%
		Hair Design			Natural Hair Care		
2020	Q1	225	97	70%	5	-	100%
	Q2	193	80	71%	6	2	75%
	Q3	187	90	68%	5	-	100%
	Q4	31	17	65%	-	-	-
2021	Q1	144	59	71%	10	2	83%
	Q2	120	77	61%	-	-	-
	Q3	-	-	-	-	-	-
	Q4	-	-	-	-	-	-
Total:		900	420	68%	26	4	87%
		Esthetics			Nail Technology		
2020	Q1	319	134	70%	198	95	68%
	Q2	305	155	66%	222	108	67%
	Q3	319	155	67%	215	104	67%
	Q4	53	27	66%	20	19	51%
2021	Q1	204	106	66%	143	70	67%
	Q2	193	123	61%	115	69	63%
	Q3	-	-	-	-	-	-
	Q4	-	-	-	-	-	-
Total:		1,393	700	67%	913	465	66%

Board of Cosmetology (COS)

Report Date: **11-Jan-21**(data as of most recently closed month to Report Date)

Practitioner Volume Trends (averages by State Fiscal Year/Quarter)



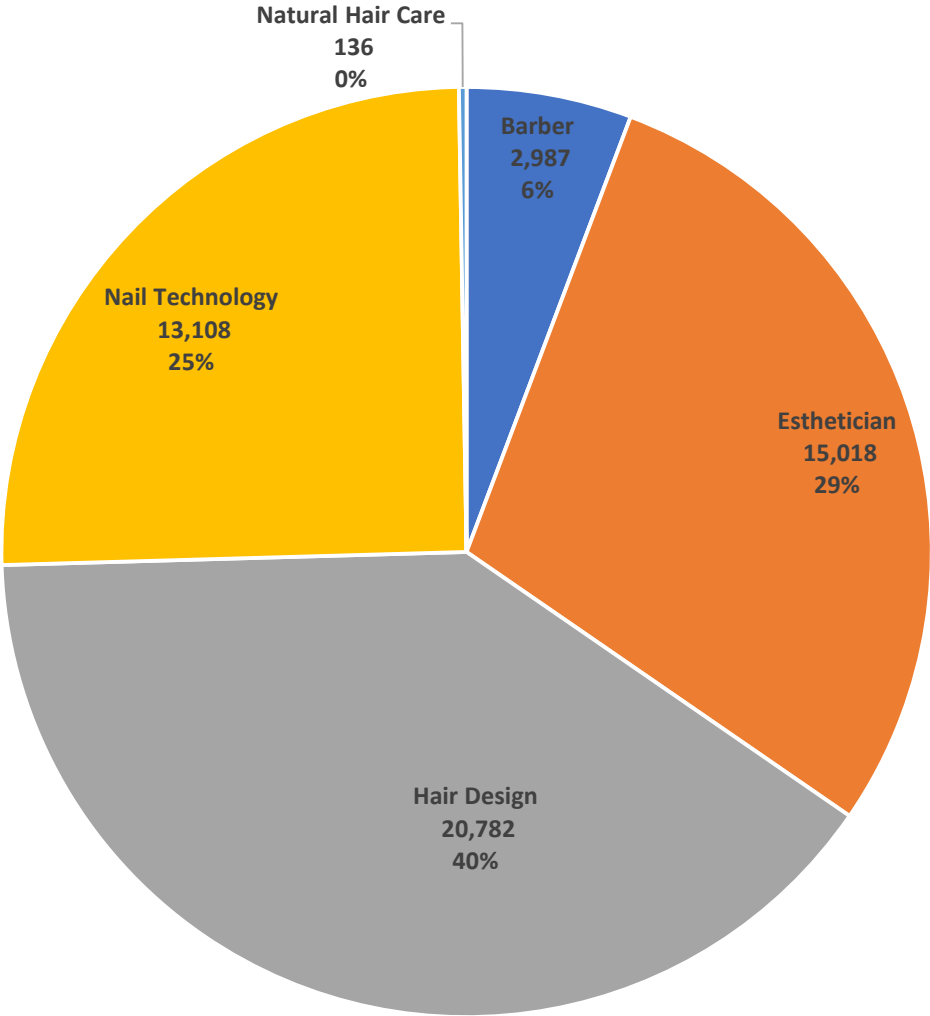
Practitioner Volume Trends Year-to-Year Growth Rate

State Fiscal Year	2017 (Jul16-Jun17)	2018 (Jul17-June18)	2019 (Jul18-Jun19)	2020 (Jul19-Jun20)	2021 (Jul20-Jun21)
Barber	-4.0%	-3.5%	-3.7%	-0.9%	-1.9%
Esthetician	-0.2%	1.2%	1.5%	2.2%	-0.5%
Hair Design	-0.6%	-0.7%	-0.6%	-0.8%	-1.8%
Nail Technology	-1.2%	-0.4%	0.4%	0.0%	-1.0%
Natural Hair Care	37.5%	17.9%	16.5%	12.6%	-3.8%

Board of Cosmetology (COS)

Report Date: 11-Jan-21
(data as of most recently closed month to Report Date)

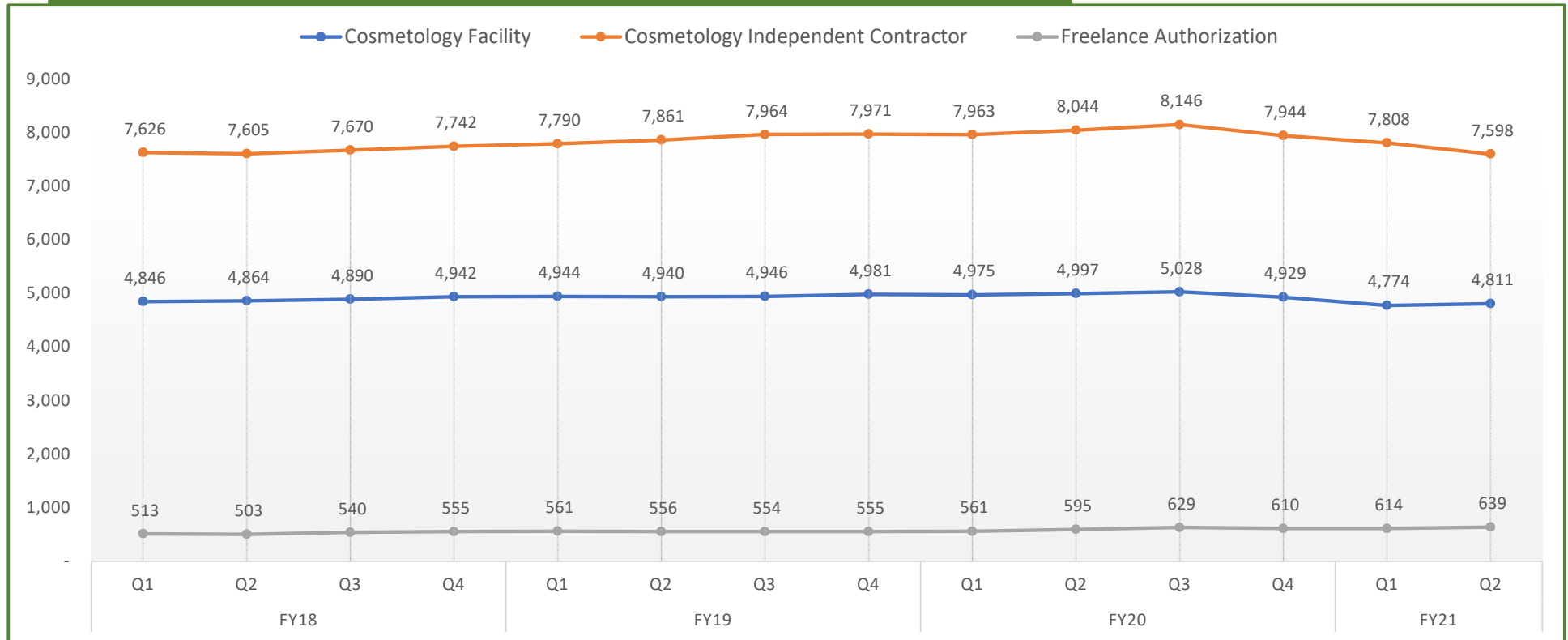
Practitioner Volume Share by Type



Board of Cosmetology (COS)

Report Date: **11-Jan-21**(data as of most recently closed month to Report Date)

Business Authorizations Volume Trends (averages by State Fiscal Year/Quarter)



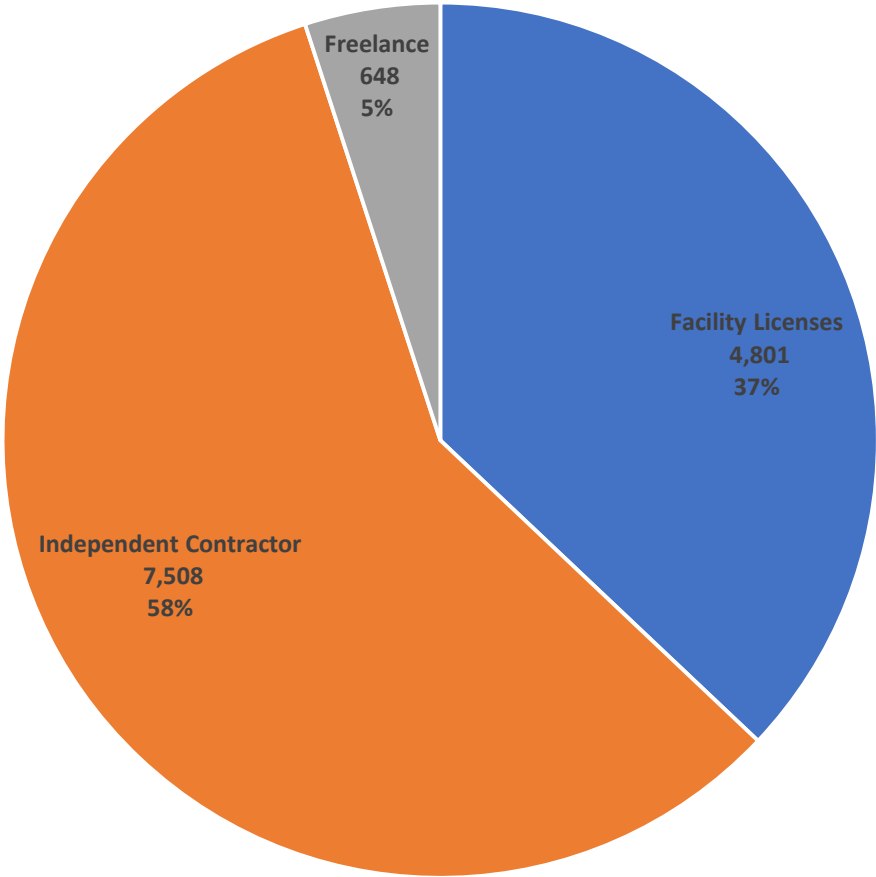
Business Authorizations Volume Trends Year-to-Year Growth Rate

State Fiscal Year	2017 (Jul16-Jun17)	2018 (Jul17-Jun18)	2019 (Jul18-Jul19)	2020 (Jul19-Jul20)	2021 (Jul20-Jul21)
Cosmetology Facility	1.8%	1.3%	1.3%	0.8%	-4.1%
Cosmetology Independent Contractor	1.3%	1.1%	3.0%	1.8%	-4.0%
Freelance Authorization	-4.2%	-2.4%	4.8%	7.3%	4.7%

Board of Cosmetology (COS)

Report Date: 11-Jan-21
(data as of most recently closed month to Report Date)

Business Authorizations Volume Share by Type



Board of Cosmetology (COS)

Report Date: **11-Jan-21**(data as of most recently closed month to Report Date)

Cash Flow by State Fiscal

	Biennium	< 2015-17	< 2017-19 >		2019-21 >	
State Fiscal Year	2017	2018	2019	2020	2021	
	(Jul16-Jun17)	(Jul17-Jun18)	(Jul18-Jun19)	(Jul19-June20)	(Jul20-Current*)	
Beginning Cash Balance	\$ 1,633,416	\$ 1,621,794	\$ 1,250,354	\$ 655,323	\$ (190,257)	
Revenues	\$ 3,675,431	\$ 3,376,827	\$ 3,414,529	\$ 3,366,149	\$ 1,353,482	
Expenditures	\$ 3,687,052	\$ 3,748,267	\$ 4,009,560	\$ 4,211,729	\$ 1,510,804	
Net Operations	\$ (11,621)	\$ (371,440)	\$ (595,031)	\$ (845,580)	\$ (157,322)	
(Rev - Exp <u>Only</u>)						
Ending Cash Balance	\$ 1,621,794	\$ 1,250,354	\$ 655,323	\$ (190,257)	\$ (347,578)	
(Beg Cash + Rev - Exp)						
HLO Pooled Expenditures Allocation Share for Board (allocated based on average license volume and inspections/examinations counts)						
Shared Assessment	91.600%	90.009%	89.043%	88.065%	86.341%	Change 1.958%
Small Board						
Examinations	94.076%	92.096%	92.917%	91.209%	91.532%	-0.354%
Inspections	91.768%	89.323%	90.051%	89.224%	86.839%	2.673%

* As noted in header, to ensure consistency 'Current' data in all reports are based on data from the most recently closed month to the report date.

Regulatory Report



HEALTH LICENSING OFFICE

1430 Tandem Ave. NE, Suite 180

Salem, OR 97301-2192

Phone: (503) 378-8667 | Fax: (503) 370-9004

Email: hlo.info@dhsosha.state.or.us

Web: www.oregon.gov/oha/ph/hlo

Board of Cosmetology

January 25, 2021

2015 – 2017 Biennium

Time Period:	Complaints Received:	Total Remaining Open:	Total Closed:
July 1, 2015 through June 30, 2017	305	4	301

Complaints Received By:

Anonymous = 69 Clients = 75 Other = 161

2017 – 2019 Biennium

Time Period:	Complaints Received:	Total Remaining Open:	Total Closed:
July 1, 2017 through June 30, 2019	387	30	357

Complaints Received By:

Anonymous = 67 Clients = 113 Other = 207

2019 – 2021 Biennium

Time Period:	Complaints Received:	Total Remaining Open:	Total Closed:
July 1, 2019 through January 4, 2021	476	134	342

Complaints Received By:

Anonymous = 233 Clients = 55 Other = 188

COVID-19 Cases Received by HLO

Cases Opened-259 Cases Closed-211

Other: General Public, Internal, Licensees or Law Enforcement

Information as of: January 4, 2021

Policy Report

2021 Legislation



HEALTH LICENSING OFFICE

Kate Brown, Governor



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Salem, OR 97301
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To: Cosmetology Interested Parties

From: Samie Patnode, Policy Analyst

Subject: 2021 Legislation – Fee Increase

During the 2021 Legislative Session the Oregon Health Authority, Health Licensing Office will be requesting licensing fee increases for the Board of Cosmetology (Board). The Board must increase fees to cover the cost of licensing and regulating the Board's professionals and protecting the public.

Prior to 2013, the Oregon Health Licensing Agency (OHLA) operated as an independent state agency. During the 2013 Legislative Session OHLA was moved to the Oregon Health Authority, creating the Health Licensing Office (HLO). This changed the indirect costs from funding an independent small agency to being part of the Oregon Health Authority (OHA). HLO now contributes to OHA's and Public Health's operations, which distributes shared costs among divisions.

This change increased expenses to the Board without an increase in fees to offset the additional costs. Each board pays these shared costs based on the number of licenses provided by the HLO and the services provided to licensees. The Board of Cosmetology carries more than 90 percent of the total cost allocation due to the number of licenses the HLO administers which is upwards of 30,000 licenses. Cosmetology fees are no longer adequate to cover the costs, since fees have not been increased since June 2011. In fact, in July 2015, the HLO began offering a discount for cosmetology licensees renewing online as it takes less staff time to process online renewals but stopped offering the discount in December 2019, to address the revenue shortfall.

Revenue and expenditure forecasts predict the Board will slip into a budget deficit in 2020, that will continue in 2021-23. Without an increase in fees, the HLO will not be able to:

- Issue licenses to applicants in a timely manner;
- Protect the public from potential health and safety violations;
- Protect the public from unqualified practitioners;
- Inspect facilities;

- Administer examinations in multiple languages; and
- Investigate complaints.

The HLO and the Board designed the fees to be less for individuals entering the profession and more for individuals who are established including businesses. The fee increases would go into effect January 1, 2022, and would include the following:

- Individuals who are entering the profession out of school will see an increase on average of \$10 per license;
- Licensees renewing or coming from another state will see an increase on average of \$20 per license;
- Applications for business licenses (facility, independent contractors, freelance, etc.) will see an increase on average of \$34 per license; and
- Business license renewals will see an increase on average of \$43 per license.

If fees are increased the Board of Cosmetology's revenue will stabilize allowing the Board and the HLO to continue its mission of protecting Oregonians who receive services from these professionals.

For questions contact Samie Patnode, Policy Analyst at (503) 373-1917 or by email at samie.patnode@dhsosha.state.or.us.

SB 74

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**Cosmetology Curriculum
&
Career School Certificate
of Compliance**

Senate Bill 74

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Higher Education Coordinating Commission)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires that cosmetology field of practice curriculum taught by career school meet standards established by Board of Cosmetology and be approved by Health Licensing Office. Requires career school to obtain certificate of compliance from office and meet safety and hygiene standards established by board and office.

Requires career school certification by January 2, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to cosmetology; creating new provisions; amending ORS 345.010, 345.030, 676.562, 690.005, 690.015, 690.025, 690.046, 690.047, 690.165, 690.195, 690.205, 690.225 and 690.360; repealing ORS 345.400, 345.430, 345.440 and 345.450; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

REGULATION OF COSMETOLOGY CURRICULA

SECTION 1. Sections 2 and 3 of this 2021 Act are added to and made a part of ORS 690.005 to 690.225.

SECTION 2. The Health Licensing Office may adopt rules to carry out its duties under ORS 690.005 to 690.225.

SECTION 3. (1) A career school must obtain a certificate of compliance under this section in order to conduct or do business under its license issued under ORS 345.030.

(2) In order to obtain a certificate of compliance under this section, a career school must:

(a) Comply with rules adopted by the Board of Cosmetology relating to health, safety and infection control.

(b) Comply with applicable health and safety laws and rules of the Oregon Health Authority and any other state agencies.

(c) Be formed and operated in accordance with Oregon law.

(d) Pay the applicable fees established under ORS 676.576.

(e) Meet any other requirements established by the Health Licensing Office by rule.

(3) The office may adopt rules to carry out this section.

SECTION 4. ORS 690.005 is amended to read:

690.005. As used in ORS 690.005 to 690.225:

(1) "Authorization" means a certificate, license, permit or registration issued under ORS 690.005 to 690.225.

(2) "Barbering" means any of the following practices, when done upon the human body for cos-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

metic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Shampooing, styling, cutting, singeing and conditioning of the hair of an individual.

(b) Applying hair tonics, dressings and rinses.

(c) Massaging of the scalp, face and neck and applying facial and scalp treatments with creams, lotions, oils and other cosmetic preparations, either by hand or mechanical appliances, except that the mechanical appliances may not be galvanic or faradic.

(d) Shaving, trimming or cutting of the beard or mustache.

(3) "Career school" means a career school as defined in ORS 345.010 that is licensed by the Higher Education Coordinating Commission to teach skills in barbering, esthetics, hair design or nail technology.

[(2)] **(4) "Certificate" means a:**

(a) Written authorization for the holder to perform in one or more fields of practice[.]; or

(b) Written authorization issued under section 3 of this 2021 Act to a career school.

[(3)] **(5) "Cosmetology" means the art or science of beautifying and improving the skin, nails and hair and the study of cosmetics and their application.**

[(4)] **(6) "Demonstration permit" means a written authorization for a person to practice, demonstrate and teach one or more fields of practice on a temporary basis.**

[(5)] **(7) "Esthetics" means any of the following skin care or facial care practices performed on the human body or face for the purpose of keeping the skin of the human body or face healthy and attractive and not for medical diagnosis or treatment of disease or physical or mental ailments:**

(a) The use of the hands or mechanical or electric apparatuses or appliances for cleansing, stimulating, manipulating, exfoliating or applying lotions or creams.

(b) Temporary removal of hair.

(c) Makeup artistry.

(d) Eyelash services.

(e) Facial and body wrapping.

(f) Facial and body waxing.

[(6)] **(8)(a) "Facility" means an establishment operated on a regular or irregular basis for the purpose of providing services in one or more fields of practice.**

(b) "Facility" does not include a career school.

[(7)] **(9) "Field of practice" means the following cosmetology disciplines:**

(a) Barbering.

(b) Esthetics.

(c) Hair design.

(d) Nail technology.

(e) Natural hair care.

[(8)] **(10) "Freelance license" means a written authorization that allows a practitioner to practice outside or away from a licensed facility.**

[(9)] **(11) "Hair design" means any of the following practices, when done upon the human body for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:**

(a) Shaving, trimming or cutting of the beard or mustache.

(b) Styling, permanent waving, relaxing, cutting, singeing, bleaching, coloring, shampooing, conditioning, applying hair products or similar work upon the hair of an individual.

(c) Massaging the scalp and neck when performed in conjunction with activities in paragraph

(a) or (b) of this subsection.

[(10)] (12) "Independent contractor" means a practitioner who qualifies as an independent contractor under ORS 670.600 and who is not under the control and direction of a facility license holder.

[(11)] (13) "License" means a written authorization issued under ORS 690.055 to a person to operate a facility *[or freelance business]* for providing services related to one or more fields of practice to the public.

[(12)] (14) "Nail technology" means any of the following manicuring or pedicuring practices performed for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Cutting, trimming, polishing, coloring, tinting, cleansing or otherwise treating the nails of the hands or feet.

(b) Massaging, cleansing, treating or beautifying the hands, arms below the elbow, feet or legs below the knee.

(c) Applying, sculpturing or removing artificial nails of the hands or feet.

[(13)(a)] (15)(a) "Natural hair care" means:

(A) The braiding, cornrowing, extending, lacing, locking, sewing, twisting, weaving or wrapping of human hair, natural fibers, synthetic fibers or hair extensions through the use of hands or simple devices such as clips, combs, hairpins or needle and thread;

(B) The use of scissors to trim synthetic fibers, hair extensions or sewn-in weave extensions as is necessary to perform the activities described in this paragraph;

(C) The making of customized wigs from natural hair, natural fibers, synthetic fibers or hair extensions; or

(D) Shampooing or conditioning of the hair of an individual.

(b) "Natural hair care" does not include the use of scissors, except as provided in paragraph (a)(B) of this subsection, penetrating chemical hair treatments, chemical hair coloring agents, chemical hair straightening agents, chemical hair joining agents, permanent wave styles or chemical hair bleaching agents.

[(14)] (16) "Practitioner" means a person certified to perform services included within a field of practice.

[(15)] (17) "Registration" means a written authorization issued to an independent contractor to hold forth to the public as a business entity providing services in a field of practice.

[(16)] (18) "School" means an educational establishment that *[has a license issued by the Department of Education and is operated for the purpose of teaching one or more fields of practice. For purposes of this subsection, "field of practice" does not include natural hair care.]* **offers a program of study in one or more fields of practice other than natural hair care, including, but not limited to, a career school, a community college or an educational establishment operated by a school district.**

[(17)] (19) "Temporary facility permit" means a written authorization issued under ORS 690.055 to provide services on a temporary basis in one or more fields of practice.

SECTION 5. ORS 690.015 is amended to read:

690.015. (1) This section establishes prohibitions relating to the practice of hair design, barbering, esthetics, nail technology and natural hair care. The prohibitions under this section are subject to the exemptions under ORS 690.025. A person who commits an act prohibited under this section is subject to the penalties under ORS 690.992 in addition to any administrative action taken by or

any civil penalty imposed by the Health Licensing Office under ORS 676.612.

(2) A person may not:

(a) Perform or attempt to perform services in a field of practice without an active [*certificate, demonstration permit, registration or freelance license*] **authorization**.

(b) Operate a facility without a license or temporary facility permit.

(c) Perform or attempt to perform services in a field of practice outside a licensed facility or temporary facility unless the person holds a freelance license issued under ORS 690.123.

(d) Practice hair design, barbering, esthetics, nail technology or natural hair care as an independent contractor without a registration.

(e) Display a sign or in any way advertise or purport to offer services in a field of practice without first obtaining [*a permit, certificate, independent contractor registration or facility license*] **an authorization**.

(f) Knowingly make a false statement on an application to obtain or renew [*a certificate, registration, license or permit*] **an authorization**.

(g) Allow an individual in the employ or under the supervision or control of the person to perform in a field of practice without a certificate or permit.

(h) Sell, barter or offer to sell or barter a document evidencing [*a certificate, registration, license or permit*] **an authorization**.

(i) Purchase or procure by barter a document evidencing a certificate with intent to use it as evidence of the person's qualification as a practitioner.

(j) Materially alter with fraudulent intent a document evidencing [*a certificate, registration, license or permit*] **an authorization**.

(k) Use or attempt to use a fraudulently obtained, counterfeited or materially altered document evidencing [*a certificate, registration, license or permit*] **an authorization**.

SECTION 6. ORS 690.025 is amended to read:

690.025. (1) ORS 690.005 to 690.225 do not apply to:

(a) Persons who perform service without compensation in case of emergency or in domestic administration.

(b) Persons licensed by a health professional regulatory board listed in ORS 676.160 who are acting within the scope of their professional license.

(c) Persons identified by the Health Licensing Office or Board of Cosmetology by rule who are acting under the authority of a hospital or long term care facility licensed under ORS 441.025 or a residential facility licensed under ORS 443.415.

(d) Persons engaged in rendering emergency medical assistance as defined in ORS 30.800.

(e) Persons licensed by the State Board of Pharmacy, merchants or other individuals when demonstrating apparatus or supplies for purposes of sale.

(f) Commissioned medical and surgical officers and personnel of the United States Armed Services while operating on a military base and personnel of correctional institutions while operating on the premises of a correctional facility.

(g) Subject to subsection (3) of this section, persons applying temporary makeup, combing hair, brushing hair, braiding hair, applying hair spray or holding cream to hair or styling hair through the use of barrettes, ties, clips, ribbons and other similar hair accessories for the sole purpose of preparing an individual for a professional photograph, provided that the person does not use any product that alters the keratin of the individual's hair.

(h) Subject to subsection (3) of this section, persons applying temporary makeup or styling hair

by any method for the sole purpose of preparing an individual for a professional film or video performance or a theatrical performance.

(i) A student while engaged in training at the direction of and under the direct supervision of the faculty of a school *[licensed under ORS 345.010 to 345.450 to teach a field of practice. For purposes of this paragraph, "field of practice" does not include natural hair care]*.

(2) The office may exempt from ORS 690.005 to 690.225 practitioners providing services at charitable or fund raising events. In establishing an exemption, the office shall consider and evaluate each written request on an individual basis.

(3) The office may develop and disseminate guidelines for persons described in subsection (1)(g) and (h) of this section for the purpose of ensuring sanitation and hygiene best practices. The office is not required to adopt rules to implement this subsection.

SECTION 7. ORS 690.046 is amended to read:

690.046. (1) To qualify for certification as a practitioner of hair design, barbering, esthetics, nail technology or natural hair care, an applicant shall:

(a) If the applicant is applying for certification to practice hair design, barbering, esthetics or nail technology, *[successfully complete all courses required by rule of the State Board of Education for graduation from a school teaching one or more fields of practice]* **submit satisfactory evidence from a school to the Health Licensing Office that demonstrates the applicant has successfully completed education, prescribed by the Board of Cosmetology by rule and approved by the office, in the field of practice for which certification is sought.**

(b) Successfully pass the certification examination approved, administered or recognized by the board *[of Cosmetology for]* **in** the field of practice *[in]* **for** which certification is sought.

(c) Pay the applicable fees established under ORS 676.576.

(d) Meet any additional requirements the board *[of Cosmetology]* may impose by rule *[for]* **in the field of practice for which** certification *[in a particular field of practice]* **is sought.**

(2) **The office may waive all or part of the education described in subsection (1) of this section and allow an applicant who meets all of the other requirements of subsection (1) of this section to take the certification examination if:**

(a) **For an applicant who holds an active authorization issued in another state or territory of the United States:**

(A) **The office determines that the applicant's education or training, including any education or training obtained in the military, is substantially equivalent to the certification requirements described in subsection (1) of this section and any rules adopted under subsection (1) of this section; and**

(B) **The applicant's active authorization has not been subject to disciplinary action by the authorizing body.**

(b) **For an applicant who has received education or training outside of this state and does not hold an active authorization issued by another jurisdiction, the office determines the applicant is qualified to take the certification examination based on:**

(A) **An assessment of evidence submitted by the applicant, prescribed by the office by rule, regarding the applicant's out-of-state education or training in the field of practice for which certification is sought; or**

(B) **If the evidence described in this paragraph is unavailable or insufficient, an assessment of the applicant's skills based on a school's evaluation and recommendation.**

[(2)] (3) A person who is certified to practice hair design or barbering under this section is au-

thorized to practice natural hair care.

SECTION 8. ORS 690.047 is amended to read:

690.047. *[(1) For purposes of this section, "field of practice" does not include natural hair care.]*

[(2) The Board of Cosmetology may waive all or part of the educational requirement for an applicant in a field of practice and allow the applicant to take the certification examination, provided that:]

[(a) The applicant's education or training, including relevant education or training obtained in the military, is determined by the board to be substantially equivalent to Oregon certification requirements;]

[(b) The applicant is otherwise qualified to take the examination; and]

[(c) The applicant holds an active certification that was issued in another state or a territory of the United States and has not been subject to disciplinary action by the other certifying body.]

[(3)] The Health Licensing Office may issue a specialty certificate in a field of practice **other than natural hair care** to a practitioner who has:

[(a)] (1) Completed post-graduate education approved by the office that is separate from the education or training required for entry-level certification;

[(b)] (2) Passed an examination approved or recognized by the Board **of Cosmetology**; and

[(c)] (3) Paid the applicable fees established under ORS 676.576.

SECTION 9. ORS 690.165 is amended to read:

690.165. In addition to the powers otherwise granted by ORS [345.430 and] 690.005 to 690.225, the Board of Cosmetology shall have the power to:

(1) **Except as provided in ORS 690.046**, determine whether applicants are qualified to take certification examinations.

(2) Administer, approve or recognize certification examinations and designate the time, place and administrators of certification examinations.

(3) Contract for the administration of examinations as part of regional or national examinations and contract with independent testing services for examination administration.

(4) Pursuant to ORS 676.568, direct the Health Licensing Office to issue certificates, registrations, licenses and permits to individuals determined by the board to be qualified.

(5) Except as otherwise provided in ORS 690.205 (2) or other provision of law, adopt rules establishing and enforcing standards for safety, infection control, professional conduct, **curriculum** and any other matters relating to fields of practice, facilities or locations used by persons providing services regulated by ORS 690.005 to 690.225.

(6) Pursuant to ORS 676.612 and 690.167, direct the office to suspend, revoke, limit or refuse to issue or renew certificates, registrations, licenses or permits or impose a period of probationary activity on the holder.

(7) Do any act necessary or proper to effect and carry out the duties required of the board by ORS 690.005 to 690.225.

(8) Adopt rules prescribing standards of professional conduct for persons practicing hair design, barbering, esthetics, nail technology or natural hair care.

(9) Consult with the office about the issuance and renewal of a license under ORS 690.055 *[authorizing a facility to provide barbering, esthetics, hair design, nail technology services or natural hair care]*.

(10) Pursuant to ORS 690.046, direct the office to approve a school's curriculum.

SECTION 10. ORS 690.195 is amended to read:

690.195. (1) The Health Licensing Office shall keep a record of *[its]* **the office's** proceedings relating to the issuance, refusal, suspension and revocation of *[certificates, registrations, licenses and permits]* **authorizations** and to the imposition of probation. This record *[shall]* **must** also contain the name, place of business and the date of each *[certificate, registration, license and permit]* **authorization** issued by the office.

(2) The office shall keep a record of all complaints received, including the date of receipt, name and place of business of each practitioner involved, the name and address of each complainant and the nature of the complaint.

(3) The records of the office shall at all reasonable times be open to inspection by the public.

SECTION 11. ORS 690.205 is amended to read:

690.205. (1) The Board of Cosmetology may adopt rules for the administration of ORS *[345.440 and]* 690.005 to 690.225 and for prescribing safety and infection control requirements for facilities **and career schools**. Infection control requirements for facilities **and career schools** shall be subject to the approval of the Oregon Health Authority. *[A copy of the rules adopted by the board shall be furnished by the board to the owner or manager of each facility.]*

(2) Notwithstanding subsection (1) of this section, the board may not prohibit the use of the facility for domestic purposes if the part devoted to domestic purposes is in a completely separate room not used by customers, with walls extending from floor to ceiling and with any connecting doors kept closed while the facility is in actual operation.

(3) Rules adopted by the board prescribing safety and infection control requirements for facilities **and career schools** shall be adopted in accordance with the procedures set forth in ORS chapter 183.

SECTION 12. ORS 690.225 is amended to read:

690.225. (1) In addition to any other duties prescribed by law, the Health Licensing Office shall provide for the inspection of facilities and **career** schools *[licensed to teach practitioner skills under ORS 345.010 to 345.450]* **teaching a field of practice**.

(2) Inspections conducted under this section shall determine whether the facilities **and career schools** comply with the health, safety, infection control and licensing rules of the Board of Cosmetology. *[and whether the schools comply with the health, safety and infection control requirements under ORS 345.010 to 345.450 and rules of the office. A report of the results of the inspection shall be submitted to the Higher Education Coordinating Commission.]*

SECTION 13. ORS 690.360 is amended to read:

690.360. (1) A person may not:

(a) Perform or attempt to perform services in a field of practice without a license to perform services in that field of practice;

(b) Perform or attempt to perform services in a field of practice outside a licensed facility;

(c) Display a sign or in any way advertise or purport to offer services in a field of practice without a license to perform services in that field of practice;

(d) Operate a facility, display a sign or in any way advertise or purport to offer services in a field of practice in a facility without a license to operate a facility or a temporary license to operate a facility;

(e) Knowingly make a false statement on an application to obtain or renew a license;

(f) Allow an individual in the employ or under the supervision or control of the person to perform services in a field of practice without a license to perform services in that field of practice;

(g) Sell, barter or offer to sell or barter a document evidencing a license;

(h) Purchase or procure by barter a document evidencing a license with intent to use the document as evidence of the person's qualification to provide services in a field of practice;

(i) Materially alter with fraudulent intent a license or temporary license; or

(j) Use or attempt to use a fraudulently obtained, counterfeited or materially altered license or temporary license.

(2) ORS 690.350 to 690.410 do not limit, preclude or otherwise interfere with the practice of other persons or health care providers licensed in this state.

(3) Subsection (1)(a), (b) or (d) of this section does not apply to:

(a) A student while engaged in training at the direction of and under the direct supervision of the faculty of a school [*licensed under ORS 345.010 to 345.450 to teach a field of practice*]; or

(b) An individual self-administering body piercing.

CONFORMING AMENDMENTS

SECTION 14. ORS 345.010 is amended to read:

345.010. As used in ORS 345.010 to 345.450 and 345.992 to 345.997:

(1) "Agent" means an individual who is employed by or for a career school, or is working on behalf of the school under a contract, for the purpose of actively procuring students, enrollees or subscribers of the school by solicitation in any form that is made at a place or places other than the school office or place of business of the school.

[(2) "*Barbering*" has the meaning given that term in ORS 690.005.]

[(3)] (2) "Career school" or "school" means any private proprietary professional, technical, home study, correspondence, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession.

[(4) "*Esthetics*" has the meaning given in ORS 690.005.]

[(5) "*Hair design*" has the meaning given in ORS 690.005.]

[(6)] (3) "License" means the authority the career school has been granted to operate under ORS 345.010 to 345.450.

[(7) "*Nail technology*" has the meaning given in ORS 690.005.]

[(8)] (4) "Registration" means the approval by the Higher Education Coordinating Commission of a teacher or agent to instruct in or to represent the school.

SECTION 15. ORS 345.030 is amended to read:

345.030. (1) A person may not open, conduct or do business as a career school in this state without obtaining a license under ORS 345.010 to 345.450.

(2) Except as provided in subsection (8) of this section, the Higher Education Coordinating Commission may issue a license to conduct a career school only after the applicant has presented proof satisfactory to the commission that the applicant complies with applicable standards adopted under ORS 345.325 and 670.280. For the purpose of this subsection, ORS 670.280 applies to individuals who hold positions of authority or control in the operation of the school and to its faculty members and agents.

(3) A career school licensed in any other state must be licensed in this state before establishing a physical presence in this state such as offices or agents, or both, for the purpose of solicitation of students.

(4) In determining whether to issue a license to a career school, the commission may consider

the prior history of the applicant in operating other career schools. The prior history of operating other career schools includes, but is not limited to:

(a) Conduct by the applicant that is cause for a notice of corrective action or for suspension or revocation of a license as provided in ORS 345.120 (3);

(b) Failure to comply with ORS 345.010 to 345.450 or rules adopted under ORS 345.010 to 345.450; and

(c) The history of the applicant in operating career schools in other states.

(5) The commission may not issue a license to or renew the license of a career school until the applicant provides all of the following to the commission:

(a) A financial statement, certified true and accurate and signed by the owner of the school;

(b) Proof of compliance with the tuition protection policy established by the commission pursuant to ORS 345.110; and

(c) Fingerprints of individuals as described in subsection (6) of this section.

(6)(a) Except as provided in paragraph (c) of this subsection, an applicant for an initial issuance of a license or a renewal of a license must provide to the commission the fingerprints of faculty members and agents of the school and individuals who hold positions of authority or control in the operation of the school if the career school will be enrolling or does enroll persons under 18 years of age.

(b) In addition to requirements provided under paragraph (a) of this subsection, the commission may require a career school to provide the fingerprints of any agents of the school who will have contact with persons under 18 years of age on behalf of the career school.

(c) An applicant is not required to provide fingerprints under paragraph (a) or (b) of this subsection if the commission has conducted a state or nationwide criminal records check on the person within the three years preceding the date of the application.

(d) The commission shall request a state or nationwide criminal records check under ORS 181A.195. Fingerprints acquired under this subsection may be used only for the purpose of obtaining a criminal records check under this section.

(7) Notwithstanding ORS 345.325 (10), the commission may issue a notice for corrective action or deny, suspend or revoke a license if the commission finds that an individual who holds a position of authority or control in the operation of the school was convicted of a crime listed in ORS 342.143.

(8) The commission may issue a conditional license to a career school that meets the requirements of subsection (5) of this section but that does not comply with the applicable standards adopted by rule under ORS 345.325. A conditional license issued under this subsection is effective for a period prescribed by the commission, which may not exceed 90 days.

(9)(a) Except as provided in paragraph (b) of this subsection, a career school license is nontransferable. The licensee must give 30 days of notice to the commission when transferring ownership of a career school.

(b) The commission may transfer a career school license or allow the ownership of a career school to transfer with less than 30 days of notice if:

(A) The owner of the school dies, is incapacitated or is incarcerated; or

(B) Other circumstances render the owner unable to operate the career school.

(10) Each career school shall display its license in a prominent place.

(11) A career school that teaches skills in barbering, esthetics, hair design or nail technology as those terms are defined in ORS 690.005 must obtain and maintain a certificate of compliance under section 3 of this 2021 Act in order to conduct or do business.

SECTION 16. ORS 676.562 is amended to read:

676.562. As used in ORS 676.560 to 676.625:

(1) "Active authorization" means an authorization that is current and not suspended.

(2) "Authorization" means a certificate, license, permit or registration issued by the Health Licensing Office that allows a person to [practice]:

(a) **Practice** one of the occupations or professions [or], maintain a facility **or conduct or do business as a career school, as defined in ORS 690.005**, subject to the authority of the boards, councils and programs listed in ORS 676.565; or

(b) **Practice** a profession or occupation subject to direct oversight by the office.

(3) "Expired authorization" means an authorization that has been not current for more than three years.

(4) "Inactive authorization" means an authorization that has been not current for three years or less.

CONTINUITY OF CURRICULA

SECTION 17. A school that teaches a curriculum that was approved by the Higher Education Coordinating Commission before the operative date specified in section 21 of this 2021 Act may continue to teach the curriculum after the operative date specified in section 21 of this 2021 Act unless the Health Licensing Office determines that the curriculum must be approved by the office pursuant to rules adopted by the Board of Cosmetology under ORS 690.005 to 690.225.

CERTIFICATION REQUIREMENT

SECTION 18. A career school that existed before the operative date specified in section 21 of this 2021 Act that intends to teach a field of practice after the operative date specified in section 21 of this 2021 Act shall apply for and obtain a certificate of compliance under section 3 of this 2021 Act not later than January 1, 2022.

REPEALS

SECTION 19. ORS 345.400, 345.430, 345.440 and 345.450 are repealed.

UNIT CAPTIONS

SECTION 20. The unit captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

OPERATIVE AND EFFECTIVE DATES

SECTION 21. (1) Sections 2 and 3 of this 2021 Act, the amendments to ORS 345.010, 345.030, 676.562, 690.005, 690.015, 690.025, 690.046, 690.047, 690.165, 690.195, 690.205, 690.225 and 690.360 by sections 4 to 16 of this 2021 Act and the repeal of ORS 345.400, 345.430, 345.440 and

345.450 by section 19 of this 2021 Act become operative on January 1, 2022.

(2) The Board of Cosmetology, the Higher Education Coordinating Commission and the Health Licensing Office may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board, the commission and the office to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board, the commission and the office by sections 2 and 3 of this 2021 Act, the amendments to ORS 345.010, 345.030, 676.562, 690.005, 690.015, 690.025, 690.046, 690.047, 690.165, 690.195, 690.205, 690.225 and 690.360 by sections 4 to 16 of this 2021 Act and the repeal of ORS 345.400, 345.430, 345.440 and 345.450 by section 19 of this 2021 Act.

SECTION 22. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

HB 2970

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**Esthetics & Advanced
Esthetics Scope of Practice**

House Bill 2970

Sponsored by Representative NOSSE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Defines "device" for purposes of practice of advanced nonablative esthetics. Allows person certified to practice esthetics to use items other than devices.

Prohibits person certified to practice esthetics from using mechanical or electrical apparatus, appliance or device without specific authorization by Board of Certified Advanced Estheticians. Defines "mechanical or electrical apparatus, appliance or device."

Requires health insurance policies to provide coverage for certain prescription drugs prescribed and dispensed by pharmacists and pharmacist fees for related patient consultation. Prohibits certain insurers from requiring prior authorization for medication prescribed for treatment of opioid or opiate withdrawal or post-exposure prophylaxes antiretroviral drugs, or restricting reimbursement for specified medication-assisted treatments.

Establishes Senior Emergency Medical Services Innovation Program in Department of Human Services to fund and monitor certain local public sector pilot projects related to emergency medical services for seniors. Sunsets January 2, 2025.

Preempts local governments from enacting certain regulations related to, and from imposing fees on, long term care facilities and residential care facilities. Creates exemptions from preemption. Sunsets January 2, 2025.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to health care; creating new provisions; amending ORS 443.001, 676.630, 676.635, 690.005, 690.015, 743A.064, 743B.001 and 743B.425; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

ESTHETICS

SECTION 1. ORS 676.630 is amended to read:

676.630. As used in ORS 676.630 to 676.660:

(1) "Advanced nonablative esthetics procedure" means a procedure that uses a laser, **intense pulsed light** or other device [*registered with the United States Food and Drug Administration*] for nonablative procedures performed on the skin or hair, including, but not limited to, procedures performed in conjunction with one of the following modalities:

- (a) Skin rejuvenation;
- (b) Photo rejuvenation;
- (c) Body contouring;
- (d) Dyschromia reduction;
- (e) Cellulite reduction;
- (f) Hair removal or reduction; and
- (g) Nonablative tattoo removal.

(2) "Certified advanced esthetician" means a person certified to practice advanced nonablative esthetics procedures under ORS 676.630 to 676.660.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

(3) “Device” has the meaning given that term by the Board of Certified Advanced Estheticians by rule.

[(3)] (4) “Esthetician” means a person certified to practice esthetics under ORS 690.005 to 690.225.

[(4)] (5) “Nonablative” means involving an action performed on the skin or hair of a person that does not result in the wounding of skin or underlying tissue.

SECTION 2. ORS 676.635 is amended to read:

676.635. (1) A person may not practice advanced nonablative esthetics procedures or use a title, word or abbreviation, including the designation certified advanced esthetician, that indicates that the person is authorized to practice advanced nonablative esthetics procedures unless the person is certified by the Board of Certified Advanced Estheticians under ORS 676.640.

(2) Notwithstanding ORS 677.080, a certified advanced esthetician may practice advanced nonablative esthetics procedures.

(3) This section does not apply to:

(a) A person who is a licensed health care professional if the person’s scope of practice includes the practice of advanced nonablative esthetics procedures; or

(b) A student enrolled in an advanced nonablative esthetics education program or training program or in an advanced nonablative esthetics program that combines education and training.

(4) Notwithstanding subsection (1) of this section, a person who is certified to practice esthetics under ORS 690.048 may, to the extent reasonably appropriate for the person’s practice, use an item that is not a device.

SECTION 3. ORS 690.005 is amended to read:

690.005. As used in ORS 690.005 to 690.225:

(1) “Barbering” means any of the following practices, when done upon the human body for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Shampooing, styling, cutting, singeing and conditioning of the hair of an individual.

(b) Applying hair tonics, dressings and rinses.

(c) Massaging of the scalp, face and neck and applying facial and scalp treatments with creams, lotions, oils and other cosmetic preparations, either by hand or mechanical appliances, except that the mechanical appliances may not be galvanic or faradic.

(d) Shaving, trimming or cutting of the beard or mustache.

(2) “Certificate” means a written authorization for the holder to perform in one or more fields of practice.

(3) “Cosmetology” means the art or science of beautifying and improving the skin, nails and hair and the study of cosmetics and their application.

(4) “Demonstration permit” means a written authorization for a person to practice, demonstrate and teach one or more fields of practice on a temporary basis.

(5) “Esthetics” means any of the following skin care or facial care practices performed on the human body or face for the purpose of keeping the skin of the human body or face healthy and attractive and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) The use of the hands or mechanical or electric apparatuses [or], appliances **or devices** for cleansing, stimulating, manipulating, exfoliating or applying lotions or creams.

(b) Temporary removal of hair **by using lotion, cream, an appliance, wax, thread, sugar, tweezers, dermaplaning, a depilatory or other means.**

(c) Makeup artistry.

(d) **Eyebrow and** eyelash services.

(e) Facial and body *[wrapping]* **treatments.**

[(f) Facial and body waxing.]

(6) "Facility" means an establishment operated on a regular or irregular basis for the purpose of providing services in one or more fields of practice.

(7) "Field of practice" means the following cosmetology disciplines:

(a) Barbering.

(b) Esthetics.

(c) Hair design.

(d) Nail technology.

(e) Natural hair care.

(8) "Freelance license" means a written authorization that allows a practitioner to practice outside or away from a licensed facility.

(9) "Hair design" means any of the following practices, when done upon the human body for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Shaving, trimming or cutting of the beard or mustache.

(b) Styling, permanent waving, relaxing, cutting, singeing, bleaching, coloring, shampooing, conditioning, applying hair products or similar work upon the hair of an individual.

(c) Massaging the scalp and neck when performed in conjunction with activities in paragraph (a) or (b) of this subsection.

(10) "Independent contractor" means a practitioner who qualifies as an independent contractor under ORS 670.600 and who is not under the control and direction of a facility license holder.

(11) "License" means a written authorization issued under ORS 690.055 to a person to operate a facility or freelance business for providing services related to one or more fields of practice to the public.

(12)(a) "Mechanical or electrical apparatus, appliance or device" includes, but is not limited to, galvanic current, high-frequency microcurrents, light-emitting diode therapy and microdermabrasion.

(b) "Mechanical or electrical apparatus, appliance or device" does not include lasers or intense pulsed light or a device as that term is defined in ORS 676.630.

[(12)] **(13)** "Nail technology" means any of the following manicuring or pedicuring practices performed for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Cutting, trimming, polishing, coloring, tinting, cleansing or otherwise treating the nails of the hands or feet.

(b) Massaging, cleansing, treating or beautifying the hands, arms below the elbow, feet or legs below the knee.

(c) Applying, sculpturing or removing artificial nails of the hands or feet.

[(13)(a)] **(14)(a)** "Natural hair care" means:

(A) The braiding, cornrowing, extending, lacing, locking, sewing, twisting, weaving or wrapping of human hair, natural fibers, synthetic fibers or hair extensions through the use of hands or simple devices such as clips, combs, hairpins or needle and thread;

(B) The use of scissors to trim synthetic fibers, hair extensions or sewn-in weave extensions as is necessary to perform the activities described in this paragraph;

(C) The making of customized wigs from natural hair, natural fibers, synthetic fibers or hair extensions; or

(D) Shampooing or conditioning of the hair of an individual.

(b) “Natural hair care” does not include the use of scissors, except as provided in paragraph (a)(B) of this subsection, penetrating chemical hair treatments, chemical hair coloring agents, chemical hair straightening agents, chemical hair joining agents, permanent wave styles or chemical hair bleaching agents.

[(14)] (15) “Practitioner” means a person certified to perform services included within a field of practice.

[(15)] (16) “Registration” means a written authorization issued to an independent contractor to hold forth to the public as a business entity providing services in a field of practice.

[(16)] (17) “School” means an educational establishment that has a license issued by the Department of Education and is operated for the purpose of teaching one or more fields of practice. For purposes of this subsection, “field of practice” does not include natural hair care.

[(17)] (18) “Temporary facility permit” means a written authorization issued under ORS 690.055 to provide services on a temporary basis in one or more fields of practice.

SECTION 4. ORS 690.015 is amended to read:

690.015. (1) This section establishes prohibitions relating to the practice of hair design, barbering, esthetics, nail technology and natural hair care. The prohibitions under this section are subject to the exemptions under ORS 690.025. A person who commits an act prohibited under this section is subject to the penalties under ORS 690.992 in addition to any administrative action taken by or any civil penalty imposed by the Health Licensing Office under ORS 676.612.

(2) A person may not:

(a) Perform or attempt to perform services in a field of practice without an active certificate, demonstration permit, registration or freelance license.

(b) Operate a facility without a license or temporary facility permit.

(c) Perform or attempt to perform services in a field of practice outside a licensed facility or temporary facility unless the person holds a freelance license issued under ORS 690.123.

(d) Practice hair design, barbering, esthetics, nail technology or natural hair care as an independent contractor without a registration.

(e) Display a sign or in any way advertise or purport to offer services in a field of practice without first obtaining a permit, certificate, independent contractor registration or facility license.

(f) Knowingly make a false statement on an application to obtain or renew a certificate, registration, license or permit.

[(g) Allow an individual in the employ or under the supervision or control of the person to perform in a field of practice without a certificate or permit.]

(g) Use a mechanical or electrical apparatus, appliance or device or other technique beyond the epidermis if the person is certified to practice esthetics under ORS 690.048, unless otherwise authorized by the office by rule.

(h) Sell, barter or offer to sell or barter a document evidencing a certificate, registration, license or permit.

(i) Purchase or procure by barter a document evidencing a certificate with intent to use it as evidence of the person’s qualification as a practitioner.

(j) Materially alter with fraudulent intent a document evidencing a certificate, registration, license or permit.

CAPTIONS

SECTION 17. The unit captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

EMERGENCY CLAUSE

SECTION 18. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

HB 2971

~

**Abolish the Board of
Certified Advanced
Estheticians and Integrate
into Board of Cosmetology**

House Bill 2971

Sponsored by Representative NOSSE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Abolishes Board of Certified Advanced Estheticians and transfers responsibilities to Health Licensing Office and Board of Cosmetology. Directs office to issue certificate to practice advanced nonablative esthetics procedures to qualified applicant.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to certified advanced estheticians; creating new provisions; amending ORS 345.010, 345.400, 345.430, 345.440, 345.450, 676.565, 676.590, 676.992, 690.005, 690.015, 690.155, 690.165 and 690.167; repealing ORS 676.630, 676.635, 676.640, 676.645, 676.650, 676.655 and 676.660; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 1 and 2 of this 2021 Act are added to and made a part of ORS 690.005 to 690.225.

SECTION 2. (1) Except as provided in subsection (3) of this section, the Health Licensing Office shall issue a certificate to practice advanced nonablative esthetics procedures to an applicant who:

(a) Is at least 18 years of age;

(b) Holds a certificate to practice esthetics and is in good standing with the Board of Cosmetology;

(c) Successfully completes:

(A) Subject to subsection (2) of this section, an advanced nonablative esthetics education or training program, or an advanced nonablative esthetics program that combines education and training, that is approved by the board; or

(B) A nationally recognized program that is approved by the board and through which individuals are certified to use lasers or other devices for purposes related to practicing advanced nonablative esthetics procedures;

(d) Passes an examination adopted by the board by rule; and

(e) Pays the applicable fees established under ORS 676.576.

(2) An education program described in subsection (1)(c)(A) of this section must be:

(a) If the program is located in this state, licensed through the Higher Education Coordinating Commission; or

(b) If the program is not located in this state, substantially equivalent to a program licensed through the commission.

(3) The office shall issue a certificate to practice advanced nonablative esthetics procedures to an applicant who:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

(a) Holds a certificate to practice esthetics and is in good standing with the board;

(b) Is authorized and in good standing to practice advanced nonablative esthetics procedures in a state where the requirements to practice advanced nonablative esthetics procedures are substantially similar to those requirements in this state; and

(c) Pays the applicable fee established under ORS 676.576.

(4) The office shall issue a temporary certificate to perform advanced nonablative esthetics procedures to an applicant who:

(a) Holds a certificate to practice esthetics and is in good standing with the board;

(b) Meets any qualifications established by the office by rule; and

(c) Pays the applicable fee established under ORS 676.576.

SECTION 3. (1) A certificate issued under section 2 (1) or (3) of this 2021 Act must be renewed annually. To renew a certificate under this section, a certified advanced esthetician must submit to the Health Licensing Office:

(a) A renewal application;

(b) Proof that the certified advanced esthetician has completed any continuing education requirements established by the Board of Cosmetology by rule; and

(c) The applicable renewal fee established under ORS 676.576.

(2) A temporary certificate issued under section 2 (4) of this 2021 Act expires as prescribed by the office by rule.

SECTION 4. ORS 690.005 is amended to read:

690.005. As used in ORS 690.005 to 690.225:

(1) "Advanced nonablative esthetics procedure" means a procedure that uses a laser or other device registered with the United States Food and Drug Administration for nonablative procedures performed on the skin or hair, including but not limited to procedures performed in conjunction with one of the following modalities:

(a) Skin rejuvenation;

(b) Photo rejuvenation;

(c) Body contouring;

(d) Dyschromia reduction;

(e) Cellulite reduction;

(f) Hair removal or reduction; and

(g) Nonablative tattoo removal.

[(1)] (2) "Barbering" means any of the following practices, when done upon the human body for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Shampooing, styling, cutting, singeing and conditioning of the hair of an individual.

(b) Applying hair tonics, dressings and rinses.

(c) Massaging of the scalp, face and neck and applying facial and scalp treatments with creams, lotions, oils and other cosmetic preparations, either by hand or mechanical appliances, except that the mechanical appliances may not be galvanic or faradic.

(d) Shaving, trimming or cutting of the beard or mustache.

[(2)] (3) "Certificate" means a written authorization for the holder to perform in one or more fields of practice.

(4) "Certified advanced esthetician" means a person certified to practice advanced nonablative esthetics procedures under section 2 of this 2021 Act.

1 [(3)] (5) “Cosmetology” means the art or science of beautifying and improving the skin, nails and
2 hair and the study of cosmetics and their application.

3 [(4)] (6) “Demonstration permit” means a written authorization for a person to practice, dem-
4 onstrate and teach one or more fields of practice on a temporary basis.

5 [(5)] (7) “Esthetics” means any of the following skin care or facial care practices performed on
6 the human body or face for the purpose of keeping the skin of the human body or face healthy and
7 attractive and not for medical diagnosis or treatment of disease or physical or mental ailments:

8 (a) The use of the hands or mechanical or electric apparatuses or appliances for cleansing,
9 stimulating, manipulating, exfoliating or applying lotions or creams.

10 (b) Temporary removal of hair.

11 (c) Makeup artistry.

12 (d) Eyelash services.

13 (e) Facial and body wrapping.

14 (f) Facial and body waxing.

15 [(6)] (8) “Facility” means an establishment operated on a regular or irregular basis for the pur-
16 pose of providing services in one or more fields of practice.

17 [(7)] (9) “Field of practice” means the following cosmetology disciplines:

18 (a) Barbering.

19 (b) Esthetics.

20 (c) Hair design.

21 (d) Nail technology.

22 (e) Natural hair care.

23 **(f) Advanced nonablative esthetics procedures.**

24 [(8)] (10) “Freelance license” means a written authorization that allows a practitioner to prac-
25 tice outside or away from a licensed facility.

26 [(9)] (11) “Hair design” means any of the following practices, when done upon the human body
27 for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental
28 ailments:

29 (a) Shaving, trimming or cutting of the beard or mustache.

30 (b) Styling, permanent waving, relaxing, cutting, singeing, bleaching, coloring, shampooing, con-
31 ditioning, applying hair products or similar work upon the hair of an individual.

32 (c) Massaging the scalp and neck when performed in conjunction with activities in paragraph
33 (a) or (b) of this subsection.

34 [(10)] (12) “Independent contractor” means a practitioner who qualifies as an independent con-
35 tractor under ORS 670.600 and who is not under the control and direction of a facility license
36 holder.

37 [(11)] (13) “License” means a written authorization issued under ORS 690.055 to a person to
38 operate a facility or freelance business for providing services related to one or more fields of prac-
39 tice to the public.

40 [(12)] (14) “Nail technology” means any of the following manicuring or pedicuring practices
41 performed for cosmetic purposes and not for medical diagnosis or treatment of disease or physical
42 or mental ailments:

43 (a) Cutting, trimming, polishing, coloring, tinting, cleansing or otherwise treating the nails of the
44 hands or feet.

45 (b) Massaging, cleansing, treating or beautifying the hands, arms below the elbow, feet or legs

below the knee.

(c) Applying, sculpturing or removing artificial nails of the hands or feet.

[(13)(a)] **(15)(a)** “Natural hair care” means:

(A) The braiding, cornrowing, extending, lacing, locking, sewing, twisting, weaving or wrapping of human hair, natural fibers, synthetic fibers or hair extensions through the use of hands or simple devices such as clips, combs, hairpins or needle and thread;

(B) The use of scissors to trim synthetic fibers, hair extensions or sewn-in weave extensions as is necessary to perform the activities described in this paragraph;

(C) The making of customized wigs from natural hair, natural fibers, synthetic fibers or hair extensions; or

(D) Shampooing or conditioning of the hair of an individual.

(b) “Natural hair care” does not include the use of scissors, except as provided in paragraph (a)(B) of this subsection, penetrating chemical hair treatments, chemical hair coloring agents, chemical hair straightening agents, chemical hair joining agents, permanent wave styles or chemical hair bleaching agents.

(16) “Nonablative” means involving an action performed on the skin or hair or a person that does not result in the wounding of skin or underlying tissue.

[(14)] **(17)** “Practitioner” means a person certified to perform services included within a field of practice.

[(15)] **(18)** “Registration” means a written authorization issued to an independent contractor to hold forth to the public as a business entity providing services in a field of practice.

[(16)] **(19)** “School” means an educational establishment that has a license issued by the Department of Education and is operated for the purpose of teaching one or more fields of practice. For purposes of this subsection, “field of practice” does not include natural hair care.

[(17)] **(20)** “Temporary facility permit” means a written authorization issued under ORS 690.055 to provide services on a temporary basis in one or more fields of practice.

SECTION 5. ORS 690.015 is amended to read:

690.015. (1) This section establishes prohibitions relating to the practice of hair design, barbering, esthetics, nail technology *[and]*, natural hair care **and advanced nonablative esthetics procedures**. The prohibitions under this section are subject to the exemptions under ORS 690.025. A person who commits an act prohibited under this section is subject to the penalties under ORS 690.992 in addition to any administrative action taken by or any civil penalty imposed by the Health Licensing Office under ORS 676.612.

(2) A person may not:

(a) Perform or attempt to perform services in a field of practice without an active certificate, demonstration permit, registration or freelance license.

(b) Operate a facility without a license or temporary facility permit.

(c) Perform or attempt to perform services in a field of practice outside a licensed facility or temporary facility unless the person holds a freelance license issued under ORS 690.123.

(d) Practice hair design, barbering, esthetics, nail technology *[or]*, natural hair care **or advanced nonablative esthetics procedures** as an independent contractor without a registration.

(e) Display a sign or in any way advertise or purport to offer services in a field of practice without first obtaining a permit, certificate, independent contractor registration or facility license.

(f) Knowingly make a false statement on an application to obtain or renew a certificate, registration, license or permit.

(g) Allow an individual in the employ or under the supervision or control of the person to perform in a field of practice without a certificate or permit.

(h) Sell, barter or offer to sell or barter a document evidencing a certificate, registration, license or permit.

(i) Purchase or procure by barter a document evidencing a certificate with intent to use it as evidence of the person's qualification as a practitioner.

(j) Materially alter with fraudulent intent a document evidencing a certificate, registration, license or permit.

(k) Use or attempt to use a fraudulently obtained, counterfeited or materially altered document evidencing a certificate, registration, license or permit.

(L) Practice advanced nonablative esthetics procedures or use a title, word or abbreviation, including the designation "certified advanced esthetician," that indicates the person is authorized to practice advanced nonablative esthetics procedures unless the person is certified by the office under section 2 of this 2021 Act.

SECTION 6. ORS 690.155 is amended to read:

690.155. (1) There is established within the Health Licensing Office the Board of Cosmetology consisting of seven members appointed by the Governor. At all times the membership of the board *[shall be so constituted that]* **must include:**

(a) *[Six]* **Five** members of the board *[shall be]* **who are** practitioners with active certificates.

(b) One member who is a certified advanced esthetician.

[(b)] **(c)** One member *[shall be]* **who is** a public member who is not a practitioner.

(2) The term of office of each member of the board is four years, but a member serves at the pleasure of the Governor. Vacancies shall be filled by the Governor by appointment for the unexpired term. A member shall hold the member's office until the appointment and qualification of a successor. A member is eligible for reappointment. If a person serves two consecutive full terms, a period of at least four years must elapse before the person is again eligible for appointment to serve on the board.

(3) The Director of the Health Licensing Office, or a designated representative, shall serve as an ex officio member of the board but without the right to vote.

SECTION 7. ORS 690.165 is amended to read:

690.165. In addition to the powers otherwise granted by ORS 345.430 and 690.005 to 690.225, the Board of Cosmetology shall have the power to:

(1) Determine whether applicants are qualified to take certification examinations.

(2) Administer, approve or recognize certification examinations and designate the time, place and administrators of certification examinations.

(3) Contract for the administration of examinations as part of regional or national examinations and contract with independent testing services for examination administration.

(4) Pursuant to ORS 676.568, direct the Health Licensing Office to issue certificates, registrations, licenses and permits to individuals determined by the board to be qualified.

(5) Except as otherwise provided in ORS 690.205 (2) or other provision of law, adopt rules establishing and enforcing standards for safety, infection control, professional conduct and any other matters relating to fields of practice, facilities or locations used by persons providing services regulated by ORS 690.005 to 690.225.

(6) Pursuant to ORS 676.612 and 690.167, direct the office to suspend, revoke, limit or refuse to issue or renew certificates, registrations, licenses or permits or impose a period of probationary

activity on the holder.

(7) Do any act necessary or proper to effect and carry out the duties required of the board by ORS 690.005 to 690.225.

(8) Adopt rules prescribing standards of professional conduct for persons practicing hair design, barbering, esthetics, nail technology *[or]*, natural hair care **or advanced nonablative esthetics procedures**.

(9) Consult with the office about the issuance and renewal of a license under ORS 690.055 authorizing a facility to provide barbering, esthetics, hair design, nail technology services *[or]*, natural hair care **or advanced nonablative esthetics procedures**.

SECTION 8. ORS 690.167 is amended to read:

690.167. In the manner prescribed in ORS chapter 183 for contested cases and at the direction of the Board of Cosmetology, the Health Licensing Office may impose a form of discipline listed in ORS 676.612 against any person practicing barbering, hair design, esthetics, nail technology *[or]*, natural hair care **or advanced nonablative esthetics procedures** for any of the grounds listed in ORS 676.612 and for any violation of the provisions of ORS 690.005 to 690.225, or the rules adopted *[thereunder]* **under ORS 690.005 to 690.225**.

SECTION 9. ORS 676.565 is amended to read:

676.565. Pursuant to ORS 676.568, the Health Licensing Office shall provide administrative and regulatory oversight and centralized service for the following boards, councils and programs:

(1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;

(2) Board of Cosmetology, as provided in ORS 690.005 to 690.225;

(3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;

(4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;

(5) Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in ORS 688.800 to 688.840;

(6) Environmental Health Registration Board, as provided in ORS chapter 700;

(7) Board of Electrologists and Body Art Practitioners, as provided in ORS 690.350 to 690.410;

(8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.170;

(9) Sexual Offense Treatment Board, as provided in ORS 675.365 to 675.410;

(10) Long Term Care Administrators Board, as provided in ORS 678.710 to 678.820;

(11) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485;

(12) Behavior Analysis Regulatory Board, as provided in ORS 676.806;

[(13) Board of Certified Advanced Estheticians, as provided in ORS 676.630 to 676.660;]

[(14)] (13) Art therapy, as provided in ORS 681.740 to 681.758;

[(15)] (14) Lactation consultation, as provided in ORS 676.665 to 676.689; and

[(16)] (15) Music therapy, as provided in ORS 681.700 to 681.730.

SECTION 10. ORS 676.590 is amended to read:

676.590. (1) Information obtained by the Health Licensing Office as part of an investigation conducted under the following laws and any reports issued by an investigator are exempt from public disclosure:

(a) ORS *[676.630 to 676.660,]* 676.665 to 676.689, 681.700 to 681.730, 681.740 to 681.758, 690.005 to 690.225, 690.350 to 690.410 or 694.015 to 694.170.

(b) ORS 676.560 to 676.625 if the investigation is related to the regulation of:

[(A) Advanced nonablative esthetics under ORS 676.630 to 676.660;]

[(B)] (A) Lactation consultation under ORS 676.665 to 676.689;

1 [(C)] (B) Music therapy under ORS 681.700 to 681.730;

2 [(D)] (C) Art therapy under ORS 681.740 to 681.758;

3 [(E)] (D) Barbering, hair design, esthetics, nail technology *[or]*, natural hair care **or advanced**
4 **nonablative esthetics procedures** under ORS 690.005 to 690.225;

5 [(F)] (E) Electrologists and body art practitioners under ORS 690.350 to 690.410; or

6 [(G)] (F) Dealing in hearing aids under ORS 694.015 to 694.170.

7 (2) The office shall disclose information obtained as part of an investigation described in sub-
8 section (1) of this section to a person who demonstrates by clear and convincing evidence that the
9 public interest in disclosure outweighs other interests in nondisclosure, including the public interest
10 in nondisclosure.

11 (3) A complaint that forms the basis for an investigation described in subsection (1) of this sec-
12 tion shall not be considered information obtained as part of an investigation and is not exempt from
13 public disclosure.

14 (4) Upon request, the office shall disclose to a person against whom disciplinary action is sought
15 any information obtained as part of an investigation described in section (1) of this section, if the
16 information is not otherwise privileged or confidential under state or federal law.

17 **SECTION 11.** ORS 676.992 is amended to read:

18 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other
19 penalty or remedy provided by law, the Health Licensing Office may impose a civil penalty not to
20 exceed \$5,000 for each violation of the following statutes and any rule adopted under the following
21 statutes:

22 (a) ORS 688.701 to 688.734 (athletic training);

23 (b) ORS 690.005 to 690.225 (cosmetology);

24 (c) ORS 680.500 to 680.565 (denture technology);

25 (d) Subject to ORS 676.616 and 687.445, ORS 687.405 to 687.495 (direct entry midwifery);

26 (e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe piercing, dermal im-
27 planting and scarification);

28 (f) ORS 694.015 to 694.170 (dealing in hearing aids);

29 (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);

30 (h) ORS chapter 700 (environmental sanitation);

31 (i) ORS 675.365 to 675.410 (sexual abuse specific treatment);

32 (j) ORS 678.710 to 678.820 (nursing home administrators and residential care facility adminis-
33 trators);

34 (k) ORS 691.405 to 691.485 (dietitians);

35 (L) ORS 676.612 (prohibited acts);

36 (m) ORS 676.810 and 676.815 (applied behavior analysis);

37 (n) ORS 681.700 to 681.730 (music therapy);

38 [(o) ORS 676.630 to 676.660 (*advanced nonablative esthetics procedure*)];

39 [(p)] (o) ORS 681.740 to 681.758 (art therapy); and

40 [(q)] (p) ORS 676.665 to 676.689 (lactation consultation).

41 (2) The office may take any other disciplinary action that it finds proper, including but not
42 limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any
43 statute listed in subsection (1) of this section or any rule adopted under any statute listed in sub-
44 section (1) of this section.

45 (3) Subsection (1) of this section does not limit the amount of the civil penalty resulting from a

1 violation of ORS 694.042.

2 (4) In imposing a civil penalty under this section, the office shall consider the following factors:

3 (a) The immediacy and extent to which the violation threatens the public health or safety;

4 (b) Any prior violations of statutes, rules or orders;

5 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-
6 lation; and

7 (d) Any other aggravating or mitigating factors.

8 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

9 (6) The moneys received by the office from civil penalties under this section shall be deposited
10 in the Health Licensing Office Account and are continuously appropriated to the office for the ad-
11 ministration and enforcement of the laws the office is charged with administering and enforcing that
12 govern the person against whom the penalty was imposed.

13 **SECTION 12.** ORS 345.010 is amended to read:

14 345.010. As used in ORS 345.010 to 345.450 and 345.992 to 345.997:

15 (1) **“Advanced nonablative esthetics procedure” has the meaning given in ORS 690.005.**

16 [(1)] (2) “Agent” means an individual who is employed by or for a career school, or is working
17 on behalf of the school under a contract, for the purpose of actively procuring students, enrollees
18 or subscribers of the school by solicitation in any form that is made at a place or places other than
19 the school office or place of business of the school.

20 [(2)] (3) “Barbering” has the meaning given that term in ORS 690.005.

21 [(3)] (4) “Career school” or “school” means any private proprietary professional, technical, home
22 study, correspondence, business or other school instruction, organization or person that offers any
23 instruction or training for the purpose or purported purpose of instructing, training or preparing
24 persons for any profession.

25 [(4)] (5) “Esthetics” has the meaning given in ORS 690.005.

26 [(5)] (6) “Hair design” has the meaning given in ORS 690.005.

27 [(6)] (7) “License” means the authority the career school has been granted to operate under ORS
28 345.010 to 345.450.

29 [(7)] (8) “Nail technology” has the meaning given in ORS 690.005.

30 [(8)] (9) “Registration” means the approval by the Higher Education Coordinating Commission
31 of a teacher or agent to instruct in or to represent the school.

32 **SECTION 13.** ORS 345.400 is amended to read:

33 345.400. In addition to the other requirements of ORS 345.010 to 345.450, the rules adopted by
34 the Higher Education Coordinating Commission to regulate schools teaching hair design, barbering,
35 esthetics [or], nail technology **or advanced nonablative esthetics procedures**:

36 (1) May include rules the commission considers necessary to protect the economic or physical
37 health and safety of the public and of the students attending the school including compliance with
38 ORS 345.110.

39 (2) Shall include rules that set standards for teachers teaching in schools licensed to teach hair
40 design, barbering, esthetics [or], nail technology **or advanced nonablative esthetics procedures**
41 pursuant to ORS 345.010 to 345.450.

42 (3) Shall require the schools to teach, and require for graduation from the school, courses that
43 meet minimum hourly training requirement or student proficiency-based training requirement stan-
44 dards set by the commission by rule.

45 **SECTION 14.** ORS 345.430 is amended to read:

1 345.430. The Higher Education Coordinating Commission shall determine whether a person from
 2 out-of-state who is not certified in hair design, barbering, esthetics [or], nail technology **or advanced**
 3 **nonablative esthetics procedures** by another state or a person from out-of-country seeking a cer-
 4 tificate in hair design, barbering, esthetics or nail technology is qualified to take the test of the
 5 Board of Cosmetology. A determination shall be made by an evaluation of academic transcripts,
 6 apprenticeship records and work experience documentation. If documentation is not available, the
 7 commission may refer the person to a career school for evaluation and recommendation.

8 **SECTION 15.** ORS 345.440 is amended to read:

9 345.440. Safety and sanitation inspections performed in schools licensed under ORS 345.010 to
 10 345.450 to teach hair design, barbering, esthetics [or], nail technology **or advanced nonablative**
 11 **esthetics procedures** shall be conducted by the Health Licensing Office.

12 **SECTION 16.** ORS 345.450 is amended to read:

13 345.450. (1) In addition to the fees required by ORS 345.080, before issuing any license under
 14 ORS 345.010 to 345.450 to a school teaching hair design, barbering, esthetics [or], nail technology
 15 **or advanced nonablative esthetics procedures**, and annually thereafter, the Higher Education
 16 Coordinating Commission shall collect a nonrefundable annual inspection fee of \$100.

17 (2) The inspection fee collected under subsection (1) of this section shall be transferred to the
 18 Health Licensing Office for inspections performed by the office under ORS 345.440.

19 **SECTION 17.** The amendments to ORS 690.155 by section 6 of this 2021 Act apply to
 20 members of the Board of Cosmetology appointed to the board on and after the operative date
 21 specified in section 19 of this 2021 Act.

22 **SECTION 18.** ORS 676.630, 676.635, 676.640, 676.645, 676.650, 676.655 and 676.660 are re-
 23 pealed.

24 **SECTION 19.** (1) Sections 2 and 3 of this 2021 Act and the amendments to ORS 345.010,
 25 345.400, 345.430, 345.440, 345.450, 676.565, 676.590, 676.992, 690.005, 690.015, 690.155, 690.165 and
 26 690.167 by sections 4 to 16 of this 2021 Act and the repeal of ORS 676.630, 676.635, 676.640,
 27 676.645, 676.650, 676.655 and 676.660 by section 18 of this 2021 Act become operative on Janu-
 28 ary 1, 2022.

29 (2) The Board of Cosmetology, the Health Licensing Office and the Higher Education
 30 Coordinating Commission may take any action before the operative date specified in sub-
 31 section (1) of this section that is necessary to enable the board, the commission and the of-
 32 fice to exercise, on and after the operative date specified in subsection (1) of this section,
 33 all of the duties, functions and powers conferred on the board, the commission and the office
 34 by sections 2 and 3 of this 2021 Act and the amendments to ORS 345.010, 345.400, 345.430,
 35 345.440, 345.450, 676.565, 676.590, 676.992, 690.005, 690.015, 690.155, 690.165 and 690.167 by
 36 sections 4 to 16 of this 2021 Act and the repeal of ORS 676.630, 676.635, 676.640, 676.645,
 37 676.650, 676.655 and 676.660 by section 18 of this 2021 Act.

38 **SECTION 20.** This 2021 Act takes effect on the 91st day after the date on which the 2021
 39 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Limited Waiver on Enforcement

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Esthetics

January 7, 2021

Background Information

In 2015, the Oregon legislature enacted law that created a certification to practice advanced nonablative esthetics. The legislature defined advanced nonablative esthetics as “a procedure that uses a laser **or other device** registered with the United States Food and Drug Administration (USFDA) for nonablative procedures performed on the skin or hair. . .” As a result of these statutes, estheticians who wanted to practice advanced nonablative esthetics could not do so until they obtained a certificate in advanced nonablative esthetics. These statutes are found in ORS 676.630 to 676.660 and can be found here: https://www.oregonlegislature.gov/bills_laws/ors/ors676.html

In 2019, the Board of Cosmetology passed a rule, OAR 817-010-0067, to help the esthetics community better understand the restrictions on the esthetician’s scope of practice, following the passage of the advanced esthetics laws under ORS 676.630 to 676.660. That rule provided the USFDA’s definition of a “device” which is specified within the scope of practice of advanced esthetics and thus, are prohibited for use by estheticians. This rule can be found at:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=264932>

In 2020, a group of estheticians went to the legislature to request passage of a new statute allowing estheticians to use galvanic current, high-frequency, microcurrents, light-emitting diode therapy and microdermabrasion devices without an advanced esthetics certificate. This proposed law was called House Bill (HB) 4016. HB 4016 would have allowed estheticians regulated by the Board of Cosmetology to use “galvanic current, high-frequency, microcurrents, light-emitting diode therapy and microdermabrasion” as “mechanical or electrical apparatus, appliances or devices.” There did not appear to be any opposition to HB 4016, but it was not passed because the legislature had to shut down when it no longer had quorum to operate. Information regarding HB 4016 can be found here:

<https://olis.oregonlegislature.gov/liz/2020R1/Measures/Overview/HB4016>

2021 Legislative Session

For the [2021 Legislative Session](#), estheticians are again requesting that the legislature pass a new law allowing estheticians to use galvanic current, high-frequency microcurrents, light-emitting diode therapy and microdermabrasion devices without an advanced esthetics certificate. The group bringing this proposed law change is the Oregon Estheticians for Fair Licensing (OEFL). Below is general information related to the legislative process:

- [How a bill becomes a law](#)
- [Legislative process](#)
- [How to testify](#)

For more information regarding legislation contact the OEFL at oeffairlicensing@gmail.com.

No changes to laws were made during 2020. Therefore, the Health Licensing Office (HLO) is exercising its discretion to not impose discipline for violations of the uncertified practice of advanced esthetics through June 30, 2021. This discretion would only apply to:

- Certified estheticians regulated by the Board of Cosmetology who do not have an advanced esthetics certificate; AND
- Use of the following devices: galvanic current, high-frequency, microcurrents, light-emitting diode therapy, or microdermabrasion.

The HLO continues to exercise its discretion and may impose discipline for other issues, including, but not limited to negligence, incompetence, and unprofessional conduct when using galvanic current, high- frequency, microcurrents, light-emitting diode therapy, and microdermabrasion.

When will this limited waiver on enforcement end?

The limited waiver on enforcement will expire on June 30, 2021. The HLO will evaluate circumstances throughout the legislative session. If the HLO decides to exercise its discretion to extend the limited waiver of enforcement, notice will be provided to estheticians.

What if legislation does not pass during the 2021 Legislative Session?

Unless the legislature acts to change the definition of advanced nonablative esthetics in ORS 676.630(1) prior to January 1, 2022, the current statute will be the same on January 1, 2022; advanced nonablative esthetics will continue to be defined as “a procedure that uses a laser **or other device** registered with the (USFDA) for nonablative procedures performed on the skin or hair. . .”

The HLO recognizes there is uncertainty as to whether and how the statutes might be changed in the future and urges practitioners to consider that uncertainty when making business decisions.

COVID-19

Update

Public/ Interest Parties Feedback

Other Board Business

[illegible]