

**REPORT OF THE
BOARD FOR PROFESSIONAL AND
OCCUPATIONAL REGULATION**

**STUDY OF THE REGULATION
OF ELECTROLOGISTS**

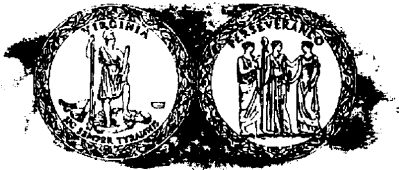
**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 8

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**

COMMONWEALTH OF VIRGINIA



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November 16, 1998

TO: The Honorable James S. Gilmore, III, Governor of Virginia
Members of the Virginia General Assembly

SUBJECT: State Regulation of Electrologists, SJR 128 and HJR 204

The Board for Professional and Occupational Regulation respectfully submits the enclosed report pursuant to Senate Joint Resolution 128 and House Joint Resolution 204 which directed the board to study the need for regulation of electrologists.

The board determined that the practice of electrology does not meet the criteria for regulation as established in Section 54.1-100 of the Code of Virginia. The board acknowledges that the occupation requires specialized skill and training, but the board did not find sufficient evidence to determine that the occupation poses a threat to public health, safety, and welfare, which should be addressed through state regulation. However, after consultation with the Department of Health Professions, we do recommend that this issue be reconsidered in the near future, as the nature of the occupation could harbor potential to pose a threat to merit regulation.

This report, approved November 16, 1998, outlines the boards findings, conclusions and recommendations. Members of the Board for Professional and Occupational Regulation would be pleased to answer any questions.

Respectfully submitted,

Morris A. Nunes
Chairman, Board for Professional and
Occupational Regulation

*BOARD FOR PROFESSIONAL AND
OCCUPATIONAL REGULATION*

**Report on the Need for
the Licensure
of Electrologists**

Board Members

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I. Introduction

A. Background and Purpose of Report

The Board for Professional and Occupational Regulation (Board) has the statutory authority for evaluating the need for regulation of occupations and professions, and making recommendations to the General Assembly. In making such determinations, the Board refers to Section 54.1-100 of the *Code of Virginia* which states:

The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety, or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists.

The 1998 Session of the Virginia General Assembly adopted Senate Joint Resolution 128 and House Joint Resolution 204 that directed the Board for Professional and Occupational Regulation to study the need for regulation of electrologists. The request for this review included concerns that without proper training in the use of sterile instruments, there is a greater chance that blood-borne illness such as HIV and Hepatitis B will be spread. (See Appendix A and B for copies of Senate Joint Resolution 128 and House Joint Resolution 204.)

B. Methodology

The Board for Professional and Occupational Regulation used the following methods to study the need for state regulation of this occupation:

- Review of the 1994 report by the Department of Health Professions regarding the “Need to Regulate Tattooists and Tattoo Parlors in the Commonwealth of Virginia”
- Review of the 1998 report “Study of the Appropriate Criteria in Determining the Need for Regulation of any Health Care Occupation or Profession” by the Board of Health Professions
- Review of the “Infection Control Standards for the Practice of Electrology” as compiled by the American Electrology Association
- Review of the “Standards of Practice for Electrologists” by the American Electrology Association
- Site-visit to an electrologist’s office
- Two public hearings and the solicitation of public comments
- Consultation with the Virginia Department of Health, the Virginia Department of Health Professions, and the Virginia Department of Education
- Consultation with consumer complaint gathering sources including the Division of Consumer Affairs and the Better Business Bureau.

II. Findings

A. Profile of the Occupation

Electrolysis is an invasive procedure for permanent hair removal. While other methods of hair removal include waxing, tweezing or shaving, electrology is the only proven method of permanent hair removal. This type of hair removal can be accomplished by electrolysis (galvanic or direct current) thermolysis (short wave or high frequency current) or a combination of both (superimposed or sequential blend).

The practice of electrology may require a client to hold an electrode in hand depending on the type of epilator and the modality being used. After cleaning the skin with an alcohol solution, the electrologist inserts a sterilized probe into the hair follicle. The follicle is a pocket in the skin in which the hair grows. An electric current is then administered which destroys the papilla cells that regenerate hair. The hair is then removed with a pair of sterilized tweezers. Since hair grows in cycles, this procedure requires a series of treatments in order to achieve permanency. The number of treatments and length of time necessary to effect permanent hair removal is relative to the amount and structure of hair presented, physiological factors of hair, cause of growth, previous methods of temporary removal, compliance of the patient/client and other individual factors.

There are an estimated fifteen thousand electrologists practicing nationwide. Most electrologists practice independently. Electrologists can be found operating in homes, in professional buildings, in beauty salons, etc.

The Center for Disease Control standards states that a dry heat sterilizer or autoclave should be available to sterilize instruments used in electrolysis. The skin should be disinfected with seventy percent alcohol before the treatment and the electrologist should wear latex type gloves to prevent the spread of infection.

Electrologists use electronic epilators, which have been classified by the Food and Drug Administration as medical devices. The equipment is regulated only for "performance standard", i.e., the amount of current that can safely pass through the needle. The thermolysis modality operates by using radio frequency. The Federal Communications Commission determines the frequencies on which this equipment may operate.

Over ninety-five percent of electrolysis clients are women. Most clients are being treated for Hirsutism (excessive or superfluous body hair). Many clients have underlying hormonal problems causing the hair growth. Thus responsible electrologists refer many clients to endocrinologists, gynecologists or other professionals for hormonal therapy, and sometimes work co-operatively with such health-care professionals.

There are approximately 250 electrologists currently practicing in the Commonwealth of Virginia. The Association of Virginia Electrologists, which urged this legislative study, has fifty-five members and is affiliated with the American Electrology Association (AEA). In addition, the International Guild for Electrologists and the Society for Clinical and Medical Electrologists have members in Virginia. In conjunction with the Centers for Disease Control, the AEA developed "Infection Control Standards for the Practice of Electrology" to assist practitioners in developing a knowledge base of infection control and patient/client safety. In addition to general electrology procedures, the association established standards for use of gloves, cleaning and sterilizing instruments, and other safety precautions.

B. Education and Training

There are currently five schools licensed as proprietary schools with the Virginia Department of Education to teach electrolysis. Four of the schools are located in Northern Virginia and one school in Fredericksburg. The procedure for licensure involves an institutional approval to ensure that the facilities and administrators meet state requirements. The Virginia Department of Education does not review the curricula for approval.

The American Electrology Association's (AEA) Council on Accreditation of Electrology Educational Institutions/Programs evaluates and accredits programs that offer six hundred hours of instruction and meet established standards. Maryland has recently increased its education requirements to six hundred hours.

Proponents of state regulation support a minimum education requirement of three hundred hours with an increase to six hundred after two years. The Board is concerned about the inability of electrologists to obtain that type of education since few schools, if any, are known to offer that type of program. If grandfathering provisions were not included, an education requirement of this level would also place a burden on practitioners who may not have completed such extensive training. Written comments and some testimony received by the Board indicated the inability of some individuals to obtain training programs in Virginia. One individual suggested that electrology students are forced to seek education in Maryland or South Carolina because Virginia's schools do not meet the AEA standards of six hundred hours.

The American Electrology Association also offers the Certified Professional Electrologist Exam (CPE). To obtain this credential, an electrologist must pass an examination developed by the Educational Testing Service. The test covers the following competencies: anatomy and physiology of the skin and hair; infection control; clinical observations and applications; electrical modalities; equipment operation and safety; and professional, ethical and legal responsibilities. The CPE exam is administered twice a year in different states. Fifty-one Virginia electrologists have met the requirements as Certified Professional Electrologists.

In order to maintain the Certified Professional Electrologist credential, a practitioner must either retake the exam or participate in seventy-five hours of continuing education over a five-year period. Approved continuing education opportunities are available through various avenues including annual conventions, continuing education events, Journal of Electrology continuing education events and independent study courses. One electrologist noted that such continuing education events are extremely worthwhile for members of this occupation since they are relatively few in practice and because they practice independently.

C. Regulation by other states

Thirty-two states currently regulate the practice of electrology. The degree of regulation varies greatly among the states. In five states (Connecticut, Louisiana, Maryland, Rhode Island, and Tennessee), licensed electrologists must complete 300 to 650 hours in the study of electrology, and pass an examination. A board of electrologists at the Department of Health administers the program in these states. Members of the occupation appearing before the Board at the public hearings supported placement of any regulatory program for electrology at the Department of Health Professions. The speakers asserted that the practice of electrology is similar to administering an injection or inserting an intravenous line. While similarities may be drawn to a cosmetologist who is licensed to remove hair by waxing, waxing is not an invasive procedure, does not result in the permanent removal of hair and does not expose the client to serious health risks as electrolysis can.

Several states do require a cosmetologist's license to practice electrology even though no electrology curriculum/instruction is included in the beauty culture course. Indiana requires a beauty culture license and electrologist's license. Iowa requires cosmetologist's license and an electrologist's license. Kansas requires a cosmetologist's license or cosmetologist technician license and an electrologist's license. West Virginia is currently the only state in which only licensed physicians or licensed physician's assistants may practice electrology.

The requirements for entry into the profession also vary greatly. Neighboring states such as Maryland and North Carolina require six hundred hours of education and an examination while the District of Columbia requires five hundred hours and an examination. Tennessee has a State Board of Electrolysis Examiners at the Department of Health and Environment with a licensing requirement of six hundred hours of education. Kentucky currently does not have a regulatory program for electrologists.

D. Public Comments

The Board for Professional and Occupational Regulation conducted two public hearings to gather information and opinions on the need for state regulation of electrologists. On June 5, 1998, approximately fifteen individuals attended a public hearing in Virginia Beach. In their testimony, electrologists supported licensure of the occupation for the protection of the public. Electrologists stated that electrology clients were not likely to present their fears and concerns at a public meeting. The practice of electrology is a very personal service, and clients may suffer psychological problems with the stigma of unwanted hair on their face or body. Letters requesting confidentiality seem to confirm these statements.

While pictures of scarring and other effects of improper electrolysis treatment were provided, none of the pictures were from clients in Virginia. An electrologist did present a written statement from a Virginia woman who tested positive for the Hepatitis B virus when giving blood to the Red Cross. As an electrology client, she immediately notified her electrologist of this information. While the electrologist began wearing gloves and using different tweezers for this client, she allegedly continued to treat other clients without gloves. In addition, the same tweezers were allegedly used for all clients and alcohol was allegedly the only form of instrument cleaning between clients. Speakers at the public hearing emphasized the importance of proper sterilization to prevent the spread of blood borne diseases.

On August 3, 1998, a second public hearing was conducted in Fairfax, Virginia. Five members of the occupation expressed concern that the unregulated practice of the occupation is a threat to public health, safety and welfare. Practicing electrologists who have a Maryland license argued that Virginia electrologists advertise as being licensed when there are no licensing requirements in Virginia. Those testifying argued for a regulatory program to be placed with the Department of Health Professions as an Allied Health Board. Concerns were also raised about the need for schools to be licensed by an electrology board in order to train electrologists in proper sterilization and methodology.

In addition to public hearings, the board received numerous written comments. The Director of the Division of STD/AIDS at the Virginia Department of Health reported to the board that there were no confirmed cases of HIV transmission through electrolysis. The statement noted, however, that there is always a possibility of transmission of any blood-borne illness, including HIV and Hepatitis B, with procedures involving body fluids. (See Appendix C)

Other written comments included numerous electrolysis clients as well as members of the occupation who supported the licensure of electrologists. One electrologist opposed the use of the Certified Professional Electrologist credential in Virginia since schools are not available in Virginia to properly prepare electrologists for this exam. The electrologist also opposed a licensing fee that could be burdensome to new, small businesses. In addition, one electrologist who refused to be identified expressed an opinion that most customers expect a sterile environment, and will not patronize an establishment that may threaten their safety.

E. Public Harm

The Board consulted with the Division of Consumer Protection at the Department of Agriculture and Consumer Services. The Division responded that they have rarely addressed consumer complaints against purveyors of electrolysis. (See Appendix D) The three Better Business Bureaus operating in Virginia compile complaints against individual businesses in their city and maintain the information for three years. A telephone survey of the bureaus failed to identify any complaints that had been filed against electrologists who are registered with the Better Business Bureau.

The Board requested comment from the Virginia Dermatological Society regarding concerns or complaints regarding the practice of electrolysis. No response was received as of this writing.

The Board clearly recognizes that consumers of electrolysis treatment may be reluctant to bring improper treatment or concerns about sterilization to a complaint-gathering source. As a result, the Board questions how consumers of these services should be able to comfortably file a complaint against a state licensed electrologist while protecting the constitutional rights of those in the profession. The enforcement division of the Department of Professional and Occupational Regulation inspects licensees in relation to complaints. Absent complaints, a meaningful inspection program is difficult to maintain. In addition, the costs of periodic inspections should be borne by the licensees.

Some localities have exercised the authority to inspect electrologists, but regulation is not universal, and standards are not uniform. The Department of Health in Alexandria and Norfolk currently inspect electrology salons. The inspection is of the facility and does not explicitly include any certification of the personnel. In Norfolk, environmental health specialists conduct unannounced inspections at least twice a year to ensure that the electrologist is using implements that are the one-use disposable type or that an autoclave is being used to sterilize such items. The Board applauds this type of inspection as a proactive means of ensuring that the occupation is following acceptable sterilization methods, while noting that inconsistency of regulation among differing localities can raise troubling questions and have undesirable results.

III. Conclusions

In considering the information received and analyzed, the Board must place its findings into the context of the criteria used to evaluate the need to regulate this occupation. Referencing Section 54.1-100 of the *Code of Virginia*, the Board makes the following conclusions:

1. There is potential, but not substantial evidence, that the unregulated practice of the profession or occupation may harm or endanger the health, safety, or welfare of the public. Thus the potential for harm currently appears remote and unproven.

There is a risk of harm to the public from the unregulated practice of electrolysis. The risk results from the characteristics of the practice. Electrolysis is an invasive procedure in which the skin is penetrated by a foreign object. As the Center for Disease Control suggests, it appears possible that such a procedure, if done with less than appropriate sterilization, has the potential to spread blood-borne diseases such as HIV and Hepatitis B. However, no documented cases of HIV transmission through electrolysis were presented to or are known to the Board. The Board strongly encourages the Virginia Dermatology Society and the Virginia Department of Health Professions to

closely monitor the occupation. It could also be beneficial to include disclosure requirements in the Consumer Protection Act regarding the practice of electrology.

2. The practice of the profession or occupation has inherent qualities to it that distinguish it from ordinary work and labor.

The scope of practice is distinguishable from other licensed occupations. While some states have placed regulation of this occupation within the regulatory scheme for cosmetology, the Board concludes that electrology is not a related occupation that should be licensed by the Virginia Board for Cosmetology. By statute, the Board for Cosmetology regulates occupations that provide external and aesthetic procedures for enhancement of human hair and nails. Although both occupations deal with hair, the education, training and practice are quite different. There are standards and techniques that are required in the practice of electrology that are not required in the practice of cosmetology and/or barbering.

3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and

The practice of electrolysis does require specialized training and the public will benefit from assurances of initial and continuing occupational competence. The Board notes that electrologists are required to use independent judgment in their practice and the occupational group practices autonomously.

4. The public may not be effectively protected by other means.

If the potential for harm in Virginia is established, the Board believes there are alternatives to a state licensing program for electrologists. The Board for Professional and Occupational Regulation emphasizes the importance of utilizing the least restrictive form of regulation possible. This is consistent with Virginia's history of an approach to regulating commerce only when clear need has been demonstrated. The Board commends and supports the continued efforts of the American Electrology Association, which has established high standards in the practice of electrolysis.

In addition, the current inspection of electrologists by local health departments may also be an effective means of ensuring a standard of practice. While such inspections may not be occurring in every locality, the board suggests that localities where electrologists practice consider such regulation.

A state regulatory program with a small number of potential regulants could be extremely costly to electrologists. While some practitioners welcome that regulation and the accompanying costs as a means of ensuring better standards of practice, the Board is concerned that there is pressure from national trade associations and surrounding states which currently have a regulatory program. To require licensure for an occupation for the purposes of enhancing its public credibility and elevating its stature is contrary to the

intent of state statutes governing the regulation of professions and occupations. Thus, a determination to regulate must be motivated by real and serious concerns.

However, if the General Assembly at any time were to determine that a state regulatory program for electrologists is necessary, the Board for Professional and Occupational Regulation strongly supports the placement of the program at the Department of Health Professions. Electrologists are not cosmetologists or nail technicians. Electrology is an invasive procedure that involves the use of needles, probes and forceps, tweezers, sterilization techniques, topical anesthetic, and health related equipment.

At this time, Board recommends that licensure not be established. However, over the next three years, the Board recommends that all potential recipients of consumer complaints made by clients of electrologists be monitored and that other sources of information on the potential for harm (e.g. Center for Disease Control, American Electrology Association, Department of Health Professions, the Department of Health, and the Division of Consumer Affairs at the Department of Agriculture) also be monitored. Should it become apparent that Virginians are placed at risk through the unregulated practice of electrolysis, then reconsideration will surely be justified.

SENATE JOINT RESOLUTION NO. 128

Requesting the Board of Professional and Occupational Regulation to study the need to regulate electrologists.

Agreed to by the Senate, February 17, 1998

Agreed to by the House of Delegates, March 12, 1998

WHEREAS, electrolysis is an invasive procedure in which a fine wire or probe is inserted into the hair follicle; and

WHEREAS, electrolysis should be done by someone who has been properly trained in aseptic technique and who has a good working knowledge of the epilator machine; and

WHEREAS, without proper training in the use of sterile instruments, there is a greater chance that blood-borne infections such as AIDS and Hepatitis B will be spread; and

WHEREAS, permanent scarring can occur from improper use of the epilator; and

WHEREAS, there are currently no laws governing electrolysis in Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Board of Professional and Occupational Regulation be requested to study the need to regulate electrologists.

All agencies of the Commonwealth, including the Board of Health Professions, shall provide assistance to the Board of Professional and Occupational Regulation for this study, upon request.

The Board of Professional and Occupational Regulation shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

GENERAL ASSEMBLY OF VIRGINIA -- 1998 SESSION

APPENDIX B

HOUSE JOINT RESOLUTION NO. 204

Requesting the Board for Professional and Occupational Regulation to study the need to regulate electrologists.

Agreed to by the House of Delegates, March 12, 1998

Agreed to by the Senate, March 10, 1998

WHEREAS, electrolysis is an invasive procedure in which a fine wire or probe is inserted into the hair follicle; and

WHEREAS, electrolysis should be done by someone who has been properly trained in aseptic technique and who has a good working knowledge of the epilator machine; and

WHEREAS, without proper training in the use of sterile instruments, there is a greater chance that blood-borne infections such as AIDS and Hepatitis B will be spread; and

WHEREAS, permanent scarring can occur from improper use of the epilator; and

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DIR Office

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RANDOLPH L. GORDON, M.D., M.P.H.
COMMISSIONER

July 2, 1998

Debra L. Vought
Agency Management Analyst
Department of Professional and Occupational Regulation
3600 West Broad Street
Richmond, Virginia 23230-4917

Dear Ms. Vought:

Thank you for the opportunity to review information regarding the practice of electrology. Nationally, there are no confirmed cases of HIV transmission through electrolysis. However, there is always a possibility of transmission of any blood-borne illness, including HIV and Hepatitis B, with procedures involving body fluids.

In material enclosed with your letter, reference is made to infection control standards for the practice of electrology which have been developed by the American Electrology Association in conjunction with the Centers for Disease Control and Prevention. The Association of Virginia Electrologists has endorsed these standards. According to your material, the standards recommend universal precautions and the use of disposable or properly sterilized equipment. Such procedures would offer sufficient protection to both worker and clients. It would be reasonable to require such procedures for the practice of electrology.

Please contact me at (804) 786-6267 if I can assist further.

Sincerely,

Casey W. Riley, Director
Division of STD/AIDS

/agc



J. Carlton Courter, III
Commissioner

COMMONWEALTH of VIRGINIA
Department of Agriculture and Consumer Services
Division of Consumer Protection

DIR Office

AUG 14 1998

Office of Consumer Affairs

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August 12, 1998

Debra Vought
Dept. of Professional & Occupational Regulation
3600 West Broad St.
Richmond, VA 23230

Re: Electrolysis Complaints

Dear Ms. Vought:

After a thorough review of complaint files in the Office of Consumer Affairs, it appears that we have rarely addressed consumer complaints against purveyors of electrolysis. Mr. Stuart Ashby, who is the long-standing Manager of Counseling, Intake, and Referral here in Consumer Affairs, and directly responsible for the administration of all formal complaints, stated that in the past five to seven years, he could remember only one or two complaints which remotely touched upon electrologists, and people dissatisfied by their work.

We sincerely hope this will be of some help to you in analyzing the needs of this industry in light of regulatory issues. Please let us know if we can be of further assistance. I can be contacted directly at 786-0321, or at our letterhead address.

Sincerely,

Joseph Herron
Senior Investigator
Office of Consumer Affairs

