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H.870

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

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

* * * Office of Professional Regulation * * *

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

§ 127. UNAUTHORIZED PRACTICE

* * *

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

* * *

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

* * *

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

2 § 129a. UNPROFESSIONAL CONDUCT

3 (a) In addition to any other provision of law, the following conduct by a
4 licensee constitutes unprofessional conduct. When that conduct is by an
5 applicant or person who later becomes an applicant, it may constitute grounds
6 for denial of a license or other disciplinary action. Any one of the following
7 items or any combination of items, whether the conduct at issue was
8 committed within or outside the State, shall constitute unprofessional conduct:

9 * * *

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

13 * * *

14 * * * Barbers and Cosmetologists * * *

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

16 § 271. DEFINITIONS

17 As used in this chapter:

18 * * *

19 (4)(A) “Esthetics” means ~~massaging, cleansing, stimulating, manipulating,~~
20 ~~beautifying, or otherwise working on the scalp, face, or neck by using cosmetic~~

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

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

7 (ii) beautifying lashes and brows; and

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

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

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

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

15 (iii) the application of permanent cosmetics.

16 * * *

17 (7) “Shop” means a facility or facilities regularly used to offer or provide
18 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 barbering
10 ~~or,~~ cosmetology, esthetics, or manicuring unless the shop or school is
11 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 the
7 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 tend
3 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 a
4 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 ~~and,~~
9 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 may~~
5 ~~reasonably require on forms provided by the Director.~~ The Director may adopt
6 rules to require additional information from applicants to prove completion of
7 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 accordance
11 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 the
21 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 as
11 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 ~~(c) 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.~~

