

**April 10, 2020**

### **Background Information**

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

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

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

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

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

## **Limited Waiver on Enforcement**

This is a unique situation as it appears the legislature would have passed HB 4016 if the legislature had been able to stay and complete the session. As a result, until January 1, 2021, the HLO is exercising its discretion to not impose discipline for violations of the uncertified practice of advanced esthetics. This discretion would only apply to:

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

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

## **When will this limited waiver on enforcement end?**

January 1, 2021. Notwithstanding that end date, HLO will evaluate circumstances around the turn of the year. If HLO decides to exercise its discretion to extend the limited waiver of enforcement, notice will be provided to certified estheticians.

## **Is it likely that ORS 676.630(1) will still be the same on January 1, 2021?**

Unless the legislature acts to change ORS 676.630(1) prior to January 1, 2021, then the current statutes will be the same on January 1, 2021. HLO recognizes there is uncertainty as to whether and how the statutes might be changed in the future. HLO urges practitioners to consider that uncertainty when making business decisions.