

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 30D (16 **Del.C.** Ch. 30D)
16 **DE Admin. Code** 4454

FINAL

ORDER

4454 Tanning Facilities Regulations

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Tanning Facilities. The DHSS proceedings to adopt the regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Chapter 30D.

On September 1, 2014 (Volume 18, Issue 3), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 1, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence." One letter of endorsement was received during the public comment period from the American Academy of Dermatology Association.

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Tanning Facilities were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. One letter of support was received on the proposed regulation during the public comment period (September 1, 2014 through October 1, 2014).

Entity offering a letter in support of the proposed regulation:

American Academy of Dermatology Association, Brett Coldiron, MD, FAAD, President:

(In Part)

On behalf of nearly 13,000 U.S. members of the American Academy of Dermatology Association (AADA), I am writing to share our support for the proposed indoor tanning regulations, which implement legislation protecting minors under 18 from using indoor tanning devices (SB 94, 147th General Assembly, Regular Session). As dermatologists, we dedicate our lives to promoting habits in our patients that ensure healthy skin. The AADA commends Delaware for its leadership in enacting SB 94 and we urge the Division of Public Health to adopt the proposed rule.

The public comment period was open from September 1, 2014 through October 1, 2014.

Based on comments received during the public comment period, no changes have been made to the proposed regulations. The regulation has been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Based on public comments received, no changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Tanning Facilities are adopted and shall become effective January 1, 2015, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

4454 Tanning Facilities Regulations

1.0 Definitions

The following words and terms, when used in this regulation, shall have the meaning set forth in 16 Del.C. § 3002D: ~~"Customer", "Department", "Minor", "Operator", "Person", "Tanning equipment or device", "Tanning facility".~~

2.0 Requirements of a Consent Form:

2.1 The consent form to be used by a tanning facility shall include the following model language:

~~WHAT YOU SHOULD KNOW ABOUT TANNING:~~

~~AVOID UNNECESSARY EXPOSURE:~~

~~Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.~~

~~ULTRAVIOLET RADIATION SENSITIVITY~~

~~Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain cosmetics, foods or medications (including, but not limited to tranquilizers, diuretics, antibiotics, high blood pressure medicines or birth control pills). A person taking a prescription or over the counter drug should consult a physician before the use of a tanning device. A person with skin that burns easily in the sun or does not tan in the sun should avoid the use of a tanning device.~~

~~PROTECTIVE EYE WEAR~~

~~Failure to use protective eyewear may result in severe burns or long-term injury to the eye.~~

2.2 A model consent form that a tanning facility may use is found at Appendix A.

3.0 Records

A tanning facility shall maintain at the facility records of consent forms for all minor customers for a period of at least 3 years from the date of signature on the consent form. The tanning facility shall make records of consent forms available, upon request, for review by the Department.

4.0 Compliance and Enforcement Procedures

4.1 Administrative Penalties

Whoever violates a provision of these regulations shall be subject to an administrative penalty of \$250.00 for the first violation, \$500.00 for the second violation and \$1,000.00 for the third and all subsequent violations.

4.2 Right to Administrative Hearing

Upon due notice that the Department intends to assess a tanning facility an administrative penalty, as indicated in section 4.1, the facility may submit to the Department, within thirty (30) days of the date of the notice of intent, a written request for an administrative hearing.

4.3 Orders of the Department

Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department, shall be fined not less than \$100.00 and not more than \$1,000.00, together with costs, unless otherwise provided by law.

5.0 Severability

In the event a particular clause or section of these regulations should be declared invalid or unconstitutional by a court of competent jurisdiction, the remaining portions of these regulations shall remain in full force and effect.

**Appendix A: Model Consent Form
TANNING FACILITY
PARENT/GUARDIAN CONSENT FORM**

~~Delaware law states that a tanning facility may not allow a minor between the ages of 14 to 18 years to use a~~

~~tanning device unless the minor provides a consent form signed by the parent or legal guardian at the time of first exposure, and the signature of the consent form is witnessed by an operator. (DE Code, Title 16, Chapter 30(D): Tanning Facilities).~~

WHAT YOU SHOULD KNOW ABOUT TANNING:
AVOID UNNECESSARY EXPOSURE:

Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.

ULTRAVIOLET RADIATION SENSITIVITY

Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain cosmetics, foods or medications (including, but not limited to tranquilizers, diuretics, antibiotics, high blood pressure medicines or birth control pills). A person taking a prescription or over the counter drug should consult a physician before the use of a tanning device. A person with skin that burns easily in the sun or does not tan in the sun should avoid the use of a tanning device.

PROTECTIVE EYE WEAR

Failure to use protective eyewear may result in severe burns or long term injury to the eye.

CONSENT

I have read and understood the above stated facts about tanning.

I am the _____ parent or _____ legal guardian (check one) of _____ a minor between the ages of 14 and not yet 18 years of age. (Please print name of minor)

My child and I have been given adequate instruction in the operation of tanning devices.
My child and I have read and understand the contents of this form.
I give consent for my child to use the tanning devices in this facility.

Signature of parent/legal guardian _____ Date _____
Print name of parent/legal guardian _____
Signature of operator _____ Date _____
Print name of operator _____

~~The minor's parent or legal guardian may withdraw this consent form at any time. Unless so withdrawn, this consent form shall expire one year from the date of the signature.~~

1.0 Definitions

The following words and terms, when used in this regulation, shall have the meaning set forth in 16 Del.C. §3002D: "Customer", "Department", "Minor", "Person", "Tanning device", "Tanning facility", "Phototherapy device".

2.0 Minors Prohibited

A tanning facility shall not permit a minor to use a tanning device

3.0 Requirements of Warning Signs and Statements

3.1 Each tanning facility shall post at least 1 warning sign in a place readily visible to persons entering the facility. Lettering must be clear, legible, and at least ¼ inch in height, unless otherwise provided herein. The sign shall have dimensions not less than 11 inches by 17 inches and shall have the following statements:

- 3.1.1 "DANGER - ULTRAVIOLET RADIATION", in capital letters at least ½ inch in height;
- 3.1.2 "Follow the manufacturer's instructions for this device.";

- 3.1.3 "Avoid overexposure. As with sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, bruising of the skin, and skin cancer.";
- 3.1.4 "Avoid sunbathing before or after exposure to ultraviolet radiation from sunlamps.";
- 3.1.5 "Wear protective eyewear. Failure to do so may result in severe burns or permanent injury to the eyes.";
and
- 3.1.6 "Medications or cosmetics may increase sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight.".

4.0 Requirements of Written Statement

- 4.1 Each customer shall be provided with a written warning statement prior to each use of the tanning equipment or device. The warning statement shall include the following statements:
 - 4.1.1 "Failure to use eye protection may result in injury to the eyes.";
 - 4.1.2 "Overexposure to ultraviolet light may cause burns.";
 - 4.1.3 "Repeated exposure to ultraviolet light may result in skin cancer and premature aging of the skin.";
 - 4.1.4 "Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain foods, cosmetics, or medications, including tranquilizers, diuretics, antibiotics, high blood pressure medications, and birth control pills.";
 - 4.1.5 "Anyone taking a prescription or over-the-counter drug should consult a physician before using any tanning equipment or device.".

5.0 Compliance and Enforcement Procedures

- 5.1 Administrative Penalties
Whoever violates a provision of these regulations shall be subject to an administrative penalty of \$250.00 for the first violation, \$500 for the second violation and \$1,000 for the third and all subsequent violations.
- 5.2 Right to Administrative Hearing
Upon due notice that the Department intends to assess a tanning facility an administrative penalty, as indicated in section 5.1, the facility may submit to the Department, within thirty (30) days of the date of the notice of intent, a written request for an administrative hearing.
- 5.3 Orders of the Department
Whoever refuses, fails or neglects to comply with an order of the Department, shall be fined not less than \$100.00 and not more than \$1,000.00, together with costs, unless otherwise provided by law.

6.0 Severability

In the event a particular clause or section of these regulations should be declared invalid or unconstitutional by a court of competent jurisdiction, the remaining portions of these regulations shall remain in full force and effect.

13 DE Reg. 1330 (04/01/10)

18 DE Reg. 392 (11/01/14) (Final)