

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 * * *

18 Sec. 2. 3 V.S.A. § 129a is amended to read:

19 § 129a. UNPROFESSIONAL CONDUCT

20 (a) In addition to any other provision of law, the following conduct by a
21 licensee constitutes unprofessional conduct. When that conduct is by an

1 applicant or person who later becomes an applicant, it may constitute grounds
2 for denial of a license or other disciplinary action. Any one of the following
3 items or any combination of items, whether the conduct at issue was
4 committed within or outside the State, shall constitute unprofessional conduct:

5 * * *

6 (16)(A) Impeding an investigation or inspection under this chapter or
7 unreasonably failing to reply, cooperate, or produce lawfully requested records
8 in relation to such investigation or inspection.

9 * * *

10 * * * Barbers and Cosmetologists * * *

11 Sec. 3. 26 V.S.A. § 271 is amended to read:

12 § 271. DEFINITIONS

13 As used in this chapter:

14 * * *

15 (4)(A) “Esthetics” means ~~massaging, cleansing, stimulating, manipulating,~~
16 ~~beautifying, or otherwise working on the scalp, face, or neck by using~~
17 ~~cosmetic preparations, antiseptics, tonics, lotions, or creams~~ services related to
18 skin-care treatments to enhance or improve the appearance of the skin,
19 including:

20 (i) cleansing, toning, stimulating, manipulating, beautifying,
21 exfoliating, or performing any similar procedure on the human body using

1 only cosmetic preparations, hands, mechanical or electrical apparatus or
2 appliances, tonics, lotions, creams, or makeup;

3 (ii) beautifying lashes and brows; and

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

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

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

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

11 (iii) the application of permanent cosmetics.

12 * * *

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

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

16 § 272. PROHIBITIONS; OFFENSES

17 (a) A person shall not practice or attempt to practice barbering or,
18 cosmetology, esthetics, or manicuring or use in connection with the person’s
19 name any letters, words, title, or insignia indicating or implying that the person
20 is a barber or, cosmetologist, esthetician, or manicurist unless the person is
21 licensed in accordance with this chapter.

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

5 * * *

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

7 § 276. GENERAL POWERS AND DUTIES OF THE DIRECTOR

8 (a) The Director shall:

9 (1) adopt rules that:

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

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

16 * * *

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

19 * * *

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

2 § 282. SHOP; LICENSE

3 * * *

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

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

8 § 283. EXAMINATION

9 * * *

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

14 * * *

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

16 § 284. ISSUANCE OF LICENSE

17 * * *

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

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* * *

* * * Nursing * * *

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

CHAPTER 28. NURSING

Subchapter 1. General Provisions

* * *

§ 1574. POWERS AND DUTIES

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

* * *

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

* * *

Subchapter 2. Advanced Practice Registered Nurses

* * *

Subchapter 3. Registered Nurses and Practical Nurses

§ 1621. REGISTERED NURSE LICENSURE BY EXAMINATION

* * *

~~Subchapter 4. Nursing Assistants~~

§ 1622. REGISTERED NURSE LICENSURE BY ENDORSEMENT

* * *

1 § 1624. REGISTERED NURSE LICENSE RENEWAL

2 To renew a license, a registered nurse shall meet ~~active practice~~ continued
3 competency requirements set by the Board by rule.

4 * * *

5 § 1628. PRACTICAL NURSE LICENSE RENEWAL

6 To renew a license, a practical nurse shall meet ~~active practice~~ continued
7 competency requirements set by the Board by rule.

8 * * *

9 Subchapter 4. Nursing Assistants

10 § 1641. DEFINITIONS

11 * * *

12 § 1645. RENEWAL

13 (a) To renew a license, a nursing assistant shall meet ~~active practice~~
14 ongoing practice requirements set by the Board by rule.

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

18 * * *

19 Subchapter 5. Nurse Licensure Compact

20 * * *

1 * * * Osteopathy * * *

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

3 § 1753. EXEMPTIONS

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

7 * * *

8 (4) A student who:

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

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

13 (C) engages in acts constituting the practice of medicine while under
14 the supervision of a Vermont-licensed or Vermont-certified health care
15 professional who is qualified to supervise any acts by the student that
16 constitute the practice of medicine; and

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

19 * * *

1 * * * Radiology * * *

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

3 § 2801. DEFINITIONS

4 As used in this chapter:

5 * * *

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

10 * * *

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

12 § 2803. EXEMPTIONS

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

16 (1) Licensed practitioners acting within the scope of practice for their
17 licensed field, including holders of limited temporary licenses to practice
18 medicine as authorized by the Board of Medical Practice, provided that their
19 practice acts and rules adopted thereunder have been expressly found by the
20 Director, in consultation with advisors appointed under this chapter, to match

1 or surpass the training in radiation safety and proper radiation practices
2 required by this chapter and rules adopted under this chapter.

3 * * *

4 * * * Tattooists and Body Piercers * * *

5 Sec. 13. 26 V.S.A. § 4101 is amended to read:

6 § 4101. DEFINITIONS

7 As used in this chapter:

8 * * *

9 (3) ~~“Disciplinary action” includes any action taken by an administrative~~
10 ~~law officer against a licensed tattooist or applicant premised on a finding of~~
11 ~~unprofessional conduct. Disciplinary action includes all appropriate remedies,~~
12 ~~including denial of an application for or renewal of a license, suspension or~~
13 ~~revocation of a license, limiting or conditioning of a license, issuing~~
14 ~~reprimands or warnings, and adopting consent orders. [Repealed.]~~

15 * * *

16 (8) ~~“Special panel” means a panel established pursuant to 3 V.S.A.~~
17 ~~§ 129(j). [Repealed.]~~

18 (9) “Shop” means a facility regularly used to offer or perform the
19 practice of tattooing or, body piercing, or permanent cosmetics.

1 Sec. 14. 26 V.S.A. § 4103 is amended to read:

2 § 4103. DIRECTOR; FUNCTION; COMMISSIONER OF HEALTH;

3 RULES

4 * * *

5 (c) The Director may adopt rules necessary to perform ~~his or her~~ the
6 Director's duties pursuant to this chapter. These rules may include:

7 (1) provisions governing tattooist, body piercer, and permanent
8 cosmetologist apprenticeships; and

9 (2) requirements for the supervision and temporary licensure of tattoo
10 artists, body piercers, and permanent cosmetologists, and shops as may be
11 necessary to allow this State to be a venue for appropriately regulated special
12 events such as conventions, festivals, or professional conferences.

13 * * *

14 Sec. 15. 26 V.S.A. § 4104 is amended to read:

15 § 4104. ADVISOR APPOINTEES

16 (a)(1) The Secretary of State shall appoint: one licensed operator practicing
17 tattooing, one licensed operator practicing body piercing, and one licensed
18 operator practicing permanent cosmetics to serve as advisors in matters
19 relating to tattooing, body piercing, and permanent cosmetics.

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

1 ~~(B) two licensed operators who~~
2 (2) Advisors shall have been practicing tattooing and, body piercing, or
3 permanent cosmetics for at least the three years immediately preceding
4 appointment and ~~who~~ shall actively be engaged in the practice of tattooing
5 ~~and, body piercing, and permanent cosmetics~~ in Vermont during incumbency.

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

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

9 * * *

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

11 § 4105. LICENSE REQUIREMENTS

12 * * *

13 (b) Tattooists and body piercers.

14 (1)(A) As a prerequisite to licensure, a tattooist or body piercer
15 applicant shall provide proof of an apprenticeship of at least 1,000 hours of
16 experience obtained within two calendar years working under the direct
17 supervision of a body piercer or tattooist licensed and in good standing with
18 this State or the state in which ~~he or she~~ the body piercer or tattooist is
19 regulated, and who has been in practice a minimum of three years.

20 (B) ~~Proof may be in the form of a sworn affidavit from the~~
21 ~~supervising tattooist or body piercer, including information as the Director~~

1 ~~may reasonably require on forms provided by the Director.~~ The Director may
2 adopt rules to require additional information from applicants to prove
3 completion of an apprenticeship.

4 * * *

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

8 * * *

9 (c) Permanent cosmetologists.

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

13 (B)(i) In addition, the applicant shall obtain at least 40 hours of
14 practical experience, within two calendar years preceding the application,
15 working under the direct supervision of a tattooist or permanent cosmetologist
16 licensed and in good standing with this State or the state in which ~~he or she~~ the
17 tattooist or permanent cosmetologist is regulated, and who has been in practice
18 a minimum of three years.

19 (ii) ~~Proof may be in the form of a sworn affidavit from the~~
20 ~~supervising permanent cosmetologist or tattooist, including information as the~~
21 ~~Director may reasonably require on forms provided by the Director.~~ The

1 Director may adopt rules to require additional information from applicants to
2 prove completion of an apprenticeship.

3 * * *

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

7 * * *

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

11 * * *

12 (2) All shops shall designate a person who is licensed under this chapter
13 ~~in the practice of tattooing or body piercing~~ at least one of the professions
14 being practiced in the shop, be it tattooing, body piercing, or permanent
15 cosmetics, who shall be responsible for overall cleanliness and sanitation of
16 the shop.

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

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

21 (A) a licensed permanent cosmetic shop;

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

2 § 4108. UNPROFESSIONAL CONDUCT

3 * * *

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

6 (1) Using dishonest or misleading advertising.

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

10 ~~(3)~~(2) Sexual harassment of a client.

11 ~~(4)~~(3) Tattooing or body piercing a minor in violation of the provisions
12 of section 4102 of this title.

13 ~~(c) After hearing and upon a finding of unprofessional conduct, an~~
14 ~~administrative law officer may take disciplinary action against a licensed or~~
15 ~~registered operator or applicant.~~

16 * * * Electrologists * * *

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

18 § 4402. DEFINITIONS

19 As used in this chapter:

20 * * *

