105 CMR 123.000: TANNING FACILITIES

Section

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123.001: Purpose and Scope

(A) The purpose of 105 CMR 123.000 is to set forth the licensure procedures and the requirements for the maintenance and operation of tanning facilities.

(B) 105 CMR 123.000 applies to all tanning facilities, except for those facilities having a phototherapy device used by or under the supervision of a licensed physician who is trained in the use of such phototherapy device in which patients are intentionally exposed to ultraviolet radiation for the purpose of treatment of disease by licensed health care professionals.

123.002: Definitions

Applicant means any person who applies to the Board of Health for a license to maintain and operate a tanning facility.

Board of Health or Board means the Board of Health which has jurisdiction in the community in which a tanning facility is located including the Board or officer having like powers and duties in towns where there is no Board of Health.

Customer means any member of the public who is provided access to a tanning facility in exchange for a fee or other compensation, or any individual who is afforded use of a tanning facility as a condition or benefit of membership or access.

Department means the Radiation Control Program of the Massachusetts Department of Public Health.

Facility means tanning facility.

Injury means bodily harm resulting from the use of a tanning device which requires medical attention.

Inspection means an official examination or observation by the Department or Board, which includes but is not limited to tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the Board or Department.

Jeopardy means a situation or condition which the Board has determined presents an imminent threat to the health or safety of a customer.

123.002: continued

License means a license to operate a tanning facility issued by the Board in accordance with 105 CMR 123.000.

Licensee means any person who is licensed by the Board in accordance with 105 CMR 123.000.

Operator means an individual designated by the licensee to control the operation of a tanning facility and to instruct and assist the customer in the proper operation of tanning devices.

Person means any natural person, corporation, partnership, firm, association, society, trust, estate, public or private institution, group, agency, political subdivision of this Commonwealth, any other State or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing.

Phototherapy device means equipment that emits ultraviolet radiation and is used by health care professionals in the treatment of disease.

Radiation means ultraviolet radiation.

Radiation machine means any device capable of producing radiation.

Tanning device means any equipment used for tanning the skin that emits ultraviolet radiation, including, but not limited to, a tanning booth, tanning bed or sunlamp which includes high pressure tanning lamps. Tanning devices also include any accompanying equipment, including, but not limited to, protective eyewear, timers and handrails.

Tanning facility means any location, place, area, structure or business which provides access to tanning devices.

Ultraviolet radiation means electromagnetic radiation with wavelengths in the air between 200 nanometers and 400 nanometers.

123.003: Operation of Tanning Facilities

Unless otherwise ordered or approved by the Board or Department, each tanning facility shall be constructed, operated, and maintained to meet the following minimum requirements:

(A) Physical plant:
(1) Warning sign
(a) A warning sign shall be posted within three feet of each tanning device;
(b) The warning sign shall be readily legible, clearly visible, and not obstructed by any barrier, equipment, or other item so that the user of the tanning device can easily view the warning sign before energizing the ultraviolet light generating device;
(c) The warning sign shall be printed in white on a red background;
(d) The lettering on each warning sign shall be at least _ inch high for all words shown in capital letters and at least 3/16 inch high for all lower case letters;
(e) The warning sign shall be at least 8½ inches wide by 11 inches long;
(f) The warning sign shall contain the following information:

DANGER - ULTRAVIOLET RADIATION

1. Follow instructions.
2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure to a sunlamp may cause eye and skin injury and allergic reaction. Repeated exposure may cause chronic damage characterized by wrinkling, dryness, fragility, bruising of the skin and skin cancer.
3. Wear protective eyewear. FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG TERM INJURY TO THE EYES.

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4. Ultraviolet radiation from sunlamps aggravates the effects of sun. Do not sunbathe before or after exposure to ultraviolet radiation.

5. Abnormal or increased skin sensitivity or burning may be caused by certain foods, cosmetics or medications, including but not limited to, tranquilizers, diuretics, antibiotics, high blood pressure medication, birth control pills and skin creams. Consult a physician before using a sunlamp if you are using medication, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women on birth control pills who use a tanning device may develop discolored skin.

6. IF YOU DO NOT TAN IN THE SUN YOU WILL NOT TAN FROM USE OF THIS DEVICE. Use of a tanning device does not provide a substantial protective base against the effects of the sun.

(2) Requirements for Tanning Devices

(a) Only tanning devices manufactured and certified to comply with the Code of Federal Regulations (CFR) 21 CFR 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products," as amended from time to time, shall be used in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR 1010.3, as amended from time to time.

(b) Each tanning device shall have a timer which complies with the requirements of 21 CFR 1040.20(c)(2), as amended from time to time. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error greater than plus or minus 10% of the maximum time interval for the product.

(c) Tanning devices shall meet the requirements of the relevant sections of the National Fire Protection Association's National Electrical Code and shall have been inspected and have satisfied all the local electrical code requirements.

(d) There shall be physical barriers in tanning facilities to protect customers from injury induced by touching or breaking the lamps.

(e) Additional requirements for stand-up booths:

1. There shall be physical barriers or other methods, such as handrails or floor markings, to indicate the proper exposure distance between ultraviolet lamps and the customer's skin.

2. The construction of the booth shall be such that it will withstand the stress of use and the impact of a falling person.

3. Access to the booth shall be of rigid construction; doors shall open outwardly. Handrails or non-slip floors shall be provided.

(f) Defective or burned-out lamps or filters shall be replaced with a type intended for use in that tanning device which is specified on the product label or with lamps or filters that are "equivalent" under the U.S.F.D.A. regulations and policies applicable at the time of lamp manufacture.

(g) The licensee shall maintain records of the recommended exposure time established by the manufacturer of the tanning device. Such records shall be available to each operator. The operator shall follow the recommended exposure times and limit each customer to the maximum exposure established by such records.

(h) The interior temperature of the tanning device shall not exceed 100°F.

(B) Protective Eyewear.

(1) Protective eyewear which meets the requirements of 21 CFR 1040.20(c)(4), as amended from time to time, shall be made available to the customer before each tanning session with instructions for its mandatory use.

(2) The licensee shall maintain in the facility manufacturer's eyewear literature which documents compliance with 21 CFR 1040.20(c)(4), as amended from time to time.

(3) Protective eyewear, other than eyewear designed for one-time use only, shall be properly sanitized before each use, using a sanitizing agent which is registered by the United States Environmental Protection Agency (U.S.E.P.A.) and which is specifically manufactured for use with protective eyewear. Exposure to the ultraviolet radiation produced by the tanning device itself is not considered a sanitizing agent.

123.003: continued

(C) Operators.

(1) Each operator must be trained and sufficiently knowledgeable in the correct operation of tanning devices used at a facility. That knowledge shall include:

(a) the requirements of 105 CMR 123.000 and of 21 CFR 1040.20, as amended from time to time;

(b) proper use of U.S.F.D.A. Recommended Exposure Schedule;

(c) photosensitizing agents such as: foods, cosmetics, and medications that may produce an abnormal or increased skin sensitivity;

(d) skin type determination;

(e) recognition of injuries from overexposure to ultraviolet radiation;

(f) manufacturer's procedures for the correct operation and maintenance of the tanning device;

(g) use of protective eyewear;

(h) emergency procedures in case of injury;

(i) effects of ultraviolet radiation, acute and chronic exposure, biological effects, and health risks;

(j) electromagnetic spectrum with emphasis on the photobiology and physics within the 200-400 nanometer range;

(2) A list of the facility's operators who have been trained in accordance with 105 CMR 123.003(C)(1) shall be maintained and available at the facility.

(3) A trained operator must be present at a tanning facility at all times during operating hours.

(D) Records.

(1) Each time a customer uses a tanning facility, or each time a customer executes or renews a contract to use a tanning facility, such customer shall be given a written statement of warning as described in 105 CMR 123.003(A)(1) and sign a written statement acknowledging that he/she has read and has understood the warning statement. For illiterate or visually handicapped persons, the warning statement shall be read by the operator to the customer in the presence of a witness. Both the witness and the operator shall sign the statement indicating it has been read to the customer.

(2) No person 14 years of age to 17 years of age, inclusive, shall use a tanning device without the prior written consent of a parent or legal guardian who shall indicate therein that such parent or guardian has read and understood the warnings required under the provisions of 105 CMR 123.003(A)(1). The operator must sign the consent form as a witness to the signing by the parent or legal guardian.

(3) No person under 14 years of age shall use a tanning device unless accompanied by a parent or legal guardian. The parent or legal guardian accompanying the person under 14 years of age shall sign a consent form indicating to the operator that such parent or guardian has read and understood the warnings required under 105 CMR 123.003(A)(1).

(4) A record shall be kept by the facility operator of each customer's total number of tanning visits and tanning times. Such records shall be maintained for at least 12 months from the date of that customer's last tanning session.

(5) Copies of all applications and the license information outlined in 105 CMR 123.005(C)(1) through (7), must be maintained at the tanning facility and be available for review by inspectors and tanning facility customers upon request.

(E) Injury Reports.

(1) A written report of any tanning injury to a customer or complaint of injury shall be forwarded by the facility's operator or licensee to the Board which issued the license and to the Department with a copy to the complainant or injured person within five working days of its occurrence or knowledge thereof. The report shall include:

(a) the name of the affected individual;

(b) the name and location of the tanning facility involved;

(c) the nature of the injury;

(d) the name and address of the affected individual's health care provider, if any;

(e) any other information considered relevant to the situation.

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(F) Sanitation.

(1) The operator shall provide to customers of the tanning facility access to toilet and hand washing facilities. Such facilities shall meet the following requirements:

(a) they shall be cleaned and disinfected at least once every 24 hours, and

(b) they shall contain liquid soap, paper towels, and a receptacle for used paper towels.

(2) Each customer shall have access at all times to a safe and sanitary supply of drinking water.

(3) Each facility shall provide to its customers paper or cloth towels which may not be shared. Cloth towels must be washed and sanitized after each use.

(4) All surfaces with which customers have contact within tanning devices shall be disinfected after each customer's use. Disinfection shall be carried out using an U.S.E.P.A. registered disinfectant.

(5) Each tanning device shall be capable of being ventilated so that there is a minimum of 20 cubic feet per minute (cfm) of fresh air per occupant.

(6) If showers are provided:

(a) hot water shall be at a temperature between 110 - 130°F;

(b) shower floors shall be constructed of non-absorbent, non-slippery materials, and sloped toward a properly installed floor drain. The use of duckboards or rubber mats in the shower is not permitted; and

(c) shower floors and walls shall be cleaned and disinfected at least once every 24 hours.

(7) The interior of the facility shall be maintained in good repair and in a safe, clean, sanitary condition, free from all accumulation of dirt and rubbish.

(8) All equipment and fixtures in the facility, if appropriate, shall be installed in accordance with accepted plumbing, gas fitting, and electrical wiring standards.

(G) No tanning facility shall claim, or distribute promotional material that claims, that the use of a tanning device is safe and free from risk.

123.004: Inspections

(A) The Board of Health shall inspect each tanning facility within 30 days of licensure, every six months thereafter, and upon receipt of any written complaint.

(B) The Board of Health, local health agent, or Department shall have access at all reasonable times to any tanning facility for the purpose of inspecting said facility.

123.005: Application for a License

(A) No person shall maintain or operate a tanning facility unless he/she is the holder of a valid license granted by the Board of Health.

(B) Applications for licensure shall be made on forms prescribed by and available from the Board. Each applicant shall submit all the information required by the form and the accompanying instructions. The term "application" as used herein shall include original and renewal applications.

(C) The Board shall require that the applicant provide at least the following information in order to be issued a license to operate a tanning facility:

(1) Name, address and telephone number of the following:

(a) The tanning facility;

(b) The owner(s) of the tanning facility;

(2) The manufacturer, model number, model year, serial number (if available) and type of each ultraviolet lamp or tanning device located within the facility;

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(3) The geographic areas within the Board's jurisdiction to be covered, if the facility is mobile;
(4) The name and address of the tanning device supplier, installer, date of installation of each tanning device, and service agent;
(5) A signed and dated certification that the applicant has received, read and understood the requirements of 105 CMR 123.000;
(6) A copy of the consent form to be used by the facility in fulfilling the requirements of 105 CMR 123.003(D)(2) and (3);
(7) A copy of the operating and safety procedures to be followed in the operation of the facility and tanning devices.

(D) Each applicant shall provide such additional information as the Board may reasonably require.

(E) Each applicant shall submit the appropriate license fee. The fee for a license and annual renewal thereof shall be determined by each Board.

123.006: Issuance of a License

(A) Upon a determination by the Board that an applicant meets the requirements of 105 CMR 123.005, the Board shall issue a license to maintain and operate a tanning facility.

(B) The Board may incorporate in the license at the time of issuance or thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession and use of the license to operate tanning facilities as it deems appropriate or necessary.

(C) A license shall expire no later than one year from the date of its issue.

(D) Each tanning facility's license must be displayed in a conspicuous place in the facility.

123.007: Renewal of a License

(A) An application to renew a license shall be filed in accordance with the requirements of the Board.

(B) In order to renew a license, a licensee shall file an application with the Board in proper form for renewal not less than 30 days prior to the expiration of his/her license, whereupon the licensee's existing license shall not expire until the renewal application status has been finally determined by the Board.

123.008: Report of Changes

All information required by 105 CMR 123.005 and otherwise required by the Board shall be kept current by each licensee. The licensee shall notify the Board in writing before making any change which would render the information reported pursuant to 105 CMR 123.005 and contained in the application for license no longer accurate. This requirement shall not apply to changes involving replacement of the original lamp types which have been certified with the United States Food and Drug Administration (U.S.F.D.A.) as "equivalent" lamps under the U.S.F.D.A. regulations and policies applicable at the time of replacement of the lamps. The facility owner shall maintain at the facility manufacturer's literature demonstrating the equivalency of any replacement lamp.

123.009: Non-Transferability of License

No license shall be transferable from one person to another or from one tanning facility to another.

123.010: Grounds for Suspension of a License

The Board or its authorized agent may summarily suspend a license pending a hearing whenever the Board finds that there is a situation causing jeopardy to customers at a tanning facility. A facility may not operate during the period of a suspension of its license.

123.011: Grounds for Denial, Revocation or Refusal to Renew a License

(A) The Board may deny, revoke or refuse to renew a license sought or issued pursuant to 105 CMR 123.000 for any one of the following reasons:

(1) The applicant or licensee has failed to submit the information required under 105 CMR 123.005 which demonstrates that the facility will be operated and maintained in accordance with the requirements of 105 CMR 123.000;

(2) The applicant or licensee has submitted incorrect, false or misleading information in the documents required under 105 CMR 123.005;

(3) The applicant or licensee has failed to operate or maintain the tanning facility in accordance with the specifications approved by the Board except as such maintenance may involve the replacement of lamps by "equivalent" lamps which have been defined in 105 CMR 123.008;

(4) The tanning facility is operated in a way that causes or creates a nuisance or hazard to the public health or safety;

(5) The applicant or licensee has violated any condition upon which the license was issued by the Board;

(6) The applicant or licensee has failed to allow duly authorized agents of the Board or Department to conduct inspections of the facility at reasonable hours and in a reasonable manner;

(7) The applicant or licensee has failed to pay license fees;

(8) The tanning facility has been found to be in violation of M.G.L. c. 111, §§ 207 through 214 or 105 CMR 123.000, or any additional requirements adopted by the Board and has not complied within seven days of written notice of said violations by the Board.

(9) The applicant or licensee has failed to pay fines or penalties imposed for violations of M.G.L. c. 111, §§ 207 through 214 or 105 CMR 123.000 or local rules, regulations, or orders respecting tanning facilities.

(B) The Board shall notify an applicant or licensee in writing of any violation of 105 CMR 123.000 for which the Board intends to deny, revoke or refuse to renew a license. The applicant or licensee shall have seven days after receipt of such written notice in which to comply with 105 CMR 123.000. The Board may deny, revoke or refuse to renew a license of a tanning facility which fails to comply after said seven days.

123.012: Procedure for Hearings

(A) Suspension of a License.

(1) Upon written request to the Board, the licensee shall be afforded an opportunity to be heard concerning the suspension of a license by the Board.

(2) Such a hearing shall be initiated pursuant to 801 CMR 1.00 *et seq.* no later than 21 calendar days after the effective date of the suspension.

(3) In cases of suspension of a license, the hearing officer shall determine whether the Board has proved by a preponderance of the evidence that there existed immediately prior to or at the time of the suspension a jeopardy situation at a tanning facility. The hearing officer shall issue a written decision which contains a summary of the testimony and evidence considered and the reasons for the decision.

(B) Denial, Revocation, or Refusal to Renew a License.

(1) A license may be denied, revoked or refused renewal only after a hearing conducted by the Board of Health;

(2) If the Board determines that a license shall be denied, revoked or not renewed pursuant to 105 CMR 123.011, the Board shall initiate a hearing in accordance with 801 CMR 1.00 *et seq.*

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(3) Following the hearing, the hearing officer shall issue a written decision which contains a summary of the testimony and evidence considered and the reasons for the decision.

123.013: Procedure for Appeal

Following a hearing by the Board, any applicant or licensee aggrieved by a determination of the Board pursuant to 105 CMR 123.012 may appeal in writing to the Department within 20 days of said determination. Any applicant or licensee or the Board, if aggrieved by a determination of the Department, may appeal said decision pursuant to the provisions of M.G.L. c. 30A § 14.

123.014: Penalties

Whoever violates any provision of M.G.L. c. 111, §§ 207 to 213 inclusive or any rule or regulation promulgated thereunder shall be punished by a fine of not less than $200 nor more than $2,000. Each violation shall be considered a separate offense.

123.015: Exemptions

(A) The Board and/or the Department may, upon application therefor or upon its own initiative, grant such exemptions or exceptions from the requirements of 105 CMR 123.000 as it determines are authorized by law and will not result in undue hazard to public health and safety.

(B) Devices intended for purposes other than the deliberate exposure of parts of the living human body to ultraviolet radiation, and which produce or emit ultraviolet radiation incidental to its proper operation are exempt from the provisions of 105 CMR 123.000.

(C) Tanning devices while in transit or storage incidental thereto are exempt from the provisions of 105 CMR 123.000.

(D) Phototherapy devices used by or under the supervision of a licensed physician who is trained in the use of such phototherapy devices are exempt from the provisions of 105 CMR 123.000.

123.016: Severability

If any provision, clause, section, sentence or paragraph of 105 CMR 123.000 or the application thereof to any person shall be held to be invalid, such invalidity shall not affect the remaining provisions or applications of 105 CMR 123.000. The valid part of any provision, clause, section, sentence or paragraph shall be given independence from the invalid provisions or applications, and to this end 105 CMR 123.000 are hereby declared to be severable.

REGULATORY AUTHORITY

105 CMR 123.000: M.G.L. c 111, §§ 207 through 214, inclusive.