WEST VIRGINIA CODE CHAPTER 16 ARTICLE 38

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§16-38-1. Definitions.

For purposes of this article:

“Adequate ventilation” means a free and unrestricted circulation of fresh air throughout the tattoo studio and the expulsion of foul or stagnant air.

“Antibacterial solution” means any solution used to retard the growth of bacteria approved for application to human skin and includes all products so labeled.

“Germicidal solution” means any solution which destroys germs and is so labeled.

“Minor” means any person under the age of 18 years.

“Scleral tattooing” means the practice of producing an indelible mark or figure on the human eye by scarring or inserting a pigment on, in, or under the fornix conjunctiva, bulbar conjunctiva, ocular conjunctiva, or other ocular surface using needles, scalpels or other related equipment.

“Sterilization” means holding in an autoclave for 25 minutes at 15 pounds pressure at a temperature of 250 degrees Fahrenheit or 121 degrees Celsius.

“Tattoo” means to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

“Tattoo studio” means any room or space where tattooing is practiced or where the business of tattooing or any part thereof is conducted

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§16-38-2. Studio sanitation.

(a) The tattoo artist's hands shall be washed and then air blown or dried by single-use towel prior to beginning work on each person or when interrupted in the process of working on a person. In addition, disposable latex examination gloves shall be worn by the tattoo artist during the tattooing process. The gloves shall be changed and properly disposed of each time there is an interruption in the application of the tattoo, each time the gloves become torn or punctured or whenever the ability of the gloves to function as a barrier is compromised.

(b) Cabinets for the storage of instruments, dyes, pigments, single-use articles, carbon, stencils and other utensils shall be provided for each operator and shall be maintained in a sanitary manner.

(c) Bulk single use articles shall be commercially packaged and handled in such a way as to protect them from contamination. Storage of single-use articles may not be in toilet rooms or in vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(d) Work tables and chairs or benches shall be provided for each tattoo artist. The surface of all work tables and chairs or benches shall be constructed of material which is smooth, light colored, nonabsorbent, corrosive-resistant and easily sanitized. The work tables and chairs or benches shall be sanitized with a germicidal solution after each tattoo application. All existing tattoo studios on the effective date of the administrative regulation shall be exempt from the required color of the work table.

(e) All materials applied to human skin shall be from single-use articles or transferred from bulk containers to single-use containers and shall be disposed of after each use.

(f) No pets, including working dogs, guide dogs or security dogs from a certified trainer, may be permitted in a tattoo studio workroom as defined in subsection (b), section four of this article.

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§16-38-3. Operation standards.

(a) Records. --

(1) Proper records of tattoos administered shall be maintained for each patron by the holder of the studio registration;

(2) A record shall be prepared for each patron prior to any procedure being performed and shall include the patron's name and signature, address, age, date tattooed, design of the tattoo, location of the tattoo on the patron's body and the name of the tattoo artist who performed the work;

(3) Record entries shall be in ink or indelible pencil and shall be available for examination by the inspecting authorities provided in §16-38-6 of this code;

(4) Before tattoo administration, the owner or tattoo artist shall discuss with the patron the risks involved in the tattoo requested, including the potential that a tattoo may interfere with the clinical reading of a magnetic resonance imaging study, should the patron intending to be tattooed ever encounter a medical need for such a study. The owner shall provide the patron with written information regarding the possible complications that may arise from receiving a tattoo. The written information shall be prepared by the Department of Health. Receipt of the information shall be acknowledged in writing by the patron. The owner or tattoo artist shall also keep and maintain the acknowledgment as part of the patron's record pursuant to the provisions of subdivision (5) of this subsection.

(5) All records required by this section shall be kept on file for five years by the holder of the studio registration for the studio in which the tattoo was performed.

(b) Consent. —

(1) Prior written consent for tattooing of minors shall be obtained from one parent or guardian;

(2) All written consents shall be kept on file for five years by the holder of the studio registration for the tattoo studio in which the tattoo was performed;

(3) The person receiving the tattoo shall attest to the fact that he or she is not intoxicated or under the influence of drugs or alcohol.

(c) Tattooing procedures. —

(1) Printed instructions on the care of the skin after tattooing shall be given to each patron as a precaution to prevent infection;

(2) A copy of the printed instructions shall be posted in a conspicuous place, clearly visible to the person being tattooed;

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(3) Each tattoo artist shall wear a clean outer garment, i.e., apron, smock, T-shirt, etc.;

(4) Tattoo artists who are experiencing diarrhea, vomiting, fever, rash, productive cough, jaundice, draining or open skin infections such as boils which could be indicative of more serious conditions such as, but not limited to, impetigo, scabies, hepatitis-b, HIV or AIDS shall refrain from tattooing activities until such time as they are no longer experiencing or exhibiting the aforementioned symptoms;

(5) Before working on each patron, the fingernails and hands of the tattoo artist shall be thoroughly washed and scrubbed with hot running water, antibacterial soap and an individual hand brush that is clean and in good repair;

(6) The tattoo artist's hands shall be air blown dried or dried by a single-use towel. In addition, disposable latex examination gloves shall be worn during the tattoo process. The gloves shall be changed each time there is an interruption in the tattoo application, the gloves become torn or punctured or whenever their ability to function as a barrier is compromised;

(7) Only sterilized or single-use, disposable razors shall be used to shave the area to be tattooed;

(8) Immediately prior to beginning the tattoo procedure, the affected skin area shall be treated with an antibacterial solution;

(9) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, the acetate stencil shall be thoroughly cleaned and rinsed in a germicidal solution for at least 20 minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use;

(10) If a paper stencil is used by a tattoo artist for transferring the design to the skin, the paper stencil shall be single-use and disposable;

(11) If the design is drawn directly onto the skin, the design shall be applied with a single-use article only.

(d) Dyes or pigments. —

(1) Only nontoxic sterile dyes or pigments shall be used and shall be prepared in sterilized or disposable single-use containers for each patron;

(2) After tattooing, the unused dye or pigment in the single-use containers shall be discarded along with the container;

(3) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.

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(e) Sterilization of needles. —

(1) A set of individual, sterilized needles shall be used for each patron;

(2) No less than 24 sets of sterilized needles and tubes shall be on hand for the entire day or night operation. Unused sterilized instruments shall be re-sterilized at intervals of no more than six months from the date of the last sterilization;

(3) Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water and soap and then sterilized by autoclaving;

(4) If used instruments are ultrasonically cleaned prior to being placed in the used instrument container, they shall be ultrasonically cleaned and then rinsed under running hot water prior to being placed in the used instrument container;

(5) The ultrasonic unit shall be sanitized daily with a germicidal solution;

(6) If used instruments are not ultrasonically cleaned prior to being placed in the used instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap and then sterilized by autoclaving;

(7) All nondisposable instruments, including the needle tubes, shall be sterilized and shall be handled and stored in such a manner as to prevent contamination. Instruments to be sterilized shall be sealed in bags made specifically for the purpose of autoclave sterilization and shall include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents;

(8) Autoclave sterilization bags, with a color code indicator which changes color upon proper steam sterilization, shall be utilized during the autoclave sterilization process;

(9) Instruments shall be placed in the autoclave in such a manner as to allow live steam to circulate around them;

(10) No rusty, defective or faulty instruments shall be kept in the studio.

(f) Aftercare of tattoo. —

The completed tattoo shall be washed with a single-use towel saturated with an antibacterial solution.

(g) It is unlawful for any person to perform or offer to perform scleral tattooing upon a person.

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§16-38-4. Facilities and equipment.

(a) General physical environment. --

(1) Tattoo studios shall have at least fifty footcandles of light and adequate ventilation. Walls and ceilings shall be painted a light color;

(2) The floor of the tattoo workroom shall be constructed of impervious material. The floor shall be swept and wet-mopped daily. Floors, walls or ceilings shall not be swept or cleaned while tattooing is in operation;

(3) Convenient, clean and sanitary toilet and hand-washing facilities shall be made accessible to customers;

(4) The building and equipment shall be maintained in a state of good repair at all times. The studio premises shall be kept clean, neat and free of litter and rubbish.

(b) Workroom. --

(1) Each tattoo studio shall have a workroom separate from a waiting room or any room or rooms used for any other purpose. The workroom may not be used as a corridor for access to other rooms. Patrons or customers shall be tattooed only in the workroom;

(2) The workroom shall be equipped with hot and cold running water, with one sink or basin per artist operating at the same time;

(3) The sinks and basins shall be for the exclusive use of the tattoo artists for washing their hands and preparing customers for tattooing. They shall be equipped with foot, wrist or single-lever action controls, soap, a germicidal solution, single-use towels and individual hand brushes clean and in good repair for each tattoo artist. All plumbing shall be in compliance with industry standards;

(4) Persons may not consume any food or drink nor smoke in the workroom.

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§16-38-5. Disposal of waste.

The tattoo studio operator shall comply with rules promulgated by the commissioner of the bureau of public health regarding the disposal of medical wastes.

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§16-38-6. Registration requirements; inspections by local or regional boards of health; permit fees.

(a) Tattoo studios in West Virginia shall obtain a West Virginia business registration certificate and shall register with their local or regional board of health.

(b) Each local or regional board of health shall conduct annual inspections of each tattoo studio to determine compliance with this article. Every person, firm or corporation operating a tattoo studio in West Virginia shall apply to their local or regional board of health for the inspection. The local or regional boards of health shall attempt to conduct the inspections within ten days of the receipt of the request for inspection: Provided, That if it is impracticable for the local or regional board of health to conduct the investigation within ten days after receiving the application, the boards may issue to the applicant a temporary operating permit which shall be valid for thirty days or until a regular inspection is made, whichever occurs first.

(c) Upon a determination by the inspecting authority that any tattoo studio is not in compliance with the provisions of this article, the inspection authority shall have the power to order the tattoo studio to cease operations until a time as the inspecting authority determines that the studio is in compliance.

(d) Upon a determination by the inspecting authority that the tattoo studio is in compliance with the provisions of this article, there shall be issued to the studio an operating permit that shall be posted in a conspicuous place, clearly visible to the general public.

(e) The fee for the issuance of an operating permit issued pursuant to this article shall be $200 and shall be paid by the tattoo studio receiving the permit. The fee shall be collected by and paid to the local or regional boards of health.

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§16-38-7. Violations and penalties.

Any owner of a tattoo studio who does not obtain a West Virginia business registration certificate, who does not register with their local or regional board of health or who fails to request an inspection pursuant to section six of this article shall be guilty of a misdemeanor and, upon conviction thereof, for a first offense, may have all of the tattoo equipment and paraphernalia confiscated and shall be fined $100. For a second offense, which is a misdemeanor, the owner may have all of the tattoo equipment and paraphernalia confiscated and shall be fined not less than $500 nor more than $1,000 or confined in a county or regional jail not less than ten days nor more than one year, or both fined and imprisoned. For a third offense, which is a misdemeanor, the owner shall have all the tattoo equipment and paraphernalia confiscated, shall be fined not less than $1,000 nor more than $5,000, or confined in a county or regional jail not less than thirty days nor more than one year, or both fined and imprisoned.

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