

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2371

2001 SENATE HUMAN SERVICES

SB 2371

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2371

Senate Human Services Committee

Conference Committee

Hearing Date February 13, 2001

Tape Number	Side A	Side B	Meter #
1		X	44.1
February 19, 2001 1	X		
February 21, 2001 1	X		
March 28, 2001 1	X		10.6
Committee Clerk Signature			

Minutes:

The hearing was opened on SB 2371.

SENATOR DUAINÉ ESPEGARD, sponsor of the bill, introduced the bill. It deals with the school of esthetics (Written testimony)

TAMARA HENNESSY, Cosmetologist, supports bill. (Written testimony).

BERT KNELL, President of the Board of Cosmetology, supports bill. (Written testimony)

SENATOR KILZER: Is there an accrediting agency for this school? MS. HENNESSY: Yes, you must be in the business for 2 years before becoming accredited. The crediting agency is NAC (National Association of Creditation).

No opposition

Hearing was recessed on SB 2371.

ROLF SLETTEN, Executive Secretary and Treasurer, Board of Medical Examiners, commented on SB 2371 and how it related to the medical field. Amendments were presented. (Written

testimony). SENATOR FISCHER: Where is the line and how do you draw that line and should it be in this bill. MR. SLETTEN: This is where we think the line should be drawn and including in the bill would be good results. SENATOR MATHERN: Is there a need for estheticians? MR. SLETTEN: There are people that want to pay for these services. They have their places. DR. CURT JUHALA, Medically retired physician/surgeon, presented some testimony. He had hired cosmetologist in his practice, working under his direction. I trained a cosmetologist to become an esthetician. If you look at the dollar that is available for use today, there is a crying market out there. Our committee got together and discussed this and came up with some ideas. You can take off dead layers of skin by several means. There are many over the counter cosmetics that will do this. We are talking about the epidermis. A doctor will invade the dermas. This is a superficial level. These people should not cut into the dermas. We - the Board - reviewed all material from all states. SENATOR KILZER: What is micro derma abrasion compared to regular derma abrasion. DR. JUHALA: Regular derma abrasion is taking a brushed wheel freezing the skin and taking a layer of skin off. It is also done by taking a diamond brazier, small studded diamond that you can freeze the skin and you literally take the epidermis off and some of the dermas. You allow that to heal. Micro derma abrasion is a superficial level, but if it cuts in the dermas and you do that with a blade, it cuts the dermas and should be performed by a doctor. SENATOR KILZER: Are there some abrasions that are needle punctures and how do you freeze the area? DR. JUHALA: I used an ethalyn oxide freezer spray on a small area. I would use a shield over my face to prevent the blood from spraying all over. You must be cautious about all the infections that are present today. Laser is not without problems. You can scar the skin.

The public hearing was closed.

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Senate Human Services Committee
Bill/Resolution Number SB 2371
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The committee directed amendments to be drawn by the Medical Board's concerns.

February 21, 2001, Tape 1, Side A

SENATOR LEE called the committee to order with all Senators present.

MARK MONASKY, Intern, explained the amendments received from the Board of Medical Examiners. It defines the fine line between cosmetology and medical procedures.

BERT KNELL, Pres of Board of Cosmetology is comfortable with the amendments

SENATOR MATHERN asked about the licensing and instruction of each division as recorded in the bill. MS. KNELL replied that there are 3 licenses in the general field of Cosmetology.

Cosmetology is hair care; esthetic is skin care, manicure is care of nails. SENATOR KILZER: Is each licensed by the board of cosmetology. MS. KNELL: Yes.

Page 1 line 12 was discussed and it was decided we needed another "or" to identify the three different divisions of cosmetology. SENATOR MATHERN moved the Medical Examiners amendments (0101). SENATOR KILZER seconded the motion. Voice vote carried. Discussion was held on curriculum and instructors credentials. MS. KNELL reported that they were accredited by the National Association of Creditation. SENATOR POLOVITZ moved the amendment to add "or" on page 1, line 12. SENATOR KILZER seconded the motion. Voice vote carried. SENATOR MATHERN moved a DO PASS AS AMENDED. SENATOR KILZER seconded the motion. Roll call vote carried 6-0. SENATOR KILZER will carry the bill.

March 28, 2001, Tape 1, Side A, Meter 10.6.

Discussion on the House amendments put on SB 2371. Voice vote passed a DO CONCUR with one dissenting vote. SENATOR KILZER will carry.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2371

Page 1, line 1, after "reenact" Insert "subsection 12 of section 43-11-01 of the North Dakota Century Code, relating to definitions; and to amend and reenact"

Page 1, after line 4, Insert:

"SECTION 1. AMENDMENT. Subsection 12 of section 43-11-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person. "Skin care" which is invasive constitutes the practice of medicine and is prohibited, and includes:

- a. The use of lasers or high energy applications, including intense light or microwaves, of any type;
- b. Dermabrasion of any type;
- c. Dermaplaning or scraping with sharp instruments;
- d. Penetration of the skin by metal needles, except electrolysis needles;
- e. Chemical peels utilizing:
 - (1) phenol, resorcinol, salicylic acid, trichloroacetic acid, or glycolic acid, except glycolic acid that is buffered and whose concentration does not exceed 20% with a ph >3.5, or;
 - (2) a combination or mixture of commercially available skin removal products, except as required by the manufacturer's instructions."

Renumber accordingly

Roll Call Vote #: /

Date: 2/21/01

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2371

Senate HUMAN SERVICES Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Sen Mathern Seconded By Sen Kilzer

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Kilzer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2371: Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2371 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 12 of section 43-11-01," and after "43-11-16" insert a comma

Page 1, line 2, after "to" insert "skin care,"

Page 1, line 3, after "schools" insert a comma

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 12 of section 43-11-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person. The term does not include invasive care including:
 - a. The use of lasers or high-energy applications, including intense light or microwaves, of any type;
 - b. Dermabrasion of any type;
 - c. Dermaplaning or scraping with sharp instruments; and
 - d. Chemical peels utilizing:
 - (1) Phenol, resorcinol, salicylic acid, trichloroacetic acid, or glycolic acid, except glycolic acid that is buffered and that has a concentration not exceeding twenty percent with a ph greater than 3.5; or
 - (2) A combination or mixture of commercially available skin removal products, except as specified by the manufacturer's instructions."

Renumber accordingly

2001 HOUSE HUMAN SERVICES

SB 2371

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2371

House Human Services Committee

Conference Committee

Hearing Date March 13, 2001

Tape Number	Side A	Side B	Meter #
Tape 1		X	1160 to end
Tape 2	X		0 to 2350
Tape 3	X		5130 to end
Committee Clerk Signature	<i>Connie Easton</i>		

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig.

Chairman Price: We will open the hearing on SB 2371.

Senator Espegard: Presented bill. I am here today to speak in favor of SB 2371 and to ask for your support. This bill was brought to me by one of my constituents who desires to establish a College of Instruction in Esthetics. I support this individual who is a reputable business person and who has been in the cosmetology business for a number of years. I support this new business in our community as a form of economic development. There are some problems with the bill as you see it today. While it was in the Senate it was virtually hog housed with an amendment that you see on section 1. The folks that proposed that amendment thought they had the approval and acceptance of the cosmetology person that wants to do this and it was not

approved. It is sent to you with a definition as you see it on the section that describes skin care. You will hear testimony this morning as to why that should not be on there. We will have an amendment that comes forward here today that asks for the bill to go back to its original form which simply sets up a School of Esthetics, sets up the training. When it is amended, I would encourage you to DO PASS.

Chairman Price: What jumps out at me on page 1 is invasive, and the second one is the laser.

Senator Espegard: I don't know anything about it, but you will hear testimony on this.

Tamara Hennessy: Licensed Cosmetologist, Owner of Unique Impressions Salon and Day Spa in Grand Forks. (See written testimony.) One of the largest obstacles I have had to overcome owning the day spa is finding educated professionals to work in my spa. There are no cosmetology schools presently in the State of North Dakota that offer an Esthetics program. The curriculum for students enrolled in an esthetician course for a complete course of 600 hours training must include: Sterilization, sanitation, and safety; body treatment, facials, hair removal, and make-up; study of law, ethics, management and salesmanship; related subject, and unassigned. I believe that too many bad things are to come if SB 2249 passes and SB 2371 passes as amended. SB 2371 was a good bill before the amendment. This bill was intended to keep people in the State of North Dakota to obtain a license for Esthetics and to advance and grow our industry. I am asking for you to please consider my request a valid one.

Chairman Price: Do I understand that there is a separate license for cosmetology and estheticians?

Tamara Hennessy: Yes.

Chairman Price: Where did you get your training as an esthetician and licensure? What is close?

Tamara Hennessy: My cosmetology license and all cosmetology licenses are 1800 hours which includes everything whether it is skin care, hair, make-up. The state board has set up specific license so one can obtain a license in a specific area. A person can obtain a license to become an esthetician for 600 hours. They can obtain a license to become a manicurists for 350 hours. Again when they implemented these laws back in 1990 they didn't follow the laws over into other areas of the law book. My training - I've had 16 years of experience and over the years I have attended the Conservatory of Esthetics in Chicago. That is the nearest place I've obtained by training.

Chairman Price: So anyone who is a licensed cosmetologist is also automatically considered to be a licensed manicurist or a licensed esthetician?

Tamara Hennessy: They could be, but I require that my technicians receive advanced training before they are allowed to do particular services, including the services that are before you today, which the medical field is classifying as invasive procedures. Those particular procedures will not be taught under my 600 hour requirement in my school. It would fall under the advanced training portion of the curriculum.

Chairman Price: You stated that you require the advanced training, do you think that is something that should be required?

Tamara Hennessy: I believe it should be and I support that, but all the more reason that we need to have a school for that.

Chairman Price: Are you aware of any salons in this state using lasers?

Tamara Hennessy: There is somebody in this room that knows first hand about them doing this in their business.

Rep. Galvin: Are you allowed to do all of these procedures now?

Tamara Hennessy: Yes, we are.

Rep. Galvin: Where are they referred to in the regular bill here?

Tamara Hennessy: They are not. Once again my bill was simply to open up a School of Esthetics.

Rep. Pollert: What basically does an esthetician do?

Tamara Hennessy: Skin care - they work on the body versus cosmetology.

Chairman Price: In your testimony you talked about the fact that manufacturers won't sell to unlicensed personnel. Is there anything other than the spa owner that is making sure that only licensed personnel are using it? What is the manufacturer's liability?

Tamara Hennessy: The manufacturer requires a copy of licensure, whether you're a doctor or licensed cosmetologist. Once again, if you are licensed, salon owner, cosmetologist, you are unable to purchase the medical grade equipment, so you would then purchase the salon or spa grade. Myself as a business owner it is my responsibility to make sure that licensed people are doing the services. I know I would not want an unlicensed person doing those procedures.

Chairman Price: But there is nothing in law right now that prevents you from allowing someone to do it?

Tamara Hennessy: The law book states you must hold a license in the State of North Dakota to practice cosmetology. Estheticians falls under the definition of cosmetology. So yes, the Cosmetology Board governs the practices and the procedures that we do and they must be done by licensed professionals.

Rep. Cleary: Do you have liability insurance and how much does that cost?

Tamara Hennessy: Yes I do. My insurance I pay as a whole - slip and fall, malpractice, liability - I know I pay well over \$2,500 a year. We are required to have a certain amount of insurance and I am far and above beyond.

Rep. Galvin: If you have a licensed cosmetology license, would that not allow you to open a school and specialize in this field?

Tamara Hennessy: What I was told by the board office is because I needed to change some wording in the law book, I was unable to open up a school until I changed the wording. It was just cleaning the wording up and putting it together.

Chairman Price: Once they complete the course there is some sort of exam?

Tamara Hennessy: Yes, students and instructors are required to take a state and national exam.

Chairman Price: So there is one specifically for manicurist and esthetician?

Tamara Hennessy: Yes, there is.

Rep. Porter: Just a question on the amendment that popped up from the Senate side. They put in a verbage that the term does not include invasive care including, and then listed all of the things - would there be a problem in changing that verbage to say the term does not include invasive care utilizing medical grade equipment products - so that it gives you the exact split of what you were talking about - the medical grade and the nonmedical grade?

Tamara Hennessy: If that is your desire as a committee - there are others in the room that practice these procedures that may want to comment. Once again, we're saying the same thing that if we're not allowed to purchase medical grade then we are not using it. So I don't see where that would be a problem.

Chairman Price: In Section 3 you said "must have been actively engaged in the practice of cosmetology for at least one year before application of an instructor's license" - do you think that is enough?

Tamara Hennessy: That is a law that already exists. I did not change the wording.

Chairman Price: Let's say you're going to hire an instructor for the esthetician part of the schooling and they have not been doing that for the past year, they've been working in a different part of the cosmetology license?

Tamara Hennessy: The instructors that I'm speaking from my school would be also Pedesco diplomats that would be required to take the course. Pedesco is nothing more than a French term for a degree in the highest form of esthetics and cosmetology training that you can achieve. Requirements for that is you must be in the industry for at least three years.

Chairman Price: Even though that is what your intentions are we have to legislate for everybody else that may not have your standards, but may attempt to open a school also. Do you want someone that is doing hair care or manicures considered an instructor esthetician program?

Tamara Hennessy: Anybody who obtains any instructions to become an instructor or to get a license must pass a state and national exam. I have not been an instructor, I don't even have my license to instruct, but we don't have legislation every day so that is why I am here before you and it may take another year or two for me to open a school.

Maureen Wanner: Vice President of the N.D. State Cosmetology Association and President of the Bismarck-Mandan Association. (See written testimony.) I do respect all the physicians I worked with directly and indirectly. I have something to offer to the public and deserve to be able to provide my knowledge and experience to them. I have been tending to some women's skin care needs since 1994. I also have a waiting list for the microdermabrasion treatments. The

delivery of my machine is on hold pending the outcome of SB 2371 as amended. Please vote YES on SB 2371 in its original version and NO to the amendment.

Rep. Porter: I have a question on your past experience working in a doctor's office. Were you using the medical grade or the nonmedical grade?

Maureen Wanner: The medical grade.

Rep. Porter: When you were using the medical grade chemicals, was that under direct supervision, under any supervision, under limited supervision? How would you describe the supervision you received?

Maureen Wanner: The fact that it was supervised is because I was employed by the clinic. The surgeon came in to say hello, how are you, do you understand what is going on with the chemical - this was on the very first visit - after that he did not require seeing them before or after the procedure.

Rep. Niemeier: Looking at the amendments again - is laser the only one on this list that is restricted to you in your business?

Maureen Wanner: Yes it is. The microdermabrasion machine - there are regulations where this machine will go to the physician only - this one estheticians only. The people providing the product line say you can only have so much acid on the chemical peel - they are very specific that this salon grade and this is medical grade.

Rep. Galvin: (Holding up shaving razor) This tool would be illegal?

Maureen Wanner: It would be illegal for me to use in the salon.

Rep. Galvin: An ordinary cosmetologist uses these, do they not? I'm a licensed barber and we're not allowed to break the skin - we do it on purpose (laughs from audience - lot of laughs)

from the audience.) Just as a comment - a razor without any guard at all would certainly be more invasive than any procedure you're talking about here.

Maureen Wanner: Right.

Rep. Kasper: I just want to make a couple of comments about why I hope you will put the amendments on the bill that you're being requested. These people create jobs all over our state and have been in business doing this type of procedure for years and years. We need to have laws that allow businesses to flourish and grow in North Dakota, not to build fences around an area of industry and business so that certain business can flourish and other are put out of business. I'm sure that in your wisdom you will see how to properly provide for this business to continue in North Dakota.

Rep. Galvin: Did you say you were for the bill with the amendments?

Rep. Kasper: I want the amendments off.

Diane Reeger: Client. I want you to vote YES on SB 2372 in its original version and NO to the amendment attached to it. I am very particular about health and sanitation. I feel I get this at a salon and I feel more relaxed than having to go to a clinic. I like the convenience of a full service salon.

Jodi Dahl: President and CO-owner of Hair Success Salons and Day Spa's in Fargo, ND. (See written testimony.) I am opposed to SB 2371 with the amendment. We do microdermabrasion in our salon but we work with a plastic surgeon. We ask for this bill to pass in it's original form because we feel in our trade that we deserve the respect for the services that we provide.

Chairman Price: You said there is a facility in Fargo that is doing laser hair removal and is non licensed. Who is it owned by?

Jodi Dahl: They are under investigation. There are three different owners. The Medical Board has brought that up because they don't have a doctor on staff. We don't allow our estheticians to do services without the proper training.

Chairman Price: Do you think, and you're saying you're very careful about your estheticians and their level of training, we need to take a look at that issue? I know you've said there should be a task force to write the laws - is that something that would be addressed?

Jodi Dahl: Back in 1996 I came to a committee just like this to have a law changed - the law was a salon has to be in a self-contained building with no openings and transparencies to any other business - that meant that any salon in a day spa building, in a mall, is illegal. Yet it is still in our law book but is not being practiced. I went to the state board to get my license and I was denied because of this law. How ancient is that? Part of the reason I was having a problem with this was the people that were trying to prevent me from opening my day spa was my competition. The law book needs updating, it is ancient.

Rep. Cleary: Do you think it would be all right to keep the engrossed part of the bill, the new version, if we changed some of the things in Section 1?

Jodi Dahl: I guess I am a little confused in what they mean by invasive, because the services that we do are not invasive.

Jill Burke: President of Hair Success Salon. (See written testimony.) I am here to keep SB 2371 in it's original version. I have come to this meeting because there has been no due process. We are not asking to do laser. The only laser we would do in the future is cold laser that is for the cosmetologists that can be sold. We're not trying to go into their field, in fact we work with plastic surgeons. The biggest I want to stress is to make sure non-licensed people aren't hired to do services in skin care.

Rep. Galvin: I agree with just about everything you say, but one thing I would caution you about is that the cosmetology laws are to protect the public, not to protect any kind of price system.

Jill Burke: Right, I understand that. What I wrote in my letter about protecting the public, that is just by not having non licensed people work on the public. I just wanted to bring up the pricing issue because I feel that is why it was brought up in the first place.

Chairman Price: I want to see where you go as an industry - I know you don't address medical history on people, but.....

Jill Burke: Yes, we do. Before anybody has a facial or massage or any of our spa treatments, there is a form they fill out and it asks medical history questions.

Chairman Price: Is that pretty typical in the industry?

Jill Burke: Yes.

Chairman Price: Because one of the things we were thinking of is for example a pedicure on a diabetic - some of those types of things - so that is pretty common?

Jill Burke: On the pedicures it probably is not so much, because pedicures and nails are a different category than esthetics, but if anybody has seen a callous it is far from any open tissue.

Jodi Zahn: Second Vice President, N.D. Cosmetology Association. (See written testimony.) I would like to state that SB 2249 be voted NO due to the simple fact that the people receiving facial services will not know who is and who is not a licensed professional performing such services. In regards to SB 2371 the original bill indicates proper guidelines which are already in the law. I urge you to vote YES on the original bill and NO on the amendments to this bill.

Don Thorp: Representing the National Cosmetology Association. I am the legislative liaison here in Bismarck. I am urging passage of SB 2371 in its original form. Passage under the other form with the amendment pretty much goes against what I see this legislature trying to do. It

goes against your economic development ideals because people are placed out of business. The cosmetology license only enables that person to operate within a licensed salon. Also the malpractice insurance that Rep. Cleary brought up is generally is based on the number of the technicians we hire and the services that we do. If you provide tanning services, it is a different umbrella. If you provide skin care services, those are also a separate umbrella.

John Olson: Represent N.D. Board of Medical Examiners. We're not here for or against the bill, in fact we have no objection to the bill as it is currently written. Obviously, the amendment was the concern in the Senate. We didn't appear on that bill when it was in the Senate. The Senate Human Services and certain Senators have issues about the kind of instructions that they believe was contained in the bill and they thought there was some issues regarding the practice of medicine. That was communicated to our board and as a coincidence a number of plastic surgeons had a meeting to address the issues of lasers, dermabrasions, invasive types of procedures. The Board of Cosmetology had asked to meet with the Board of Medical Examiners regarding this issue. As it turned out the committee called the board and we went into the meeting with Dr. Kurt Juhala, who is a plastic surgeon here in Bismarek. We tried to fashion an amendment that would address the concerns of the board in terms of invasive procedures by estheticians and cosmetologists. The intent of the board was to fashion some kind of line between what is a practice of cosmetology as compared with what would be invasive enough to constitute the practice of medicine. As a result this amendment was drafted. I'm aware that some of the things in this amendment were taken from other states. We settled upon this language. We would like to have Dr. Juhala appear before your committee and I believe we can get him here at 1:30 this afternoon. We're not here to put anybody out of business. Dr. Juhala said he used cosmetologists licensed people in the profession, and that they were absolutely

essential to the business that he was in as a plastic surgeon. We are here to honestly try to fashion an amendment that addresses that line.

Rep. Weisz: Has there been an issue, currently language does not have these procedures defined - has there been a problem currently with that line supposedly not being delineated properly? Are we seeing an issue or a problem?

John Olson: I've not seen a lot of complaints come across my desk, however, I understood there are concerns by plastic surgeons primarily with the use of lasers. The Board of Cosmetology contacted us about our perspective in terms of what would constitute the practice of medicine. They have been on board with this issue. Let me make another point very clear. When this amendment was drawn, it was given to a member of the board so they understood and were aware of what the committee was doing on the Senate side. The problem is that the definition of skin care is exceedingly broad and with the advances of this new technology, there is increasing concern about the use of those technologies. We need to define that particular practice.

Rep. Cleary: I would like you to define invasive.

John Olson: I suppose I can give you some legal definition which isn't going to satisfy anybody. I don't think there is a legal definition of invasive. I think you would find in case law common sense definitions that would somehow be interpreted and then applied to these procedures. We need some attention given to this.

Chairman Price: You said Dr. Juhala could come at 1:30?

John Olson: Yes.

Chairman Price: We will allow his testimony if it is not going to be considerably long. We will have the rest of the hearing then at 1:30.

COMMITTEE WORK:

CHAIRMAN PRICE: Have you come any sort of consensus next door, Mr. Peske?

DAVID PESKE: I was next door for part of the hearing and the Physicians Medical Board went off on their own and the Cosmetologists off on their own to discuss the further amendments. From the medical side, I think they were reaching an agreement on defining what invasive meant.

CHAIRMAN PRICE: So we can just let this one simmer for awhile, do you think?

DAVID PESKE: No, they aren't interested in prolonging it. I think the cosmetologists can be here tomorrow. They did want to address 2249 as well - the other cosmetology bill.

CHAIRMAN PRICE: We're not technically reopening the hearing again on 2249. We just held it so we could get further education.

DAVID PESKE: Yes.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2371

House Human Services Committee

Conference Committee

Hearing Date March 19, 2001

Tape Number	Side A	Side B	Meter #
Tape 2	X		1300 to 2830
Committee Clerk Signature <i>Corinne Pastore</i>			

Minutes:

COMMITTEE WORK:

CHAIRMAN PRICE: Let's go to SB 2371. Mr. Olson, I understand you are going to present these.

JOHN OLSON: N.D. Board of Medical Examiners. We were granted our request to work out the amendments with the cosmetologists. We agreed on everything except lasers. The medical doctors are concerned about any invasive procedures that goes below the outer layer of the skin. We defined invasive care on the bottom of the amendments. Chemical peels were also a concern of the doctors. The cosmetologists discussed with Dr. Juhala and they came to an agreement. (Discussed other concerns in the amendments.)

REP. WEILER: The Tens Unit, is that the machine they impulse?

JOHN OLSON: Yes.

REP. CLEARY: Have the cosmetologists seen this definition?

JOHN OLSON: They have as of today.

REP. CLEARY: It seems in their testimony they weren't allowed to buy these things - in a certain parameter.

JOHN OLSON: I think that is where the question mark gets bigger. What is being approved by FDA? How and under what circumstances can it be sold? How can it be used?

REP. PORTER: If we would leave laser off of this amendment and it reverted back to what the FDA defines as approved for non medical use, wouldn't we be okay?

JOHN OLSON: I don't know.

REP. PORTER: When we put this type of definition in, then under the Board of Medical Examiners or any other boards, are they limited to the person who can use the lasers that can generate the heat - can they do it based on being inside that practice in a doctors presence but not directly supervised?

JOHN OLSON: There is no separate license or training for using lasers which are used by a variety of specialties. Separately there is no specific licensing or training requirements. It is just assumed that medical doctors need to have that training and education.

REP. PORTER: In the case that you described, it was a medical doctor that was using the laser. By putting this exception in and then having the technology available to have heat generating lasers reduced because of devices added to them so they are safe for a lay person to use. Are we setting up an unfair competitive advantage to the physician office other than the rest of the estheticians by allowing a physician to have a person unsupervised use a different device when you have someone who is trained in it working out in a different field that could have the same training. The only lacking factor would be the non direct supervision of the physician?

JOHN OLSON: I think we're going to get to the precise question in 2249.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2371A

House Human Services Committee

Conference Committee

Hearing Date March 20, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		0 to 4290
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Doseh, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig

Chairman Price: We will call the committee to order and the clerk will take the roll. We will go to SB 2371. Rep. Galvin read information on lasers so we will ask him to tell us what he knows.

Rep. Galvin: This is only about the laser part of it. I am reading only one side of this - I am reading the report from the medical people, but the things that scare me about it is that I would be a little bit afraid of putting my approval on anybody using it is that there hasn't been much research on it, even by the dermatologists. When they perform this laser, they cool the skin. The purpose of this is for coagulation. If you need coagulation you're getting into pretty deep layers of skin. It says here "anyone including healers, tattoo artists, and cosmeticians can buy laser and advertise for their services". On the other side is they can buy them that easily, how can they be

so dangerous? When they go for their training, it is performed on an apple and orange peel under the guidance of a so called specialist. I would be hesitant to allow cosmetologists to use it until I have some more information.

Chairman Price: We had testimony on the salon grade and the medical grade. They were addressing both.

Rep. Galvin: They were addressing both. The dermatologist uses it to take out tattoos and age marks and when you do that, you're getting into some of the layers of the skin. I am a licensed barber and we're not allowed to get into any layers of the skin. I can't believe the cosmetology procedure would be this invasive or they wouldn't be doing it, because their own board wouldn't allow them to do it now. I tried desperately go get a hold of someone that could explain this, but I couldn't get a hold of anybody.

Chairman Price: The e-mail I sent around from Tamara said that the only thing they disagree with is the level of the PH. They said all other changes are the facts they agree with. She did not address any problem with the proposed invasive care language for the laser.

Rep. Weisz: If the cosmetology people are happy with the language, then we have addressed that problem.

Chairman Price: Someone want to address the PH?

Rolf Sletten: Director of the Board of Medical Examiners. When the bill was drafted, it specified that the PH level shouldn't be greater than 3.0. The Board of Cosmetology agreed with that language, in fact they agreed with the original bill. Then we came here a couple of weeks ago and found that there was a small handful of individuals that wanted to argue about various things, so we ended debating the whole thing again with them. It is a little bit frustrating because they aren't an association, they aren't a board, they're just whoever happens to be here that day

and it is very hard to pin down just exactly who it is you are talking to. I think everybody who was in the room would have to tell you that when we discussed it with them they had agreed to this language on the PH level. At that time we had Dr. Juhala here and he talked about the dangers of using products with acidity and how they can burn and they were all in there nodding their heads saying okay, okay. There was a tradeoff there because we agreed to change the percentages but to hold tight on the PH level. Now if we knew they were going to be here debating that, even through e-mail, we would have brought Dr. Juhala or other dermatologists or plastic surgeons who could once again discuss the dangers of using the more acidic products. We didn't think that was still on the table

Chairman Price: You said that when you met with the Cosmetology Board that you agreed to the 3.0?

Rolf Sletten: To the original language, yes.

Chairman Price: So you are still in agreement that the 3.0 is okay?

Rolf Sletten: 3.5 - I'm sorry. They agreed to that.

Chairman Price: Dr. Juhala is on the speaker phone if we want to ask him any questions direct.

Rep. Porter: I am wondering from the standpoint of what we're restricting and the information that we're getting back and forth - if we shouldn't look at this from the medical grade to the non medical grade component. According to what I'm reading, by putting this restriction on an esthetician an individual can still go down to Walmart and buy a product with a PH of 3.0 and take it home and use it and run the same risks of burning themselves with the acid as they would any other place. I can't see why we would all of a sudden take a stance that we want to be more restrictive than the Food and Drug Administration on products that a licensed person is able to use. If it is a non medical grade and it is available for public sale as improved by the FDA, why

would we be more restrictive than that? I think they have a valid argument that we're superseding what the existing FDA requirements are.

Dr. Juhala: In the discussion that we had last week we had talked about the - and I conferred with the dermatologists - they felt we ought to stay at the 3.5 PH because of the less acidity and the less likely of burning. We talked about the percentages of the agents that they could go up to a 30% on the alpha hydroxy acids, which we felt were safe as long as the PH was 3.5. It is definitely a safety issue for the people who are using it because particular agents can definitely cause burning, and when they do, they exfoliate or take the upper layers of skin off you can all of a sudden bring the superficial blood vessels closer to the surface and cause increased problems with palangiata which is incorrect. You cannot correct that and people are going to be left with a potential scar and the vascular markings. We just felt that it was far safer to stay at the 3.5% PH and adjust the percentage of the agents up to 30%.

Rep. Porter: What argument would there be against those same solutions that now an esthetician can't use, but a person can go to Walmart or Kmart and buy a stronger solution over the counter and use at home?

Dr. Juhala: That is a real tough question because there are products that you can buy. You just have to be so cautious with them even though they may be available. I think there is a risk of burning that is definitely there. I'm just looking at it from the safety side. I'm not a chemist. I've just been a clinician that has worked with these different things for many years.

Rep. Porter: If the FDA thinks they are safe for the over the counter sales, why should we supersede what they think is safe through their research and their determination of what a safe over the counter product is?

Dr. Juhala: I have not seen all the requirements of what the FDA calls safe and what is sold in the drug stores, so I can't answer that question a 100% in accuracy for you. That is a very good question that you asked.

Rep. Galvin: Just to put PH into perspective, do you know what the PH is in ordinary vinegar?

Dr. Juhala: I don't. I used only a quarter percent acide acid when I would use that on patients, which was very, very dilute.

Rep. Galvin: I don't know either, I just thought that would give us some idea of what we are dealing with.

Chairman Price: The majority of your food grade vinegar sold in the grocery store is 5% acid.

Dr. Juhala: That was 5% acid and I was only using a quarter percent acid.

Rep. Cleary: In the chemical peels area here it says "30% alpha hydroxy acid, and 20% beta hydroxy acid" - is there a reason for the difference.

Dr. Juhala: I talked with the cosmetologist themselves and that was the solution strength that they felt comfortable using. 30% is definitely a safer number for the patient to have applied to themselves.

Rep. Cleary: But they felt that the 20% beta hydroxy acid was correct for that area?

Dr. Juhala: That is what was discussed last week, yes. They talked about a 2% reforceinal and that is a very low dose. I even asked Maureen Wanner why do you even want to use reforceinal, but apparently some products have that in it that they can use. If they were allowed to use the 2%, they felt they would be able to sell some of their products that have that particular strength in it.

Rep. Galvin: Vinegar is 2.4 to 3.4 and lemon juice is 2.3.

Dr. Juhala: That starts getting pretty acidic, doesn't it?

Chairman Price: Does the FDA approve the products that are sold to the cosmetologists that are labeled salon grade?

Dr. Juhala: I can't answer that. Since the committee session that we had I went back and looked up a number of things on the FDA web site and it is hard to find out what answer you really need to have.

Chairman Price: My question is who makes the determination when the salesman goes into the cosmetologist as to what is considered salon grade and he can sell that to them?

Dr. Juhala: I would hope they have a guideline from FDA, or somebody.

Chairman Price: Anybody in the room know the answer? Mr. Sletten?

Rolf Sletten: The FDA does not specify who can use any particular product or device. They leave that up to the state.

Rep. Cleary: Dr. Juhala, did they agree last week when you met with them to the 3.5, because we're getting e-mail's that say a 3.0 is mostly what they sell in their salons?

Dr. Juhala: When we talked about it, that is exactly what was decided on was 3.5%.

Chairman Price: So we still need the PH in there and not just the percentage?

Dr. Juhala: Yes, I really do because when I talked with the dermatologist consultant they felt it was very critical about the PH percentage.

Chairman Price: And you really believe that for the chemical peel, that we can't just specify salon grade - that we need to be this specific?

Dr. Juhala: That I got from the other guidance from dermatology. When I talked with the dermatology consultant, they were very strong about saying the 3.5% PH.

Chairman Price: Have you been aware of any salon clients being harmed?

Dr. Juhala: I can't answer that, but I know that if the salon owners were to be asked that very privately, I am sure they would answer it very privately too. That is the area I worried about, because I worried about my own patients in practice.

Rep. Niemeier: Could you discuss laser use in your work or in cosmetologist use?

Dr. Juhala: A medical grade laser is used - there are hot lasers, the wave length of which I used the most was about 585-595 nanimeters, which is the wave length of a very brilliant turquoise light. It penetrates through the skin to coagulate blood vessels underneath the surface to try to rid birth defects. Other lasers are used by ophthalmologist when they put a cornea lens in.

Rep. Klein: What is the intensity they are using when they use lasers? What intensity setting do they use to remove tattoos?

Dr. Juhala: The tattoo removal is a much more deep setting. The wave length has to be adjusted and the energy has to be adjusted on that. That is definitely a potential for a burn. I think cosmetologists would be totally crazy to try to do it because it would absolutely be practicing medicine.

Rep. Metcalf: Getting back to chemical peels - it looks to me like there are two components of this. We have the percentage of the acid and we have the PH level. If the percentage of acid were lowered, could the PH level also be lowered?

Dr. Juhala: There are two components. The PH is the acidity that is used on the acid, and the percentage is the concentration of that acid. So we went along with the 30% concentration which on the alpha hydroxys is there, 20% on the beta hydroxy. I thought that was all ironed out last week in that committee.

Rep. Metcalf: If they were using a 20% alpha hydroxy acid, would the 3.0 PH allowed?

Dr. Juhala: That was the discussion that we had and we said "no".

Chairman Price: In fact these products can be sold in Kmart or the salon, but if this goes through and cannot be done by an aesthetician, would it not be safer to have an aesthetician with some training to it than to have them say we can't do it but here is the product and you can go home and do it yourself?

Dr. Juhala: The cosmetology people go through a very excellent training session. The estheticians go through additional training. I would much rather have an esthetician doing it than saying "go home and do it yourself". That is incredibly dangerous.

Chairman Price: It is in the bill they have to have 600 of training. So then you kind of said to me that maybe we should lower the PH balance so the esthetician does it. Is that what you intended to say.

Dr. Juhala: No that is not what I said at all. I really think the chemical side of that - maybe if we could ask somebody from the pharmacy field that sees these products come through. They might be able to give us an answer that would help. I want to be fair to them and to the patient as well.

Chairman Price: Are there any other questions for Dr. Juhala. We thank you for your time.

It appears that they agree on 7a - the two groups. So what do you want to do with 7b?

Rep. Porter: I just have a hard time understanding why we would want to take a position as a policy to be stricter than commercially, over the counter, available product, and why we would put a person in a situation where they would come into a salon or into Kmart or Walmart and an esthetician tells them they can get a much better chemical peel if you buy this product and take it home and use it, but I can't do it to you because I am limited to 3.5%. If you want to talk about harming patients, you are putting them more at risk by sending them home with these chemicals than they would ever be by having a professional applying them. If it is available in a salon grade, I think it is fair game for them to do it. I don't think we should care what the percentage

is. Someone has to be overseeing the solutions and the percentages making sure that it is safe for the salon grade to be applied. I don't think that is for us to micro manage.

Rep. Pollert: I agree with Rep. Porter.

Rep. Klein: I will have to agree with him too.

Chairman Price: What do you want to do?

Rep. Porter: On page 2, subsection b of number 7, we can do one of two things. We can get rid of 1, 2, and 3 and just put chemical peels using salon grade chemicals, or we can lower it down to what is publicly available for over the counter sales. It would be a PH of 3.0. I would be looking what you would think would be the easiest thing to do to get the job accomplished.

Chairman Price: Which one would be the least objectionable?

Rolf Sletten: What is salon grade - where does that word come from?

Chairman Price: Yes, they did use this quite a bit - medical grade and salon grade. That is what we're asking is how to determine what is salon grade.

Rep. Galvin: Didn't one of the medical people say that 3.5 was all right with the cosmetologist? They agreed to that?

Chairman Price: They say the Board of Cosmetology agreed to that.

Rolf Sletten: It was agreed upon last week, then one or two of them sent an e-mail.

Chairman Price: We will be at ease for five minutes. Committee we will come back to order. I did not reach any of the cosmetologists that were involved. I did talk to Senator Espeguard and he said if we wish to put it in subcommittee, he would certainly work with them. He did say at that point that he did feel they did agree to the 3.5, but what happened was they went back and looked at their products and decided some of them were at 3.0. So it is up to you committee what you want to do.

Rep. Pollert: On page 2 of the proposed amendments - I would suggest on b1, 2, and 3 that we change from 3.5 to 3.0 on each one of them. **I will make a motion that with those changes to approve the amendments on SB 2371.**

Rep. Tieman: **I will second that motion.**

Chairman Price: **We have a motion and a second. Discussion?**

Rep. Metcalf: I only have one concern and that is we're basing our 3.0 on the fact that individuals that said this was available commercially. Do we know that this is a fact? I would like to have more information that 3.0 is available commercially.

Rep. Galvin: Addressing Rep. Metcalf's worry - you can buy grapes and oranges.

Rep. Metcalf: But I don't know if they have alpha hydroxy acid in them.

Rep. Pollert: In response to Rep. Metcalf - if we find that this is a problem - this bill if it goes to the house and if it gets passed it is going to go to the Senate and they are going to have to concur or not concur. At that time we can go grocery shopping.

Rep. Porter: What it really comes down to is that if someone can buy the product over the counter, someone can take the products home - the question is what is in the best interest of the public.

Rep. Metcalf: And I agree with you a 100%, but you preface that whole thing with if they can buy it commercially. That is the only thing I am concerned about.

Chairman Price: **All those in favor of the proposed amendment signify by saying Aye.**

Opposed? We have an amended bill.

Rep. Klein: **I vote for a DO PASS.**

Chairman Price: **We have a motion for a DO PASS as amended.**

Rep. Pollert: **Second.**

Page 11
House Human Services Committee
Bill/Resolution Number SB 2371
Hearing Date March 20, 2001

Chairman Price: Discussion? The clerk will take the roll on a DO PASS as amended.

11 YES 1 NO 2 ABSENT

CARRIED BY REP. PORTER

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2371

Page 1, line 1, replace "subsection 12 of section" with "sections" and replace ", section" with "and"

Page 1, line 5, replace "Subsection 12 of section" with "Section"

Page 1, replace lines 7 through 20 with:

"43-11-01. Definitions. In this chapter, unless the context or subject matter ~~thereof~~ otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetology" means any one or combination of practices generally and usually ~~heretofore and hereafter~~ performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding ~~him or herself~~ oneself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology ~~is defined and includes, but otherwise is not limited thereby,~~ the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.
3. "Cosmetology salon" includes that part of any building ~~wherein~~ in which the occupation of a cosmetologist is practiced.
4. "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.
5. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
6. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
7. "Invasive care" means any procedure that invades the live tissue of the dermis, including:
 - a. Laser use, except the use of cold laser technology using nonlinear, pulsed light application for the purpose of biostimulation without the generation of heat; and

b. Chemical peels, except for chemical peels using:

- (1) Thirty percent alpha hydroxy acid, which includes glycolic acid with a pH of 3.5 or higher;
- (2) Twenty percent beta hydroxy acid, which includes salicylic acid with a pH of 3.5 or higher; or
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- ~~8.~~ 8. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
- ~~9.~~ 9. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
- ~~10.~~ 10. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
- ~~11.~~ 11. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.
- ~~12.~~ 12. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
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- ~~14.~~ 14. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
- ~~15.~~ 15. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
- ~~16.~~ 16. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits."

Renumber accordingly

VK
3/20/01
1082

HOUSE AMENDMENTS TO SB 2371 HOUSE HUMAN SERVICES 03/21/01

Page 1, line 1, replace "subsection 12 of section" with "sections" and remove the second "section"

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Renumber accordingly

Date: 3-20-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2371

House Human Services Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep Klein Seconded By Rep. Pollert

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	✓		Rep. Audrey Cleary		
Rep. William Devlin, V, Chairman	✓		Rep. Ralph Metcalf		✓
Rep. Mark Dosch	✓		Rep. Carol Niemeier	✓	
Rep. Pat Galvin	✓		Rep. Sally Sandvig	✓	
Rep. Frank Klein	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Wayne Tieman	✓				
Rep. Dave Weiler	✓				
Rep. Robin Weisz					

Total (Yes) 11 No 1

Absent 2

Floor Assignment Porter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2371, as engrossed: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2371 was placed on the Sixth order on the calendar.

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- ~~14.~~ 14. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
- ~~15.~~ 15. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
- ~~16.~~ 16. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits."

Renumber accordingly

2001 TESTIMONY

SB 2371

**TESTIMONY ON SENATE BILL 2371
SENATE HUMAN SERVICES COMMITTEE
SENATOR DUAINE ESPEGARD**

Good morning Chairman Lee and members of the Human Services committee, My name is Duaine Espegard and I am the Senator from District 43 in Grand Forks.

I am here today to speak in favor of Senate bill 2371 and to ask for your support.

Senate Bill 2371 deals with the establishment of a School of Esthetics and is a bill for an act to amend and reenact sections of the century code that deals with cosmetology schools and cosmetology instructors.

This bill was brought to me by one of my constituents that desire to establish a college of instruction in esthetics. I support this individual as a reputable businessperson that has been in the Cosmetology business for a number of years. I support this new business for our community as a form of economic development. This new business is allowed to be formed and prosper will be another option for those who want to be trained in a trade that is needed in our area.

There are others here today to testify on this bill that know much more about this bill and the practice of esthetics than I do and I encourage you listen to the testimony and to vote for a "do pass" on senate bill 2371

Thank you

Madam

Mr Chairman and members of the committee

My name is Tamara Hennessy. I have been a licensed cosmetologist for the past sixteen years and am the owner of Unique Impressions Salon and Day Spa in Grand Forks. I opened Unique Impressions in 1991 and expanded into the day spa in 1997. One of the largest obstacles I have had to overcome owning the day spa is finding educated professionals to work in my spa. This is why I would like to open a school for Esthetics in the state of North Dakota. There are no cosmetology schools presently in the state of North Dakota that offer an Esthetics program. The Esthetics program teaches a completely different curriculum needed to operate a full service spa. All the training my staff and I have received has been in Chicago.

The North Dakota law governing the profession of Cosmetology was written as far back as 1927 and various amendments have been made over the years. In 1990 the Esthetics program was added to the law book and was amended in 2000. When this program was added to the law book other laws that coincide with the program should have been amended to allow a broader base of educational opportunities in this field. I am asking to simply change the writing of the law to coincide with the various programs that are now governed by the board of cosmetology. Without this change it is impossible for the Board of Cosmetology to approve my application to open a school.

I have asked cosmetology school owners to add this curriculum and there interests lie elsewhere. I have also tried to enroll in an instructors course offered in Grand Forks but was unsuccessful in my attempts. The present school owners have complete control over our industry the way the laws are written at this point. It is for this reason why I have requested the changes before you today.

The esthetics field is a rapid growing market in many states and North Dakota is entering this phase. The medical profession proved it to you just a week ago by introducing to the Senate Bill #2249 requesting that certain medical professionals are exempt from laws governing the practice of Cosmetology. I want educated estheticians to fill these jobs. I want to protect our industry. The Medical profession is asking for the exemption because there are not enough licensed and trained estheticians available to perform the services they find are so important for there patients.

I am asking for you to please consider my request a valid one. One that would keep students in North Dakota and allow more people to expand in this area of business.

Thank You



NORTH DAKOTA STATE BOARD OF COSMETOLOGY

1102 S. WASHINGTON SUITE 310
P.O. BOX 2177
BISMARCK, ND 58502
TELEPHONE (701) 224-9800

TESTIMONY OF BERT KNELL ON SENATE BILL 2371

Madam Chairman, members of the committee, I am Bert Knell, President of the Board of Cosmetology. I am here today to testify on Senate Bill 2371.

N.D. State Board of Cosmetology is in agreement will these changes to allow individuals from North Dakota to receive esthetics training in our state.

Section 1 of 43-11-16 will clarify the hours of training and instruction for esthetics and manicurists. The bill provides the amount of full-time instructors required for the number of students enrolled in a school that offers training and instruction limited to esthetics or manicure and the amount of student instructors a school may have per licensed instructor.

Section 2 of 43-11-27 allows current North Dakota licensees that have been actively engaged in the practice of cosmetology for one or more years to complete the required hours at a course of training approved by the board in lieu of instructor's training in a school of cosmetology.

We as board members truly feel these changes will benefit North Dakota by allowing our people to be trained in our state.

Bert Knell,

**Bert Knell, President
ND State Board of Cosmetology**

**North Dakota State
Board of Medical Examiners**

ROLF P. SLETTEN
Executive Secretary and Treasurer

LYNETTE LEWIS
Administrative Assistant

TO: MEMBERS OF THE SENATE HUMAN SERVICES COMMITTEE
FROM: ROLF P. SLETTEN, EXECUTIVE SECRETARY & TREASURER
RE: SENATE BILL NO. 2371
DATE: FEBRUARY 19, 2001

This is in response to your request for comments from the Board of Medical Examiners.

As you know, the bill sets forth the qualifications for licensure for schools of cosmetology and for instructors in schools of cosmetology. The Board of Medical Examiners has no quarrel with any of that language.

The Board of Medical Examiners is concerned about the scope of practice of cosmetologists, particularly, estheticians who are authorized to "engage in the practice of skin care". Under Section 43-11-01 § (12), skin care is defined to mean "the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person". In other words, "skin care" includes "... otherwise...beautifying...the upper part of the body of any person". That language is extremely broad and could obviously be construed to embrace a number of treatments and procedures which constitute the practice of medicine. Our position on this is as follows:

1. The use of lasers or high energy applications (such as intense light or microwave) of any type is invasive and constitutes the practice of medicine.

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SENATE HUMAN SERVICES COMMITTEE

February 19, 2001

Page 2

2. Dermabrasion of any type is invasive and constitutes the practice of medicine.
3. Dermaplaning or scraping with sharp instruments is invasive and constitutes the practice of medicine.
4. Penetration of the skin by metal needles, except electrolysis needles is considered invasive.
5. Regarding chemical peels, cosmetologists may utilize only commercially available products for removal of skin for the purpose of beautification. Mixing or combining skin removal products is prohibited except as it is required by the manufacturer's instructions.
 - a) Chemicals prohibited for use shall include but are not limited to the following: phenol, resorcinol, salicylic acid and trichloroacetic acid.
 - b) Glycolic acids must be buffered and concentration may not exceed 20% with a ph > 3.5.

Unique Impressions, Inc.

Salon & Day Spa

*Unique Impressions, Inc.
100 North Central Street
Grand Forks, North Dakota 58201*

*Phone: 701-785-7272
Fax: 701-785-4020*

Copyright © 2001 Unique Impressions, Inc.

March 12, 2001

Madam Chairman and Members of the Human Service Committee

My name is Tamara Hennessy. I have been a licensed cosmetologist for the past sixteen years and am the owner of Unique Impressions Salon and Day Spa in Grand Forks. I opened Unique Impressions in 1991 and expanded into the day spa in 1997. One of the largest obstacles I have had to overcome owning the day spa is finding educated professionals to work in my spa. There are no cosmetology schools presently in the state of North Dakota that offer an Esthetics program. The Esthetics program teaches a completely different curriculum needed to operate a full service spa. The curriculum for students enrolled in an esthetician course for a complete course of six hundred hours training must be as follows:

Sterilization, sanitation, and safety	75 hours
Body treatment, facials, hair removal, and make-up	340 hours
Study of law, ethics, management, and salesmanship	75 hours
Related subjects	60 hours
Unassigned	50 hours

Advanced courses will also be offered but will not be a part of the 600-hour requirement. Advanced courses will be available for people who are already licensed and want further training in specific areas.

The North Dakota law governing the profession of Cosmetology was written as far back as 1927 and various amendments have been made over the years. In 1990 the Esthetics program was added to the law book and was amended in 2000. When this program was added to the law book other laws that coincide with the program should have been amended to allow a broader base of educational opportunities in this field. I am asking to

simply change the writing of the law to coincide with the various programs that are now governed by the board of cosmetology. Without this change it is impossible for the Board of Cosmetology to approve my application to open a school.

In Section 1, 43-11-16 item #2 I added the hours that are already set for the Esthetician and manicurist program in the law book. They were just never added into Section 43-11-16 when the law was added in 1990. Item #3 was changed simply to allow a smaller size school to open and operate. As you can see the change is still within the parameters set by the existing law. Two licensed instructors are needed for the first twenty-five students and what I am asking to change is one instructor per twelve students, which will come out to be two instructors for the first twenty-four students. Again this law was never changed when they added the Esthetics and Manicurist program. Because these programs are smaller than the Cosmetology programs, which teaches a broader base of study, the school size should reflect this. Item #8 is requesting that there be allowed two student instructor's per one license instructor.

In Section 2 the change is requested for several reasons. The current law states that the training is to be in Cosmetology when actually the instructor's training itself is on how to instruct not the act of practicing Cosmetology. The State Board cut out some wording in this section because it no longer applies under this section. I am asking for the addition of or a course of study approved by the board. I have been actively trying to enroll in the Cosmetology school in Grand Forks to obtain my instructor's license and have been unsuccessful in my attempts. The reason I believe for this is why would they want to help me get my instructor's license if I am going to open a school that could possibly be competition for them. In the history of this school I have known them to only allow students to go thru the instructor program only if they are going to continue to work for them after receiving there license. After seven different attempts, I finally spoke with the enrollment director and she told me the owner himself wanted to speak with me about his future plans and business opportunities and what roll I would play in his life.

I believe a course of training approved by the board as outlined in the law book would allow more individuals to obtain an instructor's license in various ways including attending instructor courses at the University. Also I felt it to be unusual for a person who has a four-year degree in teaching would have to attend a Cosmetology school to obtain an instructor license. The change of this law would allow the board to consider all forms of instruction as experience and for them to determine the additional instruction needed to obtain there instructors license. No matter what form of instruction you take you still must pass a national and state exam.

I have and will follow the policies and procedures of NACCAS, which is the National Accrediting Commission of Cosmetology Arts and Sciences. To become accredited you must be in operation for two years and must meet there criteria and standards. I intend on doing this.

This school is very much needed in the State of North Dakota to protect our industry from

becoming extinct. The esthetics field is a rapid growing market in many states and North Dakota is entering this phase. The Medical Board introduced Senate Bill #2249 requesting that certain medical professionals are exempt from laws governing the practice of cosmetology. If it is the intent of medical professionals to offer skin care related services in their offices I feel they still must comply with the law and hire licensed professionals to perform these services.

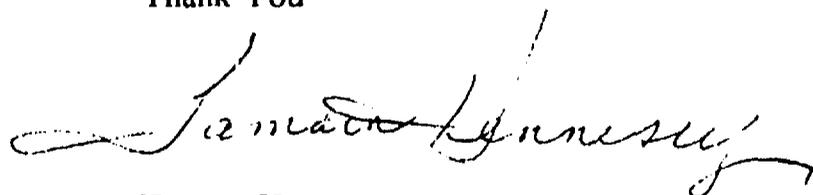
The amendment added to this bill has changed its whole complexion. The medical board was asked to comment on this bill and as a result an amendment was added to change the definition of skincare to exclude a number of services which they feel are invasive and yet they want to hire non-licensed people to perform these services. Licensed Cosmetologists and Estheticians have offered these services for many years. Concerns regarding the invasiveness of the procedures have been addressed by the manufacturers, with the production of two devices with distinctly different power levels and chemicals that are salon grade and medical grade. Salon owners are not allowed to purchase product or equipment that falls under the direction of a medical professional. Most manufacturers have policies regarding sale to non-licensed persons. To ensure that a professional is purchasing the device a copy of licensure is required. The FDA has classified Microdermabrasion devices as a class I device which is non-invasive.

I have spoken to several medical professionals regarding this matter and they to believe this bill can be very harmful. If medical doctors in our community don't want to offer these services in their offices and Cosmetologist and Estheticians are no longer able to perform these services then we will lose our clients and patients to other communities and states. Also many business's that rely solely on performing these services in North Dakota will be forced to close as of August 1st when this new law would come into effect.

I believe that too many bad things are to come if SB2249 passes and SB2371 passes as amended. Senate Bill 2371 was a good bill before the amendment. I am asking to have the amendment removed from SB2371. This bill was intended to keep people in the state of North Dakota to obtain a license for Esthetics and to advance and grow our industry. The medical board is about to take that away.

I am asking for you to please consider my request a valid one. One that would keep students in North Dakota and allow more people to expand in this area of business.

Thank You



Tamara Hennessy

Madame Chairman and Member of the Human Services Committee,

My name is Maureen Wanner. I am the third Vice-President of the ND State Cosmetology Association and the President of the Bismarck-Mandan Association. I want you to vote yes on SB2371 in its original version and no to the amendment attached to it.

I am a Cosmetologist since 1992 and a trained Medical Aesthetician since 1994. I worked in medical clinics for 6 years with several Plastic Surgeons and a Dermatologist. I have training to do chemical peels with Glycolic Acid up to 70%, Salicylic Acid up to 30% both with a low pH and on microdermabrasion machines with turbo pedals.

I received my training with the BioMedic Corporation in Arizona, which focused on medical skin care and the application of chemicals. I am also planning to complete my certification in Paramedical Aesthetics through Advanced Aesthetics, Inc. in Utah.

In May 2000 I went independent and am booth renting space. The name of my business is Glorious! From Head To Toe, and I now rent space in four locations in the state of ND; @ Escape On Third, Bismarck, @ D Franks, Dickinson, @ Styles By Stacey, Beulah, and @ Designs and Details, New Rockford. At the end of year 2001, my hope is to have employees in all my satellite salons.

If SB2371 passes as amended, the training I have received and plan to receive will be of no use in North Dakota, as I will not be allowed to perform these services in this state. However, because of SB2249, someone without my background or training will be allowed to perform these same services and more, under the direction of a Physician in a medical office or medical Day Spa because they will be exempt from the rules that apply to me.

If the amended version of SB2371 is passed, I will have to close all four of my locations. In my satellite salons, 93% of my business is Chemical Peels. In my main salon, 50% of my business is Chemical Peels.

Since I have been on both sides of this fight, working in the Medical offices and now in a salon, I believe we do need regulations. The Corporation that I receive my product line from has a salon/spa line and a Physicians only line. This Corporation regulates what strengths of acids I receive, making sure I do not receive the stronger strengths that are for Physicians only. This Corporation already regulates me and yet I can please my clients with a beneficial, affordable and safe procedure.

I have found that each product line has their own guidelines and they are very similar to each other, regulating which strength salon/spas receive and which the Physicians receive.

Salon/spas in one state have lost their abilities to do chemical peels. Salon/spas in at least 5 other states have gone through this fight and have won the right to continue doing what their Aestheticians are trained to do.

I am confident that we, too, will win because the medical boards guidelines range from being unnecessarily prohibitive to outrageous.

~20% Glycolic acid with pH no lower than 3.5= you can get 15% as an ingredient in a product that you can buy at your local discount store and use at home

~no microdermabrasion machines= the ones made for salons/spas are less power, less crystal flow, without turbo petals, therefore very safe. Suppliers have models specifically designed for salon use by Cosmetologists and Aestheticians. Physicians are offered machines that are more aggressive. (page 3 in hand out)

~no salicylic acid= it is an ingredient in a product that you can buy at your local discount store and use at home

~no resorcinol= it is an ingredient in a product that you can buy and use at home (page 4 in hand out)

~no dermaplaning or scraping the skin with sharp or blunt objects= women can no longer shave your legs and men can no longer shave their faces. The scraping of dead skin (dermaplaning) would be prohibitive, even though it does not at all break the skin layer unlike piercing and tattoos, which does break the skin but are not prohibitive.

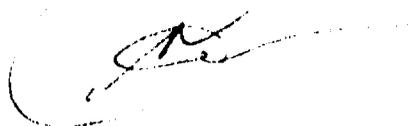
Furthermore, in all the years that I worked in Medical offices performing these procedures, the doctors that I worked with very rarely (if ever) performed these procedures. The Dermatologist and I worked on different days and she was rarely in the building at the same time. Only one Plastic Surgeon required seeing the patient before but never after the procedures. On my first day at the office of the other Plastic Surgeon, the comment was made to me that he did not want to be bothered with anything or anyone I was doing "unless they were a Vikings cheerleader or someone like that" because he considered the services I provided cosmetic service not medical services.

Because of these experiences, I wonder why the physicians now want to restrict our profession. Could it be because they can charge up to \$150 dollars per service without doing the service themselves and pay the technologist small hourly wage?

I do respect all the Physicians I worked with directly and indirectly. They are all fine Physicians with wonderful skills. However, I have something to offer to the public and deserve to be able to provide my knowledge and experience to them. I have been tending to some woman's skin care needs since 1994. I also have a waiting list for the microdermabrasion treatments. The delivery of my machine is on hold pending the outcome of SB2371 as amended.

Please vote yes on SB2371 in its original version and no to the amendment attached to it.

I thank you for your time.



Microdermabrasion Device Comparison Chart*

Name	Manufacturer	Price	lbs.	Handpiece Type (HP)	\$ †	Training	Model Type
DermaGlow	Aesthetic Solutions, USA	\$12,500	32	Sanitizable pyrex glass, single-use sterile plastic, stainless steel HP	\$6	1 day	Esthetic only
DermaPeel	DermaGenesis, USA	\$24,950	43.5	Titanium HP, sanitizable pyrex glass HP, disposable tips	\$8- \$12	4-8 hrs. mandatory, on site	Physician only
Diamond Peel	SlimTone, AU	\$12,500	23	Lightweight, extruded nylon HP, sanitizable or single use plastic tips	\$2.50	4 hrs. on site	Both (2 models)
EuroPeel	LICA, ITA	\$12,900	17	Sanitizable pyrex glass, single use heads in 3 sizes	\$8.50	1 day, on site or location	Both
Microdermex 1000, 2000	Sirnos, ITA	\$12,900	17	Titanium HP with sanitizable or single use plastic tips	\$5- \$6	2 days mandatory, on location or on site	1000- 2000- Esthetician; Medical
Parisian Peel	Medicamet, FR	\$24,500	70	Tungsten carbide HP, single-use plastic tips	\$2	1 day on site	Physician only
Pepita	Mattioli Engineering, ITA	\$11,250	40	Sanitizable pyrex glass HP	\$10	2 days mandatory on location	Both
PowerPeel	Aesthetic Lasers, Inc. ITA	\$12,500	44	Stainless steel HP, sanitizable or single-use plastic tips	\$10- \$12	6 hrs. on site	Both
Silk Peel	General Project, ITA	\$7,900	35	Sterilizable steel HP, disposable tip	\$15	1 day	Both
UltraPeel	SoundSkin Corp., UK	\$9,500	18	Sanitizable high impact acetal copolymer HP	\$1	4 hrs. min on site	Both

*These are some of the manufacturers of microdermabrasion systems whose information was available at press time. The individual manufacturers or sales representatives provided the information regarding each machine. In each case, the information given relates to the esthetician microdermabrasion model, unless otherwise stated. † Indicates disposable cost per treatment.

NAME:

GlyMed Plus
Serious Action Skin Peeling Lotion

ACNE

SKIN TYPE:

All (for acne patients allergic or extremely sensitive to benzoyl peroxide)

FEATURES:

For the more resistive and severe acne skin types, the unique combination of sulfur, resorcinol, salicylic & lactic acid, guarantees results! This specialized state of the art formulation promotes peeling, stimulates healing, acts as a mild antiseptic, retards oil production and kills bacteria while it creates a mild desquamation within the follicle wall, helping to prevent retention hyperkeratosis.

DIRECTIONS:

After cleansing skin with *GlyMed Plus Gentle Facial Wash, Serious Action Skin Wash or Serious Action Skin Exfoliant Wash*, apply a liberal amount to affected areas, thoroughly working emulsion into skin.

ADDITIONAL BENEFITS:

Use in the *GlyMed Plus In-clinic Professional AHA Active Exfoliator* process. See specific treatments for details.

ACTIVE INGREDIENTS:

4% sulfur
3% salicylic acid
2% resorcinol
lactic acid

PRECAUTIONS:

This is an active acne product and patient supervision is recommended. May temporarily cause additional irritations and peeling when used with other acne preparations. Advise use of *GlyMed Plus Oxy-Radical Cream or Serum* to relieve sensitivities. Always direct patient to use sunscreen *Photo-Age Protection Gel or Cream* daily.

This is a product for
the client to use
at home.

HAIR SUCCESS SALONS & DAY SPA'S

March 12, 2001

Dear Madam: Chairmen and members of Human Services,

Hi ,My name is Jodi Dahl President and Co-owner of Hair Success Salons & Day Spa's in Fargo I am writing this letter to apose bill #2371 with the amendment. I am here to seport the bill without the amendment.

In the U.S. there are Day Spa's opening up all over. Noelle DeCaprio was the founder of "Day Spa's" in the U.S.. She was the consultant we hired to train us in how to open and operate our Day Spa business. In our Spa's we work with a plastic surgeon. We do her pre-operation and post-operation skin care. We send her clients that want more than we can offer. I know of doctors that hire nonlicensed people to preform such services as micro-dermabrasion and say it's under a doctor provision. When the doctor is' nt even in the room or sometimes not even in the clinic. Micro-dermbrsion is a service that needs to be preformed by licensed cosmetologist. They need to know how to determine skin types because some skin types this treatment is not to be preformed on. Our industry has taken **huge** leaps in advancing the training in skin care. Schools are now teaching Day Spa training. Jill my partner and I have taught seminars and spoken at trade show on our industry. There are Salon Spa's like us all over the U.S.. Micro-dermabrasion is \$120.00 service ticket in our spa. This service dramatically effects the pay and the professionalism of our industry we have worked so had to grow. 49 other states operate just like us. North Dakota need to continue to support our industries trade "Skin Care".

I feel Strongly that we need to designate a task force to update our N.D. Cosmetology Law Book . I encounter laws in the book when opening our spa (which was the first one in the state to open) that were so ancient they didn't make sense. I had to come before you then to have some of them changed. Our board of cosmetology says their job is to protect the client in department of sanitation. That is true but also they should be responsible for informing us when things like this are going on . I don't feel this is clearly recognised. This task force should consist of nonsalon owner to protect that these laws aren't self serving to just certain types of salons. This is not meant to degrade our current board at all. This is a huge undertaking that just hasn't been done in years. We just need to review it and update it to better the professionalism of our industry. To strengthen our trade.

Dear: Madam Chairman and Members of the Human Services,

I am writing to you to oppose the amended version of Bill #2371. My name is Jill Burke, president of Hair Success Salons and Day Spas in Fargo, North Dakota. I am opposed to the amended version of this bill. This will adversely impact our industry. It will reduce our company's profitability and ultimately result in lost jobs and wages. We have always maintained highly educated estheticians, and are continually Educating them. The spa industry is vastly expanding across the United States and Europe. I am a member of TSA and ISPA, which are associations for skin care. Allowing individuals to do skin services without the proper licensing and training will be a danger to the public. The public will also be mislead into believing that their level of skin service will not change, and that they are still receiving the same professional level of service. This Bill will Discount the efforts of the individuals who have taken the time and effort to become licensed and properly trained. North Dakota estheticians will be forced to take reduced salaries or even put out of business as of result of this bill. At Hair Success alone we have 94 employees of which several of them are estheticians.

Another concern that I have is that hardly anyone has been properly informed of this bill. I feel that the cosmetologists of North Dakota have the right to know about the dramatic changes that this bill is proposing. I was made aware of this bill through a phone call two days ago, leaving me no time to gather information for today's meeting. I am shocked and disappointed in the way this has been handled. I feel we have the right to be informed; I feel this has been done behind the cosmetologists back. I feel there should be information drafted and sent to the cosmetologists and estheticians of North Dakota regarding this Bill and allowing them time to respond.

Sincerely,

Jill Burke
President of Hair Success Salon

Monday, 12 March, 2001

Madam Chairperson & Members of the Human Service Committee:

I, Jodi Zahn am here representing the North Dakota Cosmetology Association. I have been very active in the industry nationwide for 18 years. As second vice president of NDCA, I would like to state that bill 2249 be voted No upon, due to simple fact that the people receiving facial services will not know who is and who is not a licenced professional performing such services.

A licenced professional receives education in the following:

- Theory of Massage (motor nerve points of the face)
- Facials concerning different skin conditions
- Facial makeup (corrective makeup)
- Corrective placing and shaping of the eyebrows
- Sanitation of implements
- Superfluous hair removal
- Cells (growth and reproduction, tissues, ect.)
- The skin and disorders of the skin
- Histology of the skin
- Anatomy (bones, muscles, nerves of the face, neck, and cranium)
- Chemistry as applied to cosmetics

My major concern is that if this bill passes, clients & patients will have services done to their face, by people who are not educated in what they are doing. It is important that one must have the education & pass a state board exam before performing facial services on any individual. This is to protect the public and keep professionals educated on their profession.

In regards to bill 2371 the original bill indicates proper guidelines which are already in the law. It is just a condensed version for a smaller type of school. This is great ... a new school will be opened in North Dakota for professionals who wish to specialize in facial services. This will bring more revenue into our state.

The ammended version of this bill revamps the definition of skin care which will harm professionals in the industry I represent, and many will be out of jobs.

I urge you to vote yes on the original bill and no on the ammendments to this bill.

Thank you for your time,



Jodi Zahn
Second Vice President NDCA
Stylist / Manager / National Education
City Looks Salon Internation

SB 2371

TO WHOM IT MAY CONCERN**Ladies and Gentlemen:**

With the explosion of interest in microdermabrasion, many of the State Boards of Cosmetology are taking a hard look at the modality for use by aestheticians, and whether or not it should be allowed.

I have been asked to address the issue of microdermabrasion and its use by aestheticians by a number of State Boards, including that of Ohio. In Ohio, the issue was resolved by providing guidelines for manufacturers and the State's licensees, a copy of such policy is enclosed. The Ohio State Board of Cosmetology has endorsed my book "A Complete Guide to Microdermabrasion - Treatment, Technique & Technology" as recommended reading for those interested in performing microdermabrasion treatments. This book is the basis for the two-day classes that I teach around the country. A copy of my article submitted to Skin Inc. magazine, which has not yet been published, is also attached, which addresses the concerns of many state boards of cosmetology regarding microdermabrasion.

This is a procedure in which I advocate the establishment of a standardized, certification course for the use of microdermabrasion, beyond the basic training provided by most manufacturers.

It is my opinion that microdermabrasion in the hands of a well-trained aesthetician is both safe and beneficial to our clients. The procedures performed by aestheticians deal only with the Stratum Corneum, which is non-living tissue, and exfoliate in the same manner as salon-strength AHAs, only by a mechanical means. In most instances the microdermabrasion machines are configured so as to exfoliate no farther than the scope of an aesthetician's licensure, unless there is severe misuse.

A well-trained aesthetician will be able to recognize both contraindications and potential concerns during the course of the client consultation, and should be able to utilize good judgment and common sense in delivering an adequate, safe and beneficial microdermabrasion treatment within the salon and spa setting, just as they would with an AHA treatment.

As with most issues concerning any potential hazard, the potential for harm with the use of microdermabrasion is directly related to the "intent" of the person operating the machine. Every microdermabrasion machine available on the market today can be used safely when the aesthetician is properly instructed in the treatments that we are allowed to perform within the scope of our licensure.

Please do not hesitate to contact me if you have any further questions regarding this matter.

Sincerely,

Laura L. Root, CIDESCO Diplomate

Enclosures:

Ohio State Board of Cosmetology Policy, 9/13/99

Microdermabrasion Legislation, Skin Inc. submission 3/1/01

Microdermabrasion Legislative Update

By Laura L. Root, CIDESOC Diplomate

For Skin Inc. Magazine

The emergence of microdermabrasion as an effective tool for the esthetic market gives rise to questions of who should use this tool, what treatments should be permitted, and what training should be required. There are even questions of what authority should regulate it. An on-line Mini Survey conducted by this magazine and published in the February 2001 issue (p. 22), asked the question "Who should regulate microdermabrasion?" Sixteen percent felt the FDA should regulate it, sixty six percent felt state cosmetology boards should regulate it, and another sixteen percent felt that state medical boards should regulate microdermabrasion.

In 1998, the Food and Drug Administration (FDA) "cleared" microdermabrasion as a Class I exempt device, the same classification applied to the electric toothbrushes many of us may have in our bathrooms. Once cleared, the FDA has nothing further to say over who uses it. Some people have misinterpreted the FDA guidelines describing microdermabrasion machines, while a Class I exempt device, as being for "prescription use" only. Nancy Leonard, Public Health Advisor in the FDA's Office of Health and Industry Programs, advises that "the Code of Federal Regulations only discusses "prescription" in terms of adequate directions for use" and that each state defines how they want the device to be used. Sources at the FDA indicate they have no objection to esthetic professionals performing microdermabrasion treatments, as long as they are duly licensed and properly trained. In other words, the States are responsible for the regulations applicable to microdermabrasion and the licensure and training of its practitioners. This makes the licensing board of each state the proper regulating authority.

Our state boards exist to protect the public and set guidelines for the practice of cosmetology and esthetics. Their members are generally well meaning, but not always fully informed when it comes to new esthetic procedures such as microdermabrasion. Many of the boards do not have the benefit of a practicing esthetician or skin care professional as a member and this has sometimes resulted in the misunderstanding of what microdermabrasion and other types of skin exfoliation really is or what it can do. Some board members have confused "microdermabrasion" with "dermabrasion" and concluded

that this is NOT a procedure for a licensee of the cosmetology board (a few physicians have seen the profit potential of microdermabrasion and helped foster this misunderstanding). Of course open medical dermabrasion is not an appropriate procedure for an esthetician; but this is not the same as microdermabrasion and it is not a proper reason to deny this new procedure to appropriately trained licensees.

State board concerns also revolve around determining which license holders should be able to perform microdermabrasion (cosmetologist and/or esthetician) and how to ensure that licensees are provided proper training to perform these new procedures. This question includes what "proper" training should include (the curriculum), in addition to who is to provide that training - whether it be a manufacturer of a machine, cosmetology school or independent educator.

Many states are attempting to address these issues and a few have begun providing guidance to their licensees. I would like to suggest that the state boards consider the following guidelines to carry out their mandate to protect the public, while allowing their licensees to give their clients the benefits of the best possible esthetic services:

- Require cosmetology licensees to obtain advanced skin care training prior to obtaining microdermabrasion training and before performing treatments on the public;
- Require estheticians and qualified cosmetologists (as above) to obtain at least 8, preferably 16, hours of microdermabrasion training before the licensee is able to perform treatments on the public;
- Require all educators, including manufacturers, distributors, esthetic/cosmetology schools and independent educators, to obtain approval of their training curriculum by the Board before being able to give classes in the state;
- Require that manufacturers not sell machines to anyone other than a qualified, licensed professional;
- Specify particularly that a State Board of Cosmetology licensee is prohibited from using any exfoliation method that goes beyond the stratum corneum;

- Specify particularly that duly qualified licensees are prohibited from performing "combination" treatments, *i.e.* application of chemical or acid exfoliants immediately after or within 7 days of a microdermabrasion treatment.

In the last four years, several state cosmetology boards have taken the initiative and given the general subject of skin exfoliation a new look. They have addressed the issues of both chemical and mechanical exfoliation, and in a number of cases, have acknowledged that the training that the practitioner or licensee obtains prior to performing these treatments is significantly important. Currently at least one state has set forth specific guidelines for the manufacturers and distributors, and others are developing similar guidelines.

The first state to specifically address this issue was Ohio. According to James R. Rough, Executive Director of the Ohio State Board of Cosmetology, "The Ohio State Board of Cosmetology was concerned that unqualified people would attempt to provide microdermabrasion services. The Board had a committee review the procedure and discussed the necessary training with knowledgeable users and The Esthetics Manufacturers and Distributor Alliance (EMDA)... [They] were very helpful in understanding what the machines were designed to do and how to establish a thoughtful requirement. The Board does not want to inhibit salons and spas from the latest techniques, but does want to ensure the safety of the public, which is our charter. The Board is working on a more generic rule to govern all of these types of issues as they arise to establish what is within the scope of practice of our licensees and what training is required. The main concern of the Board is to certify that licensees have been trained ... in the proper operation of the device in question."

I applaud the Ohio State Cosmetology Board for designing and passing a specific law on the practice of microdermabrasion and chemical exfoliation in their state and hope many others follow their lead. However, I believe there is a significant shortcoming with their legislation in that it allows cosmetologists to practice this treatment with no more skin care training than the few hours they were given in beauty school, and no more microdermabrasion training than is required of the State's skin care specialists, which is 8 hours provided by the manufacturer. The safe use of microdermabrasion machines

requires the knowledge and expertise of a trained skin care professional. Though many cosmetologists have been performing professional skin care with expertise for years, the present wording of this legislation allows cosmetologists who have never even performed a "beauty school" facial since receiving their license to begin performing microdermabrasion immediately, sans any skin care training. In my opinion this is contradictory to guarding the safety of the public and should be addressed, possibly through post-license training of a chosen amount of hours or taking the skin care specialty examination and practical.

Janet McCormick, an Ohio licensed CIDESCO esthetician, national educator, and an author of over 250 articles in the trade magazines within our industry supports this concern. "I believe that cosmetologists should be allowed to perform microdermabrasion, but only after proving skin care training and expertise," she says. "These professionals need to know skin care basics and client safety prior to putting the hand piece of a microdermabrasion machine in their hands, and then onto a client's face. This expertise can only be learned through proper and thorough education and its verification."

The state of Illinois has also established guidelines that became law in 2000. Illinois' ruling provides the industry with an exceptionally well-defined description of exfoliation, and includes chemical preparations as well as mechanical devices and limitations. "Exfoliation is defined as a procedure utilizing cosmetic preparations or mechanical devices to slough off the stratum corneum of the epidermis. ... Mechanical devices include, but are not limited to microdermabrasion. Professionals regulated by this Act shall utilize cosmetic preparations or mechanical devices, which limit the exfoliation to the stratum corneum of the epidermis." Unfortunately, there are no guidelines that require training provided by either manufacturers or independent educators.

The estheticians from Utah are going about this issue in a different way, and until now Utah has had no separate esthetic or nail licensing. According to Ruth Ann Holloway, Master Esthetician, "Over several years of observing the ..field of esthetics, it became evident that there would be a conflict with the physicians over many of the procedures currently being done by estheticians. This created a desire to set a higher standard in esthetics, and I felt three years ago that a two level status for estheticians

should be established in the state of Utah. Many of the already 'Master Level' estheticians agreed, thus ensued our push for a Basic (600 hours) and Master Esthetician (1,200 hours) license.

Our lobbyist was invaluable in the negotiating and protecting our areas of expertise as estheticians. In our meetings held with the Utah Medical Association, it became evident that the physicians wanted specific boundaries in regard to microdermabrasion and chemical exfoliation, and this is where the Master Esthetician status was made indispensable. Without it, the physicians appeared ready to appropriate microdermabrasion and chemical exfoliation solely for their own offices. By explaining that only the Master Esthetician would be allowed the advanced treatments of microdermabrasion, chemical exfoliation, lymphatic drainage, we were able to establish that there would be competent Master Estheticians providing these services to the public, as public safety is the main argument for licensure. The estheticians of Utah are proud of our enterprising two-level licensure, and feel the campaign to assure its passing was worth every effort."

This type of advanced license is progressive, and recognizes the need for advanced training for those estheticians that may wish to perform the more advanced clinical treatments, such as microdermabrasion or chemical exfoliation. A well-written regulation, as Utah's appears to be, should assuage the fears that the medical community has with regard to microdermabrasion and chemical exfoliation, and provide strict guidelines prohibiting the use of any exfoliation procedure going beyond the stratum corneum layer of the epidermis. Of course, this may not address the true root of the problem relating to esthetics and the medical community, as we well know.

Montana's State Board of Cosmetology has also endeavored to address the concerns of licensees, and their proposed legislation gives machine specifications, and provides, in part, that the microdermabrasion machines must be "closed" systems and that they must be used in accordance with specific manufacturer directions. Safety and sanitation issues are also addressed regarding the handling and disposal of the crystal and plastic tips.

In order to perform microdermabrasion, Montana's licensees must also give their

State Board a notarized copy of the certificate of completion for training for EACH machine or device used by the licensee, prior to the licensee using the device on the public. I believe that while this regulation is a commendable attempt to ensure appropriate training, most who have worked with different microdermabrasion machines will acknowledge that while each machine has its own idiosyncrasies, the microdermabrasion technique and treatment process is virtually the same no matter which machine is used. Thus, trying to regulate manufacturers and machines, other than by requiring them to submit training curriculum and prohibiting sale to non-licensed persons seems tedious and almost unenforceable.

Another drawback that I see in the Montana regulations is that they do not appear to specify the required number of hours of training required or what that training is to include, regardless of whether it is provided by the manufacturer or a training class independent of a particular manufacturer.

The New Jersey State Board has recently raised the awareness of problems concerning communication between a state board members and its constituents, and this has caused many licensees to petition the board for the right to be heard regarding microdermabrasion and other modes of exfoliation. The New Jersey State Board has seemed to thwart participation by its licensees in the course of its examination of microdermabrasion, and in fact, had changed the timing of at least one public meeting without notice. This makes some wonder what the Board has to fear from a publicly heard honest "give and take" between its members and licensees involved in the procedure in question.

Numerous telephone calls to the Executive Director's office made by interested individuals resulted in different answers to the question: "Is the State Board considering regulating microdermabrasion, and if so, how?" Some of the answers given included: "The Board is looking into the matter," "The Board does not have microdermabrasion on the agenda for the next meeting," and "The Board has no intention of regulating microdermabrasion at this time."

On the other hand, some professionals in New Jersey were informed in November that the New Jersey State Board (consisting of one representative, a cosmetologist, not an

esthetician) and the Medical Board met behind closed doors, without prior public notice, to "discuss" the use of microdermabrasion by estheticians. Based upon a single "complaint" of dubious origin, the State Board Member capitulated and the Medical Board put forth the following limitations, as verbally reported: "Microdermabrasion is to be done only by a physician. Microdermabrasion is not to be done by an esthetician, *even* in a physician's office. No grandfather clause has been provided for." This ruling was to go into effect 90 days after that meeting, with the written regulation available in 60 days. Apparently enough licensees heard about these proposed actions and plans to regulate microdermabrasion appear, for now, to be on hold.

As the State Medical Boards possibly attempt to influence their respective legislatures over the less affluent or less well represented cosmetology boards, their actions have the potential to result in bitterness and confusion between the professions. I believe some of the medical community's concerns are based in their awareness of certain combination treatments that have been promulgated by some skin care product companies and machine manufacturers. These concerns are well founded and represent an issue that the state cosmetology boards must address, both in terms of their written policies and enforcement.

For instance, so-called "combination treatments" using microdermabrasion and THEN the application of an exfoliation chemical can cause severe skin irritation and the possibility of scarring and/or hyper- and hypopigmentation and are not advocated to be used by the licensed skin care professional, despite reports by some of "great results". Once the skin has been microdermabraded, there is no control over how deep any chemical exfoliant may penetrate; thus bringing the potential of oozing, bleeding, scabbing and scarring of the treated skin - and thus going beyond the esthetic licensure. Professional liability insurance will not cover a licensee in these instances if a client chooses to bring suit in a court of law.

For the esthetician working within the physician's office, this of course poses a different situation. If the physician with whom the esthetician works deems it necessary for the particular client's skin treatment to include a chemical exfoliation after microdermabrasion, it is strongly recommended that the skin care professional perform the

microdermabrasion treatment and the physician then proceed to apply the chemical. Keep in mind, also, that this type of combination treatment also poses downtime for the client that the normal protocols do not.

Our State Boards, in general, are doing the best that they can for their esthetic licensees, given the constantly changing technology in both products and machines. Beyond our responsibility to keep our clients and ourselves safe and healthy, our job must also be to ensure that we keep our boards informed about new techniques and stay informed ourselves regarding regulations that have the potential to restrict our chosen profession and livelihoods.

Author Biography:

Licensed in both Arizona and Oregon, Laura Root is a CIDESCO Diplomate, and has published *A Complete Guide to Microdermabrasion*, in addition to a second manual, *Techniques & Protocols for the Medical Skin Care Clinic*. She has established two-day non-manufacturer sponsored microdermabrasion classes through Esthetics Education Resource; for class schedules and ordering information, Laura may be contacted at 602-493-5982, FAX: 602-953-8297; via e-mail at llroot@home.com or through www.beautytech.com/microdermabrasion

The following information may be used as side bars or however you see fit!

States that have no stated policies or rulings on microdermabrasion or chemical exfoliation include: Alaska, Arkansas, Connecticut, Delaware, Hawaii, Indiana, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri (may use up to 10% Phenol), Nebraska, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Washington and Wyoming.

The State Boards of Cosmetology that do not have specific policies or rulings, but have committees investigating exfoliation by estheticians, whether it is by microdermabrasion or chemical means, include: Florida, Kansas, New Jersey (see details above) and Wisconsin.

States that currently have no separate licensing for esthetics includes Kentucky and Virginia. As previously mentioned, Utah has just passed legislation instituting a separate license for esthetics, and the bill is sitting on the Governor's desk awaiting signature, at this writing.

The following chart lists each state board of cosmetology's stand on microdermabrasion and/or chemical exfoliants (where indicated). All information was provided by each of the individual state boards either in writing through submission of rules and regulations, or telephonically.

State	Microdermabrasion /Chemical Exfoliant Rulings
Alabama	Requires licensee obtain machine manufacturer certification of training.
Arizona	Allows exfoliation of dead tissue, prohibits dermaplaning and any tool that invades the skin; allows 2% phenol, 37-40% neutralized glycolic acid.
California	Prohibits invasive procedures such as application of topical substances

that affect living tissue, removal of skin by means of a razor-edged instrument, and abrasion of skin below the non-living, epidermal layers.

Colorado | By agreement with the Medical Board, Cosmeticians are allowed to use TCA at levels of less than 20%, glycolic at less than 30% with pH of 3.5, and microdermabrasion of the upper layers of the stratum corneum.

Illinois | Exfoliation is defined as a procedure utilizing cosmetic preparations or mechanical devices to slough off the stratum corneum of the epidermis. Cosmetic preparations include, but are not limited to alphahydroxy acid exfoliations, betahydroxy acid exfoliations, Jessner's exfoliations, enzyme exfoliations and resorcinol exfoliations. Mechanical devices include, but are not limited to microdermabrasion. Professionals regulated by this Act shall utilize cosmetic preparations or mechanical devices, which limit the exfoliation to the stratum corneum of the epidermis. Alphahydroxy acid cosmetic exfoliation preparations are limited to a maximum concentration of 30% with pH no lower than 3.0 as established by the Cosmetic Ingredient Review.

Kentucky | State Board considers microdermabrasion a medical procedure and cannot be performed by a licensed cosmetologist.

Maryland | Dept. of Labor, Licensing and Regulation deems "The use of acids, microabrasers, and/or chemical peels are beyond the scope of an esthetician's license and should only be performed by a licensed physician or dermatologist." Also prohibits a licensee from displaying license if they work within a physician's office. ***While this regulation sounds harsh, it does appear that because of the lack of manpower, it is not well enforced.

Montana | Only microdermabrasion machines specifically for esthetic services are allowed; must be closed systems, be kept clean, sanitary and safe, used only in accordance with specific manufacturer directions; Licensee must advise the client on the use of sun protection; the Licensee must provide the Board with a notarized copy of the certificate of training for each machine or device to be used and display same. Use of: phenol, resorcinol, salicylic, TCA, Jessner's solutions for chemical exfoliation is prohibited; Glycolic acid in concentrations of 30% or less, with a pH of not less than 3.0, and application time of no longer than 2 minutes is permitted.

Nevada | Requires approval of each, individual machine by the State Board; prohibits use of salicylic acid and resorcinol; limits exfoliation of dead cells for the purpose of "beautifying the skin only".

North Carolina | State Board of Cosmetic Art Examiners states "In the scope of the {esthetics} definition, licensed estheticians may perform microdermabrasion treatments and chemical peels."

Ohio	Manufacturers must sell only to licensed salons and schools, provide the State Board with training materials and certification process and provide a customer list of salons using the equipment/products and records of training provided on a quarterly basis. Licensees must display the manufacturer's certificate of training for each of the services provided, follow the EMDA guidelines for AHA procedures, comply with manufacturers' directions for use of machines, advise clients of necessity of sunscreen protection following procedure.
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Oregon	Facial technologists... may use chemicals or products, natural or synthetic, which act on or affect the epidermis layer of the skin... shall not use chemicals or products... which act on or may create damage to the deeper dermis layer of the skin. Prohibited: unbuffered AHAs greater than 15%, buffered AHAs 10-30% with a pH of less than 3; any concentration of formulation of AHA greater than 30%; any concentration of formulation of TCA containing phenol or resorcinol or salicylic acid which acts on living tissue; all exfoliant and chemical peel products or formulations shall be used in accordance with manufacturer's recommendations.
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Tennessee	State Board individually reviews each machine for approval; has deemed "one machine was permissible for use by aestheticians".
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Utah	Master esthetician is allowed to perform microdermabrasion and chemical exfoliation. At this time, no further details regarding specific regulations restricting performance or requiring specific training beyond licensure is available.
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Those states, from which no response could be obtained, even after direct request include: Georgia, Idaho, Washington, D.C. and West Virginia.



Uniquele@aol.com

03/19/01 07:04 PM

To: cprice@state.nd.us

cc:

Subject: Re: SB2371 & SB2249

Dear Representative Price:

Rolf Sletten from the Medical Board today sent me a fax with the way they would like the amendment to read. We do not agree with the level of pH that they are suggesting. I spoke with Maureen tonight and again she told me that consumers are allowed to purchase product off the shelves at Walmart or Kmart that high a lower pH then what the medical board is suggesting. Examples of the product Maureen shared with your committee last Tuesday. We would like the levels to be at a pH of 30% or higher. The Medical Board is suggesting 35% or higher. Once again the services and product that Maureen has been offering her clients are at 30%. This law would drastically effect her business and others as well.

All other changes the Medical Board has suggested in the fax I received today I agree with. I sent Senator Espegard an email asking if he could please have the new amendment drawn up and present it to the Human Service Committee as soon as possible. The changed amendment does not include what Rolf Sletten faxed me today. If you would like to include there changes with the exception of the pH level and change it to a pH of 30% or higher we would be comfortable with that.

I will fax to you tomorrow the information that I had received regarding other state laws and legislation that has been implemented across the country. Rolf Sletten also sent me an amendment that would change SB2249. This change would allow doctors to hire non-licensed people and have them work outside of their office in an after care clinic. I would assume they would consider a spa an after care clinic such as Day Spa Athena. I still believe they should have to hire licensed people to perform these services.

I will try to call Senator Espegard again in the morning so he can get the new amendment to your committee for review. Can you please let me know where I can fax the information that I have for you.

Sincerely,
Tamara Hennessy



"Victor Wanner"
<44WannL@goesp.co
m>

To: <wdevlin@state.nd.us>
cc:
Subject: SB2371

03/19/2001 10:22 PM

Dear Repetitive,

Thank you for your time.

I believe I need to clarify Tamra's email. pH balance is not in percentages, it is a log scale. She meant 3.0 not 30%.

The pH balance the medical board mentioned was 3.5 and we would not be allowed to use any thing lower than that. The lower the pH balance, the more irritation, this is true. Please keep in mind that you can buy items at Walmart, Kmart, etc. with pH balances of 3.0 (federal regulated). About 80% of what I sell in the salon has a pH of 3.0. If the new amendment passes with 3.5, I and many others will not be able to sell our retail. Why, again, should we be limited and not the discount stores?

If these things are going to be itemized, then so be it. But allow us a pH of 3.0. Please consider the amendment that Tamra has purposed. Itemizing will hold the door open for more itmizing in the future when new trends become public.

Thank you again for hearing our voice.

Maureen Wanner

663-9154

400-5457 cell