

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 123.000: TANNING FACILITIES

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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 health care provider who is trained in the use of such a phototherapy device in which patients are intentionally exposed to ultraviolet radiation for the purpose of treatment of disease by licensed health care providers.

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 Massachusetts Department of Public Health.

FDA means the U.S. Food and Drug Administration.

Injury means bodily harm resulting from the use of a tanning device.

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.

License means a license to operate a tanning facility issued by the Board.

Licensee means any person who is licensed by the Board to operate a tanning facility.

Maximum Exposure Time means the greatest continuous exposure time interval recommended by the manufacturer of a tanning device.

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Maximum Timer Interval means the greatest time interval setting on the timer of a tanning device.

Operator means a person employed and trained by a tanning facility to control, maintain or operate a tanning device under M.G.L. c. 111, §§ 207 through 213 and 105 CMR 123.000 to assist or instruct customers of the tanning facility in the correct use or operation of a tanning device.

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 a licensed health care provider in the treatment of disease.

Protective Eyewear or Protective Goggles means any device designed to be worn by users of a tanning device to reduce exposure of the eyes to radiation emitted by the device.

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 Facility or 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) Operator Responsibilities.

- (1) An operator shall ensure that no customer younger than 18 years old uses a tanning device at the tanning facility.
- (2) No tanning facility shall employ as an operator a person younger than 18 years old or permit any other employee of the tanning facility who is younger than 18 years old to operate a tanning device.
- (3) A trained operator meeting the requirements of 105 CMR 123.003(A)(4) must be present at a tanning facility at all times during operating hours.
- (4) 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 21 CFR 1040.20, as amended;
 - (b) skin type determination and the proper use of the manufacturer's Recommended Exposure Schedule;
 - (c) photosensitizing agents such as: foods, cosmetics, and medications that may produce an abnormal or increased skin sensitivity;
 - (d) recognition of injuries from overexposure to ultraviolet radiation;
 - (e) effects of ultraviolet radiation, acute and chronic exposure, biological effects, and health risks;
 - (f) electromagnetic spectrum with emphasis on the photobiology and physics within the 200-400 nanometer range;
 - (g) use of protective eyewear;
 - (h) emergency procedures in case of injury;
 - (i) manufacturer's procedures for the correct operation and maintenance of the tanning device.

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(5) A list of the facility's operators who have been trained in accordance with 105 CMR 123.003(A)(4) shall be maintained at the facility and be made available at the facility to Board or Department inspectors upon request.

(6) An operator shall determine tanning session duration for each customer based on a skin type determination and previous tanning device exposure in order to gradually increase exposure. An operator shall not exceed the exposure times listed in the manufacturer's recommended exposure schedule. At no time shall an operator permit a tanning session to exceed the maximum exposure time established by the manufacturer for a particular tanning device.

(7) An operator shall, upon request by a tanning device user or prospective user, with respect to any tanning device that the operator operates, provide a copy of the tanning device user manual or the name and address of the manufacturer or distributor from whom a user manual may be obtained.

(8) A tanning facility shall give each prospective user of a tanning device a written warning statement on a form provided by the Department, which contains the warning language specified in 105 CMR 123.003(B)(1)(f). Prior to tanning, each prospective user must sign the warning statement acknowledging he or she understands such warning, unless the prospective user has previously signed the warning statement in the preceding six months. The warning statement shall then be signed by the operator and, whenever possible, by a witness who can verify that the warning information was provided.

(B) 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 $\frac{3}{8}$ inch high for all words shown in capital letters and at least $\frac{3}{16}$ inch high for all lower case letters;

(e) The warning sign shall be at least $8\frac{1}{2}$ 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.

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) Each tanning device shall have a warning placed either directly above or below the exposure schedule stating "Skin Type I individuals (always burns, never tans) should never use tanning devices."

(3) Requirements for Tanning Devices.

(a) Only tanning devices manufactured and certified to comply with FDA regulations 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 FDA regulations.

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(b) Each tanning device shall have a timer which complies with the requirements of FDA regulations. 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 been found to satisfy 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 customer who may fall.

3. Doors shall consist of rigid construction material and 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 FDA regulations.

(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 and be made available to the Board or the Department, if requested. The operator shall follow the recommended exposure times and limit each customer to the maximum exposure established by the manufacturer.

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

(C) Protective Eyewear.

(1) The operator shall provide each customer with protective eyewear which meets the requirements of FDA regulations and shall ensure that each customer is using protective eyewear at all times while using a tanning device.

(2) In the tanning facility, the licensee shall maintain literature from the manufacturer of the protective eyewear which documents that the eyewear meets the requirements of FDA regulations.

(3) Protective eyewear, other than eyewear discarded after each use, shall be properly sanitized before each use, using a sanitizing agent which is registered by the United States Environmental Protection Agency and which is specifically manufactured for use on protective eyewear. Exposure to the ultraviolet radiation produced by the tanning device itself is not considered a sanitizing agent.

(D) Records.

(1) The operator shall keep a record of each customer's tanning sessions, including, for each visit, the date, skin type determination, tanning times, and device used. Such records shall be maintained at the tanning facility for a minimum of one year and be made available to the Board or the Department upon request.

(2) The operator shall maintain records of the risk acknowledgment certification signed by each customer. Such records shall be maintained at the tanning facility for a minimum of one year and be made available to the Board or the Department upon request.

(3) The operator shall maintain records of the recommended exposure time established by the manufacturer of the tanning device. Such records shall be maintained at the tanning facility for a minimum of one year and be made available to the Board or the Department upon request.

(4) Copies of all applications and the license information outlined in 105 CMR 123.005(C)(1) through (6), must be maintained at the tanning facility and be available for review by inspectors and tanning facility customers upon request.

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(E) Injury Reports.

(1) An operator shall prepare a written report of any tanning injury to a customer or complaint of injury and such report 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 customer within five business 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.

(F) Sanitation.

(1) The operator shall provide to customers of the tanning facility access to toilet and hand washing facilities. Such facilities shall be cleaned and disinfected at least once every 24 hours, and contain liquid soap, paper towels, and a receptacle for used paper towels. Sinks shall have hot water in the temperature range of not less than 110°F (43°C) and not greater than 130°F (54°C);

(2) Each customer shall have access at all times to potable 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 a U.S. Environmental Protection Agency 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 in the shower shall be at a temperature range of not less than 100°F (38°C) and not greater than 112°F (44°C);

(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 or 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 in 105 CMR 123.000 shall include original and renewal applications.

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(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;
- (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 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 or 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 by the FDA as "equivalent" lamps under the FDA regulations. 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 or condition which the Board has determined presents an imminent threat to the health or safety of one or more customers 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 licensee has permitted a customer younger than 18 years old to use a tanning device at the tanning facility;
- (2) The licensee has permitted a person younger than 18 years old to operate a tanning device;
- (3) 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;
- (4) The applicant or licensee has submitted incorrect, false or misleading information in the documents required under 105 CMR 123.005;
- (5) 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;
- (6) The tanning facility is operated in a way that causes or creates a nuisance or hazard to the public health or safety;
- (7) The applicant or licensee has violated any condition upon which the license was issued by the Board;
- (8) 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;
- (9) The applicant or licensee has failed to pay license fees;
- (10) 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.
- (11) 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: *Standard Adjudicatory Rules of Practice and Procedure* 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 situation or condition which the Board determined presents an imminent threat to the health or safety of one or more customers 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.

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(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: *Standard Adjudicatory Rules of Practice and Procedure*.
- (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 through 213 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.