

CR 92-188

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to regulation of tanning facilities were duly approved and adopted by this Department on April 30, 1993.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 30th day of April, 1993.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

RECEIVED
APR 30 1993
7:35
Revisor of Statutes
Bureau

7-1-93

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

To create HSS 161, relating to regulation of tanning facilities.

Analysis Prepared by the Department of Health and Social Services

Ultra-violet radiation emitted by tanning devices offered for public use by tanning facilities is known to cause injury and skin cancer if a tanning device is improperly used.

A recent session law, 1991 Wisconsin Act 192, created s. 146.08, Stats., which requires every tanning facility in the state, beginning November 1, 1992, to have a permit from the Department in order to operate, and to display the permit in a conspicuous place in the facility. The Department is directed to enforce the new statute. That statute requires tanning facilities to give written notice to customers about safety considerations before and during use of a tanning device; to post signs near each tanning device giving instruction about use of the device and stating the date on which the florescent tube in the device was last replaced; not to claim that a tanning device is free of risk; to report to the Department all customer injuries that require medical attention; and to comply with specific requirements regarding minimum age of customers, limitations on frequency of use and exposure time, the presence of a trained operator during operating hours, provision and required use of protective eyewear, the maximum interior temperature of the facility, sanitizing tanning beds after use, accuracy of the timing device and presence of a turn-off switch on a device that the customer can use.

The permit that a tanning facility must have is an annual permit.

If the Department finds that a tanning facility has violated any requirement under s. 146.08, Stats., as created by Act 192, affecting facilities and their owners, the Department may, after a hearing under ch. 227, Stats., deny issuance of a permit or suspend or revoke the permit, in which case the facility would have to not begin operations or cease operations.

These are the Department's rules for administration of s. 146.08, Stats., as created by Act 192. They repeat the requirements of the statute that apply to facilities and facility owners, add greater specificity to some of those requirements under the authority of ss. 140.50 to 140.60, Stats., the Wisconsin Radiation Protection Act, and drawing from federal standards for light-emitting devices used for human tanning purposes at 21 CFR 1040.20, specify the fee for a permit, and add procedures for how to appeal a decision of the Department to deny issuance of a permit or to suspend or revoke a permit.

The Department's authority to create these rules is found in s. 140.53(1)(a), Stats., and ss. 146.08 (2)(b) and (12), Stats., as created by 1991 Wisconsin Act 192. The rules interpret ss. 140.50 to 140.60, Stats., and s. 146.08, Stats., as created by 1991 Wisconsin Act 192.

SECTION 1. HSS 161 is created to read:

Chapter HSS 161

TANNING FACILITIES

HSS 161.01 Authority and purpose	HSS 161.08 Lamp replacement
HSS 161.02 Applicability	HSS 161.09 Liability
HSS 161.03 Definitions	HSS 161.10 Duties of the owner
HSS 161.04 Permit	HSS 161.11 Reports of injury
HSS 161.05 Advertising	HSS 161.12 Denial, suspension or revocation of permit
HSS 161.06 Public information	HSS 161.13 Penalties
HSS 161.07 Warning sign	APPENDIX A Skin types

HSS 161.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 140.53(1)(a) and 146.08(2)(b) and (12), Stats., to regulate the use of tanning devices in the interests of helping prevent injury and skin cancer caused or promoted by ultra-violet radiation emitted by tanning devices. The standards in this chapter conform generally to nationally accepted standards for protection against the harmful effects of ultra-violet radiation.

HSS 161.02 APPLICABILITY. This chapter applies to all persons who possess or operate tanning devices available to the public for the purpose of artificial light skin tanning, including those offered for use as part of a membership or premium offer in a health club, condominium ownership, apartment complex activity center, hotel or motel room rental.

HSS 161.03 DEFINITIONS. In this chapter:

(1) "Applicant" means any person who applies to the department for a permit to operate a tanning facility.

(2) "Customer" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a benefit of membership in or access to a health club, condominium ownership, apartment complex activity center, hotel or motel room rental or other offer.

(3) "Department" means the Wisconsin department of health and social services.

(4) "Operator" means an individual designated by the permit holder to manage the tanning facility and to assist and instruct the public in the correct operation of the tanning devices.

(5) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group or agency, or a representative or agent of any of these.

(6) "Protective eyewear" means any apparatus designed to be worn over the eyes by a user of tanning devices which absorbs all UV-A, UV-B and visible light up to 500 nanometers but permits sufficient light to pass through to allow a user to safely negotiate obstacles, and that complies with the standards set forth in 21 CFR 1040.20.

(7) "Radiation" means ultraviolet radiation.

(8) "Tanning device" means any equipment that emits electromagnetic radiation having wavelengths in air 200 to 400 nanometers and that is used for

tanning of human skin and any equipment used with that equipment, including but not limited to protective eyewear, timers and handrails, except that "tanning device" does not include a phototherapy device used by a physician.

(9) "Tanning facility" or "facility" means a place or business that provides access to a tanning device, which may be a room or booth or a group of rooms or booths housing ultraviolet lamps or products containing lamps intended for the irradiation of any part of the body for cosmetic or nonmedical-related purposes but does not include any sunlamp located in a bathroom or dressing room or any germicidal lamp used for bacteria control.

(10) "Ultraviolet radiation" means electromagnetic radiation with a wavelength in air of 200 to 400 nanometers.

(11) "UV-A" means ultraviolet radiation having a wavelength in air of 320 to 400 nanometers.

(12) "UV-B" means ultraviolet radiation having a wavelength in air of 290 to 320 nanometers.

HSS 161.04 PERMIT. (1) No person may operate a tanning facility without a permit issued by the department.

(2) Application for a permit shall be made on a form provided by the department and shall be accompanied by a permit fee of \$15.00 for the period from November 1, 1992 to June 30, 1993, or for any part of that period, and \$10.00 annually after June 30, 1993.

Note: To obtain a copy of the application form for a permit to operate a tanning facility, write to the Radiation Protection Unit, Bureau of Public Health, P.O. Box 309, Madison, WI 53701-0309

(3) An application for a permit shall include all of the following:

(a) The name and complete mailing address of the tanning facility.

(b) The name of the facility operator.

(c) The phone number of the facility.

(d) The brand and model number of tanning devices.

(e) The primary type of business in which the facility is located.

(f) Any other information required by the department.

(4) Within 60 days after it receives a complete application for a permit, the department shall either approve the application and issue the permit or deny the application. If the application is denied the department shall give the applicant reasons, in writing, for the denial.

(5) Permits issued by the department shall expire annually on June 30.

(6) A permit holder shall notify the department in writing of any change in information that appears on the permit, such as facility ownership, business status or address. That notification shall be sent to the department within 30 days after the change is made.

Note: Send notice of change in permit information to the Radiation Protection Unit, Bureau of Public Health, P.O. Box 309, Madison WI 53701-0309.

(7) No permit issued by the department may be transferred from one person to another or from one facility to another.

HSS 161.05 ADVERTISING. (1) No tanning facility may state in any advertising, written or verbal, that the tanning facility holds a license or permit issued by the department to operate the tanning facility.

(2) No tanning facility may state in any advertising, written or verbal, that tanning has any health benefit or the tanning device is free of hazards from ultraviolet radiation.

(3) No person may state or imply that any activity under a permit has been approved by the department.

HSS 161.06 PUBLIC INFORMATION. (1) NOTICE. A tanning facility shall give written notice to each customer, before the customer uses a tanning device, of all of the following:

(a) Failure to wear protective eyewear provided by the tanning facility may result in damage to the customer's eyes and cause cataracts or other eye injury.

(b) Overexposure to a tanning device causes burns.

(c) Repeated exposure to a tanning device may cause premature aging of the skin and skin cancer.

(d) Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by any of the following:

1. Certain foods.

2. Certain cosmetics.

3. Certain medications, including but not limited to tranquilizers, diuretics, antibiotics, high blood pressure medications and birth control pills. The notice shall include a statement that any person who is taking medication should consult with a physician before using a tanning device.

(2) LISTS OF CERTAIN FOODS, CHEMICALS AND MEDICATIONS. Literature containing lists of known photosensitizing foods and medications shall be available at the facility for customer review.

HSS 161.07 WARNING SIGN. (1) LOCATION AND CONTENT. Tanning facilities shall prominently display a warning sign in each area where a tanning device is used. A sign shall be located within one meter of each device. The sign shall be readily legible, clearly visible and not obstructed by any barrier, equipment or other item present so that the customer can easily view the warning sign before turning on the tanning device. The sign shall convey the following directions and information:

(a) Follow instructions.

(b) Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage which is characterized by wrinkling, dryness, fragility and bruising of the skin and skin cancer.

(c) Wear protective eyewear. FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

(d) Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the 24 hours immediately preceding or immediately following the use of a tanning device.

(e) Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using tanning devices if you are using medications or have a history of skin problems, or believe yourself especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.

(f) If you do not tan in the sun, you are unlikely to tan from the use of this device.

(2) LETTERING. The lettering on each warning sign shall be at least one centimeter high for the word "WARNING". All capital letters shall be at least 4 millimeters high and all lower case letters shall be at least 3 millimeters high.

Note: The department will provide one sign for each facility for duplication and placement as required.

HSS 161.08 LAMP REPLACEMENT. (1) A tanning facility shall post a sign in each area where a tanning device is used which states the date at which tubes, bulbs or lamps in that tanning device were replaced. The tanning facility shall maintain a record of the dates on which the tubes, bulbs or lamps were replaced.

(2) The tubes, bulbs or lamps shall be replaced at the frequency recommended by the manufacturer or when the tubes, bulbs or lamps become damaged or defective. A replacement lamp for a tanning unit shall be compatible with the original lamp as specified by the manufacturer of the unit or shall be substantially equivalent to the manufacturer's original lamp type. In this subsection, "substantially equivalent" means within 10% of the UV-B emission of the original lamp and meeting the performance requirements of the U.S. food and drug administration in 21 CFR 1040.20(c)(1).

(3) A facility may only use tubes, bulbs or lamps which meet the standards of the U.S. food and drug administration in 21 CFR 1040.20. This applies to original or replacement tubes, bulbs or lamps.

(4) The facility shall maintain the device manufacturer's literature indicating the rating, output or intensity of the tube, lamp or bulb required for replacement.

(5) No tube, bulb or lamp designated for medical use only may be used.

HSS 161.09 LIABILITY. A tanning facility's compliance with ss. HSS 161.06 and 161.07 does not relieve the owner or any employe of the tanning facility from liability for an injury sustained by a customer from use of a tanning device.

HSS 161.10 DUTIES OF THE OWNER. The owner of a tanning facility shall ensure that all of the following requirements are fulfilled:

(1) No customer under 16 years of age may be permitted to use a tanning device.

(2) During operating hours there shall be present at the tanning facility, in the tanning area, a trained operator who is able to inform customers about the tanning devices and assist customers in the proper use of the tanning devices. Training of the operator shall include:

- (a) The requirements of this chapter.
- (b) Procedures for correct operation of tanning devices.
- (c) Recognition of injury and overexposure.
- (d) Manufacturer's procedures for operation and maintenance of the tanning equipment.
- (e) Determination of the customer's skin type using the skin types outlined in Appendix A of this chapter, and appropriate spacing of sequential exposures and maximum exposure times as recommended by the device manufacturer.
- (f) Knowledge of potential photosensitizing agents.
- (g) Procedures for sanitizing protective eyewear and tanning equipment.
- (h) Emergency procedures in case of injury.

(3) Each tanning device shall be properly sanitized after each use with sanitizing agents approved by the manufacturer of the tanning device as safe and effective.

(4) Each customer, before he or she begins using a tanning device, shall be provided with properly sanitized and securely fitting protective eyewear that protects the wearer's eyes from ultraviolet radiation and allows enough vision to maintain balance. The eyewear shall meet the requirement of 21 CFR 1040.20(c)(4).

(5) A customer shall not be permitted to use a device unless the customer uses protective eyewear.

(6) For stand-up booths, there shall be physical barriers or other means such as handrails or floor markings to indicate the proper exposure distance between ultraviolet source and the customer's skin. Customers shall be shown how to use these aids. Access to a booth shall be of rigid construction. Doors shall open outwardly. Handrails and non-slip floor covering shall be provided.

(7) A timing device shall be provided for each tanning device that is accurate to within 10% of the maximum exposure. If the timing device is token operated, no customer may be issued more tokens than is required for that session.

(8) Each tanning device shall be equipped with a mechanism that allows the customer to turn the tanning device off when the customer is using the device.

(9) A customer shall be limited to the maximum exposure time recommended by the manufacturer for the type of tubes, bulbs or lamps in the device.

(10) A customer shall not be permitted to use a tanning device more than once every 24 hours.

(11) The temperature shall not exceed 100 degrees F.° in the room in which the tanning device is located.

(12) A customer's statement of agreement required under s. 146.08 (10) (a), Stats., shall be retained for 3 years or until the customer signs a new statement.

(13) Only tanning equipment manufactured in accordance with the specifications set forth in 21 CFR 1040.20 may be used in tanning facilities.

(14) Protective acrylic sheets shall be in place when a tanning device is in use, except that the protective acrylic may be sleeves over the lamps in the upper portion of a device or over lamps in booth devices.

HSS 161.11 REPORTS OF INJURY. (1) If a person requires medical attention due to use of a tanning device, the permit holder or operator of the facility shall report that injury to the department in writing and send a copy of the report to the injured person. The permit holder of the tanning facility shall retain a copy of the report for 3 years. The report shall include all of the following:

(a) The name of the affected individual and date of the actual or alleged injury.

(b) The name and location of the tanning facility.

(c) The nature of the injury and identification of the tanning device and duration of the exposure.

(d) Any other information considered relevant to the situation.

(2) The department shall inspect a facility upon receipt of a notice of injury.

HSS 161.12 DENIAL, SUSPENSION OR REVOCATION OF PERMITS. (1) ACTION. The department may deny issuance of a permit or suspend or revoke a permit issued under s. HSS 161.04 if the applicant or permit holder does not comply with or violates s. 146.08, Stats., or any provision of this chapter or if the applicant or permit holder does any of the following:

(a) Submits false or misleading information in the application or in reports.

(b) Fails to construct, operate or maintain the tanning facility in accordance with the application.

(c) Operates the tanning facility in a way that causes or creates a nuisance or hazard to the public health or safety.

(d) Violates any condition upon which the permit was issued.

(e) Fails to allow the department or a duly authorized agent to inspect the facility at a reasonable hour and in a reasonable manner for the purpose of determining compliance with this chapter.

(f) Fails to pay the permit fee.

(2) NOTICE. The department shall give written notice to the applicant or permit holder of its decision to not renew or to suspend or revoke a permit, with reasons for that decision and information that the applicant or permit

holder may appeal the decision under sub. (3).

(3) APPEAL OF DECISION TO DENY, REVOKE OR SUSPEND A PERMIT. (a) Any person aggrieved by the department's decision to deny issuance of a permit or renewal of a permit or to suspend or revoke a permit may request a hearing on that decision under s. 227.42, Stats., which shall be limited to the issues stated as the basis for denial, suspension or revocation in the notice under s. HSS 161.04(4) or sub. (2).

(b) The request for hearing shall be in writing, shall be filed with the department's office of administrative hearings, and shall be sent to that office so that it is received there within 30 days after the date of the notice under s. HSS 161.04(4) or sub. (2). A request for a hearing is considered filed upon its receipt by the office of administrative hearings. Review is not available if the request is received more than 30 days after the date of the notice under s. HSS 161.04(4) or sub. (2).

Note: The mailing address of the Office of Administrative Hearings is P.O. Box 7875, Madison, Wisconsin 53707.

HSS 161.13 PENALTIES. (1) Any person who violates s. 146.08, Stats., or any requirement of this chapter may be required to forfeit not less than \$50 or more than \$250.

APPENDIX A

SUN-REACTIVE SKIN TYPES USED IN CLINICAL PRACTICE

Skin Type	Skin Reactions to Solar Radiation*	Examples
I	Always burns easily and severely (pain); tans little or none and peels	People most often with fair skin, blue eyes, freckles; unexposed skin is white**
II	Usually burns easily and severely (painful burn); tans minimally or lightly, also peels.	People most often with fair skin, red or blond hair, blue, hazel or even brown eyes; unexposed skin is white**
III	Burns moderately and tans about average	Normal average Caucasoid; unexposed skin is white
IV	Burns minimally, tans easily and above average with each exposure; exhibits IPD (immediate pigment darkening) reaction	People with white or light brown skin, dark brown hair, e.g., Mediterraneans, Orientals, Hispanics; unexposed skin is white or light brown
V	Rarely burns, tans easily and substantially; always exhibits IPD reaction	Brown-skinned persons, e.g., Amerindians, East Indians, Hispanics; unexposed skin is brown
VI	Never burns and tans profusely; exhibits IPD reaction	Blacks, African and American Blacks, Australian and South Indian Aborigines; unexposed skin is black

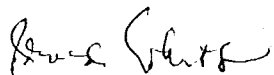
* Based on the first 45-60 minutes (equals 2-3 minimum erythema dose) exposure of the summer sun (early June) at sea level

** They may be of Celtic background (Irish or Scottish); others may even have dark hair or brown eyes

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Dated: April 30, 1993

By: 
Gerald Whitburn
Secretary

SEAL:

RECEIVED
APR 30 1993
Revisor of Statutes
Bureau

Tommy G. Thompson
Governor
Gerald Whitburn
Secretary



Mailing Address:
1 West Wilson Street
Post Office Box 7850
Madison, WI 53707-7850
Telephone (608) 266-3681

State of Wisconsin
Department of Health and Social Services

April 30, 1993

RECEIVED

APR 30 1993

Revisor of Statutes
Bureau

Mr. Bruce E. Munson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of ch. HSS 161, administrative rules relating to regulation of tanning facilities.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerald Whitburn".

Gerald Whitburn
Secretary

Enclosure