

county in which the information was disseminated or redisseminated. Upon a finding by a preponderance of the evidence that a person has violated this section, the court shall issue an injunction punishable by civil contempt ordering the person in violation of this section to comply with the requirements of, and to refrain from any violations of section ~~239B.2A~~, 299.5A, or 299.12 with respect to the dissemination or redissemination of information shared with the person pursuant to section ~~239B.2A~~, 299.5A, or 299.12.

Sec. 10. CODE EDITOR. In codifying the provisions of this Act, the Code editor shall revise the section 299.12 headnote to eliminate the reference to the family investment program.

Sec. 11. Section 239B.2A, Code Supplement 2003, is repealed.

Sec. 12. APPLICABILITY. The provisions of this Act amending section 239B.7 are applicable during the fiscal year commencing July 1, 2004, on a date identified in administrative rule adopted for this purpose by the department of human services.

Approved April 7, 2004

CHAPTER 1044

PRACTICE OF COSMETOLOGY — MISCELLANEOUS CHANGES

H.F. 2358

AN ACT providing for technical and substantive changes relating to the practice of cosmetology, establishing penalties, and making penalties applicable.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 157.1, Code 2003, is amended by adding the following new subsections:
NEW SUBSECTION. 1A. “Certified laser product” means a product which is certified by a manufacturer pursuant to the requirements of 21 C.F.R. pt. 1040 and as specified by rule.

NEW SUBSECTION. 1B. “Chemical exfoliation” means the removal of surface epidermal cells of the skin by using only nonmedical strength cosmetic preparations consistent with labeled instructions and as specified by rule.

Sec. 2. Section 157.1, subsection 3, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

3. “Cosmetology” means all of the following practices:

a. Arranging, braiding, dressing, curling, waving, press and curl hair straightening, shampooing, cutting, singeing, bleaching, coloring, or similar works, upon the hair of any person; or upon a wig or hairpiece when done in conjunction with haircutting or hairstyling by any means.

b. Massaging, cleansing, stimulating, exercising, or beautifying the superficial epidermis of the scalp, face, neck, arms, hands, legs, feet, or upper body of any person with the hands or mechanical or electrical apparatus or appliances or with the use of cosmetic preparations, including cleansers, toners, moisturizers, or masques.

c. Removing superfluous hair from the face or body of a person with the use of depilatories, wax, sugars, or tweezing.

d. Applying makeup or eyelashes, tinting of lashes or brows, or lightening of hair on the face or body.

e. Cleansing, shaping, or polishing the fingernails, applying sculptured nails, nail extensions, wraps, overlays, nail art, or any other nail technique to the fingernails or toenails of a person.

Sec. 3. Section 157.1, subsection 4, Code 2003, is amended to read as follows:

4. "Cosmetology arts and sciences" means any or all of the following ~~practices~~ disciplines, performed with or without compensation by a licensee:

- a. Cosmetology.
- b. Electrology.
- c. Esthetics.
- d. Nail technology.
- e. Manicuring.

Sec. 4. Section 157.1, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. "Depilatory" means an agent used for the temporary removal of superfluous hair by dissolving it at the epidermal surface.

Sec. 5. Section 157.1, subsection 9, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

9. "Esthetics" means the following:

- a. Beautifying, massaging, cleansing, stimulating, or hydrating the skin of a person, except the scalp, by the use of cosmetic preparations, including cleansers, antiseptics, tonics, lotions, creams, exfoliants, masques, and essential oils, to be applied with the hands or any device, electrical or otherwise, designed for the nonmedical care of the skin.
- b. Applying makeup or eyelashes to a person, tinting eyelashes or eyebrows, or lightening hair on the body except the scalp.
- c. Removing superfluous hair from the body of a person by the use of depilatories, waxing, sugaring, tweezers, or use of any certified laser products. This excludes the practice of electrology, whereby hair is removed with an electric needle.
- d. The application of permanent makeup or cosmetic micropigmentation.

Sec. 6. Section 157.1, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 9A. "Exfoliation" means the process whereby the superficial epidermal cells are removed from the skin.

NEW SUBSECTION. 9B. "General supervision" means the supervising physician is not on-site for laser procedures conducted on minors, but is available for direct communication, either in person or by telephone, radio, radiotelephone, television, or similar means.

NEW SUBSECTION. 10A. "Laser" means light amplification by the stimulated emission of radiation.

NEW SUBSECTION. 12A. "Mechanical exfoliation" means the physical removal of surface epidermal cells by means that include but are not limited to brushing machines, granulated scrubs, peel-off masques, peeling creams or drying preparations that are rubbed off, and microdermabrasion.

NEW SUBSECTION. 12B. "Microdermabrasion" means mechanical exfoliation using an abrasive material or apparatus to remove surface epidermal cells with a machine which is specified by rule.

NEW SUBSECTION. 12C. "Minor" means an unmarried person who is under the age of eighteen years.

NEW SUBSECTION. 14A. "Physician" means a person licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

Sec. 7. Section 157.2, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 3. Persons licensed under this chapter shall not administer any practice of removing the skin by means of a razor-edged instrument.

NEW SUBSECTION. 4. With the exception of hair removal, manicuring, and nail technology services, persons licensed under this chapter shall not administer any procedure in which human tissue is cut, shaped, vaporized, or otherwise structurally altered.

Sec. 8. NEW SECTION. 157.3A LICENSE REQUIREMENTS — ADDITIONAL TRAINING.

In addition to the license requirements of section 157.3, as provided in this section, a written application and proof of additional training and certification shall be required prior to approval by the board for the provision of the services described in this section.

1. a. A licensed esthetician, who intends to provide services pursuant to section 157.1, subsection 9, paragraphs “a” and “c”, having received additional training on the use of microdermabrasion or a certified laser product shall submit a written application and proof of additional training and certification for approval by the board. Training shall be specific to the service provided or certified laser product used.

b. A licensed esthetician who applies permanent makeup or cosmetic micropigmentation shall comply with the provisions of section 135.37 and applicable rules.

c. Extractions shall be administered only by a licensed esthetician who has been trained in extraction procedures.

d. Chemical peels shall be administered only by a licensed esthetician who has been certified by the manufacturer of the product being used.

2. a. A licensed cosmetologist having received additional training in the use of chemical peels, microdermabrasion, or a certified laser product shall submit a written application and proof of additional training and certification for approval by the board. A cosmetologist who is licensed after July 1, 2005, shall not be eligible to provide chemical peels, practice microdermabrasion procedures, or use certified laser products.

b. A licensed cosmetologist who applies permanent makeup or cosmetic micropigmentation shall comply with the provisions of section 135.37 and applicable rules.

3. A licensed electrologist having received additional training on the use of a certified laser product for the purpose of hair removal shall submit a written application and proof of additional training and certification for approval by the board.

4. Any additional training received by a licensed esthetician, cosmetologist, or electrologist and submitted to the board relating to utilization of a certified laser product shall include a safety training component which provides a thorough understanding of the procedures being performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

5. A certified laser product shall only be used on surface epidermal layers of the skin except for hair removal.

Sec. 9. NEW SECTION. 157.5 CONSENT AND REPORTING REQUIREMENTS.

1. A licensed cosmetologist, esthetician, or electrologist who provides services relating to the use of a certified laser product, chemical peel, or microdermabrasion, shall obtain a consent in writing prior to the administration of the services. A consent in writing shall create a presumption that informed consent was given if the consent:

a. Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks associated with the procedure or procedures, if reasonably determinable.

b. Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.

c. Is signed by the client for whom the procedure is to be performed, or if the client for any reason lacks legal capacity to consent, is signed by a person who has legal authority to consent on behalf of that client in those circumstances.

2. A licensed cosmetologist, esthetician, or electrologist who provides services related to the use of a certified laser product, chemical peel, or microdermabrasion, shall submit a report to

the board within thirty days of any incident involving the provision of such services which results in physical injury requiring medical attention. Failure to comply with this section shall result in disciplinary action being taken by the board.

Sec. 10. Section 157.8, subsection 1, Code 2003, is amended to read as follows:

1. It is unlawful for a school of cosmetology arts and sciences to operate unless the owner has obtained a license issued by the department. The owner shall file a verified application with the department on forms prescribed by the board. The application for a license for a school shall be accompanied by the annual license fee determined pursuant to section 147.80 and shall state the name and location of the school and such other additional information as the board may require. The license is valid for one year and may be renewed. A license for a school of cosmetology arts and sciences shall not be issued for any space in any location where the same space is also licensed as a barber school. The school of cosmetology arts and sciences must pass a sanitary inspection under section 157.6. An annual inspection of each school of cosmetology arts and sciences, including the educational activities of each school, shall be conducted and completed by the board or its designee prior to renewal of the license.

Sec. 11. NEW SECTION. 157.12A USE OF LASER PRODUCTS ON MINORS.

A laser hair removal product or device shall not be used on a minor unless the minor is accompanied by a parent or guardian and only under the general supervision of a physician.

Sec. 12. Section 157.13, subsection 1, Code 2003, is amended to read as follows:

1. It is unlawful for a person to employ an individual to practice cosmetology arts and sciences unless that individual is licensed or has obtained a temporary permit under this chapter. It is unlawful for a licensee to practice with or without compensation in any place other than a licensed salon, a licensed school of cosmetology arts and sciences, or a licensed barber-shop as defined in section 158.1, except that a licensee may practice at a location which is not a licensed salon or school of cosmetology arts and sciences under extenuating circumstances arising from physical or mental disability or death of a customer. It is unlawful for a licensee to claim to be a licensed barber, but it is lawful for a licensed cosmetologist to work in a licensed barbershop. It is unlawful for a person to employ a licensed cosmetologist, esthetician, or electrologist to perform the services described in section 157.3A if the licensee has not received the additional training and met the other requirements specified in section 157.3A.

Sec. 13. Section 157.13, Code 2003, is amended by adding the following new subsection: NEW SUBSECTION. 3. If the board has reasonable grounds to believe that a person or establishment which is not licensed under this chapter has engaged, or is about to engage, in an act or practice which requires licensure under this chapter, or otherwise violates a provision of this chapter, the board may issue an order to require the unlicensed person or establishment to comply with the provisions of this chapter, and may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter by an unlicensed person or establishment. Each day of a continued violation after an order or citation by the board constitutes a separate offense, with the maximum penalty not to exceed ten thousand dollars.

a. In determining the amount of a civil penalty, the board may consider the following:

- (1) Whether the amount imposed will be a substantial economic deterrent to the violation.
- (2) The circumstances leading to or resulting in the violation.
- (3) The severity of the violation and the risk of harm to the public.
- (4) The economic benefits gained by the violator as a result of noncompliance.
- (5) The welfare or best interest of the public.

b. The board may conduct an investigation as needed to determine whether probable cause exists to initiate the proceedings described in this subsection. Before issuing an order or citation under this section, the board shall provide written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted as provided in chapter 17A. The board may, in connection

with a proceeding under this section, issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

c. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review in accordance with section 17A.19. The board shall notify the attorney general of the failure to pay a civil penalty within thirty days after entry of an order pursuant to this subsection, or within ten days following final judgment in favor of the board if an order has been stayed pending appeal. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs. An action to enforce an order under this subsection may be joined with an action for an injunction.

Approved April 7, 2004

CHAPTER 1045

ATHLETIC TRAINING — LICENSURE REQUIREMENTS

H.F. 2452

AN ACT providing for licensure requirements relating to the practice of athletic training and increasing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 147.2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A person shall not engage in the practice of medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, physical therapy, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, occupational therapy, respiratory care, pharmacy, cosmetology, barbering, social work, dietetics, marital and family therapy or mental health counseling, massage therapy, mortuary science, athletic training, or acupuncture, or shall not practice as a physician assistant as defined in the following chapters of this subtitle, unless the person has obtained from the department a license for that purpose.

Sec. 2. Section 147.74, subsection 20, Code Supplement 2003, is amended to read as follows:

20. An athletic trainer licensed under chapter 152D and this chapter may use the title words “licensed athletic trainer” or the letters “LAT” after the person’s name.

Sec. 3. Section 152D.1, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

152D.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. “Athlete” means a person who participates in a sanctioned amateur or professional sport or other recreational sports activity.
2. “Athletic injury” means any of the following:
 - a. An injury or illness sustained by an athlete as a result of the athlete’s participation in sports, games, or recreational sports activities.