

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 819
OREGON HEALTH AUTHORITY
HEALTH LICENSING OFFICE, BOARD OF CERTIFIED ADVANCED ESTHETICIANS

FILED

08/31/2023 2:42 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Define advanced esthetics device.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/09/2023 12:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Samie Patnode
503-373-1917
samie.patnode@oha.oregon.gov

1430 Tandem Ave, Suite 180
Salem, OR 97301

Filed By:
Samantha Patnode
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 09/19/2023

TIME: 9:00 AM - 3:00 PM

OFFICER: Samie Patnode

HEARING LOCATION

ADDRESS: Health Licensing Office Conference Room, 1430 Tandem Ave, Suite 180, Salem, OR 97301

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 971-271-2343

CONFERENCE ID: 170680339

SPECIAL INSTRUCTIONS:

Persons attending the meeting through MS Teams using a computer click the link above and enter:

Meeting ID: 295 487 779 79

Passcode: wjswTj

NEED FOR THE RULE(S)

The rule is needed to comply with the requirements of HB 2970 (2021) passed during the 2021 Legislature. The bill made changes to both the estheticians and advanced estheticians' scope of practice and requires the Board of Certified Advanced Estheticians and the Board of Cosmetology to work collaboratively to define the term "device" within each profession.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- Oregon Revised Statutes, Oregon Administrative Rules, and meeting materials, including video recordings related to

the Board of Cosmetology, Board of Certified Advanced Estheticians, and HLO.

- Information pertaining to HB 2970 (2021).
- Joint Rules Advisory Committee meeting documents and video.
- Stedman's Medical Dictionary for the Health Professions and Nursing is 7th edition, copyright 2012
- MiLady Standard – Esthetics – Fundamentals – Edition 11, last copyright 2013
- Salon Fundamentals Esthetics – 2nd edition, last copyright 2007
- MiLady Standard - Advanced Esthetics – 2nd edition, last copyright 2013
- Advanced Professional Skin Care – Medical Edition – copyright 2005, no edition

All documents are available at the HLO, 1430 Tandem Ave. NE, Suite 180, Salem, OR 97301-2192. To obtain information or copies of information, please contact Samie Patnode, Policy Analyst, at 503-373-1917 or by email at samie.patnode@oha.oregon.gov, during normal business hours Monday through Friday between 7 a.m. and 2:30 p.m.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

All advanced estheticians no matter what their race, gender or ethnic background will be required to meet the requirements of the new rules.

FISCAL AND ECONOMIC IMPACT:

The fiscal impact to advanced estheticians, small business owners, and the public if the proposed rules become permanent will likely be minimal.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Cost of Compliance

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

The HLO will likely be affected by the rule changes. HLO performs inspections on cosmetology facilities where both estheticians and advanced estheticians are required to work. Changes to the scope of practice will require additional training of staff to understand the changes to the scope of practice, which will ensure inspectors can determine if either profession is working outside of the scope of practice.

Generally, when inspectors find the certificate holders are working outside of the scope of practice the inspection is transferred to a complaint generated by HLO for further investigation. Complaint investigations are considerably more work than a cosmetology facility inspection. If the changes in the scope of practice increase the number of complaints received, it may cost HLO more in expenditures for training of investigators and subject matter experts, legal, hearing, and cost for subject matter experts. If there is an increase in complaints, there will likely be additional meetings held for both the Board of Cosmetology and the Board of Certified Advanced Estheticians to make decisions based on investigations.

HLO may have to create additional practice clarifications that explain how specific procedures, services, and use of devices impact each scope of practice, including prohibitions and exemptions. Practice clarification requires the cost of obtaining legal advice, board meeting time if applicable, and resources within the Policy Section of HLO.

If advanced estheticians are considered the public there will likely be minimal fiscal impact regarding advanced estheticians being required to use United States Food and Drug Administration (USFDA) registered because prior to passage of HB 2970 (2021) they were already required to do so. As background prior to passage of HB 2790 (2021) the statutory definition of "advanced nonablative esthetics procedure" and the advanced esthetics scope of practice hinged on the use of an United States Food and Drug Administration registered device (this definition also impacted the esthetics scope of practice). Now, with HB 2970 (2021), the "advanced nonablative esthetics procedure" definition and advanced esthetics scope of practice are no longer tied to the USFDA definition of device. However, under ORS 676.647 a person may not use a device that is not registered with the USFDA to perform advanced nonablative esthetics procedures.

Also if advanced estheticians are considered the public, they will likely see a positive fiscal impact if the proposed rules as written become permanent. The proposed rules prohibit estheticians from providing services using a piece of equipment or a mechanism for microneedling, micro-channeling, dermarolling, radiofrequency needling, or a similar procedure specified in OAR 819-030-0000(3)(c) and other advanced esthetic devices.

The public may see an increase in the cost to microneedling services if estheticians are prohibited from performing microneedling services. If the number of individuals qualified to perform microneedling services decreases, then the demand for services will be spread out over fewer people thus allowing those individuals to charge higher prices due to supply and demand. The actual costs to consumers is unknown, as the prices associated with advanced esthetics vary based on the complexity and location of the procedure, as well as the length of time required to perform the procedure, equipment cost and maintenance and whether the service is combined with other modalities such as radiofrequency. One website states the average microneedling service costs an average of \$683 per session and another website shows the cost can vary from \$100 to \$800 per procedure.

Salary.com shows advanced estheticians in Portland, Oregon earning \$56,100 annually.

The United States Food and Drug Administration (USFDA) has guidance related to "microneedling devices". The USFDA defines "microneedling-devices" as:

Microneedling devices are instruments with technological features, such as many small needles, tips, or pins on the surface, which are repeatedly inserted and removed into the skin. For example, the needles may be attached to a cylinder that is rolled across the skin, project from a flat surface that is "stamped" on the skin, or arranged in a pattern on the tip of a pen-shaped instrument.

(2) Effect on Small Businesses: a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping, and administrative activities and costs required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

a) Estimate the number and type of small businesses subject to the rule(s);

There are currently 1,300 members of the Oregon Estheticians for Fair Licensing group which is an advocacy group for estheticians and advanced estheticians. Many of the members would be considered small businesses.

Currently there are 319 businesses who are actively registered with the Secretary of States Office with the term "esthetics" in the title. HLO has approximately 5,000 licensed cosmetology facilities some of which specialize in esthetics and advanced esthetics. HLO does not track which cosmetology fields of practice are performed in each facility.

There are currently seven advanced esthetics private career schools in Oregon that could see a positive financial gain if estheticians currently performing microneedling services enroll an advanced esthetics education program.

There may also be a financial gain to advanced estheticians who are independent contractors providing hands-on training or continuing education to already certified advanced estheticians. There are currently 590 active advanced estheticians in Oregon of which some may be independent contractors who would likely consider themselves a small business. There are currently 7,673 independent contractors in Oregon.

All HLO authorization data can be obtained on the website.

(b) Describe the expected reporting, recordkeeping, and administrative activities and costs required to comply with the rule(s);

The cost for reporting, recordkeeping and administrative activities appears to be minimal. HLO may have to update facility inspection sheets with new rule information.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s). The cost for professional services, equipment supplies, labor, and increased administration appears to be limited.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Many of the members of the Board of Certified Advanced Esthetics and Board of Cosmetology as well as Rules Advisory Committee members were small business owners.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 819-030-0001

RULE SUMMARY: Define advanced esthetics device.

CHANGES TO RULE:

819-030-0001

Definition of Advanced Esthetics Device

Pursuant to ORS 676.630(3), the Board and the Board of Cosmetology collaboratively developed the definition of "Device" (advanced esthetics device) in this rule. This rule sets forth the specific characteristics of an advanced esthetics 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: ¶

(c) Piece of equipment or a mechanism used for microneedling, micro-channeling, dermarolling, radiofrequency needling, or a similar procedure: ¶

(d) Piece of equipment or a mechanism that meets all of the following: ¶

(A) Shares the same risk and safety qualities as lasers and intense pulse light devices.¶

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

(C) Is capable of performing procedures in conjunction with a modality.¶

(D) 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 the devices and procedures used in the practice of advanced nonablative esthetics. ¶

(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.

Statutory/Other Authority: ORS 676.630, ORS 690.005, ORS 676.665, ORS 676.647

Statutes/Other Implemented: ORS 676.630, ORS 676.647