

1 H.870

2 Introduced by Committee on Government Operations and Military Affairs

3 Date:

4 Subject: Professions and occupations

5 Statement of purpose of bill as introduced: This bill proposes to modify
6 provisions related to the Professional Regulatory Fee Fund. It will expand
7 what constitutes professional misconduct to include impeding an inspection.
8 This bill will modify the scope of practice for estheticians and clarification for
9 their licensing. It will modify the placement of subchapter titles concerning
10 nursing statutes and create consistency in terminology relating to nursing.
11 This bill will create an exemption to osteopath licensing for students and
12 clinical rotations. It will create an exemption to radiology technologist
13 licensing for limited temporary medical licensees. This bill will modify
14 aspects of tattooing, body piercing, and permanent cosmetics licensing,
15 including the number of advisors, shop licensing, and unprofessional conduct.
16 It will clarify the scope of practice for electrologists.

17 An act relating to professions and occupations regulated by the Office of
18 Professional Regulation

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 * * * Office of Professional Regulation * * *

3 Sec. 1. 3 V.S.A. § 127 is amended to read:

4 § 127. UNAUTHORIZED PRACTICE

5 * * *

6 (b)(1) A person practicing a regulated profession without authority or an
7 employer permitting such practice may, upon the complaint of the Attorney
8 General or a State's Attorney or an attorney assigned by the Office of
9 Professional Regulation, be enjoined therefrom by the Superior Court where
10 the violation occurred or the Washington County Superior Court and may be
11 assessed a civil penalty of not more than \$5,000.00.

12 * * *

13 (3)(A) A civil penalty imposed by a board or administrative law officer
14 under this subsection (b) shall be deposited in the Professional Regulatory Fee
15 Fund established in section 124 of this chapter ~~for the purpose of providing~~
16 ~~education and training for board members and advisor appointees.~~

17 * * *

Sec. 1a. 3 V.S.A. § 123 be amended to read:

§ 123. DUTIES OF OFFICE

* * *

Registrar shall register the report in the Statewide Registration System if it has been completed properly and filed in accordance with this chapter. The portion of the registered birth report that is not confidential under section 5014 of this title is the birth certificate.

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** * * Naturopathic Physicians Technical Advisory Group * * **

*Sec 2c. NATUROPATHIC PHYSICIANS TECHNICAL ADVISORY
GROUP*

(a) On or before September 1, 2024, the Commissioner of the Vermont Department of Health or designee shall convene the first meeting of the Naturopathic Physicians Technical Advisory Group. The Technical Advisory Group shall discuss the potential integration of naturopathic physicians into statewide policies regarding Vermont's Patient Choice at End of Life laws (18 V.S.A. chapter 113), do not resuscitate (DNR) orders and advanced directives, and the creation of clinician orders for life-sustaining treatment (COLST). The Technical Advisory Group shall also consider the requirements of integrating naturopathic physicians into statewide policies.

(b) The Commissioner of the Vermont Department of Health or designee shall chair any meeting or meetings described in this section.

(c) The following individuals and entities shall be invited to participate in the meeting or meetings described in this section:

1 ~~cosmetic preparations, antiseptics, tonics, lotions, or creams~~ services related to
2 skin-care treatments to enhance or improve the appearance of the skin,

3 including:

4 (i) cleansing, toning, stimulating, manipulating, beautifying,
5 exfoliating, or performing any similar procedure on the human body using
6 only cosmetic preparations, hands, mechanical or electrical apparatus or
7 appliances, tonics, lotions, creams, or makeup;

8 (ii) beautifying lashes and brows; and

9 (iii) removing unwanted hair using manual and mechanical means.

10 (B) “Esthetics” does not include any of the following:

11 (i) the sale or application of cosmetics to customers in retail stores or
12 customers’ homes;

13 (ii) any practice, activity, or treatment that constitutes the practice of
14 medicine, as defined in section 1311 of this title, including injections of any
15 substance and the use of lasers; or

16 (iii) the application of permanent cosmetics.

17 * * *

18 (7) “Shop” means a facility or facilities regularly used to offer or provide
19 barbering or, cosmetology, esthetics, or manicuring.

1 Sec. 4. 26 V.S.A. § 272 is amended to read:

2 § 272. PROHIBITIONS; OFFENSES

3 (a) A person shall not practice or attempt to practice barbering ~~or~~,
4 cosmetology, esthetics, or manicuring or use in connection with the person's
5 name any letters, words, title, or insignia indicating or implying that the person
6 is a barber ~~or~~, cosmetologist, esthetician, or manicurist unless the person is
7 licensed in accordance with this chapter.

8 (b) A person who owns or controls a shop or school of barbering ~~or~~,
9 cosmetology, esthetics, or manicuring shall not permit the practice of
10 barbering ~~or~~, cosmetology, esthetics, or manicuring unless the shop or school
11 is registered in accordance with this chapter.

12 * * *

13 Sec. 5. 26 V.S.A. § 276 is amended to read:

14 § 276. GENERAL POWERS AND DUTIES OF THE DIRECTOR

15 (a) The Director shall:

16 (1) adopt rules that:

17 (A) prescribe sanitary and safety standards for shops, schools, and
18 other facilities used for the practice of barbering ~~and~~, cosmetology, esthetics,
19 or manicuring;

1 (B) prescribe safe and sanitary practices for the performance of
2 activities related to the practice of barbering ~~and~~, cosmetology, esthetics, or
3 manicuring;

4 * * *

5 (b)(1) The Director may inspect shops and schools and other places used
6 for the practice of barbering ~~and~~, cosmetology, esthetics, or manicuring.

7 * * *

8 Sec. 6. 26 V.S.A. § 282 is amended to read:

9 § 282. SHOP; LICENSE

10 * * *

11 (b) The practices of barbering ~~and~~, cosmetology, esthetics, or manicuring
12 shall be permitted only in shops licensed by the Director, except as provided in
13 sections 273 and 281 of this chapter and the rules of the Director.

14 Sec. 7. 26 V.S.A. § 283 is amended to read:

15 § 283. EXAMINATION

16 * * *

17 (b)(1) The examination for a license shall include ~~both practical~~
18 ~~demonstrations and written or oral tests~~ examinations approved by the Director
19 by rule in the area of practices for which a license is applied and other related
20 studies or subjects as the Director may determine necessary.

21 * * *

1 Sec. 8. 26 V.S.A. § 284 is amended to read:

2 § 284. ISSUANCE OF LICENSE

3 * * *

4 (b) The Director shall issue a license to the person who owns or controls a
5 shop or school of barbering ~~or~~, cosmetology, esthetics, or manicuring who has
6 paid the required fee and is in compliance with the rules of the Director and
7 the provisions of this chapter.

8 * * *

9 * * * Nursing * * *

10 Sec. 9. 26 V.S.A. chapter 28 is amended to read:

11 CHAPTER 28. NURSING

12 Subchapter 1. General Provisions

13 * * *

14 § 1574. POWERS AND DUTIES

15 (a) In addition to the powers granted by 3 V.S.A. § 129, the Board shall:

16 * * *

17 (7) Adopt rules setting ~~active practice~~ continued competency and
18 ongoing practice requirements for licensure and renewal.

19 * * *

20 Subchapter 2. Advanced Practice Registered Nurses

21 * * *

1 (b) The Board shall credit as ~~active practice~~ ongoing practice those
2 activities, regardless of title or obligation to hold a license, that reasonably
3 tend to reinforce the training and skills of a licensee.

4 * * *

5 Subchapter 5. Nurse Licensure Compact

6 * * *

7 * * * Osteopathy * * *

8 Sec. 10. 26 V.S.A. § 1753 is amended to read:

9 § 1753. EXEMPTIONS

10 (a) The provisions of subdivision 1752(a)(1) of this title, relating to
11 practice, shall not apply to the following persons acting within the scope of
12 their respective practices:

13 * * *

14 (4) A student who:

15 (A) is enrolled in an accredited educational program that leads to the
16 issuance of a degree that would satisfy the educational requirement for a
17 profession licensed under this chapter;

18 (B) is engaged in an organized clinical training program;

19 (C) engages in acts constituting the practice of medicine while under
20 the supervision of a Vermont-licensed or Vermont-certified health care

1 professional who is qualified to supervise any acts by the student that
2 constitute the practice of medicine; and

3 (D) is not a postgraduate trainee who is otherwise required to obtain
4 a training license.

5 * * *

6 * * * Radiology * * *

7 Sec. 11. 26 V.S.A. § 2801 is amended to read:

8 § 2801. DEFINITIONS

9 As used in this chapter:

10 * * *

11 (6) “Licensed practitioner” means a person licensed under this title to
12 practice medicine, osteopathy, advanced practice registered nursing, dentistry,
13 podiatry, naturopathic medicine, or chiropractic, and includes holders of
14 limited temporary licenses to practice medicine.

15 * * *

16 Sec. 12. 26 V.S.A. § 2803 is amended to read:

17 § 2803. EXEMPTIONS

18 The prohibitions in section 2802 of this chapter shall not apply to dentists
19 licensed under chapter 12 of this title and actions within their scope of practice
20 nor to:

1 operator practicing permanent cosmetics to serve as advisors in matters
2 relating to tattooing, body piercing, and permanent cosmetics.

3 ~~(A) a professional in the field of public health and medicine from a~~
4 ~~list of persons provided by the Commissioner of Health; and~~

5 ~~(B) two licensed operators who~~

6 (2) Advisors shall have been practicing tattooing and, body piercing, or
7 permanent cosmetics for at least the three years immediately preceding
8 appointment and ~~who~~ shall actively be engaged in the practice of tattooing
9 and, body piercing, and permanent cosmetics in Vermont during incumbency.

10 ~~(2) The appointees shall be appointed to serve as advisors in matters~~
11 ~~relating to tattooing, permanent cosmetics, and body piercing.~~

12 (3) The appointees shall be appointed as set forth in 3 V.S.A. § 129b.

13 * * *

14 Sec. 16. 26 V.S.A. § 4105 is amended to read:

15 § 4105. LICENSE REQUIREMENTS

16 * * *

17 (b) Tattooists and body piercers.

18 (1)(A) As a prerequisite to licensure, a tattooist or body piercer
19 applicant shall provide proof of an apprenticeship of at least 1,000 hours of
20 experience obtained within two calendar years working under the direct
21 supervision of a body piercer or tattooist licensed and in good standing with

1 this State or the state in which ~~he or she~~ the body piercer or tattooist is
2 regulated, and who has been in practice a minimum of three years.

3 (B) ~~Proof may be in the form of a sworn affidavit from the~~
4 ~~supervising tattooist or body piercer, including information as the Director~~
5 ~~may reasonably require on forms provided by the Director.~~ The Director may
6 adopt rules to require additional information from applicants to prove
7 completion of an apprenticeship.

8 * * *

9 (3) Apprentices shall ~~contact~~ register with the Office ~~for the appropriate~~
10 ~~forms~~ prior to beginning the apprenticeship in accordance with rules adopted
11 by the Director.

12 * * *

13 (c) Permanent cosmetologists.

14 (1)(A) As a prerequisite to licensure for the practice of permanent
15 cosmetics, an applicant shall provide proof of a course of approved study
16 lasting at least 60 hours.

17 (B)(i) In addition, the applicant shall obtain at least 40 hours of
18 practical experience, within two calendar years preceding the application,
19 working under the direct supervision of a tattooist or permanent cosmetologist
20 licensed and in good standing with this State or the state in which ~~he or she~~ the

1 tattooist or permanent cosmetologist is regulated, and who has been in practice
2 a minimum of three years.

3 (ii) ~~Proof may be in the form of a sworn affidavit from the~~
4 ~~supervising permanent cosmetologist or tattooist, including information as the~~
5 ~~Director may reasonably require on forms provided by the Director.~~ The
6 Director may adopt rules to require additional information from applicants to
7 prove completion of an apprenticeship.

8 * * *

9 (3) Prior to training and obtaining practical experience, applicants shall
10 contact register with the Office and submit the appropriate forms in
11 accordance with rules adopted by the Director.

12 * * *

13 (d) Shops. A shop shall not operate in this State without first registering
14 with the Office of Professional Regulation and paying a fee of \$100.00.
15 Registration shall be in the form required by the Director.

16 * * *

17 (2) All shops shall designate a person who is licensed under this chapter
18 in the practice of tattooing or body piercing at least one of the professions
19 being practiced in the shop, be it tattooing, body piercing, or permanent
20 cosmetics, who shall be responsible for overall cleanliness and sanitation of
21 the shop.

1 (3) The practice of tattooing or body piercing shall be permitted only in
2 registered tattooing and body piercing shops.

3 (4) The practice of permanent cosmetics ~~may be performed~~ shall be
4 permitted only in:

5 (A) a licensed permanent cosmetic shop;

6 (B) a cosmetology shop licensed under chapter 6 of this title;

7 (C) anywhere the practice of tattooing is permitted;

8 (D) on the premises of a health care professional licensed pursuant to
9 this title, or; and

10 (E) on premises meeting the sanitation requirements of this chapter
11 as determined by the Director or as set forth by rule.

12 (5) Notwithstanding the provisions of this subsection, a tattoo shop
13 licensed under this chapter or a cosmetology shop licensed under chapter 6 of
14 this title may provide permanent cosmetics services by a person licensed under
15 this chapter without obtaining a second ~~an~~ additional shop license for the same
16 premises, provided that the Director may require by rule permanent
17 cosmetologists to report all locations of their practice to the Director as a
18 condition of licensure or license renewal.

19 (6) All registered shops shall report to the Director within 48 hours after
20 a change of location. The Director may require shops to undergo a new
21 inspection prior to beginning the practice of tattooing, body piercing, or

1 permanent cosmetics at the new location. The Director may permit a relocated
2 shop to continue operation under its existing registration.

3 * * *

4 Sec. 17. 26 V.S.A. § 4108 is amended to read:

5 § 4108. UNPROFESSIONAL CONDUCT

6 * * *

7 (b) Unprofessional conduct means the following conduct and conduct set
8 forth in 3 V.S.A. § 129a:

9 (1) Using dishonest or misleading advertising.

10 ~~(2) Addiction to narcotics, habitual drunkenness, or rendering~~
11 ~~professional services to a client if the operator is intoxicated or under the~~
12 ~~influence of drugs.~~

13 ~~(3)(2)~~ Sexual harassment of a client.

14 ~~(4)(3)~~ Tattooing or body piercing a minor in violation of the provisions
15 of section 4102 of this title.

16 ~~(e) After hearing and upon a finding of unprofessional conduct, an~~
17 ~~administrative law officer may take disciplinary action against a licensed or~~
18 ~~registered operator or applicant.~~

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* * * Electrologists * * *

Sec. 18. 26 V.S.A. § 4402 is amended to read:

§ 4402. DEFINITIONS

As used in this chapter:

* * *

(3) “Electrology” means the removal of hair by electrical current using needle/probe electrode-type epilation, which would include electrolysis (direct current/DC), thermolysis (alternating current/AC), or a combination of both (superimposed or sequential blend). “Electrology” includes, solely for the purpose of hair removal, the use of lasers approved by the U.S. Food and Drug Administration for electrology by electrologists possessing a special license endorsement set forth in subsection 4404(d) of this chapter. “Electrology” does not include any practice, activity, or treatment that constitutes the practice of medicine, as defined in section 1311 of this title, including injections of any substance or the practices of permanent cosmetics as defined in section 4101 of this title.

* * *

** * * Office of Professional Regulation Funding Structure Study * * **

Sec. 18a. OFFICE OF PROFESSIONAL REGULATION; FUNDING

STRUCTURE STUDY

1 *The Office of Professional Regulation, in consultation with the Joint Fiscal*
2 *Office, shall conduct a study reviewing the funding structure of the Office of*
3 *Professional Regulation. The Office of Professional Regulation shall report to*
4 *the House Committee on Government Operations and Military Affairs and the*
5 *Senate Committee on Government Operations by January 1, 2025 with an*
6 *assessment of the benefits and challenges of the current funding model for the*
7 *Office of Professional Regulation, as established in 3 V.S.A. § 124, and with*
8 *any recommendations for alternative models for funding the Office of*
9 *Professional Regulation.*

10 * * * Effective Date * * *

11 Sec. 19. EFFECTIVE DATE

12 This act shall take effect on passage.