



HEALTH LICENSING OFFICE

Tina Kotek, Governor

Oregon
Health
Authority

1430 Tandem Ave. NE Suite 180

Salem OR 97301-2192

Phone: (503)378-8667

Fax: (503)585-9114

www.oregon.gov/oha/ph/hlo

WHO: Health Licensing Office
Board of Certified Advanced Estheticians & Board of Cosmetology
Esthetics & Advanced Esthetics Rules Advisory Committee

WHERE: TELEPHONE CONFERENCE CALL ONLY
1430 Tandem Ave. N.E. Suite 180, Salem, OR 97301

WHEN: January 30, 2023, from 9 a.m. to 1 p.m.

What is the purpose of the meeting?

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

May the public attend open sessions in person?

Yes, members of the public, interested parties, and the media are invited to attend all board/council meetings. Public and interested parties' feedback will be heard if available and stated on the agenda.

May the public attend by way of teleconference (call-in)?

Yes, a teleconference line is available for the public to attend the open sessions of the public meeting.

Teleconference call-in instructions:

- Dial (503) 934-3605 and enter the specific six-digit passcode listed on the agenda below. Keep your phone on mute at all times during the meeting until you are given an opportunity to speak during the Public and Interested Parties Feedback period.
- Email your full name to April Fleming at april.fleming@dhsosha.state.or.us, and let her know if you would like to make a public comment.

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 an executive session. Board members, designated participants such as 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. 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.

Representatives of the news media who are interested in attending an executive session are asked to contact April Fleming at april.fleming@dhsosha.state.or.us to make arrangements.

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

If you have any questions about accommodations or need any assistance to participate, please contact April Fleming at april.fleming@dhsosha.state.or.us, or by calling (503) 509-5127; or Derek Fultz at derek.j.fultz@dhsosha.state.or.us or by calling (503) 373-1915. All relay calls are accepted.

Call to Order



Health Licensing Office
Board of Certified Advanced Estheticians & Board of Cosmetology
Esthetics & Advanced Esthetics Rules Advisory Committee
1430 Tandem Ave. NE, Suite 180, Salem, OR 97301



January 30, 2023, from 9 a.m. to 1 p.m.

Conference call number: (503) 934-3605

Conference passcode: 747147

| # | Topic | Content |
|---|-------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ♦ | Call to Order Agenda | <ul style="list-style-type: none">• Call Rules Advisory Committee (RAC) to order• Agenda overview |
| ♦ | Rules Advisory Committee Presentation | <ul style="list-style-type: none">• Purpose and role• Laws and rules |
| ♦ | Executive Session Legal Advice | <ul style="list-style-type: none">• Pursuant to ORS 192.660(2)(f), ORS 192.355(9)(a) and ORS 40.225 for the purpose of considering information exempt from public disclosure. |
| ♦ | HB 2970 | <ul style="list-style-type: none">• Draft Rule• Define device for esthetics and advanced esthetics• Reconcile current rules to align with HB 2970 |
| ♦ | Working Lunch | |
| ♦ | HB 2970 Continued | <ul style="list-style-type: none">• Revisions to rule schedule if necessary |
| ♦ | Statement of Need and Fiscal Impact and Racial Equity | <ul style="list-style-type: none">• Racial Equity Statement• Effect on the public and small business• Cost of compliance with proposed rules |
| ♦ | Next Steps | <ul style="list-style-type: none">• Homework and next steps• Next meeting February 27, 2023, from 9 a.m. to 1 p.m. |
| ♦ | Public Comment | |

Agenda is subject to change.

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

Rule Schedule



ADMINISTRATIVE RULE SCHEDULE

HEALTH LICENSING OFFICE

Cosmetology & Advanced Esthetics

| Date | Action | Time |
|-------------------|----------------------------------------------------------------------------------------------------------|---------------|
| October 26, 2022 | Board Certified Advanced Estheticians (CAE) meeting – approve rule schedule & membership recommendations | 9 am |
| November 14, 2022 | Board of Cosmetology (COS) meeting – approve rule schedule & membership recommendations | 10 am |
| January 23, 2023 | COS board meeting | 10 am |
| January 30, 2023 | Esthetics & Advanced Esthetics Rules Advisory Committee (RAC) | 9 am |
| February 22, 2022 | CAE board meeting | 9 am |
| February 27, 2023 | Esthetics & Advanced Esthetics RAC | 9 am |
| March 27, 2023 | Esthetics & Advanced Esthetics RAC | 9 am |
| June 12, 2023 | CAE & COS combined meeting – approve proposed rules | 10 am |
| June 13, 2023 | CAE & COS combined meeting – approve proposed rules | 9 am |
| August 1, 2023 | Notify legislators 49-days before the effective date of rule | |
| August 1, 2023 | First day for public comment Notice of proposed rules in Oregon Bulletin | |
| August 16, 2023 | COS Public rule hearing | 9 am to 12 pm |
| August 16, 2023 | CAE Public rule hearing | 1 pm to 4 pm |
| August 28, 2023 | Last day for public comment | 12 pm |
| October 23, 2023 | CAE & COS combined meeting – consider public comment and hearings officer report -adopt permanent rules | 10 am |
| October 24, 2023 | CAE & COS combined meeting – approve proposed rules | 9 am |
| January 1, 2024 | Permanent rules filed and effective | |

Please send all public comment or questions to:

Samie Patnode, Policy Analyst

1430 Tandem Ave NE, Suite 180, Salem OR 97301

Phone – desk: (503)373-1917 or cell: (503)509-5592

Samie.patnode@dhsosha.state.or.us

Administrative rule schedules are subject to change. 12/5/2022

Rules Advisory Committee Overview

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**August 23, 2021
November 10, 2021**



HEALTH LICENSING OFFICE

Tina Koteck, Governor

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Health
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1430 Tandem Ave. N.E. Suite 180
Salem, OR 97301
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Date: January 29, 2023

To: Board of Certified Advanced Estheticians & Board of Cosmetology

From: Samie Patnode, Policy Analyst

Subject: Advanced Esthetics & Esthetics Rules Advisory Committee Report
August 23 & November 10, 2021

2021 Rules Advisory Committees Summaries

In 2021 the Health Licensing Office (HLO) convened a Joint Esthetic and Advanced Esthetic Rules Advisory Committees (Joint RAC) to recommend rule changes to the Board of Cosmetology's (COS Board) and the Board of Certified Advanced Estheticians' (CAE Board) rules. The rule changes were necessitated by [HB 2970](#) (2021), which impacted the scope of practice for estheticians and advanced estheticians. HB 2970 also charged both boards to work collaboratively to define the term "device" within both the esthetics and advanced esthetics professions.

RAC Members:

- Sonia Bellini, Esthetician
- Taylor Ford, Advanced Esthetician
- Olivia Hawthorne, Esthetician
- Martha MacAdoo, Advanced Esthetician
- Debora Masten, Advanced Esthetician

- Lacey Mendoza, Esthetician
- Oliva Nelson, Esthetician
- Pamela Sanders, Advanced Esthetician

The Joint RAC met on August 23 and November 10, 2021, before getting paused due to legislation enacted through [HB 2993](#) (2021). HB 2993 broadened the requirements of who is required to serve on RACs. Specifically, a RAC must now include communities likely to be affected by the rule. The purpose of the change in RAC membership is to ensure that communities that may be disproportionately and potentially adversely impacted are involved in the rulemaking process. Such persons and communities may include but are not limited to people of color, indigenous people, individuals with disabilities, small business owners, people of similar socio-economic status, gender, sexual orientation, and geography.

August 23 - Joint Rules Advisory Committee

On August 23 the Joint Esthetics and Advanced Esthetic RAC met to review the requirements of HB 2970 and evaluate the changes necessary to accommodate the new law. The following topics were discussed:

- The rulemaking process including RACs, board meetings, notice of proposed rulemaking, hearing and how to interpret laws.
- Types of “devices” to be considered including microneedling, radio frequency and devices with combined technology.
- Whether certain devices can be used by both estheticians and advanced estheticians but possibly at different specifications, levels, and depths of skin.
- Microneedling devices: Food and Drug Administration registration requirements and use of combined devices to enhance service.

November 10 - Joint Rules Advisory Committee

Esthetic and Advanced Esthetic Combined device and questions to consider.

1. What are clearly advanced esthetic devices?

2. What are the shared qualities amongst lasers and intense pulsed light that are used for nonablative procedures performed on the skin or hair in conjunction with skin rejuvenation, photo rejuvenation, body contouring, dyschromia reeducation, cellulite reduction, hair removal or reduction, and nonablative tattoo removal?
3. What are clearly esthetic devices?
4. Is galvanic current, high-frequency, microcurrents, light-emitting diode therapy, and microdermabrasion devices capable of penetrating further than the epidermis?

Esthetics devices cannot penetrate deeper than the epidermis. An esthetician must not use a device in a way that would cause penetration further than the epidermis.

5. What are the common characteristics amongst galvanic current, high-frequency, microcurrents, light-emitting diode therapy and microdermabrasion devices?

Consider each of the specific pieces of equipment and look for common characteristics. Then, other items included in the phrase “mechanical or electrical apparatus, appliance or device” must also share that common characteristic.

6. Applying the same criteria as above are there any crossover devices that may be advanced esthetics and esthetics?
7. What other devices are not listed in statute?

Executive Session

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**Pursuant to ORS 192.660(2)(f), ORS
192.355(9)(a) and ORS 40.225 for the purpose of
considering information exempt from public
disclosure. (legal advice)**

Draft
Definition of Device
~
Advanced Esthetics
Esthetics

OAR 819-XX-XXXX

Advanced Esthetics Definition of Device

Pursuant to ORS 676.630(3) the Board and the Board of Cosmetology developed the definition of “Device” to determine the specific characteristics of an advanced esthetic devices.

(1) An advanced esthetician is:

(a) Limited to performing services that are “nonablative” as defined in OAR 819-005-0005.

(b) Limited to services performed on the hair and skin.

(2) An advanced nonablative esthetic device must:

(a) Be capable of performing procedures that are in conjunction with the following modalities (819-005-0005(4):

(A) Skin rejuvenation;

(B) Photo rejuvenation;

(C) Body contouring;

(D) Dyschromia reduction;

(E) Cellulite reduction;

(F) Hair removal or reduction;

(G) Nonablative tattoo removal.

(b) Be a United States FDA registered device pursuant to ORS 676.647 to perform advanced nonablative esthetics procedures.

(3) An advanced nonablative esthetics device is a:

(a) Laser;

(b) Intense Pulse Light; or

(c) A piece of equipment or a mechanism that shares the same common characteristics as lasers and intense pulse light devices. and is designed to serve a special purpose or special function related to advanced nonablative esthetic procedures and is capable of performing nonablative procedures on the skin or hair; or

(d) An esthetic device defined under OAR 817-XXXX.

(4) A certified advance esthetician may use an esthetic device beyond the epidermis.

| Advanced Esthetics Device | Esthetics Device |
|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Fits the definition: A piece of equipment or a mechanism designed to serve a special purpose or perform a special function. | Fits the definition: A piece of equipment or a mechanism designed to serve a special purpose or perform a special function. |
| Must be capable of performing nonablative procedures on the skin or hair. | Either mechanical or electrical. |
| Must be registered with the USFDA. | Must be capable of being used for cleansing, stimulating, manipulating, exfoliating, or applying lotions or creams to the human body or face. |
| Includes a laser and an intense pulsed light. | Includes galvanic current, high-frequency microcurrents, light-emitting diode therapy and microdermabrasion. |
| CAE device must share the same qualities as laser and intense pulsed light. | Shares the same common characteristic that exists amongst galvanic current, high-frequency microcurrents, light-emitting diode therapy and microdermabrasion. For example, harmless and non-risky equipment and does not require CAE training. |
| The CAE rule defining “device” can place a mechanical or electrical apparatus, appliance, or device entirely into the CAE’s scope of practice. | Is not a laser, intense pulsed light, or a CAE device; i.e. devices that share the same qualities as a laser and intense pulsed light should not be included as a COS device. |
| Can be the same as a COS device and used for nonablative procedures that extend deeper than the epidermis. | Must be capable of <u>not</u> penetrating beyond the epidermis. COS esthetician’s use of a mechanical or electrical apparatus, appliance or device is limited to the epidermis, only the natural physiological effects from use of the equipment can go further than the epidermis. |
| | Not for medical diagnosis or treatment of disease or physical or mental ailments, but for purpose of keeping the skin of the human body or face healthy and attractive. |

Board of Cosmetology Definitions (Websters):

- Draft definition of “Natural physiological effects” means something produced by, or that follows immediately from and in accordance with, a person’s normal biological functioning.
- “Apparatus” is defined as:
 - A collection or set of materials, instruments, appliances, or machinery designed for a particular use ***any compound instrument or appliance designed for a specific mechanical or chemical action or operation: machinery, mechanism.
- “Appliance” is defined as:
 - A piece of equipment for adapting a tool or machine to a special purpose: accessory, fixture, attachment * * * a tool, instrument, or device specially designed for a particular use: apparatus * * * a household or office utensil, apparatus, instrument, or machine that utilizes a power supply, esp. electrical current (as a vacuum cleaner, a refrigerator, a toaster, an air conditioner.
- “Electrical” is defined as:
 - Of, relating to or produced by electricity.
- “Electricity” is defined as:

A fundamental entity of nature consisting of negative and positive kinds composed respectively of electrons and protons or possible electrons and positrons, usu. measured in electrostatic units (as the stat coulomb) or electromagnetic units (as the coulomb), observable in the attraction and repulsion of bodies, electrified by friction and in certain natural phenomena (as lightning or the aurora borealis) and usu utilized in the form of electric current.
- “Exfoliating” is defined as:
 - To remove or take off the surface in scale or laminae. *** to split into or give off scales, laminae, or body cells, esp. from the surface.
- “Manipulating” is defined as:
 - To treat, work or operate with the hands or by mechanical means * * *.
- “Mechanical” is defined as:
 - Caused by, resulting from or relating to a process that involves a purely physical as opposed to a chemical change.
- “Stimulating” is defined as:
 - To function as a stimulus to; *esp.*: to evoke the characteristic physiologic activity of (as a nerve or muscle).
- “Stimulus” is defined as:
 - A “stimulus” is “something that produces a temporary increase of physiological activity in an organism or in any of its parts * * *.

Board of Certified Advanced Estheticians Definitions (ORS):

- “Nonablative” is defined as:
 - Under ORS 676.630(4) “nonablative” is defined as involving an action performed on the skin or hair of a person that does not result in the wounding of skin or underlying tissue.

BOARD OF CERTIFIED ADVANCED ESHTETICIANS

676.630 Definitions for ORS 676.630 to 676.660. 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 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.

(3) "Device" has the meaning given that term by the Board of Certified Advanced Estheticians by rule, in collaboration with the Board of Cosmetology.

(4) "Esthetician" means a person certified to practice esthetics under ORS 690.005 to 690.225.

(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. [2015 c.722 §1; 2021 c.366 §7]

676.635 Prohibition on unauthorized practice of advanced nonablative esthetics procedures or unauthorized use of title. (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. [2015 c.722 §2]

676.647 Prohibition on use of unregistered device; rules. (1) A person may not use a device that is not registered with the United States Food and Drug Administration to perform advanced nonablative esthetics procedures.

(2) The Board of Certified Advanced Estheticians may adopt rules to carry out this section. [2021 c.366 §2]

676.655 Board powers; rules. (1) In addition to the powers granted to the Board of Certified Advanced Estheticians by ORS 676.630 to 676.660, the board shall have the power to:

*** (a) Adopt rules and take actions necessary to carry out the duties of the board under ORS 676.630 to 676.660.

*** (d) Adopt any other rule necessary to regulate certified advanced estheticians.

(e) Provide advice to the Health Licensing Office on issues related to advanced nonablative esthetics procedures.

BOARD OF COSMETOLOGY

690.005 Definitions for ORS 690.005 to 690.225. As used in ORS 690.005 to 690.225:

*** (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, 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 treatments.

*** (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 that does not penetrate beyond the epidermis except through natural physiological effects.

(b) "Mechanical or electrical apparatus, appliance or device" does not include lasers or intense pulsed light or a device, as that term is defined by the Board of Cosmetology by rule, in collaboration with the Board of Certified Advanced Estheticians.

690.165 Powers of board; rules. 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.

(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. [1977 c.886 §21; 1983 c.151 §14; 1987 c.31 §9; 1993 c.267 §13; 1995 c.343 §68; 1999 c.425 §18; 2003 c.547 §46; 2005 c.117 §6; 2005 c.648 §60; 2009 c.701 §41; 2013 c.290 §6; 2013 c.314 §43; 2013 c.568 §87]

Fiscal Impact ~ **Racial Equity**

Each of the questions below must be answered in order to have a legally sufficient fiscal impact statement. Further, any errors cannot be fixed by an amended filing unless an advisory committee was used to develop the statement.

1. Are any state agencies likely to be economically affected by the rule change? If yes, which ones?

2. Are any units of local government likely to be economically affected by this rule change? If yes which ones?

3. Are any members of the public likely to be economically affected by the rule change? If yes, which ones?

4. Can you provide an estimate of the economic impact on state agencies, units of local government and members of the public? If yes, what is the estimate for each? ***An estimate does not have to be an exact number but does need to let economically affected persons know that they may be impacted.***

5. Have you included a cost of compliance on small businesses¹ affected, including:

a. An estimate of the number of small businesses subject to the proposed rule.

b. An identification of the types of businesses and industries subject to the rule.

¹ A “small business” for this purpose has 50 or fewer employees. ORS 182.310(10).

c. A description of expected reporting, recordkeeping, and administrative activities required to comply with the rule.

d. An estimate of the cost of professional services required to comply with the rule.

e. An identification of the equipment, supplies, and labor and increased administration required to comply with the rule.

f. A description of how small businesses were involved in developing the rule. This will be the advisory committee. If you consult with any other promoters, etc., be sure to mention that.

6. If you cannot provide an estimate of the economic impact on state agencies, units of local government or members of the public, does the statement of fiscal impact, explain why an estimate is not possible. ***A bare “we don’t know” is not sufficient, there must also be a description of why an estimate is not possible.***

7. Is the fiscal impact statement sufficient to notify those who might be economically affected to evaluate their position? ***Err on the side of assuming an economic impact if there is any doubt.***

8. Are there ways to reduce the economic impact on small businesses?

a. Consolidating compliance and reporting requirements?

b. Objective criteria for standards?

c. Exempting small business from parts of the rule?

d. Other less intrusive or less costly alternatives?

The Office requests your assistance in answering the following questions to aid the Office in completing the racial equity statement.

9. Identify what persons and racial groups are impacted by the rule.

a. Who is subject to the rule?

b. What issues does the rule address?

c. Who will be affected by the rule?

d. Which racial groups will be affected by the rule?

e. Which racial groups are likely to be most concerned by the issues addressed in the rule?

f. Which racial groups are likely to be most affected by the issues addressed in the rule?

10. If current committee members do not represent the racial groups likely to be affected by the, who can HLO contact that represent the racial groups likely to be affected by the rule?

11. What other resources are available for HLO to find data that would help determine racial equity impacts specific to this rule?

12. How might the rule impact racial groups?

- Please help identify any unintended adverse consequences that this rule might have on racial equity.

Enrolled House Bill 2970

Sponsored by Representative NOSSE; Representatives HAYDEN, PRUSAK, SCHOUTEN

CHAPTER

AN ACT

Relating to health care; creating new provisions; amending ORS 676.579, 676.612, 676.613, 676.622, 676.630, 678.733, 679.020 and 690.005; and declaring an emergency.

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

ESTHETICS

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 676.630 to 676.660.

SECTION 2. (1) A person may not use a device that is not registered with the United States Food and Drug Administration to perform advanced nonablative esthetics procedures.

(2) The Board of Certified Advanced Estheticians may adopt rules to carry out this section.

SECTION 3. ORS 676.579 is amended to read:

676.579. (1)(a) The Health Licensing Office is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers and for the organization of the office.

(b) The Director of the Oregon Health Authority shall establish the qualifications for and appoint the Director of the Health Licensing Office, who holds office at the pleasure of the Director of the Oregon Health Authority.

(c) The Director of the Health Licensing Office shall receive a salary as provided by law or, if not so provided, as prescribed by the Director of the Oregon Health Authority.

(d) The Director of the Health Licensing Office is in the unclassified service.

(2) The Director of the Health Licensing Office shall provide the boards, councils and programs administered by the office with any services and employees as the office requires to carry out the office's duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of the Health Licensing Office shall appoint all subordinate officers and employees of the office, prescribe their duties and fix their compensation.

(3) The Director of the Health Licensing Office is responsible for carrying out the duties, functions and powers under ORS 675.365 to 675.410, 676.560 to 676.625, **676.630 to 676.660**, 676.665 to 676.689, 676.810, 676.815, 676.825, 676.992, 678.710 to 678.820, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700.

(4) The enumeration of duties, functions and powers in subsection (3) of this section is not intended to be exclusive or to limit the duties, functions and powers imposed on or vested in the office by other statutes.

SECTION 4. ORS 676.612 is amended to read:

676.612. (1) Subject to ORS 676.616 and 687.445, and in the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, **676.660**, 676.685, 676.825, 678.780, 680.535, 681.733, 681.755, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111, the Health Licensing Office may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit an authorization or may discipline or place on probation an authorization holder for commission of the prohibited acts listed in subsection (2) of this section.

(2) A person subject to the authority of a board, council or program listed in ORS 676.565 commits a prohibited act if the person engages in:

(a) Fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining an authorization to practice in this state, or in any written or oral communication to the office concerning the issuance or retention of the authorization.

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive.

(c) Making a representation that the authorization holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the authorization holder.

(d) Practicing under a false, misleading or deceptive name, or impersonating another authorization holder.

(e) Permitting a person other than the authorization holder to use the authorization.

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the authorization holder or to the person or property of others in the course of performing the authorization holder's duties.

(g) Practicing while under the influence of alcohol, cannabis, controlled substances or other skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-impairing substances so as to create a risk of harm to the person or property of others in the course of performing the duties of an authorization holder.

(h) Failing to properly and reasonably accept responsibility for the actions of employees.

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards, councils and programs listed under ORS 676.565.

(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of the conviction. A plea of no contest or an admission of guilt is a conviction for purposes of this paragraph.

(L) Failing to report any adverse action, as required by statute or rule, taken against the authorization holder by another regulatory jurisdiction or any peer review body, health care institution, professional association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(m) Violation of a statute regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565.

(n) Violation of any rule regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565.

(o) Failing to cooperate with the office in any investigation, inspection or request for information.

(p) Selling or fraudulently obtaining or furnishing an authorization to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565, or aiding or abetting such an act.

(q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565, or aiding or abetting such an act.

(r) Failing to pay an outstanding civil penalty or fee that is due or failing to meet the terms of any order issued by the office that has become final.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the office may require the fingerprints of a person who is:

(a) Applying for an authorization;

(b) Applying for renewal of an authorization; or

(c) Under investigation by the office.

(4) If the office places an authorization holder on probation under subsection (1) of this section, the office, in consultation with the appropriate board, council or program, may determine and at any time modify the conditions of the probation.

(5) If an authorization is suspended, the authorization holder may not practice during the term of suspension. Upon the expiration of the term of suspension, the authorization may be reinstated by the office if the conditions of suspension no longer exist and the authorization holder has satisfied all requirements in the relevant statutes or administrative rules for issuance, renewal or reinstatement.

SECTION 5. ORS 676.613 is amended to read:

676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 675.365 to 675.410, **676.630 to 676.660**, 676.665 to 676.689, 676.810, 676.815, 678.710 to 678.820, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 or 694.015 to 694.170 or ORS chapter 700, the office may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.

(2) A court may issue an injunction under this section without proof of actual damages. An injunction issued under this section does not relieve a person from any other prosecution or enforcement action taken for violation of statutes listed in subsection (1) of this section.

SECTION 6. ORS 676.622 is amended to read:

676.622. (1) A transaction conducted through a state or local system or network that provides electronic access to the Health Licensing Office information and services is exempt from any requirement under ORS 675.365 to 675.410, 676.560 to 676.625, **676.630 to 676.660**, 676.665 to 676.689, 676.810, 676.815, 676.992, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700, and rules adopted thereunder, requiring an original signature or the submission of handwritten materials.

(2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable and have the same force as original signatures.

SECTION 7. 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.

(3) "Device" has the meaning given that term by the Board of Certified Advanced Estheticians by rule, in collaboration with the Board of Cosmetology.

[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 8. 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 that does not penetrate beyond the epidermis except through natural physiological effects.

(b) "Mechanical or electrical apparatus, appliance or device" does not include lasers or intense pulsed light or a device, as that term is defined by the Board of Cosmetology by rule, in collaboration with the Board of Certified Advanced Estheticians.

[(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.

RESIDENTIAL CARE FACILITY ADMINISTRATORS

SECTION 9. ORS 678.733 is amended to read:

678.733. (1) The Health Licensing Office may issue a residential care facility administrator license to an applicant who:

(a) Is at least 21 years of age;
(b) Has earned at least a high school diploma or its equivalent[;], **as indicated by evidence of the following, in a form deemed sufficient by the office:**

(A) Completion of high school or an equivalent educational level;

(B) Passage of an approved high school equivalency test, including but not limited to the General Educational Development (GED) test; or

(C) Graduation from a post-secondary institution;

(c)(A) For at least two of the last five years has been employed in a professional or managerial capacity in a health or social service related field, or has a combination of experience and education deemed sufficient by the office; or

(B) Has earned at least a bachelor's degree in a health or social service related field;

(d) Has completed at least 40 hours of training approved by the office by rule;

(e) Pays a licensure fee; and

(f) Passes an examination described in ORS 678.743.

(2) Evidence of the education described in subsection (1)(b) of this section may be provided by a diploma or other document, or by facts, circumstances or other indicators deemed sufficient by the office.

[2] (3) When issuing a license under this section, the office shall consider the qualifications for employment under ORS 443.004.

SECTION 10. The amendments to ORS 678.733 by section 9 of this 2021 Act apply to residential care facility administrator license applications submitted to the Health Licensing Office on or after the effective date of this 2021 Act.

DENTAL CLINICS

SECTION 11. ORS 679.020 is amended to read:

679.020. (1) A person may not practice dentistry without a license.

(2) Only a person licensed as a dentist by the Oregon Board of Dentistry may own, operate, conduct or maintain a dental practice, office or clinic in this state.

(3) The restrictions of subsection (2) of this section, as they relate to owning and operating a dental office or clinic, do not apply to a dental office or clinic owned or operated by any of the following:

(a) A labor organization as defined in ORS 243.650 and 663.005 (6), or to any nonprofit organization formed by or on behalf of such labor organization for the purpose of providing dental services. Such labor organization must have had an active existence for at least three years, have a constitution and bylaws, and be maintained in good faith for purposes other than providing dental services.

(b) The School of Dentistry of the Oregon Health and Science University.

(c) Public universities listed in ORS 352.002.

(d) Local governments.

(e) Institutions or programs accredited by the Commission on Dental Accreditation of the American Dental Association to provide education and training.

(f) Nonprofit corporations organized under Oregon law to provide dental services to rural areas and medically underserved populations of migrant, rural community or homeless individuals under 42 U.S.C. 254b or 254c or health centers qualified under 42 U.S.C. 1396d(l)(2)(B) operating in compliance with other applicable state and federal law.

(g) Nonprofit charitable corporations as described in section 501(c)(3) of the Internal Revenue Code and determined by the Oregon Board of Dentistry as providing dental services by volunteer

licensed dentists to populations with limited access to dental care at no charge or a substantially reduced charge.

(h) Nonprofit charitable corporations as described in section 501(c)(3) of the Internal Revenue Code and determined by the Oregon Board of Dentistry as having an existing program that provides medical and dental care to medically underserved children with special needs at an existing single fixed location or multiple mobile locations.

(i) Nonprofit charitable corporations as described in section 501(c)(3) of the Internal Revenue Code and determined by the board as providing dental services to individuals who are 65 years of age or older and individuals who are unable to stand or walk unassisted.

(4) For the purpose of owning or operating a dental office or clinic, an entity described in subsection (3) of this section must:

(a) Except as provided in ORS 679.022, name an actively licensed dentist as its dental director, who shall be subject to the provisions of ORS 679.140 in the capacity as dental director. The dental director, or an actively licensed dentist designated by the director, shall have responsibility for the clinical practice of dentistry, which includes, but is not limited to:

(A) Diagnosis of conditions within the human oral cavity and its adjacent tissues and structures.

(B) Prescribing drugs that are administered to patients in the practice of dentistry.

(C) The treatment plan of any dental patient.

(D) Overall quality of patient care that is rendered or performed in the practice of dentistry.

(E) Supervision of dental hygienists, dental assistants or other personnel involved in direct patient care and the authorization for procedures performed by them in accordance with the standards of supervision established by statute or by the rules of the board.

(F) Other specific services within the scope of clinical dental practice.

(G) Retention of patient dental records as required by statute or by rule of the board.

(H) Ensuring that each patient receiving services from the dental office or clinic has a dentist of record.

(I) The prescription and administration of vaccines.

(b) Maintain current records of the names of licensed dentists who supervise the clinical activities of dental hygienists, dental assistants or other personnel involved in direct patient care utilized by the entity. The records must be available to the board upon written request.

(5) Subsections (1) and (2) of this section do not apply to an expanded practice dental hygienist who renders services authorized by a permit issued by the board pursuant to ORS 680.200.

(6) Nothing in this chapter precludes a person or entity not licensed by the board from:

(a) Ownership or leasehold of any tangible or intangible assets used in a dental office or clinic. These assets include real property, furnishings, equipment and inventory but do not include dental records of patients related to clinical care.

(b) Employing or contracting for the services of personnel other than licensed dentists.

(c) Management of the business aspects of a dental office or clinic that do not include the clinical practice of dentistry.

(7) If all of the ownership interests of a dentist or dentists in a dental office or clinic are held by an administrator, executor, personal representative, guardian, conservator or receiver of the estate of a former shareholder, member or partner, the administrator, executor, personal representative, guardian, conservator or receiver may retain the ownership interest for a period of 12 months following the creation of the ownership interest. The board shall extend the ownership period for an additional 12 months upon 30 days' notice and may grant additional extensions upon reasonable request.

SECTION 12. ORS 679.020, as amended by section 11 of this 2021 Act, is amended to read:

679.020. (1) A person may not practice dentistry without a license.

(2) Only a person licensed as a dentist by the Oregon Board of Dentistry may own, operate, conduct or maintain a dental practice, office or clinic in this state.

(3) The restrictions of subsection (2) of this section, as they relate to owning and operating a dental office or clinic, do not apply to a dental office or clinic owned or operated by any of the following:

(a) A labor organization as defined in ORS 243.650 and 663.005 (6), or to any nonprofit organization formed by or on behalf of such labor organization for the purpose of providing dental services. Such labor organization must have had an active existence for at least three years, have a constitution and bylaws, and be maintained in good faith for purposes other than providing dental services.

(b) The School of Dentistry of the Oregon Health and Science University.

(c) Public universities listed in ORS 352.002.

(d) Local governments.

(e) Institutions or programs accredited by the Commission on Dental Accreditation of the American Dental Association to provide education and training.

(f) Nonprofit corporations organized under Oregon law to provide dental services to rural areas and medically underserved populations of migrant, rural community or homeless individuals under 42 U.S.C. 254b or 254c or health centers qualified under 42 U.S.C. 1396d(l)(2)(B) operating in compliance with other applicable state and federal law.

(g) Nonprofit charitable corporations as described in section 501(c)(3) of the Internal Revenue Code and determined by the Oregon Board of Dentistry as providing dental services by volunteer licensed dentists to populations with limited access to dental care at no charge or a substantially reduced charge.

(h) Nonprofit charitable corporations as described in section 501(c)(3) of the Internal Revenue Code and determined by the Oregon Board of Dentistry as having an existing program that provides medical and dental care to medically underserved children with special needs at an existing single fixed location or multiple mobile locations.

[(i) Nonprofit charitable corporations as described in section 501(c)(3) of the Internal Revenue Code and determined by the board as providing dental services to individuals who are 65 years of age or older and individuals who are unable to stand or walk unassisted.]

(4) For the purpose of owning or operating a dental office or clinic, an entity described in subsection (3) of this section must:

(a) Except as provided in ORS 679.022, name an actively licensed dentist as its dental director, who shall be subject to the provisions of ORS 679.140 in the capacity as dental director. The dental director, or an actively licensed dentist designated by the director, shall have responsibility for the clinical practice of dentistry, which includes, but is not limited to:

(A) Diagnosis of conditions within the human oral cavity and its adjacent tissues and structures.

(B) Prescribing drugs that are administered to patients in the practice of dentistry.

(C) The treatment plan of any dental patient.

(D) Overall quality of patient care that is rendered or performed in the practice of dentistry.

(E) Supervision of dental hygienists, dental assistants or other personnel involved in direct patient care and the authorization for procedures performed by them in accordance with the standards of supervision established by statute or by the rules of the board.

(F) Other specific services within the scope of clinical dental practice.

(G) Retention of patient dental records as required by statute or by rule of the board.

(H) Ensuring that each patient receiving services from the dental office or clinic has a dentist of record.

(I) The prescription and administration of vaccines.

(b) Maintain current records of the names of licensed dentists who supervise the clinical activities of dental hygienists, dental assistants or other personnel involved in direct patient care utilized by the entity. The records must be available to the board upon written request.

(5) Subsections (1) and (2) of this section do not apply to an expanded practice dental hygienist who renders services authorized by a permit issued by the board pursuant to ORS 680.200.

(6) Nothing in this chapter precludes a person or entity not licensed by the board from:

(a) Ownership or leasehold of any tangible or intangible assets used in a dental office or clinic. These assets include real property, furnishings, equipment and inventory but do not include dental records of patients related to clinical care.

(b) Employing or contracting for the services of personnel other than licensed dentists.

(c) Management of the business aspects of a dental office or clinic that do not include the clinical practice of dentistry.

(7) If all of the ownership interests of a dentist or dentists in a dental office or clinic are held by an administrator, executor, personal representative, guardian, conservator or receiver of the estate of a former shareholder, member or partner, the administrator, executor, personal representative, guardian, conservator or receiver may retain the ownership interest for a period of 12 months following the creation of the ownership interest. The board shall extend the ownership period for an additional 12 months upon 30 days' notice and may grant additional extensions upon reasonable request.

SECTION 13. The amendments to ORS 679.020 by section 12 of this 2021 Act become operative on January 1, 2023.

CAPTIONS

SECTION 14. 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 15. 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.

Passed by House April 15, 2021

Received by Governor:

Repassed by House June 8, 2021

.....M.,....., 2021

Approved:

.....
Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2021

.....
Tina Kotek, Speaker of House

.....
Kate Brown, Governor

Passed by Senate June 7, 2021

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Peter Courtney, President of Senate

.....
Shemia Fagan, Secretary of State



****PLEASE PRINT****

[illegible]