

Review of Legislative Request: Health Occupation Review

Body Art (HF677/SF 525)

Response to Council of Health Boards Questionnaire submitted by:

Joseph Trowbridge, Owner, Anchors End Tattoo

Dwayne Holt, Manager, Anchors End Tattoo

Ryan Welles

With support of Memorial Blood Centers, American Red Cross – North Central Chapter,
and May Transfusion Service

Review Panel for the Council of Health Boards:

- Stephanie Lunning, Executive Director, Board of Physical Therapy, Chair
- Corinne Ellingham, Board of Physical Therapy
- Gina Stauss, Executive Director, Board of Cosmetologist Examiners
- Rebecca Gaspard, Office Manager, Board of Cosmetologist Examiners
- Laurie Mickelson, Executive Director, Board of Dietetics and Nutrition Practice
- Janelle Peterson, Board of Dietetics and Nutrition

Referred to the Council of Health Boards by:

Representative Paul Thissen

Chair, Health Care and Human Services Policy and Oversight Committee

cc: Representative Tina Liebling
Representative Jim Abeler

Senator John Marty
Senator Patricia Torres Ray
Senator Paul Koering

Tom Hiendlmayr, MDH

Staff to the Subcommittee:

Cindy Greenlaw Benton

Health-Related Licensing Boards

Administrative Services Unit

Public meeting dates:

September 28, 2009 (Legislative Subcommittee)

October 5, 2009 (Legislative Subcommittee)

October 19, 2009 (Legislative Subcommittee)

November 9, 2009 (Legislative Subcommittee)

November 23, 2009 (Legislative Subcommittee)
December 1, 2009 (Full Council)

Background

The Council of Health Boards was charged with the responsibility of reviewing legislative proposals regarding body art technicians and body art establishments. House File 677 and Senate File 525 differ in language, and Senate File 525 is in its third engrossment while HF 525 has not had engrossments. Senate File 525 passed the Senate in the 2009 Legislative session; however, House File 677 did not pass out of committee during the 2009 legislative session.

The Conference Committee Report of the 86th Legislative Session for HF 1362 contained a provision regarding review of proposed regulations throughout the states for body art technicians and establishments; this review is currently being conducted by the Minnesota Department of Health. This includes studying the extent of regulation; the name of the agency that provides the regulation; the type/level of regulation; the legislative scope of practice (including supervisory and disclosure requirements); and regulatory requirements such as continuing education; licensing fees; disciplinary process; and if applicable, information on the board structure, including the size of the board and board membership eligibility requirements.

Minnesota Statutes 214.001, Subd. 4, states that the chair of a standing committee in either body of the Legislature may request information from the Council of Health Boards regarding proposals relating to the regulation of health occupations. Minnesota Statute 214.025 states that the health-related licensing boards may establish a Council of Health Boards consisting of representatives of the health-related licensing boards and the Emergency Medical Services Regulatory Board. When reviewing legislation or legislative proposals relating to the regulation of health occupations, the Council shall include the Commissioner of Health or a designee.

The panel reviewed the application through a variety of methods, including: discussion at meetings with interested members of the public and the occupation; and review of materials submitted by the proponents, including responses to a questionnaire regarding occupational regulation.

Generally, the House and Senate bills provide for a system of statewide licensure for body art technicians (including tattooing and body piercing) and body art establishments. Licensure activity would be under the auspices of the Commissioner of the Minnesota Department of Health. Tattooing, body piercing, and related facilities are not currently regulated by state statute. Some versions of the proposed legislative changes do not propose regulation of a “new” occupation, but, rather, propose to provide licensure to address sanitation and blood bank supply concerns. Currently, there are no Minnesota state statutes governing body art technicians or for body art establishments, although some governmental entities (counties and cities) have ordinances or licenses regarding such activity.

The Council received responses to its standard “Questionnaire on New or Expanded Regulation” from representatives of the occupation seeking regulation with the assistance of other proponents of the legislation. Responses were reviewed and rated based upon the materials provided with the application, with limited reliance on knowledge of, or inferences about, the occupations by the subcommittee comprised of health-related licensing board executive directors and board members. The worksheets contained 60 items in the general topic areas: Description of the Occupation; Safety and Efficacy; Government and Private Sector Recognition; Education and Training; Practice Model & Viability of Profession; and Regulatory Framework. The proposal submitted by the proponent for this legislative change was reviewed according to these 60 items for thoroughness of response and provision of information. The Council has assessed the degree to which the responses to the questions and information provided supported the application for establishing licensure.

The bills do not mention the support of Minnesota blood banks in obtaining statewide regulation regarding tattooing and body piercing. Statements provided during the review indicate that the blood banks’ support for this regulation and its aims, in order to minimize the number of blood donation deferrals (in that current blood bank standards are to defer for one year donors who have received a tattoo in a state that does not have statewide regulation of body art technicians, body art facilities, and body piercing).

The Council reviewed the proposal with a view toward providing the Legislature with an objective evaluation of information regarding the proposal and to describe those areas, if any, that were supportive of the legislative change, and which were not. The subcommittee met to organize the review process, review the worksheets and to discuss the proposal on September 28, 2009; October 5, 2009; October 19, 2009; and November 9, 2009, and November 23, 2009.

In general, this subcommittee found that the responses given to the questionnaire were generally responsive to the questions posed with some areas not thoroughly developed. *There may be additional considerations that are not addressed, for which the Legislature may want to request additional information or clarification.*

In its entirety, the questionnaire completed by the proponents of the legislation, and which is completed by all proponents whose legislative proposal is forwarded to the Council of Health Boards, is designed to respond to legislative issues that range from, but are not limited to:

- review of initial request for creation of new licensing board ;
- regulation as an advisory committee within a Board;
- registration;
- reviewing changes to regulation of an existing profession.

Because of the broad scope of the questionnaire, some of the usual discussion and review that would be considered if a new board were being created, or if this were a new health-related occupation, is not applicable. Through the Council, however, an opportunity

exists to review the proposed legislation and the impact of the changes in their entirety, with a goal of clarifying for the Legislature issues that may arise in the course of its consideration of the proposal.

It is not the role of this Council to either recommend or to withhold recommendation of proposed legislation, but to analyze submissions pertaining to proposed legislation and to offer factually based conclusions and other possible areas of inquiry in order for the Legislature to determine whether to grant licensure to an occupation.

The Committee did face some hurdles in review, in that the House File and Senate File differ from each other in some respects; and in the legislative posture. In exactly what format these bills will be considered in the future is uncertain. However, the Council reviewed the legislation with a view to providing assistance to the Legislature on overriding issues that may warrant additional legislative consideration.

An Executive Summary of major issues for legislative consideration may be found at the end of this report. Where the Council of Health Boards suggests specific lines for legislative inquiry, the suggestion is italicized.

The primary proponents of this legislation were practitioners and the primary presenters during the Council review process were representatives of blood banks, who explained that because Minnesota has no overall regulatory scheme for body art, recipients of tattoos are deferred from blood donation for one year. The legislative proposals currently under review reflect this is an overriding consideration.

Differences between House and Senate proposals are noted in the body of this report.

A. Description of the Occupation

The groups proposed for state licensure are body art technicians and body art establishments. Body art technicians' practice includes tattooing and body piercing. The proposal includes application of body art and cosmetic tattooing, but exempts piercing of the ear (using a presterilized single-use stud-and-clasp ear piercing system). The proposal also includes scope of practice language that would exempt other licensed health practitioners from the provisions of this statute as long as they were operating in accordance with their licensure requirements. Among body piercing contemplated within the statute are insertion of jewelry or other objects in or through the human body. There are no independent provisions for body piercing establishments.

Because there is no current statewide licensing system, both body art and body piercing are unregulated except insofar as a subdivision of government, such as a county, regulates it. Currently, Anoka and Hennepin counties, and some Minnesota cities, have provisions regulating body art. The Minnesota Department of Health is reviewing how other states regulate body art establishments and body art technicians, and this review will be provided to the Legislature by January 15, 2010. Thus, unless regulated by a

government subdivision, practitioners may freely practice their occupation without state governmental statutory limitations or protections.

Body art technicians and establishments are not considered health providers or diagnosticians; however, there are public health ramifications of the practice, including possible transmission of bloodborne pathogens, as well as ensuring appropriate aftercare and referral for medical treatment, if necessary.

The Council considered whether standards are appropriate for both body piercing and body art.

Body art is defined as:

Subd. 5. **Body art.** "Body art" means physical body adornment using, but not limited to, the following techniques: body piercing, tattooing, [Senate – includes micropigmentation] and cosmetic tattooing.
1. 18 This definition of body art does not include piercing of the outer perimeter or lobe of the
1. 19 ear using a presterilized single-use stud-and-clasp ear piercing system. This definition
1. 20 of body art does not include practices that are part of a medical procedure performed by
1. 21 board-certified medical or dental personnel including, but not limited to, implants under
1. 22 the skin.

Body piercing is defined as:

Subd. 7. **Body piercing.** "Body piercing" means the penetration or puncturing of
2. 5 human skin by any method for the purpose of inserting jewelry or other objects in or
2. 6 through the human body. This definition does not include any procedure performed by
2. 7 a licensed or registered health professional if the procedure is within the professional's
2. 8 scope of practice.

In reviewing the legislation, the Council finds that there is no separate regulation for body piercing and body tattooing; rather, there are separate regulations / licenses for body art and for body art establishments. Under the proposed legislation, the regulations for body art and for body art establishments would be sufficient to encompass body piercing. There are different, separate safety concerns relating to body piercing (which are not necessarily considerations in tattooing) such as sanitation and safety of various objects that might be embedded beneath the skin, methods of scarification, skin incisions and sutures, and removal of embedded objects.

The Legislature may want to consider whether this broad coverage is sufficient to address specific issues of concern that may relate to body piercing, but not to tattooing.

The current legislation provides no provision for occupational ethics, and this is not discussed in the occupational review questionnaire. Because both tattooing and body piercing may involve touching of private parts of the body, if these occupations were to be licensed under the same standards pertaining to licensed health professionals, standards regarding ethics would be part of the regulatory system; inappropriate touching and crossing boundaries would typically be part of such regulations. Similarly, the

proposals do not address potential consequences to consumers that may result from incompetence, deception, fraud, failure to refer to a medical practitioner, or unethical practice.

The Legislature may want to consider whether to review the appropriateness of adding provisions regarding occupational codes of ethics for practitioners. The Legislature may wish to inquire into the need for clarification and possible additional requirements for facilities and practitioners of body piercing, since proposed regulations for body piercing do not appear within either the House or Senate proposal.

B. Safety and Efficacy

The primary goal of health-related regulation is protection of the public, and public safety.

In reviewing this proposal, the Council noted a provision permitting provisions of body art services within the State by a guest artist. Under the proposal, a guest artist may work for up to 30 days without licensure, having been registered to do so by a licensed technician. In the House version of the Bill, Section 146B.04 permits a guest artist to conduct body art procedures for up to 30 days without licensure. The only oversight in regard to such guest artists is registration of the artist with the Commissioner of Health [in the Senate, a licensed state technician would register the guest artist and also provide proof of having satisfactorily completed a course on bloodborne pathogens, prevention of disease transmission, infection control, and aseptic technique. It should be noted that there is a possible drafting ambiguity in this Senate provision, however, in that the section does not explicitly provide that the guest artist must have completed this course.]

An additional ambiguity exists in regard to legislative intent on guest artist practice in that the guest artist is limited to not conducting body art procedures for more than 30 days per calendar year *per licensed establishment*; such an artist could potentially operate continually within the state by working for various establishments throughout the state, without being required to apply for a technician's license, thus eluding the (albeit limited) requirements for technician licensure.

The Legislature may want to consider whether sufficient protection is offered to members of the public in regard to the work of guest body art and body piercing technicians who are permitted to operate within the State under the sole certification of in-state practitioner.

Similarly, although provisions exist for obtaining a temporary event permit for a single event up to a 21-day period, and the proposed bill states that an owner or operator shall comply with the requirements of this chapter, and post the permit, many of the requirements in this chapter pertain to sanitation and health and safety standards. Because the language is non-specific, and because there are a number of sanitation standards, *the Legislature may want to consider whether to specify more precisely the applicability of all health and safety standards, considering that temporary events may not be held in traditional venues that would meet such safety standards.*

The Legislature is encouraged to obtain additional information from stakeholders regarding whether these provisions offer sufficient public safety protection for those persons obtaining body art from a body art technician without supervision, such as guest artists or a practitioner with a temporary event permit.

Neither legislative proposal establishes a requirement for a base of knowledge regarding contraindications of tattooing or piercing, nor identifying wounds or other infections that could cause side effects to the client.

Within both proposed versions of the legislation (though not the Senate), licensed health professionals for whom body art would be within the scope of practice, are physicians, nurses, chiropractors, acupuncturists, physician's assistants, and dental professionals. However, the House version also includes body art within the scope of practice of cosmetologists. Thus, if a person were licensed as a cosmetologist, no additional apprenticeship or training would be required in order to work as a body art technician. Cosmetologists do not have health training akin to these health professionals.

The Legislature may wish to examine educational content in the area of body piercing and body tattooing.

The Legislature may wish to examine the appropriateness of cosmetologist licensure as including scope of practice for body tattooing and body piercing.

The reviewers did not have sufficient information to determine either the existence of complaints regarding body tattooing and body piercing practitioners nor the prevalence of complications or transmission of disease from these practices.

The Legislature may want to obtain research studies or other information to determine the extent to which potential public hazards exist in regard to this occupation, as well as the most appropriate manner of regulating for such hazards.

The proposed legislation provides for investigation of complaints, and disciplinary action by the Commissioner of Health based on certain actions of a licensed technician.

The legislative proposal would permit current practitioners who operate within governmental jurisdictions that have standards meeting or exceeding those of the state (and a letter from that jurisdiction stating the applicant is in good standing) to be licensed by reciprocity. It is not clear whether this would vitiate the course requirement of bloodborne pathogens, prevention of disease transmission, infection control, and aseptic technique.

Additionally, the legislation would permit until January 1, 2011, licensure of practitioners who have practiced more than 200 hours in the previous five years.

Although it is often the case in health licensure of newly-licensed professions and occupations that current practitioners are licensed based on experience, *the Legislature may wish to consider whether a sufficient level of public protection is provided by licensing practitioners who may have practiced without any state or other governmental subdivision regulations, regardless of length of practice.*

Once approved, although ear piercing is not part of the bill, it appears that a body art technician could be authorized to provide both piercing and body art services; under the proposal, there is only one type of licensure – tattooing is not separated from piercing. The legislative proposal does not consider the many, various possibilities for potential damage and injury which could occur from body piercing, and for which additional education might be warranted.

The Legislature may wish to consider how the goal of protection of the public would be met by this legislative change, as well as to consider the overall regulatory scheme proposed.

C. Government and Private Sector Recognition

In reviewing this proposal, the Council found several items for consideration by the Legislature in regard to its approach to regulation of occupations.

The proposed legislation covers practitioners of both tattooing and body piercing, and body art facilities.. However, all legislative language in the proposed bill appears related to concerns arising from tattooing, and not from piercings.

The Council noted that the proposed regulation would be performed by the Department of Health, including an emphasis on inspection of facilities before facilities could be licensed. The bill requires that the Health Department inspect prior to license issuance; *the Legislature may wish to review the mechanism by which such inspections would be conducted.*

Additionally, because there is not a single standard for state regulation, a patchwork of regulation appears to have arisen throughout the State.

The Council noted that neither the current statute nor the proposed legislation, require self-reporting by an applicant of having failed an examination, including during either the six month “temporary registration” period nor during the three month “grace period” during which body art technicians may practice. There is also no provision for termination of the “grace period” should the body art technician fail the required examination.

The Legislature may want to review whether regulation of body art and body piercing is more appropriately regulated via the current system of governmental subdivisions with a variety of varying provisions, or through a single regulatory system for the state.

D. Education and Training

The members of the subcommittee considered several issues pertaining to education and training.

The information regarding education and training is limited, and this occupation is not subject to defined academic standards. Because this is not the traditional health licensing regulatory model, the information provided is quite different from that for standard health licensing regulation. The Council is unaware of particular courses of education that lead to competency or public safety, nor that address codes of conduct. The current proposals provide for either licensing by reciprocity of practitioners currently regulated by governmental subdivisions, or for initial licensing upon completion of a 200-hour apprenticeship (and a single course in bloodborne pathogens, prevention of disease transmission, infection control, and aseptic technique). Proposed legislation does not anticipate formal education or training other than apprenticeship.

Until January 1, 2011, the 200 hour apprenticeship requirement would also be waived for practitioners who establish having met a minimum of 200 hours of performing body art procedures within the previous five years. Neither regulations nor legislation specify the content and form of apprenticeship.

There is not a defined test for competence during or at completion of apprenticeship programs. It is unknown whether educational opportunities are standardized. The only apprenticeship model is direct supervision. There are no accepted national or regional standards of education and training for competent practice. The occupation does not have standard tests individuals can take to demonstrate knowledge, skills and judgment.

After review, the Council determined that the proposed legislation does not have an impact on the education and training of body art technicians.

The Legislature may wish to consider whether proposed training is sufficient to meet a regulatory goal of protecting public safety, in that there is not a requirement for practitioners to learn about possible other areas of public concern, such as physical complications, physical boundaries, aftercare need for referral.

E. Practice Model and Viability of Profession

As currently practiced in Minnesota, no standard mechanism exists for clients of body art technicians to report injuries or unsafe practices or conditions, or to have them investigated. Regulation of occupations is for the purpose of public safety.

All current practitioners would meet legislative requirements for practice, if grandparented in to the occupation through 2011. This would require an applicant to file

evidence of 200 hours of work experience. A review of the legislation indicates that if a current practitioner has 200 hours of occupational service, he or she can perform either body tattooing or body piercing.

Practitioners are required to pay a fee for licensure. Whether cost would be a substantial barrier to practice may be dependent upon whether a county currently regulates practitioners, i.e., county regulations may be sufficiently stringent and costs at a cost that State fees would be comparable. However, practitioners who are currently not under the auspices of any type of regulation would likely face additional costs in complying with licensing and regulatory requirements. Additional costs may also be incurred over the course of a career. For example, standards regarding sanitation of facilities do not require a practitioner to remodel facilities to comply. However, if a practitioner does remodel facilities, then facility requirements must be met.

The Council reviewed the occupation being considered for regulation, and notes that the appropriate system of state involvement may include, in part, a view of whether the occupation is more akin to a regulated health occupation, or a customer-driven business, or a hybrid of both. The expected impact of proposed regulation on the existing supply of practitioners is unknown. Likewise, insufficient information was provided to determine what impact, if any, regulation would impose on customers. *The Legislature may wish to request additional information regarding the financial impact if any on consumers of these services.*

The Legislature may wish to consider the efficacy of regulation in that only a small (estimated) percentage of practitioners would be added to legislative coverage. At the same time, the Legislature must consider the possible risk to public safety if a fairly common occupation (one in which various parts of the skin and body are pierced and in which needles are inserted) is unregulated. It is also incumbent upon the Legislature to consider whether it is appropriate to regulate a practice in respects other than sanitation.

The Legislature may wish to inquire into the impact of regulation on the supply of practitioners in entities that regulate this occupation.

F. Regulatory Framework

Body art technicians and body art establishments are not currently regulated by the State. Some counties, particularly those with a more urban population, do regulate these practices. Civil remedies are available through the court system (as with any other legal wrong) for violations and for legally actionable harms.

The Council notes the existence of numerous regulatory options, including voluntary or mandatory registration or licensure. As previously noted, a number of practitioners work within counties that have some municipal or county ordinances. These are by no means standardized, however. For example, some counties' regulations cover facilities and

technicians, and others cover only facilities or only technicians. Sanitation practices are not standardized.

Unlike other health-related regulation, there is no provision within the proposed legislation for a code of ethics pertaining to this occupation. A code of ethics is typical in health regulation, particularly in an occupation such as this one, where there is a possibility of contact with intimate parts of clients' bodies and the potential of sexual misconduct.

Limitations in regard to occupational standards pertain to proof of age of the client, who is required to be 18 years or older [The Senate proposal requires notarized parent consent or the presence of the parent or legal guardian.] Also required is informed consent that a tattoo is permanent.

Under the proposed legislation, a client disclosure form is required to be completed, regarding whether the client has various health conditions, e.g., diabetes, hemophilia, skin disease, etc.

However, the bill contains no requirement that the practitioner be familiar with or have training or education on identifying any of these conditions or the ramifications of these conditions as having an impact on body art. Nor is there a requirement that the practitioner have sufficient information so as to refer a client for medical attention if necessary.

A retention schedule of two years for client records would be required.

Aftercare is limited to providing verbal and written instructions for the care of the tattooed or pierced site [Legislation does require that the written instructions must advise the client to consult a health care professional at the first sign of infection.]

Overall, the Council is concerned that the public is not as fully protected by a potentially unsafe practice as it could otherwise be in that the legislation appears to be aimed most directly at sanitation regulation.

The Legislature may wish to consider whether it is more appropriate to more fully regulate this occupation to provide protection, or whether proposed regulations are sufficient for an occupation that is not a health-related profession.

Additional Comments

The Council recognizes that quality of care can benefit by regulation. In assessing a health profession, the Legislature will need to determine whether the proposed statutory changes will meet the needs of public safety.

Stakeholders will also be involved in addressing critical issues regarding this legislative proposal, including possible unintended consequences regarding scope of practice issues.

Executive Summary

Description of the Occupation

In reviewing the legislation, the Council finds that there is no separate regulation for body piercing and body tattooing; rather, there are separate regulations / licenses for body art and for body art establishments. Under the proposed legislation, the regulations for body art and for body art establishments would be sufficient to encompass body piercing. There are different, separate safety concerns relating to body piercing (which are not necessarily considerations in tattooing) such as sanitation and safety of various objects that might be embedded beneath the skin, methods of scarification, skin incisions and sutures, and removal of embedded objects. *The Legislature may want to consider whether this broad coverage is sufficient to address specific issues of concern that may relate to body piercing, but not to tattooing.*

The Legislature may want to consider whether to review the appropriateness of adding provisions regarding occupational codes of ethics for practitioners. The Legislature may wish to inquire into the need for clarification and possible additional requirements for facilities and practitioners of body piercing, since proposed regulations for body piercing do not appear within either the House or Senate proposal.

Safety and Efficacy

The Legislature may want to consider whether sufficient protection is offered to members of the public in regard to the work of guest body art and body piercing technicians who are permitted to operate within the State under the sole certification of in-state practitioner.

The Legislature may want to consider whether to specify more precisely the applicability of all health and safety standards, considering that temporary events may not be held in traditional venues that would meet such safety standards.

The Legislature is encouraged to obtain additional information from stakeholders regarding whether these provisions offer sufficient public safety protection for those persons obtaining body art from a body art technician without supervision, such as guest artists or a practitioner with a temporary event permit.

The Legislature may wish to examine educational content in the area of body piercing and body tattooing.

The Legislature may wish to examine the appropriateness of cosmetologist licensure as including scope of practice for body tattooing and body piercing.

The Legislature may want to obtain research studies or other information to determine the extent to which potential public hazards exist in regard to this occupation, as well as the most appropriate manner of regulating for such hazards.

The Legislature may wish to consider whether a sufficient level of public protection is provided by licensing practitioners who may have practiced without any state or other governmental subdivision regulations, regardless of length of practice.

The Legislature may wish to consider how the goal of protection of the public would be met by this legislative change, as well as to consider the overall regulatory scheme proposed.

Government and Private Sector Recognition

The Legislature may wish to review the mechanism by which initial pre-licensure inspections would be conducted.

The Legislature may want to review whether regulation of body art and body piercing is more appropriately regulated via the current system of governmental subdivisions with a variety of varying provisions, or through a single regulatory system for the state.

Education and Training

The Legislature may wish to consider whether proposed training is sufficient to meet a regulatory goal of protecting public safety, in that there is not a requirement for practitioners to learn about possible other areas of public concern, such as physical complications, physical boundaries, aftercare need for referral.

Practice Model and Viability of Professions

The Legislature may wish to request additional information regarding the financial impact if any on consumers of these services.

The Legislature may wish to consider the efficacy of regulation in that only a small (estimated) percentage of practitioners would be added to legislative coverage. At the same time, the Legislature must consider the possible risk to public safety if a fairly common occupation (one in which various parts of the skin and body are pierced and in which needles are inserted) is unregulated. It is also incumbent upon the Legislature to consider whether it is appropriate to regulate a practice in respects other than sanitation.

The Legislature may wish to inquire into the impact of regulation on the supply of practitioners in entities that regulate this occupation.

Regulatory Framework

The Legislature may wish to consider whether it is more appropriate to more fully regulate this occupation to provide protection, or whether proposed regulations are sufficient for an occupation that is not a health-related profession.