

## September 2021

### Background Information

In 2015, the Oregon legislature enacted [law](#) that created a certification to practice advanced nonablative esthetics. The legislature defined advanced nonablative esthetics as “a procedure that uses a laser or other device registered with the United States Food and Drug Administration (USFDA) for nonablative procedures performed on the skin or hair. . .” As a result of these statutes, estheticians who wanted to practice advanced nonablative esthetics could not do so until they obtained a certificate in advanced nonablative esthetics.

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.

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](#) (2020). 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. 4016

After no changes to laws were made during 2020, the Health Licensing Office (HLO) exercised its discretion to not impose discipline for violations of the uncertified practice of advanced esthetics through June 30, 2021 by implementing a Limited Waiver on Enforcement. This discretion only applied to:

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

The 2021 Legislature passed [HB 2970 \(2021\)](#), which became effective on June 23, 2021. The legislature made changes to both the Board of Certified Advanced Estheticians and the Board of Cosmetology including scope of practice changes for estheticians and advanced estheticians. The legislature also charged both boards to work collaboratively to define the term “device” within both the esthetics and advanced esthetics profession.

In relation to esthetics HB 2970 does the following:

- Provides ways in which an esthetician can do temporary removal of hair: by use of lotion, cream, an appliance, wax, thread, sugar, tweezers, dermaplaning, a depilatory, or other means.
- Specifies that an esthetician can perform eyebrow and eyelash services.
- In relation to an esthetician doing facial and body wrapping, it changes “facial and body “wrapping” to facial and body “treatments.”
- States that for cleansing, stimulating, manipulating, exfoliating, or applying lotions or creams, an esthetician can use “mechanical or electrical apparatuses, appliances or devices” including, but “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.”
- Specifies that a “mechanical or electrical apparatus, appliance or device” does not include lasers, intense pulsed light, or devices as that term is defined in rule by the Board of Cosmetology, in collaboration with the Board of Certified Advanced Estheticians.

In relation to advanced esthetics HB 2970 does the following:

- Prior to passage of HB 2790 the statutory definition of “advanced nonablative esthetics procedure” and the advanced esthetics scope of practice hinged on the use of an USFDA registered device (this definition also impacted the esthetics scope of practice). Now, with HB 2970, the “advanced nonablative esthetics procedure” definition and advanced esthetics *scope of practice* are no longer tied to the USFDA definition of device.
- Specifies that intense pulsed light is included within an advanced esthetician’s scope of practice.
- Specifies the term “device” has the meaning given that term by the Board of Certified Advanced Estheticians by rule, in collaboration with the Board of Cosmetology.
- Prohibits a person from using a non USFDA registered device when performing advanced nonablative esthetics procedures.

## **Moving Forward**

Now, with HB 2970, the legislature has specifically required the Board of Cosmetology and Board of Certified Advanced Estheticians to collaboratively work together to create administrative rules to further define the term “device” as used in HB 2970. In order to adhere to the legislature’s requirement of both boards collaborating HLO has begun the rulemaking process convening an Esthetics and Advanced Esthetic Joint Rules Advisory Committee. The committee will review and make recommendations regarding defining “device” to each respective board. The HLO has received questions from practitioners asking for guidance on what types of devices are included in their scopes of practice given HB 2970. The HLO must allow the boards to work collaboratively to define “device” in rule.

Until the rulemaking process can be completed, as required by the legislature in HB 2970, the HLO will be reviewing complaints about licensee conduct that implicate the new law created by HB 2970 as follows:

- The HLO will interpret the law created by HB 2970 as determinative of whether a licensee’s

conduct violated a statute or rule. For instance, it is clear under the new law that as of June 23, 2021, individuals authorized to practice esthetics by the Board of Cosmetology can use “galvanic current, high-frequency microcurrents, light-emitting diode therapy, and microdermabrasion that does not penetrate beyond the epidermis except through natural physiological effects.” It is also clear that an individual holding an esthetics certificate from the Board of Cosmetology cannot use lasers or intense pulsed light to practice advanced nonablative procedures unless the individual is also authorized to practice advanced nonablative procedures by the Board of Certified Advanced Estheticians, is a licensed health-care professional acting within their scope of practice, or is a student enrolled in a Board approved advanced nonablative esthetics education or training program. Furthermore, it is clear under HB 2970 that a person may not use a device that is not registered with the USFDA to perform advanced nonablative esthetics procedures.

- The HLO will interpret HB 2970 consistent with what the legislature intended the new law to allow and restrict.
- To the extent that there is a conflict between HB 2970 and a rule, the HLO will interpret HB 2970 as determinative of whether a licensee’s conduct violated the rule. For instance, to the extent that the definition of “device” under OAR 817-010-0067 conflicts with HB 2970, the HLO will interpret HB 2970 as determinative of whether a licensee is in violation of the rule. Please note that as part of the rulemaking process, Board of Cosmetology and Board of Certified Advanced Estheticians rules will be under review to ensure that rules are amended consistent with HB 2970.
- The HLO will review each case on its own facts to determine whether a licensee violated a statute or rule, including whether the licensee acted with negligence, incompetence, or unprofessional conduct in performing services.

Thank you for your patience as the Board of Cosmetology and Board of Certified Advanced Estheticians work collaboratively to carry out the legislature’s intent. The rulemaking process is ongoing please check the HLO [website](#) for updates or contact Samie Patnode at (503) 373-1917 or by email at [samie.patnode@dhsoshs.state.or.us](mailto:samie.patnode@dhsoshs.state.or.us).