March 17, 2021

The honorable Rachel Prusak, Chair of House Health Care Committee
The honorable Cedric Hayden, Andrea Salinas, Vice Chairs Members of the House Health Care Committee

Re: Response to HB2971 Definition of esthetics "devices", Support with clarification.

As a licensed OR Esthetician and OR Advanced Esthetics Certificate holder, president of the Esthetics Council and author of multiple textbooks for the esthetics industry, I am writing to address support for HB2971. The position of the Esthetics Council as well as my position as a stakeholder is that the definition of devices listed for an OR esthetics license is appropriate and meets national practice standards as well as published curriculum for esthetics licensing at an entry level. If the current interpretation of devices is left unchanged the damage to OR licensed estheticians' ability to practice will be devastating.

To further clarify;

(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.
Explanation: These devices range from predicate devices such as galvanic current (in use for beauty treatments in the early 1920's) to class 2 designated Led therapy available to the general public. All of these modalities are taught in the entry level licensing curriculum. Safety has been established and the Esthetics Council has extensive resources documenting the safety of these devices that can be provided as needed.

(b) "Mechanical or electrical apparatus, appliance or device" does not include lasers or intense pulsed light or a device as that term is defined in ORS 676.630.
Explanation: This clause is appropriate to define the "advanced" use device vs. a standard device list above and provides safety to the public. Item of concern is how "device" is defined and the interpretation of FDA standards within this framework. Ideally this definition would be changed for clarity, but this may not be in authority of this committee at this time.

From the beginning the ORS 676.630(a) definition of "FDA approved devices" has been flawed and not reflective of national skill standards in esthetics or master esthetics. The FDA classifies devices by their intended use and claims made to the public, using FDA classification to determine safety of a device does not reflect the current processes that the FDA uses. There is no "nonablative" category that the FDA uses to classify a device. Because the FDA considers any device that impacts the human body as a medical device does not mean that the use of devices in a licensed esthetician practice is out of scope. Both of the clauses listed below do not reflect current standards and places the ability of a licensed esthetician to practice at risk based on the interpretation of one board that is designed to determine standards for advanced practice.

(3) "Device" has the meaning given that term by the Board of Certified Advanced Estheticians by rule.
This is a problematic clause that requires clarity in statute instead of rule interpretation. The use of the term device is too broad, and anything can be claimed as a device based on how a board tries to interpret it. This explanation is defined above.

(4) Notwithstanding subsection (1) of this section, a person who is certified to practice esthetics under ORS 690.048 may, to the extent reasonably appropriate for the person's practice, use an item that is not a device.
This is redundant and reflective of the challenges of a poorly written statute that will be hard to enforce.

Both (3) & (4) were addressed in earlier communication with both the BCAE as well as in the initial statute process over 3 years ago. I am encouraged to hear in reading multiple letters that the BCAE is now willing to work with industry to support changes, that will be helpful for the entire profession.

There is no doubt that the intent of BCAE and ORS was to ensure safety when using "advanced" modalities primarily laser use. Without going into the full flaws of the advanced esthetician certification statute, the listing of the above safe modalities for a OR esthetician licensee to use is appropriate and fair to licensees' as well as safe for the general public.

I am willing as well as the Esthetics Council to help clarify standards, improve statute definitions, and provide safety data for this committee, OR representatives or board administration.

Please feel free to reach out.

Sincerely,

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ESTHETICS council