



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
[Department of Public Health](#)
250 Washington Street, Boston, MA 02108-4619

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

WILLIAM D. O'LEARY
SECRETARY

HOWARD K. KOH MD, MPH
COMMISSIONER

MEMORANDUM

TO: Howard K. Koh M.D., Commissioner, and Members of the Public Health Council

FROM: Nancy Ridley, MS, Assistant Commissioner,
Bureau of Health Quality Management

DATE: January 23, 2001

RE: Informational Briefing – Model Regulations for Body Art Establishments

Introduction:

The attached Model Body Art Regulations set forth a model code for the practice of body art and for the maintenance and operation of body art.

The regulations have been reviewed by an advisory group composed of representatives from local boards of health, state cosmetology board, Office of General Counsel and the body art industry. Multiple suggestions expressed during the meetings with the advisory group, as well as written testimony and comments presented at the public hearings, have been incorporated into the final draft of the model regulations.

Background

On October 20, 2000, the Superior Court decision in Lanphear v. the Commonwealth found that MGL c. 265 §34 (the statute prohibiting the act of tattooing except by a licensed physician) violated the First Amendment. On November 20, 2000, the Commonwealth was granted a stay of entry of the judgement for 90 days in order to permit Department to develop regulations addressing the public health risks imposed by tattooing. The model regulations apply to all body art practitioners who seek to practice body art, and to all body art establishments where body art occurs in the Commonwealth. In addition, these model regulations provide for protection of minors, a particular concern of the Department. These regulations provide a model code, which may be used by local boards of health, for the regulation of tattooing, and other body art techniques.

The state legislature has not yet passed legislative language that would create a statutory framework for regulating various body art, tattoo and body piercing practices, but it is

expected that this will occur early in this legislative session. It should be noted that local boards have statutory authority to regulate health-related issues in a city or town pursuant to M.G.L. c. 111 § 31.

Public Hearing Process

Two public hearings were held, one on December 19, 2000 at the State Laboratory in Jamaica Plain, the other on December 27, 2000 at the DPH Western Regional Office in Northampton. Oral and/or written comments on these regulations were received from 20 individuals or groups as follows: one state senator; five local boards of health, as well as the president of the Massachusetts Health Officers Association (MHOA); the Massachusetts Medical Society (MMS); five tattooists and five body piercers; two manufacturers of ear piercing systems and four retail businesses that provide ear piercing services.

Response to Comments

Purpose and Scope - Boards of Health commented that the regulations should be adopted and enforced by DPH. Boards also commented that permits should be the responsibility of DPH. The suggestion was also made to forgo the formal promulgation process and put into a format for local adoption. Therefore, the Department is putting forth the standards as “model” regulations for adoption by local Boards of Health.

Definitions - Boards suggested adding the definitions for autoclave and ultrasonic cleaners, these additions were made.

On the definition of “body piercing”, manufacturers of ear piercing systems (guns) stated that the outer perimeter of the ear should be permitted to occur without regulation, and that piercing guns should be allowed for piercing the outer perimeter and lobe of the ear. Body piercers stated that ear piercing guns should not be allowed for piercing of any kind. The Department does not believe that any change is warranted. Ear piercing systems (guns) will be restricted to use on the ear lobe only.

On the definition of “Universal Precautions”, MHOA and one board stated that this is the old terminology and that it should be changed to the current term “Universal Standards”. The term Standard precautions (Universal Standards) were developed for isolation precautions in hospitals and may not necessarily be indicated in other settings where universal precautions are used, therefore no change was made.

Operation of Body Art Establishments- Boards suggested adding the requirement of posting emergency numbers as part of the requirements for each establishment and to require that each establishment have an emergency response plan. Boards also suggested adding to this section that establishments are required to obtain and keep visibly posted an occupancy permit. The Department has added these requirements.

Boards suggested requiring that practitioners provide the client information on ink ingredients and types of inks used and proposed allowing only dyes approved for intradermal use in body art. A tattooist commented that there are 2 companies that produce inks with MSDS information. While the FDA has approved no dyes for use under the skin, the Department has added a requirement for an MSDS sheet, when available.

Information to Be Kept on File - Two tattooists stated that there is no reason for an inventory of instruments, jewelry, inks, and sharps. The Department maintains that equipment and supply inventories are standard information in most facilities. This information is a means for establishments to track any problems with the quality of inks, jewelry and other products used in body art procedures. It is also a key component of complaint investigations. No change was made.

Smoking, eating, or drinking is prohibited in the area where body art is performed - Tattooists and body piercers stated that providing fluids for a client who feels weak should be allowed. The Department agrees and has modified the statement.

Refusal of service to any person who, in the opinion of the operator/practitioner, is under the influence of alcohol or drugs - The MMS stated that the phrase: "in the opinion of the practitioner", is weak and unenforceable, and recommends deleting it. The Department removed this phrase but has replaced it with the term "appears".

Contaminated waste disposal - Boards recommended requiring that the establishments contract with medical waste hauler for disposal of contaminated waste. There is a requirement in that section that the establishments be in compliance with 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste, State Sanitary Code, Chapter VIII.

Body art procedure upon a client under the age of 18 years -Tattooists and body piercers stated that the requirements in the section for "presence, consent, and proper identification of a parent, legal custodial parent, or legal guardian" were vague. They also commented that the practitioner should retain a copy of the photographic identification of clients; and that, for a client under the age of 18 years, a copy of proof of parental or guardian presence is attached to the consent form. The Department modified the section to add that parent or legal guardian must be on the premises during the procedure. It also clarified that proper identification is a photographic identification (driver's license, passport or military ID) for parents, legal guardian or client, and added the requirement that photocopies of identification are to be made and kept on file.

Exemptions - Body piercers requested removing exemption (B) for individuals who pierce only the lobe of the ear with a presterilized single-use stud-and-clasp ear piercing. The Department does not agree and therefore no change was made.

Injury Reports - Boards requested clarification on reporting and follow-up. The proposed regulations required reporting to Board and to Department. Including the requirement to report injuries to the Department was deleted.

Client Records - Boards recommended that regulations specify what practitioner should do upon receiving information regarding history of health issues. Piercers and Tattooists were concerned that they can't make judgment on health conditions and asking those questions is a potential violation of the Americans with Disabilities Act. The Department modified the language to require that clients will be asked to review a form that lists health conditions that may place them at risk when receiving body art. The form shall be signed by the client and kept on file.

Sanitation and Sterilization Procedures - One manufacturer suggested modifying the term “peel packs” to “sterilizer packs”. This change was made.

Piercers and tattooists stated that dry-heat sterilizers are not appropriate for sterilizing body art instruments. Dry heat sterilizers were eliminated.

Body piercers and tattooist commented on the reference to ‘reusable needles’ in. Body piercers maintain that no piercing needles should be reused, but the solid core stylets, which can be properly cleaned and sterilized, are reusable. Tattooists maintain that the tattooing ‘pins’ can also be properly cleaned and sterilized. The Department agrees, and has revised the accordingly.

One board suggested adding a requirement for secure storage for equipment and needles. There is a storage requirement in the model regulations which has been modified to add the secure language.

Requirements for Single Use Items - Tattooists recommended removing the phrase “acetate stencils may be reused if approved by the Board”, on the basis that acetate stencils are no longer in use, and cannot be sterilized. The statement on acetate stencils was removed from this section.

Body Art Practitioner Permit - Members of the body art industry had varying views with regard to the requirement of an anatomy course for all practitioners. The body piercers were diverse in their views on whether an anatomy course should be required. The tattooists view was that they should only be required to take courses on the skin. Both groups suggested that the course requirements be tailored to the needs relative to their art. There was agreement that training in bloodborne pathogen and infectious disease control were necessary for all. Boards, piercers and tattooists were in agreement that First Aid and CPR courses should be added to the requirements. The course work requirements have been separated into general requirements for all body art practitioners, and specific additional training for body piercers and tattooists, respectively.

Boards commented that the renewal period for these permits, every two years, is different from other establishments, which is annually or every calendar year. The Department believes that a two year cycle is appropriate, and that most other professional registrations and licenses for individuals are for a cycle of two or more years.

There was concern from tattooists and piercers that the regulations do not include any provisions to grandfather established practitioners or for reciprocity from other states. Practitioners were also concerned that unreasonable requirements will be required for experienced practitioners. In addition, boards, body piercers and tattooists suggested that the Department consider adding an apprenticeship as a requirement for obtaining a license. The Department has added provisions whereby the Board may recognize experience and training acquired in other states that regulate body art, and that experienced artists may apply for reciprocity if they hold a body art practitioner or tattoo license from another state that licenses body art practitioners, and have been practicing in that state.

Grounds for Revocation of Permit, or Refusal to Renew Permit - Body piercers and tattooists requested removal of the section which dealt with refusal to practice body art on a person because of such person’s race, creed, color, gender, age, disability, national origin, or sexual orientation. The Department removed this statement.

The proposed regulations were reordered and a new section was added (Body Art Restrictions for Persons under the age of 18) that restricts minors from receiving tattoos, piercing of genitalia, branding, and scarification. Local boards and members of the body art industry overwhelmingly suggested and supported these restrictions.

Conclusion

The proposed model regulations are designed to protect the health and safety of the public and will be distributed to all local Boards of Health for adoption. Once the legislature has adopted a state statutory framework for body art, the Department will proceed with the formal adoption of statewide regulations in lieu of the model code concept that must be adopted by each local jurisdiction.