BUREAU DE SANTÉ DE MIDDLESEX-LONDON HEALTH UNIT

Comments Re: Draft Regulations for Bill 30 *Skin Cancer Prevention Act* (Tanning Beds) 2013 Middlesex-London Health Unit

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We would like to provide comments below based on the summary that accompanied the release of Bill 30 and in the absence of actual regulatory language.

Re: Definitions

We recommend that all terms that provide authority and/or that may be used for compliance and enforcement are defined in the regulations to provide clarity.

"**Minister** - we would like consideration of the addition of "any person designated by the Minister to act on the Minister's behalf" to provide greater flexibility in providing authority under the Act.

"**Owner"** is the terminology used in the legislation and **"owner/operator**" is used in the draft regulation summary. Within the regulation, both "owner" and "operator" should be clearly defined/clarified since the owner of a commercial tanning operation may not be the person who manages or controls a commercial tanning operation. It is our recommendation that owners and operators (or persons most in charge) should be held accountable under the *Act.* The definition of "operator" within the *Health Protection and Promotion Act* and corresponding Regulations may prove useful.

"**Tanning services**" should be clearly defined in the regulations with reference to using/offering any device that can be equipped with one or more ultraviolet lamps and induces skin tanning or other cosmetic effects.

"**Prescribed class**" needs to be defined in the regulations since it is included under sub-section 2(5). This inclusion without parameters may provide a potential legislative loophole and/or may create confusion for both the owner/operators and the Public Health Units who are responsible for enforcement.

"**Spray tanning**" should be clearly defined in the regulations. It is understood that "spray tanning" is excluded from the *Act* and Regulations; however, an unintended consequence may be the increased use of spray tanning as an alternative to tanning. Clear parameters around what is considered "spray tanning" would help to define the issue.

Re: Apparent Age

Comment: Before selling tanning services to any person who appears to be less than 25 years old, an operator must request identification and be satisfied that the person is at least 18 years old. The *Act* does not legislate currently what forms of identification are acceptable. Acceptable identification must be government issued, that includes photograph, name and date of birth. This requirement for acceptable identification should be clearly defined within the regulations.

Re: Proposed Valid Identification

Comment: *The only acceptable identification should be government issued identification that includes date of birth and photograph. Acceptable identification is:*

- Ontario driver's licence
- Canadian passport
- Canadian citizenship card
- Canadian Armed Forces identification card
- Liquor Control Board of Ontario photo card

When identification is presented other than Ontario- issued, the same consideration of government issued identification that includes name, date of birth, and photograph should be observed.

Consideration should be given to the inclusion of language within the regulations to cover **Improper Identification.** The inclusion of language similar to "n*o person shall present as evidence of his/her age identification that is not lawfully issued to him/her" would incorporate some consumer responsibility into the regulation and legislation.*

Re: Owner's Responsibility

Comment: The legislation outlines that the owner shall be liable for youth access unless they exercised **due diligence** to prevent contravention. It is imperative to provide strict and specific responsibilities of owners/operators that would meet the requirement of "**due diligence"** as without clear guidelines it becomes problematic for enforcement of the *Act*. Our health unit has had experience in tobacco control and may be able to provide some guidance in this matter and can offer a framework to develop the parameters – please refer to Appendix A. For example, it should become the responsibility and legal obligation of those who sell or offer tanning services to provide consumers with information about the risks associated with tanning, to ask for identification, to provide education for staff regarding the law and appropriate identification, and to have the appropriate policies in place regarding documentation, etc. High expectations for due diligence should be included in any training material provided by the Ministry for operators.

Re: The proposed exception of the Owner's responsibility

Comment: Under sub-section 2 (5), the legislation reads, Subsections (1) and (2) do not apply to a person who belongs to a **prescribed class**, as long as the person is complying with all applicable requirements provided for in the regulation; this provides an opportunity to bypass the legislation. Who is the **prescribed class and what is the intention of the exception**? **Could you provide some comments or explanation as to why the exception was included in the legislation?** Our position is that tanning services should not be provided to anyone under the age of 18 years regardless; there should be no exemptions.

It is the position of our Health Unit that medical exemptions for artificial tanning should not be included. The use of commercial tanning beds for treatment of underlying medical problems is not endorsed by the Canadian Dermatology Association. The scientific evidence is clear that commercial tanning facilities are not the appropriate substitute for treatment as they provide a larger range of ultraviolet light (UV) wavelengths than UV equipment specifically designed for treatment. The first line of treatment for any medical problem that is treated with UV is medication; UVR therapy indications are limited.

Tanning operators should not be permitted to accept a prescription for UVR treatments or services. Anecdotal evidence suggests use of prescriptions for Vitamin D treatments at tanning salons in the Province of British Columbia and in the city of Ottawa. The language should be explicit in the regulations so that it is clear for both operators and those enforcing the legislation; no prescriptions allowed.

Re: No Self-Tanning

Comment: Under the legislation, no tanning services can be provided by a device that does not require the presence of an attendant so it is important that the regulations outline what that statement actually means. Does "the presence of an attendant" mean someone in the building, at the front desk, or in close proximity? We propose that the regulations clearly define that this means that an attendant needs to be able to restrict access to the device and provide control over the maximum length of time of exposure.

Coin-operated machines would not be permitted for use under the legislation. There should be a consideration for some regulations in place to allow an inspector to stop use of such device, for example, an order for seizure of such device or the suspension of operation as it is illegal. It may be problematic for inspectors to physically remove the coin-operated devices but there should be an action(s) that allows inspectors to prohibit public access to the device.

Tanning devices may also be found in some condominiums or health clubs as an added service to their members. It is our understanding that the condominiums use self-serve tanning

devices and health clubs may or may not have an attendant. For those devices within common areas of condominiums, condominium corporations may not view these devices as public service, but part of the "private dwelling". This example requires consideration and within the regulation, a clear definition of private dwelling is necessary to ensure that public health units have appropriate authority to inspect and prohibit public/client use to these devices. The Public Pool Regulations and Public Spa Regulations address pools and spas in private health clubs and privately-owned condominium units. These Regulations may provide elements for consideration.

Re: Proposed Regulations for Advertising and Marketing of Tanning Services and Treatments for Tanning

Comment: Tanning operators should be prohibited from claiming any health benefits of tanning services or ultraviolet treatments for tanning since it promotes the idea that tanning behaviour is healthy. The regulations should clearly restrict advertising and marketing to youth, such as in or near elementary and high schools, university and college campuses. No advertisements should be placed in media, electronic or otherwise, that includes images targeted to youth; images used in advertisements should not portray/use youth under 25 years of age in advertisements, campaigns or strategies to market tanning services. There should be a discontinuation of any materials such as tanning bed stickers or accelerants that attract youth to tanning services, especially at point of sale, through giveaways, or promotional items. No advertisements in youth magazines, youth websites, or other venues that are frequently used or accessed by youth should be permitted. Under no circumstances should health benefit claims for the use of UVR be allowed in any type of advertisement, promotion or marketing strategy. In particular some tanning bed operators are using social media to advertise their special deals, targeted to youth and young adults. These social media ads target specific age groups/demographics. These types of advertising tactics need to be spelled out in the regulation as prohibited.

Similar to the Province of New Brunswick (http://laws.gnb.ca/en/ShowPdf/cs/2013-c.21.pdf), we would support no direct or indirect advertising promoting artificial tanning that makes false or misleading claims about health effects from tanning including advertising that includes the following statements:

- That artificial tanning is beneficial to a person's health
- That artificial tanning is a means of obtaining vitamin D
- That artificial tanning is a means of obtaining a base tan

The summary of the draft of the proposed regulation indicates the term "tanning services" will be defined in a manner that excludes spray tanning. However, many tanning operators offer both UVR beds and spray tanning, therefore youth will be able to continue to access these

services in tanning operations; therefore it is imperative to keep access, marketing and advertising away from youth.

An unintended consequence of excluding spray tanning from the legislation and regulations may be the increased use of spray tanning. The Health Unit encourages the Ministry of Health and Long-Term Care to advocate to Health Canada for the development and public release of safety information related to the use of commercial spray tanning booths. Recommendations about protective measures need to be issued by Health Canada to the public and protective measures regarding spray tan should be incorporated into the materials developed and distributed for training and education on owner/operator requirements under the Skin Cancer Prevention Act and Regulations. For example, dihydroxyacetone (DHA), the colour additive that darkens the skin and that is contained in some sunless tanning products, is approved by Health Canada for external application only. Health Canada needs to provide clarity to the public and spray tanning service providers about the use of spray tanning booths. The US Food and Drug Administration (FDA) has taken a position that all-over spray has not been approved; the FDA advises that consumers should request measures to protect their eyes and mucous membranes, and measures should be in place to prevent inhalation. Leadership on this issue in Canada is required.

Addition of **Display and Promotion**

No person shall promote tanning services in/or at any place where tanning services or ultraviolet light treatments for tanning are sold, offered for sale, or provided, where youth are ordinarily invited/permitted access either expressly or by implication, or whether a fee is charged for entry.

Addition of **Display and Promotion at Places of Entertainment/Recreation**

No person shall employ or authorize anyone to promote tanning services or the sale of tanning services at any place of entertainment or recreation that the person owns, operates or occupies. This would prohibit the promotion of tanning services at places where youth and young adults frequent like restaurants, cafes, recreational facilities, bars, bowling alleys, golf courses, etc.

Re: Proposed Regulations for Signs

All signs required to be posted under the Act and regulations shall be posted in a conspicuous manner and shall not be obstructed from view. Improper signage and obstruction are to be denoted as contrary to the regulations and are eligible for fine.

A person who sells, offers to sell, or provides tanning services or ultraviolet light treatments for tanning shall post the sign at any location where services are sold or offered in a place where

the sign is clearly visible to the person who sells or supplies the service and to the person to whom the tanning service is sold or offered.

The content to be posted should clearly describe the government identification that is necessary to access services, the age restriction and health warnings. The Government ID signage should state clearly that anyone aged 25 years and under will be asked for identification to access tanning services.

Simple, clear, and concise language should be used on the signs.

Recommend that signage is government issued and distributed to keep size, shape, colour, and messaging consistent. The Ontario Ministry of Health and Long-Term Care can develop and distribute signage through that Ministry and/or local public health units.

We strongly recommend no use of distance in the regulations for posting signage, such as "one meter from …" as it provides challenges for enforcement and potential court or prosecution challenges. Key areas in a tanning facility should have signage, including point of sale and entrance to the facility. Posting signs throughout the facility may dilute our message, or create more interest in tanning by inadvertently "advertising" the fact that access is not allowed for youth. The "display, promotion and handling" section of Regulation 48/06 under the *Smoke-Free Ontario Act* provides excellent guidance on the limitations and restrictions that should be enacted to prohibit the inadvertent advertising of tanning services to youth. The number of signs should be restricted and restrictions placed on the type of signage allowed (e.g. black font on white background, no larger than 14 Arial font).

Re: Proposed Regulation Regarding Protective Eyewear

Comment: The operator should provide each client/customer with ultraviolet radiation safety eyewear that complies with the Radiation Emitting Devices Regulations (Tanning Equipment) and covers the eyes securely. This regulation addresses the specific wavelength range of the eyewear to ensure safety. Additional inclusion of instructions for use, for example how to wear them, as well as the inclusion of operator responsibility to ensure eyewear are free of cracks, pitting or discolouration to minimize any damage to the eyes is imperative.

There is also a risk of transmission of infectious diseases (e.g. Pink Eye) from sharing protective eyewear equipment. It is therefore recommended that customers of tanning salons be encouraged to purchase their own personal protective eyewear equipment from the operators for their own personal and exclusive use. If protective eyewear equipment is provided by the tanning salon, it should either be single-use and disposed of after use on a single client, or else such equipment must be disinfected in accordance with Infection Control guidelines.

With the inclusion of eyewear in the legislation and proposed regulations, it does allow health protection to be part of the regulations for all individuals that access tanning services.

Re: The Proposed Notice of Operation

Comment: Along with the notice of operation to the Medical Officer of Health in the area where tanning services or treatments are offered, there should be consequences if notice is not provided prior to the selling of such services, or in the case of existing facilities, after 60 days of the coming into force of this section. Failure of notification should be cause for an immediate fine. This section of the *Act* should have short form wording attached to facilitate the levying of fines for lack of notification.

A mandatory provincial or municipal registry is recommended as it would be useful and practical to identify the tanning operators in the city and county.

Re: Inspectors

Comment: Recommend that *at the time an inspector removes records or other things, that the proprietor be prohibited from doing anything to remove or destroy any other records or things until the process is complete.*

Re: Additional Considerations for the Proposed Regulations

1. The Regulations for the *Skin Cancer Prevention Act* should follow a similar model to that which exists for the tobacco regulations (Ontario Regulations 48/06) under the *Smoke-Free Ontario Act*

Evidence suggests that through self-regulation the tanning industry has not been compliant with voluntary regulations. There is strong evidence that more active surveillance from public health units is necessary to ensure compliance. In a study released October 2008, the evidence showed that artificial tanning facilities in Toronto were not following Health Canada's voluntary safety guidelines. The key findings were:

- 96% of all personnel operating the tanning facilities did not communicate with the researchers about Health Canada's tanning safety guidelines
- 60% of tanning facilities did not ask the age or ask for identification from the researchers who were under the age of 19 years
- 60% of tanning facilities visited did not identify, neither verbally or through a skin assessment survey that the researcher had type I skin that burns and never tans.
- 99% of tanning facilities did not recommend against tanning for the researchers with type 1 skin type.
- Only 12 % of facilities visited were reported to have the Health Canada voluntary guidelines posted in an area that could be seen by the researchers

(Canadian Cancer Society, Ontario Division (October 2008) Media Backgrounder: Results from 2007 study of Toronto's artificial tanning facilities).

Additionally, lessons learned from public health units' collective experience with tobacco legislation and regulations clearly illustrate that unless there are mandatory compliance visits by each jurisdiction voluntary compliance with the regulations will not be achieved (Sinclair C, Makin JK. Implications of Lessons Learned From Tobacco Control for Tanning Bed Reform. Prev Chronic Dis 2013;10:120186. DOI: http://dx.doi.org/10.5888/pcd10.120186)

2. Enforcement Protocols and Directives

The Ontario Tobacco Research Unit (OTRU) has just released results from a study they conducted with three public health units testing a risk-based enforcement model for public health unit inspections of tobacco retailers. The model demonstrated that even low risk tobacco retailers required at least one youth access check per year, and for higher risk tobacco retailers, two to perhaps even 4 or five inspections are required. By increasing the frequency of inspections for high risk tobacco retailers, compliance increased. Legislation without active compliance and enforcement activities will not yield the results intended with the enactment of the *Skin Cancer Prevention Act*. Mandated inspections are required to ensure consistent application and enforcement of the *Act* across Ontario. The Middlesex-London Health Unit welcomes the opportunity to participate in consultations to assist in the development of a Protocol for inclusion under the Ontario Public Health Standards and the development of enforcement directives (i.e. mandated inspections, interpretation of advertising restrictions, etc…) to ensure consistent application and compliance with the *Skin Cancer Prevention Act* and its Regulations.

3. Funding for Public Health to Adequately Promote and Enforce the Legislation

Funding enhancements for public health units to support the promotion and enforcement of the new legislation are required. This is a significant addition to the requirements under the Ontario Public Health Standards and as a result, a funding model should be developed, in consultation with public health units to support the following required activities:

- Compliance monitoring: additional funding for public health units for inspections of facilities to meet the new requirements under the Ontario Public Health Standards
- Training of PHU staff who will be responsible for compliance and enforcement activities, including the training of operators/owners of tanning facilities
- Registry development, including technical support and a set of required data fields so that statistics and reports can be generated locally, regionally and provincially to ensure accountability and to measure outcomes
- Public education and promotion of the new legislation through a creative and coordinated social marketing campaign that not only promotes the legislation but that promotes the dangers of tanning and exposure to ultraviolet radiation, regardless of age.

4. Consistent Province Wide Development of Educational Materials

There should be consistent, province-wide educational materials (including signage) developed and provided to the Public Health Units for owners/operators that outline obligations under the law. A **Tanning Operator Manual that has the following inclusions is required:**

- Section for the law
- ID (similar to the sheets used in Tobacco and Alcohol
- Signage
- Health effects
- Skin type
- Owner/operator obligations
- Documentation

The Middlesex-London Health Unit welcomes any and all opportunities to work with our partners at the Ministry of Health and Long-Term Care to support a successful implementation of the *Skin Cancer Prevention Act* and Regulations.

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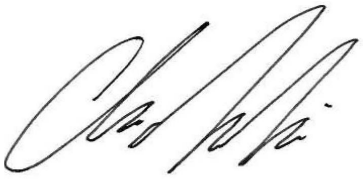

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