

Body Art Regulation

Report to the Minnesota Legislature 2010

Minnesota Department of Health

January 15, 2010



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2010 Proposed Regulatory Legislation For Body Art Technicians and Establishments

I. Executive Summary and Recommendations

Pursuant to the Laws of 2009, Chapter 79, Article 10, Section 49, the Minnesota Department of Health [hereinafter “MDH”] was mandated to review proposed regulatory legislation for body art technicians and establishments. The MDH review was to answer three questions and to develop recommendations as to the proper level of regulation needed. The questions are: [1] how other states comply with the American Association of Blood Banks [hereinafter “AABB”] standards; [2] how regulatory requirements affect currently-operating body art establishments; and [3] the appropriate level of coordination between the state and local jurisdictions that currently regulate body art establishments. The 21 jurisdictions which currently meet the AABB criteria place responsibility for body art regulation with the state, not county or local jurisdictions, and require at a minimum, licensure and inspection of establishments. The State of Minnesota is not included in the list of 21 jurisdictions which meet the AABB criteria. The proposed body art regulation would meet the AABB requirements.

The MDH recommendations which appear at the end of this report include suggested changes to the proposed definition of body art, training requirements, equipment requirements for both technicians and establishments, and a list of housekeeping changes to ensure the proposed statute is consistent with other occupational licensure programs. Also included with the recommendations is a list of issues which should be addressed, such as inclusion of criminal sanctions for unlicensed practice, a requirement for an exposure control plan, and autoclave maintenance.

II. Introduction and Background

MDH prepared this report based on research and investigation conducted by staff of the Health Occupations Program of the Compliance Monitoring Division. The research included review of local and state statutes and federal regulations. The investigation included: [1] interviews of body art practitioners; [2] site visits to tattoo and piercing establishments in both the metro and outstate Minnesota areas; and [3] numerous telephone contacts, e-mails, and meetings with various officials, including but not limited to the areas of environmental health, tribal law, city and state governments, and body art practitioners.

III. **How Other States Comply With the AABB Standards**

The AABB Reference Standard 5.4.1A—Requirements for Allogeneic Donor Qualification mandates a 12-month deferral period for blood donations performed using “nonsterile skin penetration with instruments or equipment contaminated with blood or body fluids other than the donor’s own. Includes tattoos or permanent make-up unless applied by a state-regulated entity with sterile needles and ink that has not been reused.” According to the most current information maintained by the Armed Services Blood Program [see: Appendix A], as of March 21, 2008, 21 out of 51 jurisdictions, including the District of Columbia, meet the AABB criteria of state licensure for each establishment, mandated use of sterile needles, and one-time use ink requirement.

The 21 jurisdictions which currently meet the AABB criteria place responsibility for body art regulation with the state, not county or local jurisdictions, and require at a minimum, licensure and inspection of establishments. The State of Minnesota is not included in the list of 21 jurisdictions which meet the AABB criteria. The proposed body art regulation would meet the AABB requirements.

IV. **How Regulatory Requirements Affect Currently Operating Body Art Establishments**

Currently, the only requirement for body art establishments in the State of Minnesota is to obtain written parental consent for the provision of either tattoo or piercing services to minors. Pursuant to Minnesota Statutes, section 609.2246, it is a misdemeanor to provide a tattoo to a minor under the age of 18 without written parental consent. As stated in Minnesota Statutes, section 609.2246, the definition of “tattoo” includes marks made by either ink or the production of scars. Pursuant to Minnesota Statutes, section 325F.814, it is a misdemeanor to provide body piercing services for a minor under the age of 18 without witnessed written consent of the minor’s parent or legal guardian. The definition of body piercing excludes piercing of earlobes for the purpose of inserting jewelry or other decoration or for some other nonmedical purpose. Pursuant to Minnesota Administrative Rules 2105.0010, subpart 13, ear piercing falls within the category of “unregulated services” and are not regulated through the cosmetology statute.

As of June 2009, 99 Minnesota cities have adopted the Minnesota Basic Code [hereinafter “Code”] promulgated by the League of Minnesota Cities. Chapter 114 of the Code [see: Appendix B] regulates tattoo and body piercing services and adopts the tattoo definition as set forth in Minnesota Statutes, section 609.2246, and requires: [1] establishment licensure; [2] yearly inspections; [3] parental consent and presence for tattooing and piercing of minors; [4] recordkeeping; [5] safety and sanitation standards; [6] and training. The Code includes ear piercing within the definition of piercing. However, the League of Minnesota Cities does not maintain information regarding those cities which have

adopted Chapter 114 of the Code in whole or in part. MDH was not able to determine that information from city websites.

In addition, the Counties of Anoka and Hennepin and the Cities of Bloomington, Minneapolis, Richfield, and Saint Cloud, have instituted regulations for body art establishments. Those regulations are at least as restrictive as that set forth in Chapter 114 of the Code and similar to the currently proposed state regulation. Other than the imposition of the licensure requirements related to the individual technicians, there would be minimal impact related to the proposed regulations on body art establishments located in these locales.

Of the regulatory programs currently operational, those in force in the Cities of Bloomington, Minneapolis, Richfield; Saint Cloud, and the Counties of Anoka and Hennepin may be sufficient to meet the AABB criteria. If adopted as written, those jurisdictions which have ratified the Code should have ordinances in place sufficient to meet the AABB criteria. However, it should be noted that the AABB standard is not met unless the regulation is administered by the state. For example, Chapter 367 of the Saint Paul Legislative Code merely requires city licensure of tattoo parlor and is insufficient to meet the AABB standard.

The impact of the proposed regulation would be greatest for those body art establishments located outside those cities and counties with existing regulation. Heretofore, the body art profession in the State of Minnesota has been self-regulating and practitioners have trained through training and apprenticeships of their own making. Implementation of the proposed regulation for establishments outside of the currently-regulated locations may involve some costly physical plant changes. Interviews with practitioners determined the proposed requirements related to sinks and lighting would place unnecessary and burdensome conditions on existing businesses. All body art technicians currently involved in the profession would be financially impacted by the licensure, training, and continuing education requirements.

V. Appropriate Level of Coordination Between State and Local Jurisdictions That Currently Regulate Body Art Establishments

To meet the AABB standard, the state must be responsible for the body art regulation. Those local and county jurisdictions with an in-place and active regulatory program which includes both licensure and regular inspections should be allowed to continue their programs as related to the licensure and inspection of body art establishments. However, the local and county jurisdictions should report their findings to the state and the state should be solely responsible for the licensure of the body art technicians. However, any jurisdiction which maintains its own regulatory program should be required to notify the state of complaint information related to either body art technicians and/or establishments. The state should assume responsibility for discipline taken against all body art technicians,

but local government could sanction establishments for violations of local standards which exceed the state requirements.

VI. Regulatory Recommendations for Body Art Technicians and Establishments

A. MDH Recommendations Related to Body Art Technicians and Procedures:

1. The definition of body art as stated in SF525, Section 1, subdivision 5, should be expanded to encompass all forms of body modification, including but not limited to: tattooing (indelible mark or figure fixed on the body by insertion of pigment under the skin), body piercing (perforation of any human body part other than an earlobe for the purpose of inserting jewelry or other decoration or for some other nonmedical purpose), micropigmentation and cosmetic tattooing (use of tattoos for permanent makeup and hiding or neutralizing skin discolorations), branding (indelible mark burned into the skin of a living human being using instruments of thermal cautery, radio frequency, and strike branding), scarification (indelible mark or figure fixed on the body by production of scars), suspension (form of body art where a person hangs from affixed hooks placed through temporary piercings), subdermal implant (implantation of an object to reside entirely below the dermis), microdermal (single-point perforation of any human body part other than an earlobe for the purpose of inserting an anchor with a step either protruding from or flush with the skin), tongue bifurcation (cutting tongue from tip to part of the way toward the base, forking the end), and tissue removal (indelible mark or figure fixed on the body by removal of dermis).

MDH found that all forms of body art are currently being performed in the State of Minnesota. If allowed, body art technicians and their clients must be afforded access to safe and sanitary environments in which to receive the desired procedures. Local governments could choose to limit the types of procedures allowed within their jurisdictions. If a procedure is prohibited, criminal sanctions at least at the gross misdemeanor level would be needed for enforcement to be effective.

2. The training requirement stated in SF525, section 3, subdivision 4(4), should be modified to include “industry-specific” blood borne pathogen training, CPR, and First Aid. Industry-specific training is available through several professional organizations, including the Association of Professional Piercers and the Association of Professional Tattooists.

3. Disposable razors referred to in SF525, section 6, subdivision 4(c), should be disposed of after each client to prevent cross contamination of bloodborne pathogens between clients.
4. Glove use requirement stated in SF525, section 6, subdivision 4(e), should prohibit use of latex gloves when Vaseline/petroleum products are used, due to the degradation of latex in the presence of petroleum products.
5. The requirement for technicians to use a disposable barrier stated in SF525, section 6, subdivision 5(c), should be changed to “may”. MDH’s interviews determined there is minimal blood loss involved in tattooing and some piercing procedures and that the use of aprons or other barriers is a personal preference of the technician, usually to prevent ink damage to clothing.
6. A criminal penalty for unlicensed practice should be included. An appropriate level would be at least a Gross Misdemeanor with a \$3,000 fine and/or one year in jail with elevation to felony status after multiple violations. Currently, the most problematic area in the body art field involves the unsafe practices by those practitioners who provide services outside of a legitimate establishment, do not maintain appropriate sanitary conditions, and do not use either sterilized equipment or jewelry. The unsafe locations include, but are not limited to, residential kitchens and basements, garages, and motor vehicles such as vans.
7. The requirement for a 200+ hour apprenticeship as stated in SF525, section 3, subdivision 4(3), should be further considered. MDH research and investigation failed to find a consensus as to what would constitute an appropriate and effective training period. MDH interviews with practitioners found significant disagreement regarding all aspects of training, including need for, length of, and monitoring of apprenticeships.
8. The subject of ear piercing should be reviewed further. SF525, section 1, subdivision 5, states, “The definition of body art does not include piercing of the outer perimeter or lobe of the ear using a presterilized single-use stud-and-clasp ear piercing system.” Retail businesses specializing in accessories and jewelry which also offer ear piercing, use equipment which is plastic and unable to be sterilized. The employees of these establishments are frequently minors with minimal training. There was great concern expressed by piercing professionals as to the sanitary conditions and practices of ear piercing businesses.

B. MDH Recommendations Related to Body Art Establishments:


1. The lighting requirements stated in SF525, section 6, subdivisions 1(h) and (i), should be changed to “adequate for procedure”. Some practitioners interviewed stated the lighting requirements as stated

are unnecessary. The stated lighting requirement would also be burdensome for both practitioners to implement and for MDH to monitor.

2. Requirements related to minors stated in SF525, section 7, subdivision 1(b), should include documentation of the relationship between the minor and guardian present, including but not limited to birth certificates. Some practitioners interviewed stated it was apparent that some minors had attempted to obtain procedures using either counterfeit identification or consent forms signed by individuals posing as their parent or guardian.
3. The records requirement stated in SF525 section 7, subdivision 3(4), should include the physical location on the body where the work was performed. This would be used in the event of an adverse reaction to the procedure, to assist in verification of the source of the procedure.
4. All establishments should be required to maintain and exhibit an Exposure Control Plan (ECP), as mandated by the United States Department of Labor, Occupational Safety and Health Administration (OSHA), pursuant to the Bloodborne Pathogen Standard stated in 29 CFR 1910.1030. This would ensure adequate protection of practitioners who are inadvertently exposed to a bloodborne pathogen during a procedure. The ECP must clearly outline the procedures to be taken when a practitioner is exposed to a bloodborne pathogen through the practitioner's eyes, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials during a procedure.
5. All establishments should be required to calibrate their autoclaves at least once a year and maintain documentation thereof. Calibration of autoclaves will ensure spore tests are accurate and within specification limits.

D. Housekeeping details: the following provisions should be changed to ensure consistency with other occupational licensure programs:

1. The appeal period requirement stated in SF525, section 3, subdivision 5, should be changed from "20 days" to "30 calendar days". Pursuant to Minnesota Statutes, sections 148.6448, subdivision 1(2); and 148.5195, subdivision 3(2), occupational therapy practitioners, speech-language pathologists, and audiologists must respond to MDH requests within 30 days.
2. The grounds for emergency closure as stated in SF525, section 5, subdivision 1(6), should be clarified to clearly define "untrained staff" and "poor personal hygiene". Both terms are vague. The term "staff" should be changed to "body art technician" to differentiate from other non-technician staff possibly employed by



an establishment. The term “poor personal hygiene” should be limited to ensure emergency closure would be based on a condition which would directly impact the technician’s ability to provide services in a sanitary manner.

3. The records requirement stated in SF525, section 7, subdivision 3, should include the client’s written acknowledgement of receipt of written aftercare instructions. Clients bear much of the burden of ensuring their own safety after the completion of a procedure. It is imperative the client receive clear and concise aftercare instructions directly related to the particular procedure they received.
4. The disciplinary grounds stated in SF525, section 8, subdivision 3(2), should delete the requirement for sending written communications by certified mail. The requirement for certified mailings places an undue financial burden on the state and is unnecessary in all cases. The current charge for certified mailing of minimal weight is approximately \$5.60, whereas a first class stamp currently costs 44 cents.

APPENDIX A

TABLE PRODUCED BY THE ARMED SERVICES BLOOD PROGRAM OF THOSE STATES WHOSE STATUTES MEET THE AABB STANDARD

Armed Services Blood Program
State Tattoo and Permanent Make-Up Reference List

NOTE: The Department of Defense (DoD) assumes no risk for the use of this information by non-DoD personnel, blood programs, or individual medical institutions. The use of this information by DoD personnel is strictly for blood donor registration and must adhere to the current Service Entry. Visit http://www.fda.gov/cfsr/standards/operating_procedure.html for the screening of blood donors. Changes since initial publication (JAE Nov 07) are highlighted in yellow.

NOTE: The following criteria provided in AABB Reference Standard 3.4.1.1. Items meet for Abstinence Barrier Qualification were used to determine acceptability of each state (a) State licensure required for each establishment, (b) Mandatory use of sterile needles, (c) One-time use ink required.

If the state is acceptable, defer the donor for one week to ensure the tattoo site has healed properly.

STATE	ACCEPTABILITY	NOTE
Alabama	Yes	n/a
Alaska	Yes	n/a
Arizona	No	n/a
Arkansas	Yes	n/a
California	No	n/a
Colorado	No	n/a
Connecticut	No	n/a
Delaware	Yes	n/a
District of Columbia	No	n/a
Florida	No	n/a
Georgia	No	n/a
Hawaii	Yes	n/a
Idaho	No	n/a
Illinois	No	n/a
Indiana	No	n/a
Iowa	Yes	n/a
Kansas	Yes	n/a
Kentucky	No	n/a
Louisiana	Yes	n/a
Maine	Yes	n/a
Maryland	No	n/a
Massachusetts	No	n/a
Michigan	No	n/a
Minnesota	No	n/a
Mississippi	Yes	n/a
Missouri	Yes	n/a
Montana	No	n/a
Nebraska	Yes	n/a
Nevada	No	n/a
New Hampshire	No	n/a
New Jersey	No	n/a
New Mexico	No	n/a

State Tattoo and Permanent Make-Up Reference List 21 March 2008 HPL 03-02, Enclosure 2 Page 1 of 2

Armed Services Blood Program
State Tattoo and Permanent Make-Up Reference List

STATE	ACCEPTABILITY	NOTE
New York	No	n/a
North Carolina	No	n/a
North Dakota	No	n/a
Ohio	No	n/a
Oklahoma	Yes	n/a
Oregon	No	n/a
Pennsylvania	No	n/a
Rhode Island	Yes	n/a
South Carolina	Yes	n/a
South Dakota	No	n/a
Tennessee	Yes	n/a
Texas	Yes	n/a
Utah	No	n/a
Vermont	Yes	n/a
Virginia	Yes	n/a
Washington	No	n/a
West Virginia	Yes	n/a
Wisconsin	Yes	n/a
Wyoming	No	n/a

Although a state government has laws that regulate the tattoo industry, the adequacy of enforcement is difficult to ascertain in all cases. Therefore, individual BDC Medical Directors should freely institute more restrictive local policies concerning donor suitability as needed.

State Tattoo and Permanent Make-Up Reference List 21 March 2008 HPL 03-02, Enclosure 2 Page 2 of 2

APPENDIX A

APPENDIX B

TABLE PRODUCED BY THE LEAGUE OF MINNESOTA CITIES OF THE 99 CITIES WHICH HAVE ADOPTED THE MINNESOTA BASIC CODE

These cities have adopted the Minnesota Basic Code as of June 2009:

Akeley	Deer Creek	Goodhue*	Long Beach		
Annandale	Deerwood	Halstad	Mable	Randall	
Appleton	Denham	Harmony*	Mapleview	Ranier	
	Ashby	Dundas	Hayward	Marble	Ruthton
Barrett*	East Gull Lake	Heidelberg	Meadowlands*	St. Augusta	
	Barnum	Elizabeth	Herman	Milan	St. Clair
	Baudette	Eikton	Hill City*	Miltona	St. Martin
	Belgrade	Ellendale	Hitterdal	Morton	Spicer
	Big Falls	Fertile	Holdingsford*	Motley*	Stewart
	Bigfork	Finlayson	Hoffman	Nerstrand	Taunton
	Bovey*	Fisher	Houston*	Norcross	Twin Valley
	Bowlus	Flensburg	Isle	Northome	Tower
	Callaway	Floodwood	Kelliher*	Ogilvie	Ulen
	Canton	Ft. Ripley	Klester	Ostrander	Upsala
Chandler	Franklin	Lake Lillian	Parkers	Prairie	Utica
Clear Lake	Geneva	La Porte	Pemberton*	Vergas	
Clearbrook	Ghent*	Lanesboro	Pillager	Wahkon	
Climax	Grand Meadow	Lengsby	Plainview	Waltham	
Clitherall	Grove City	Leonidas	Rockville	Wilmont	
Dakota	Green Isle	Le Roy	Rushford	Zumbro Falls	

*Cities that have a customized Minnesota Basic Code.

This is a bit more information on the Basic Code and the League's Codification Services:

<http://www.lmc.org/page/1/codification-services.jsp>

The League's private partner in its codification service (both custom codes and the Minnesota Basic Code), American Legal Publishing, has a search function that encompasses ALL its Minnesota Codes in a single search query. "Tattoo" should be a relatively easy search to try:

<http://www.amlegal.com/library/mn/index.shtml>

APPENDIX B

APPENDIX C

HF 1362, Article 10, Section 49, reads as follows:

339.10 Sec. 49. REVIEW OF PROPOSED REGULATIONS FOR BODY ART
339.11 TECHNICIANS AND BODY ART ESTABLISHMENTS.
339.12 The commissioner of health shall review proposed regulatory legislation for
339.13 body art technicians and body art establishments and develop recommendations on the
339.14 proper level of regulation needed for body art technicians and establishments in order
339.15 to protect public health. The recommendations must include a review of how other
339.16 states comply with the American Association of Blood Banks standards, how regulatory
339.17 requirements affect currently operating body art establishments, and the appropriate level
339.18 of coordination between the state and local jurisdictions that currently regulate body art
339.19 establishments. The commissioner shall submit the results of the review and possible
339.20 regulatory recommendations for body art technicians and establishments to the chairs and
339.21 ranking minority members of the legislative committees with jurisdiction over health
339.22 care by January 15, 2010.

APPENDIX C