



## HEALTH LICENSING OFFICE

Tina Kotek, Governor

**Oregon**  
**Health**  
Authority

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**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:** April 26, 2023, from 9 a.m. to 11 a.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@oha.oregon.gov](mailto:april.fleming@oha.oregon.gov), 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@oha.oregon.gov](mailto:april.fleming@oha.oregon.gov) 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@oha.oregon.gov](mailto:april.fleming@oha.oregon.gov), or by calling (503) 509-5127; or Derek Fultz at [derek.j.fultz@oha.oregon.gov](mailto:derek.j.fultz@oha.oregon.gov) 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



**April 26, 2023, from 9 a.m. to 11 a.m.**

Conference call number: (503) 934-3605

Conference passcode: 747147

#	Topic	Content
◆	<b>Call to Order Agenda</b>	<ul style="list-style-type: none"><li>• Call Joint Rules Advisory Committee (RAC) to order</li><li>• Agenda overview</li><li>• Purpose &amp; Actions of the Joint RAC</li></ul>
◆	<b>Executive Session</b>	<ul style="list-style-type: none"><li>• <b>Executive Session:</b> 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)</li></ul>
◆	<b><u><a href="#">HB 2970</a></u></b>	<ul style="list-style-type: none"><li>• Draft definition of “natural physiological effects”</li><li>• Draft definition of “epidermis”</li><li>• Fiscal and Economic Impact &amp; Racial Equity Statement</li></ul>
◆	<b>Reference Materials</b>	<ul style="list-style-type: none"><li>• Esthetic and advanced esthetic flow chart</li><li>• Joint RAC recommended definition of esthetic &amp; advanced esthetic devices</li></ul>
◆	<b>Next Steps</b>	<ul style="list-style-type: none"><li>• Homework and next steps</li></ul>
◆	<b>Public Comment</b>	

# **Executive Session**



**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 Definitions**

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**“Natural physiological effect”  
&  
“Epidermis”**

## **OAR 817-XX-XXX Esthetics - Natural Physiological Effects**

(1) Per ORS 690.005(5)(a) and (12)(a), an esthetician may use a “mechanical or electrical apparatus, appliance or device” that does not penetrate beyond the epidermis except through natural physiological effects for 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: cleansing, stimulating, manipulating, exfoliating or applying lotions or creams.

(2) “Natural physiological effects” means something naturally produced by, or that follows immediately from and in accordance with, a person’s normal biological functioning.

(3) “Epidermis” means the outermost layer of the skin. The epidermis does not include any layers of the skin below the epidermis, including, but not limited to the following: dermis, hypodermis, muscle.

(4) An esthetician may not use a “mechanical or electrical apparatus, appliance or device” beyond the epidermis. An esthetician is presumed to be using a “mechanical or electrical apparatus, appliance or device” below the epidermis when:

(a) The esthetician’s application of electricity visibly contracts the muscle.

(b) The esthetician exfoliates the skin below the epidermal layer.

(5) An esthetician using a “mechanical or electrical apparatus, appliance or device” can only use it within the epidermis. Only the client’s body’s own natural physiological effects from the esthetician’s use of the “mechanical or electrical apparatus, appliance or device” within the client’s epidermal skin layer, can go deeper than the

epidermis. For example, an esthetician can use microcurrent to stimulate the skin within the epidermis. Any increased cellular metabolism, activity, and exchange below the epidermis from stimulating the epidermal skin would be the natural physiological effects from use of the esthetics device. Direct stimulation of muscle is not a natural physiological effect; an esthetician is prohibited from using microcurrent below the epidermis.

# **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?

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

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

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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.***

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5. Have you included a cost of compliance on small businesses<sup>1</sup> affected, including:

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

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

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<sup>1</sup> 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.

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

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

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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.

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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.***

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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.***

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

a. Consolidating compliance and reporting requirements?

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b. Objective criteria for standards?

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c. Exempting small business from parts of the rule?

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d. Other less intrusive or less costly alternatives?

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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?

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b. What issues does the rule address?

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c. Who will be affected by the rule?

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

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

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

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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.

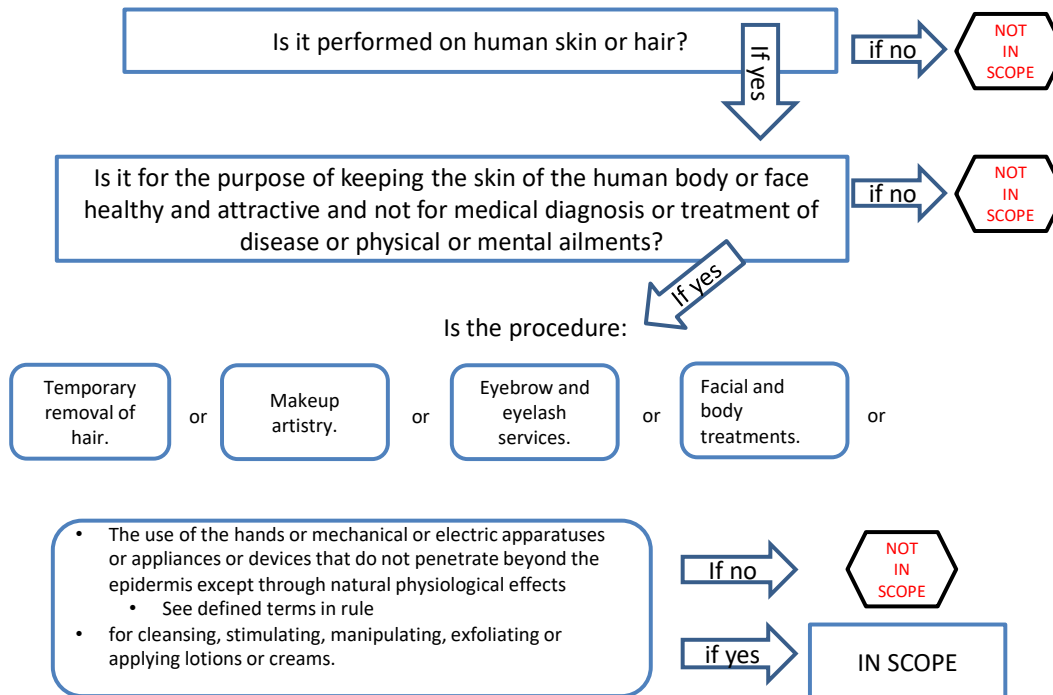
## **IDENTIFY DATA AND RESOURCES**

### Considerations for Identifying Data and Resources for Drafting the Racial Equity Statement (HB 2993)

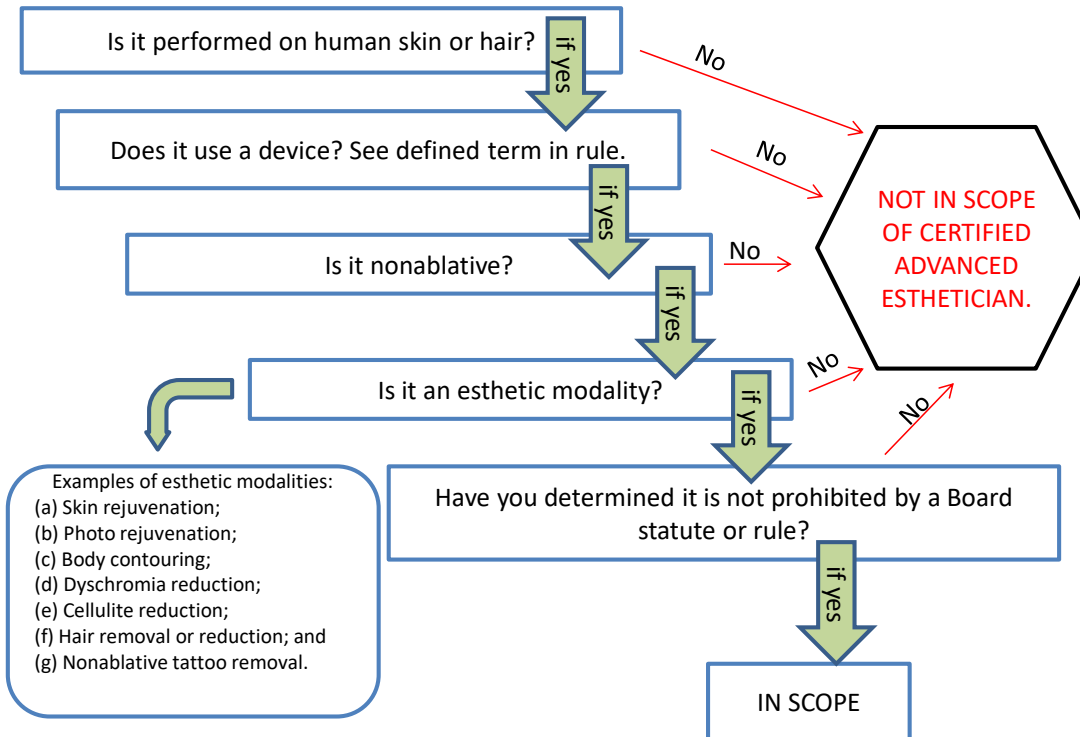
- Identify what persons and racial groups are impacted by the rule.
  - Who is subject to the rule?
  - What issues does the rule address?
  - Who will be affected by the rule?
  - Which racial groups will be affected by the rule?
  - Which racial groups are likely to be most concerned by the issues addressed in the rule?
  - Which racial groups are likely to be most affected by the issues addressed in the rule?
- Do any current stakeholders represent the racial groups likely to be affected by the rule?
  - If not, who can HLO contact that represents racial groups likely to be affected by the rule?
- Identify other resources where HLO can find data that helps to determine racial equity impacts specific to this rule.
- Solicit from board members their thoughts on how the rule might impact racial groups and any unintended adverse consequences that this rule might have on racial equity.

# **Scope of Practice Flow Charts**

**Is the procedure within scope of a certified esthetician?**



### Is the procedure within scope of a certified advanced esthetician?



# **Joint RAC Recommendations**

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## **Definition of Esthetic Devices**

## **Definition of Advanced Esthetic Devices**



### **3/27/2023 RAC RECOMMENDATION FOR COS AND CAE ON 6/12/2023**

#### **OAR 817-XX-XXXX**

##### **Esthetics Definition of Device**

Pursuant to ORS 690.005(12) the Board and the Board of Certified Advanced Estheticians developed this definition of “Device” (esthetics device). This rule sets forth the specific characteristics of an esthetic device.

(1) An esthetician is limited to performing services with mechanical or electric apparatuses, appliances or devices that do not penetrate beyond the epidermis except through natural physiological effects as defined in OAR 817-XX-XXX.

(2) An esthetician may use mechanical or electrical apparatuses, appliances or devices that include but are not limited to the following:

- (a) Galvanic current;
- (b) High-frequency
- (c) Microcurrents;
- (c) Light-emitting diode therapy;
- (d) Microdermabrasion; and
- (e) Esthetics device.

(3) An esthetic device must:

- (a) Be either mechanical or electrical.
- (b) Be capable of, and used for, performing the following skin care or facial care services pursuant to ORS 690.005(5):
  - (A) Cleansing;
  - (B) Stimulating;
  - (C) Manipulating; or

(D) Exfoliating;

(E) Applying lotions or creams.

(c) Have the same risk and safety qualifications as galvanic current, high-frequency, microcurrents, light-emitting diode therapy and microdermabrasion.

(4) An esthetic device is not a:

(a) Laser;

(b) Intense pulse light;

(c) Other advanced esthetic device as specified in OAR 819-XXX-XXXX;

(d) Needle-free devices for injection of dermal fillers or fillers.

(5) An esthetician may not perform skin care or facial care practices or use a mechanical or electrical apparatuses, appliance or device for medical diagnosis or treatment of disease or physical or mental ailments.

(6) It is the responsibility of the esthetician to be trained and educated on mechanical or electrical apparatuses, appliances and devices used and procedures used in the practice of esthetics pursuant to OAR 817-010-0065 as of June 23, 2021.

(7) An individual certified in esthetics is responsible for determining if any services provided or mechanical or electrical apparatuses, appliances or devices used on clients would be prohibited by law.

(8) Services provided and mechanical or electrical apparatuses, appliances or devices used by estheticians that are prohibited, unsafe, dangerous or cause harm may result in a violation of incompetence, negligence or unprofessional conduct pursuant to ORS 676.612(2)(j) and under Office or Board rules.

## **3/27/2023 RAC RECOMMENDATION FOR COS AND CAE ON 6/12/2023**

### **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” (advanced esthetics device) in this rule. This rule sets forth the specific characteristics of an advanced esthetic device.

(1) An advanced esthetician is limited to using advanced esthetics devices as follows:

(a) Limited to performing services that are “nonablative” as defined in ORS 676.630(4) and OAR 819-005-0005.

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

(2) An advanced esthetician may perform advanced nonablative esthetic procedures that go beyond the epidermis using advanced esthetics devices listed in subsection (3) of this rule.

(3) An advanced esthetics device is a:

(a) Laser;

(b) Intense Pulse Light; or

(c) A piece of equipment or a mechanism that meets all of the following:

(i) Shares the same risk and safety qualities as lasers and intense pulse light device.

(ii) Is capable of performing nonablative procedures on the skin or hair.

(iii) Is capable of performing procedures that are in conjunction with a modality.

(iv) Is registered with the United States FDA.

- (4) An advanced esthetic device may not be of greater risk or greater inherent risk as a laser or intense pulse light.
- (5) It is the responsibility of the advanced esthetician to be trained and educated on advanced esthetics devices used and procedures used in the practice of advanced nonablative esthetics procedures pursuant to OAR 819-XXX-XXXX.
- (6) An individual certified to practice advanced nonablative esthetics procedures is responsible for determining if any services provided or devices used on clients would be prohibited by law.
- (7) Services provided and devices used by certified advanced estheticians that are prohibited, unsafe, dangerous or cause harm may result in a violation of incompetence, negligence, or unprofessional conduct pursuant to ORS 676.612(2)(j) and under Office or Board rules.

# **Relevant Statutes & Rules**

### BOARD OF CERTIFIED ADVANCED ESHTETICIANS OREGON REVISED STATUTES

#### **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.

(b) Adopt rules establishing sanitation and safety requirements for advanced nonablative esthetics procedures.

(c) Adopt rules establishing a professional code of conduct for certified advanced estheticians.

(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.

(f) Compile information related to advanced nonablative esthetics procedures and direct the office to disseminate the information to certified advanced estheticians.

(2) In adopting rules under subsection (1)(b) of this section, the board shall adopt rules:

(a) Requiring a certified advanced esthetician to conduct all advanced nonablative esthetics procedures in a facility for which a license has been issued under ORS 690.055;

(b) Requiring a certified advanced esthetician to maintain client disclosure forms that include, at a minimum, disclosure of the existence of professional liability insurance; and

(c) Requiring a certified advanced esthetician to enter into an agreement with:

(A) A physician licensed under ORS chapter 677 or a nurse practitioner licensed under ORS 678.375 to 678.390; or

(B) A licensed health care professional who works at the same location as the certified advanced esthetician and who has the authority to prescribe drugs listed in Schedule III, IV or V.

(3) The purpose of an agreement described in subsection (2)(c) of this section is to provide a certified advanced esthetician with a licensed health care professional to whom the certified advanced esthetician may refer a client of the certified advanced esthetician. [2015 c.722 §6]

## **BOARD OF CERTIFIED ADVANCED ESTHETICS OREGON ADMINISTRATIVE RULES**

### **819-005-0005**

#### **Definitions**

As used in OAR 819-005-0005 to 819-050-0020:

(1) “Ablative” means the total destruction of the epidermis creating a wound pursuant to the definition under OAR 819-005-0005(6) and ORS 676.630(4).

(2) “Applicant” means a natural person applying to be certified as a “certified advanced esthetician” defined in ORS 676.630(2).

(3) “Board” means the Board of Certified Advanced Estheticians.

(4) “Modality” defined under ORS 676.630 means:

(a) Light energy hair removal;

(b) Photo rejuvenation and dyschromia reduction;

(c) Skin rejuvenation;

(d) Cellulite reduction;

- (e) Body contouring;
- (f) Nonablative tattoo removal.
- (5) “FDA” means Food and Drug Administration.
- (6) “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 as defined under ORS 676.630.
- (7) “Office” means Health Licensing Office

## **819-030-0005**

### **GENERAL PRACTICE STANDARDS**

(1) A certified advanced esthetician must wear a name tag that clearly states the individual's name and in what capacity the individual is working in and designate in each client’s treatment log documenting who performed the service and in what capacity the service was being performed including but not limited to medical assistant or registered nurse.

(2) A certified advanced esthetician is prohibited from making any false representation either verbally or in writing that would imply services being performed outside the scope of practice are connected to their certified advanced esthetician practice.

(3) A certified advanced esthetician is prohibited from performing:

- (a) Ablative services; and
- (b) Internal vaginal rejuvenation that goes beyond the introitus (vaginal opening).

(4) Procedures performed without using a laser or other device registered with the FDA are not considered advanced nonablative esthetics services pursuant to ORS 676.630(1).

(5) Services provided by a certified advanced esthetician to a client that are prohibited, unsafe, dangerous or cause serious harm may result in a violation of incompetence, negligence or unprofessional conduct pursuant to ORS 676.612(2)(j), OAR 331-020-0070 or OAR 331-020-0075.

## **819-030-0010**

### **CLIENT DISCLOSURE PRACTICE STANDARDS**

A certified advanced esthetician must maintain and provide to each client a “client disclosure form” pursuant to ORS 676.655, which includes at minimum the existence of professional liability insurance. The client disclosure information may be combined with other documentation used by the certified advanced esthetician including but not limited to informed consent or summary of visit.

## **819-030-0020**

### **COLLABORATIVE AGREEMENT**

(1) Pursuant to ORS 676.655(2)(c), a certified advanced esthetician must enter into a collaborative agreement with one or more of the following health-care professionals who hold an active license in good standing with no current or pending action:

- (a) Physician licensed under ORS Chapter 677;
- (b) Nurse practitioner licensed under ORS 678.375 to 678.390;

(c) A licensed health-care professional who works at the same location as the certified advanced esthetician and who has the authority to prescribe drugs listed in Schedule III, IV or V which includes, but is not limited to, the following:

- (A) Dentist licensed under ORS 679;
- (B) Naturopathic physician licensed under ORS 685; or



- (C) Certified Registered Nurse Anesthetists licensed under ORS 678.245 to 678.285.
- (2) All active collaborative agreements must be maintained and kept current by the certified advanced esthetician and made immediately available.
- (3) Inactive collaborative agreements must be kept for seven years and must be made immediately available to the Office upon request.
- (4) All collaborative agreements must contain the following information:
  - (a) Name of certified advanced esthetician;
  - (b) Certificate number of the certified advanced esthetician;
  - (c) Name of licensed health care professional;
  - (d) License number of licensed health care professional;
  - (e) Contact information of the licensed health care professional; and
  - (f) Effective date of agreement.
- (5) The collaborative agreement must be current and updated at all times services are being performed.
- (6) Multiple advanced certified estheticians can enter into a collaborative agreement under the same licensed health-care professional; however, each certified advanced esthetician must have individual agreements that meet requirements listed in subsection (1), (2) and (3) of this rule.
- (7) For the purpose of this rule and pursuant to ORS 676.655 the purpose of an agreement is to provide a client with a referral to a licensed health care professional. It is not required that the client pursue treatment from the referred licensed health care professional and the licensed health care professional is not required to provide care to the client.
- (8) Collaborative agreements may be stored electronically.

#### **819-030-0060**

##### **Safety and Infection Control Practice Standards**

- (1) A certified advanced esthetician performing services must:
  - (a) Work in a licensed Board of Cosmetology facility with a certification issued under ORS 690.055 pursuant to ORS 676.655(2)(a);
  - (b) Adhere to facility standards set forth in ORS 690.055 and OAR Chapter 817 Division 10 and Division 20, if applicable to advanced nonablative esthetics;
  - (c) Use only lasers or other devices registered with the FDA and for nonablative procedures pursuant to ORS 676.630;
  - (d) Use laser or other device registered with the FDA in a manner described in the manufacturer's instructions and consistent with the manufacturer's intended use of the device by the FDA;
  - (e) Maintain FDA registration documentation on each laser or device on the facility premises.
  - (f) Ensure high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed.
  - (g) Adhere to all Centers for Disease Control and Prevention Standard Precautions for All Patient Care.
- (2) If a certified advanced esthetician is performing laser services they must meet the standards pursuant to the 2014 American National Standard Z136.1 and the 2011 American National Standards Laser Safety Education Program Z136.3.
- (3) Tools, instruments, equipment or devices that come in direct contact with a client must be disposed of or sanitized and disinfected according to manufacturer's instructions before use on each client.

**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]

## **BOARD OF COSMETOLOGY**

## **OREGON ADMINISTRATIVE RULES**

### **817-015-0055**

#### **Chemical Peels**

- (1) An esthetician is prohibited from performing chemical peels that extend beyond the stratum basale.
- (2) Except as needed to acquire the education or training, an esthetician is only permitted to perform very superficial peels when the five hours of required education or training is completed.
- (3) The training or education described in subsection (2) of this rule must be obtained through schools, institutions, vendors, manufacturers, formal seminars, online courses, an esthetician experienced in chemical peels, a licensed health-care provider experienced in chemical peels or through self-study.
- (4) Proof of self-study must be documented on a form prescribed by the Office.
- (5) Proof of all training or education obtained from schools, institutions, vendors, manufacturers, formal seminars, online courses must include the following:
  - (a) Name of continuing education sponsor or provider;
  - (b) Course agenda and outline – including the date of the training and breakdown of hours for each agenda item, lunch and breaks; and a detailed summary of each topic discussed and the learning objective or training goal of each agenda item;
  - (c) Documentation of attendance and course completion including, but not limited to, certificate, transcript, sponsor statement, affidavit attesting to attendance or diploma.
- (6) The training or education obtained from an esthetician or licensed health care provider with experience providing chemical peel services must include:
  - (a) Verification of the content and hours; and
  - (b) Proof of education or training received by the esthetician or licensed health-care provider providing the education or training.
- (7) Records of the required education or training must be kept for as long as the esthetician provides very superficial or superficial peels and must be provided to Office upon request.
- (8) An esthetician who is performing chemical peels must:
  - (a) Fully comply with the required education or training.
  - (b) Use chemicals in a manner intended by the manufacturer and in accordance with manufacturer's recommendations, guidelines and protocols.
  - (c) Only use chemicals that the licensed esthetician has been fully educated or trained in the use of and is fully informed of the ingredients in any products used.
  - (d) Only use chemicals that are suitable for the client after an analysis of the client's skin condition, medical history (including pregnancy if applicable), skin type, currently used medication and skin-care products.
  - (e) Chemicals must be stored and maintained in accordance with Division 60 of these rules.

### **817-015-0056**

#### **Dermaplaning**

- (1) Except as needed to acquire the education and training, an esthetician is only permitted to perform dermaplaning when the six hours of required education and training below are completed. A minimum of two hours of the education and training must be hands on, practical training.
- (2) The education and training must be obtained through schools, institutions, vendors, manufacturers, formal seminars, an esthetician experienced in dermaplaning, or a licensed health-care provider experienced in dermaplaning. Proof of education and training must include:

- (a) Name of continuing education sponsor or provider;
  - (b) Course agenda and outline – including the date and breakdown of hours for each agenda item, lunch and breaks; and a detailed summary of each topic discussed and the learning objective or training goal of each agenda item;
  - (c) Documentation of attendance and successful course completion including, but not limited to, certificate, transcript, sponsor statement, affidavit attesting to attendance, or diploma.
- (3) The education and training obtained through an esthetician or from a licensed health care provider with experience providing dermaplaning services must include:
- (a) Verification of the content and hours; and
  - (b) Proof of education and training received by the esthetician or licensed health care provider providing the education and training.
- (4) An esthetician who is performing dermaplaning must:
- (a) Comply with the required education and training and retain proof of the required education and training and make the proof available to the Office upon request.
  - (b) Only use dermaplaning when suitable for the client after an analysis of the client's skin condition, medical history (including pregnancy if applicable, skin type, currently used medication, and skin-care products).
  - (c) Provide dermaplaning in a manner that is safe for the client.
- (5) Dermaplaning blades must be single-use and disposed of after each treatment as required in OAR 817-010-0060.

#### **817-015-0065**

##### **Client Records**

- (1) A practitioner providing esthetic services is responsible for collecting and maintaining copies of client records. If client records are maintained by the facility, the facility license holder must provide the practitioner who is providing the service, with copies of those client records upon request. The record must include:
- (a) Client information including the client's name, address, telephone number, type of service, date of birth, and date of service;
  - (b) The name of the practitioner and practitioner certificate number who is providing the service, and special instructions or notations pertinent to providing esthetic services including, but not limited to, bleeding disorders, allergies or sensitivities to chemicals or products or complications during service(s); and
  - (c) Medical advice, if obtained.
- (2) Client records must be kept at the facility for a minimum of three years and must be made available upon request from the Office.
- (3) Client records must be typed or printed in a legible format and may be stored electronically. Client records that are not readable by the Office will be treated as incomplete.
- (4) If a practitioner is acting in a dual capacity and providing services outside their scope of practice, the capacity under which the person is working must be clearly documented in the client's record.
- (5) If providing chemical peels or dermaplaning, the esthetician must also document:
- (a) Location of procedure on the body;
  - (b) Special instructions or notations relating to the client's medical or skin conditions;
  - (c) Complete list of the client's sensitivities to medicines or topical solutions;
  - (d) Description of complications during procedure(s);

- (e) Any referral to a health-care professional; and
  - (f) If providing chemical peels, the chemical used on the client, including the brand name or manufacturer, type of chemical peel, process of applying very superficial or superficial peel including number of layers of chemical peel solution, the length of time the chemical is left on the client's skin, pre- and post-treatment care.
- (6) For the purpose of procedures listed in subsection (5) of this rule upon initial visit the practitioner must obtain signature from the client that they have received and understand the following information and consent to the nonablative esthetic procedure:
- (a) Explanation of procedure;
  - (b) Risk(s) of the procedure;
  - (c) Description of potential complications or side effects;
  - (d) Adverse outcomes;
  - (e) Contraindications;
  - (f) Alternatives; and
  - (g) Aftercare instructions.
- (7) Following initial visit referenced in subsection (6) of this rule and if for the same procedure a practitioner may have the client initial, that the client has received information listed in subsection (6) of this rule and document any refusal to initial the client record.
- (8) Information listed in subsection (5), (6) and (7) of this rule may be combined with other documentation used by the practitioner.
- (9) A practitioner is prohibited from providing services to a client who refuses to provide the personal information required in subsection (1)(a) of this rule unless the client signs a waiver form documenting the client's refusal to provide the required information. The signed waiver form must be retained on file in the manner required in subsection (2) of this rule.
- (10) For the purpose of this rule, practitioner means an individual certified in esthetics.

#### **817-010-0065**

#### **Requirements and Standards**

- (1) Any product or manual, mechanical or electrical appliance or apparatus used in a field of practice must meet all product registration requirements imposed by any federal, state, county, city or other regulating authority.
- (2) The following applies to any service, product, chemical, materials and supplies, tools and implements, including sharp edged or pointed non-electrical tools and implements, or manual, mechanical or electric apparatuses or appliances that an authorization holder uses in a field of practice:
- (a) An item listed in (2) is subject to Office inspection.
  - (b) The authorization holder must maintain and make available to the Office upon request all manufacturer operation and usage documentation for an item listed in (2).
  - (c) The authorization holder is responsible for using an item listed in (2) in a manner that is consistent with the manufacturer's intended use.
  - (d) The authorization holder must obtain education or training before providing services or using items listed in (2).
- (3) The following requirements pertain to the education or training listed in section (2)(d) of this rule:
- (a) The education or training listed in section (2)(d) of this rule may be obtained through schools, institutions, vendors, manufacturers, formal seminars, online courses, practitioners certified in a field of practice, a licensed health-care provider or self-study.

(b) Based on how the education or training was obtained, the authorization holder must maintain the following records of education or training listed in section (2)(d) of this rule:

(A) For self-study: A completed self-study form. The self-study form is prescribed by the Office.

(B) Schools, institutions, vendors, manufacturers, formal seminars, or online courses:

(i) Name of education or training sponsor or provider;

(ii) Documentation from the education or training sponsor that expressly shows that the education or training is related to an item in section (2) of this rule;

(iii) Documentation of attendance and course completion including, but not limited to, certificate, transcript, sponsor statement, affidavit attesting to attendance, or diploma.

(C) Certified practitioner or licensed health care provider:

(i) Documentation of the content and hours; and

(ii) Proof of the certified practitioner's or licensed health-care provider's education or training.

(c) The authorization holder must maintain records of education or training for as long as the authorization holder provides services.

(d) If an authorization holder has not provided services or used items listed in (2)(d) of this rule within two-years then the authorization holder must obtain additional education or training.

## **817-010-0067**

### **Requirements, Standards and Prohibitions - Esthetics**

(1) ORS 676.635 prohibits the practice of advanced nonablative procedures by anyone who is not authorized to practice advanced nonablative procedures by the Board of Certified Advanced Estheticians, except for licensed health-care professionals acting within their scope of practice and students enrolled in an advanced nonablative esthetics education or training program.

(2) The practice of advanced nonablative esthetics is defined in ORS 676.630, and is a procedure that uses a laser or other device registered with the FDA for nonablative procedures performed on hair or skin.

(3) ORS 676.630 refers to devices registered with the United States Food and Drug Administration (FDA) when describing the scope of advanced nonablative esthetics. "Device" is defined under the federal law that governs the FDA. For purposes of this rule, HLO deferred to guidance on the FDA's website, including the FDA Federal Food, Drug and Cosmetic Act, ch. II, s. 201(h)

and <https://www.fda.gov/downloads/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm575923.pdf>. As described by the FDA, a device is a product intended to cure, mitigate, treat or prevent disease or affect the structure or function of the body. The FDA considers claims that indicate penetration or some effect beyond the stratum corneum into living layers of skin by such products to be evidence of a firm's intent to affect the structure or function of the body. The FDA does not consider a chemical product to be a device. Section (4) of this rule sets forth the meaning of "device" in accordance with the federal law and the FDA's interpretation of that law.

(4) A device is a product intended to cure, mitigate, treat or prevent disease or affect the structure or function of the body. Claims that indicate product penetration or some effect beyond the stratum corneum into living layers of skin is evidence of a firm's intent to affect the structure or function of the body.

(a) Chemical products are not devices.

(b) Non-chemical products that do not penetrate into living skin (e.g., epidermal and dermal layers of the skin) and claim only to do the following are not devices:

(i) Facilitate exfoliation of the skin (i.e. disruption of the stratum corneum);

(ii) Improvement of appearance of the skin;

(iii) Give skin a smoother look and feel; or

(iv) Give skin a luminous look.

(5) An individual certified in esthetics is prohibited from using devices as defined in subsection (4) in this rule.

(6) A person who does not hold a valid practitioner certificate from the Board is prohibited from providing esthetic services using any type of device defined under this rule unless otherwise authorized to do so by statute.

(7) An individual certified in esthetics is responsible for determining if any services provided to clients would be prohibited by law.

(8) Services provided by an individual certified in esthetics that are prohibited, unsafe, dangerous or causes harm may result in a violation of incompetence, negligence or unprofessional conduct pursuant to ORS 676.612(2)(j) and under Office rules.

#### HEALTH LICENSING OFFICE

**676.612 Disciplinary authority; authority of office to require fingerprints.** (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, 676.745, 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. [2003 c.547 §3; 2005 c.648 §6; 2005 c.730 §66; 2007 c.841 §15; 2009 c.701 §12; 2009 c.768 §29; 2011 c.346 §26; 2011 c.630 §16; 2013 c.314 §12; 2013 c.568 §27; 2013 c.657 §9; 2013 c.771 §13; 2017 c.21 §68; 2017 c.155 §10; 2017 c.499 §14; 2019 c.456 §20; 2021 c.231 §11; 2021 c.366 §4]

### **331-020-0075**

#### **Unprofessional Conduct**

Unprofessional conduct under ORS 676.612, includes, but is not limited to:

(1) Sexual misconduct or harassment.

(2) Practicing outside the authorization holder's scope of practice.

(3) Advertising services outside the authorization holder's scope of practice.

(4) Practicing in a manner inconsistent with the health and safety of the client.

(5) Deceptive business practices with clients.

(6) Misrepresentation or fraud in any aspect of the profession, including, but not limited to, charging for unnecessary services, charging for services not provided, failing to provide services that are paid in full, or failure to comply with Oregon insurance billing laws and rules.

(7) Failing to report in writing to the Office any adverse action as described in ORS 676.612(2)(L) within 10 days.

(8) Falsifying or altering any record in any aspect of the profession.

(9) Commission of any crime or any act that would constitute a criminal act, while providing services.

(10) Engaging in any conduct likely to deceive or defraud the public or a program under the authority of the Office.

(11) Implying a medical affiliation, medical skill or training that is false, misleading or deceptive, including but not limited to:

- (a) Using “medical,” “medical grade,” or “medi” when referring to nonmedical services or services that are outside the authorization holder’s scope of practice;
- (b) Attaching “medical” to an authorization holder title;
- (c) Advertising or implying that the authorization holder is “certified” or similarly accredited or qualified, in a regulated procedure that is outside the authorization holder’s scope of practice;
- (12) Using a title or initials that imply that the authorization holder holds an authorization to practice that the authorization holder does not hold, or using a title or initials that are false, misleading or deceptive.
- (13) Attempting to influence a witness or complainant in an investigation, including but not limited to:
  - (a) Inducing or attempting to induce, or allow anyone on an authorization holders behalf to induce or attempt to induce, a witness, or a person the authorization holder believes may be a witness, in any investigation or in an official proceeding to offer false information or testimony or unlawfully withhold any testimony; or
  - (b) Inducing or attempting to induce, or allow anyone on an authorization holder’s behalf to induce or attempt to induce, a witness to be absent from or be uncooperative with any investigation or official proceeding.
- (14) Using or attempting to use another person’s identification or credentials to obtain an authorization.
- (15) Using or attempting to use fraudulent diplomas or certifications (“diploma mill”) to obtain an authorization.
- (16) Failure to report to the appropriate board that another authorization holder has or may have engaged in prohibited or unprofessional conduct as required in ORS 676.150.
- (17) Failure to report to the Office arrests or convictions within 10 days as required in ORS 676.150.
- (18) Violating the client's rights of privacy, and confidentiality.
- (19) Photographing or filming the body or any body part or pose of a client without consent.

# **HB 2970 (2021)**

## 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

# 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 - CANCELLED	9 am
March 27, 2023	Esthetics & Advanced Esthetics RAC	9 am
April 24, 2023	Esthetic & 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](mailto:Samie.patnode@dhsosha.state.or.us)

Administrative rule schedules are subject to change. 2/21/2023

# **Public Comment**