

ARTICLE 4-A

REGULATION OF BODY PIERCING AND TATTOOING

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§ 460. Definitions. As used in this article, unless the context requires otherwise:

1. "Commissioner" shall mean the commissioner of health.
2. "Body piercing" shall mean the piercing of any part of the body, except the ear. Such term shall not include tongue-splitting, as defined in section four hundred seventy of this chapter.
3. "Tattoo" shall mean a mark on the body of a person made with indelible ink or pigments injected beneath the outer layer of the skin.
4. "Body piercing specialist" shall mean any person who performs body piercing on the body of any other person.
5. "Tattooist" shall mean any person who applies a tattoo to the body of any other person.
6. "Body piercing studio" shall mean any premises in which the body piercing specialist conducts such practice.
7. "Tattoo studio" shall mean any premises in which the tattooist conducts such practice.
8. "Officer" shall mean the public official with primary responsibility for the enforcement of the state sanitary code within a county, or within a city with a population of one million or more persons. For purposes of this title an officer shall have the powers of a presiding officer under the state administrative procedure act within a county and shall have the powers of a presiding officer under the city administrative procedures act within a city with a population of one million or more persons.
9. "Department" shall mean the department of health.

§ 461. Permit required. 1. No person shall be a body piercing specialist or tattooist and no person, firm, corporation, partnership, or other association shall operate a body piercing studio or tattoo studio without first obtaining a permit from the department.

2. All body piercing or tattooing shall be performed in accordance with the rules and regulations promulgated by the commissioner pursuant to the public health law.

3. The department shall issue a permit if the body piercing specialist and body piercing studio or tattooist and tattoo studio are in compliance with this article, the penal law and the state sanitary code and are not otherwise disqualified under this article.

§ 462. Application of article. 1. This article shall not apply to or affect a physician duly licensed under article one hundred thirty-one of the education law or x-ray technicians.

2. This article shall not apply to, affect, or restrict the ability of a city, town, village, or county to enact a local law or ordinance prohibiting or restricting body piercing or tattooing within such city, town, village or county.

3. Nothing contained in this article shall be construed to limit the duty or power of an officer to act with regard to an immediate threat to the health of the customers of a body piercing specialist or tattooist or body piercing studio or tattoo studio or the community in which it is located, or to alter or abridge any of the duties and powers now or hereafter existing in the commissioner, state district health officers, county boards of health, county commissioners of health or local boards of health.

§ 463. Denial of permit; notice of hearing. The department shall, before making a final determination to deny an application for a permit, notify the applicant in writing of the reasons for such proposed denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notification shall be served personally or by certified mail or in any manner authorized by the civil practice law and rules for service of a summons. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe. If the applicant fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification of denial shall become the final determination of the department. The department, acting by such officer as the commissioner may designate, shall have the power to subpoena and bring before the officer any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. If, after such hearing, the application is denied, written notice of such denial shall be served upon the applicant personally or by certified mail or in any manner authorized by the civil practice law and rules for the service of a summons.

§ 464. Permits; display; renewal; duplicates. 1. All permits shall be for a period of two years.

2. No permit shall be assignable or transferable.

3. Each permit issued pursuant to this article shall be posted and kept posted in some conspicuous place in the body piercing studio or tattoo studio in which the permittee is engaged in the practice of body piercing or tattooing.

4. Any permit which has not been suspended or revoked, may, upon the payment of the renewal fee prescribed by the commissioner, be renewed for additional periods of two years from its expiration, upon the filing on any application for such renewal, on a form to be prescribed by the commissioner.

5. Any person, firm, corporation, partnership or other association failing to file application and fee for renewal of a permit within one year immediately following the expiration of his last permit shall pay an additional fee as prescribed by the commissioner.

6. A duplicate permit may be issued for one lost, destroyed or mutilated upon application therefor on a form prescribed by the commissioner and the payment of the fee prescribed therefor by the commissioner. Each such duplicate permit shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

§ 465. Powers of the commissioner. In addition to the powers and duties elsewhere prescribed in this article, the commissioner shall have power to:

1. Appoint one or more officers as shall be necessary to do or perform in the department's place or stead the acts authorized by this article;

2. Examine the qualifications and fitness of applicants for permits;

3. Keep records of all permits issued, suspended or revoked, or orders directing the cessation of unpermitted activities; and

4. Prepare a manual of rules and regulations for the conduct of examinations and to furnish copies thereof to persons desiring the same upon payment of a reasonable fee therefor.

5. Establish an appropriate fee structure for licenses, permits, renewals and duplicates, and set levels of punishments for failure to abide by this article.

§ 466. Judicial review. The action of the commissioner in suspending, revoking or refusing to issue or renew a permit or imposing any fine or reprimand upon the holder thereof may be reviewed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.