

ARTICLE XXII-REGULATIONS OF TATOO ARTISTS AND ESTABLISHMENTS

The following Article includes the amendments of 2005

Purpose:

The act of tattooing is an invasive procedure which punctures the skin and injects a dye into the tissue just below the skin. The skin is the body's primary barrier to infectious agents and any procedure which compromises the integrity of this barrier increases the possibility of infection. In this age, with some diseases causing serious health problems, it is imperative to regulate both the person applying the tattoo and the facility and equipment used in this procedure. The art of tattooing has been in practice since early human history and it appears that if properly applied, this practice has minimal medical significance. Therefore, the purpose of this Article is to assure that the conditions in the tattoo facility provide a safe and sanitary environment and that the person applying the tattoo has a basic knowledge of aseptic techniques.

Section 1: Definitions

For the purpose of this Article, the following words and phrases when used herein shall be construed as follows:

- (a) Tattoo – The word “tattoo” shall mean 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.
- (b) Tattoo Establishment – The words “tattoo establishment” shall mean any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.
- (c) Tattoo Operator – The words “tattoo operator” shall mean any person who controls, operates, conducts, or manages any tattoo establishment, whether actually performing the work of tattooing or not.
- (d) Tattoo Artist – The words “tattoo artist” shall mean any person who actually performs the work of tattooing.
- (e) Permanent Makeup – The words “permanent makeup” shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks.

For the purpose of this Article, whenever the word tattoo is used, it shall also apply to permanent makeup.

- (f) Permanent Makeup Establishment – The words “permanent makeup establishment” shall mean any room or space where permanent makeup is applied or any part thereof. For the purpose of this Article, whenever the words tattoo establishment are used, it shall also apply to permanent makeup establishment.
- (g) Permanent Makeup Operator – The words “permanent makeup operator” shall mean any person who controls, operates, conducts, or manages any establishment where permanent makeup is applied, whether actually applying the permanent makeup or not. For the purpose of this Article, whenever the words tattoo operator are used, it shall also apply to permanent makeup operator.
- (h) Permanent Makeup Cosmetologist – The words “permanent makeup cosmetologist” shall mean any person who actually performs the work of applying permanent makeup. For the purpose of this Article, whenever the words tattoo artist are used, it shall also apply to permanent makeup cosmetologist.
- (i) Health Officer – The words “health officer” shall mean the Commissioner of the Erie County Health Department or a duly authorized representative.
- (j) Minor – The work “minor” shall mean any male under the age of eighteen (18) year and any female under the age of eighteen (18) years.
- (k) Health Hazard – The words “health hazard” shall mean a violation, combination of violations, condition or a combination of conditions identified by the health officer that can injure the person receiving a tattoo or the general public.

Section 2: Artist Certification

- (a) No person except a duly licensed physician shall engage in the practice of tattooing or act as a tattoo artist unless he or she has a certificate issued by the health officer.
- (b) No operator of any tattoo establishment shall allow a tattoo artist to perform in the facility unless the tattoo artist is the holder of a valid certificate issued under this Article.

- (c) Any person desiring to engage in tattooing or act as a tattoo artist shall submit an application for certification to the health officer in the form prescribed by the health officer which will include a statement that the applicant has received a copy of this Article and has a working knowledge of its content.
- (d) The certificate holder shall be required to show evidence of knowledge of the provisions of this Article including an adequate knowledge of bacteriology and aseptic technique to assure that infection and contagious disease shall not be spread by tattooing practices. The health officer may require a written and/or verbal test to assure that the applicant meets minimum standards as determined by the health officer.
- (e) Certificates will expire on December 31 of each year. The Certification shall be renewed annually.
- (f) An annual fee as per the Erie County Fee Schedule shall be assessed on the recipient of a Certification. The certificate owner must be an employee of a certified tattoo facility prior to the issuance of a tattoo artist certificate. The certificate will indicate the certified facility to which the artist is assigned. The certified artist may apply tattoos only at the certified tattoo facility providing the artist has a certificate that indicates the artist is assigned to that facility. Should the artist wish to work in another certified tattoo facility, the artist must submit a new application to the health officer indicating his or her intentions to work in a different certified tattoo facility. The application must be received by the health officer at least twenty one (21) days prior to the move. The tattoo artist shall be assessed an administrative fee as per the Erie County Fee Schedule for every change. The tattoo artist may not apply tattoos at the new location until he or she has received a new certificate indicating the change in assignments. The tattoo artist may work in more than one certified facility as long as the artist has a valid certificate for each facility.
- (g) The registration certificate of the artist must be prominently posted in the public area of the facility where the artist is working.

Section 3: Tattoo Establishment Registration

- (a) No person shall operate a tattoo establishment unless such person has registered such shop with the health officer and has received a registration certificate from the health officer.

- (b) No registration certificate shall be issued or renewed unless the shop has been inspected and found to be in compliance with the provisions of these Rules and Regulations.
- (c) The registration certificate must be prominently posted in the public area of the facility.
- (d) The registration certificate shall expire on December 31 of each year. The certificate shall be renewed annually.
- (e) An annual fee as per the Erie County Fee Schedule shall be assessed on the operator of the establishment.
- (f) Plans for new tattoo facilities or existing tattoo facilities that are to be extensively remodeled shall be submitted to the health officer. No constructions or remodeling shall take place until the health officer approves the plans.
- (g) Such plans and specifications shall include, at a minimum, the work room and areas, sinks, counters, storage areas, toilet facilities, sterilizing equipment area and the waiting room.
- (h) An application on a form approved by the health officer and a plan review fee as per the Erie County Fee Schedule shall be submitted along with the plans.

Section 4: General Physical Environment

- (a) The tattoo establishment must have adequate light and ventilation and all walls and ceilings shall be kept cleaned. Walls and ceilings are to be painted a light color.
- (b) The floor of the tattoo establishment shall be 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.
- (c) There shall be sufficient toilet, urinal, and hand washing facilities accessible to customers.

- (d) There shall be provisions for the proper and safe disposal of all types of waste products. Any material contaminated with blood must be stored in a puncture and leak proof container and disposed of in accordance with Federal, State and Local Laws and acceptable to the Health Officer.
- (e) The building and equipment shall be maintained in a state of good repair at all times. All parts of the establishment and its premises shall be kept clean, neat and free of litter, rubbish and materials not necessary to the operation of the facility.
- (f) Each tattoo establishment shall have a work room that may contain one or more tattoo stations where tattoos are applied. The work room must be separate and apart from the waiting room. Said work room shall be constructed so as to prevent contamination of the work room by activities or people in the waiting area. The construction could include a wall or partition or other construction acceptable to the health officer. This room shall not be used as a corridor for access to other rooms. Patrons or customers shall be tattooed only at a tattoo station in said work room.
- (g) Each tattoo station shall have a hand wash facility equipped with hot and cold running water, together with such sinks and basins as may be necessary.
- (h) Each hand washing facility is to be provided with hand cleaning soap or detergent. Individual single service towels, warm air blowers, or clean individual sections of continuous cloth are to be provided. Common towels are prohibited. Conveniently located waste receptacles are to be provided.
- (i) Hand washing facilities, hand washing devices and related equipment are to be kept clean and in good repair.
- (j) Adequate cabinets for the storage of instruments, dyes, pigments, carbon and stencils shall be provided for each artist and shall be maintained in a sanitary manner.
- (k) An adequate number of work tables shall be provided for each tattoo artist. The surface of all work tables shall be constructed of a material which is smooth, light colored, non-absorbent, corrosive-resistant, and easily cleaned, and sanitized.
- (l) Live animals, with the exception of fish in aquariums and guide dogs accompanying blind persons, are prohibited from all areas of the tattoo facility.

Section 5: Records and Reporting Requirements.

- (a) There shall be proper records maintained by the operator of a tattoo establishment for each person receiving a tattoo.
- (b) A record of each patron shall be prepared prior to any procedure being performed and shall include the date on which the tattoo was applied, the name and signature, address and age of the patron, the design of the tattoo, and its location on the body and the name of the tattoo artist who applied the tattoo.
- (c) The records shall be entered in ink or indelible pencil in a book kept solely for this purpose. This book shall be available at a reasonable time for examination by the health officer and records for each patron shall be preserved for at least (3) years from the date of the tattoo. The signature of the patron shall be in the book.
- (d) The tattoo facility operator is required to keep a record of any complaint or unexpected complication associated with a tattoo applied in the operators tattoo facility. Information concerning the complaint is to be kept as part of the required record for each person who received a tattoo.
- (e) Any tattoo facility operator having actual or constructive knowledge of the occurrence of a complication of a tattoo that resulted in the treatment by a physician or medical facility must be reported to the health officer within 24 hours. The report can be made in person or by telephone

Section 6: Consent

- (a) It is unlawful to apply a tattoo to a minor.
- (b) It shall be the responsibility of the person applying the tattoo to assure that the person receiving the tattoo is not a minor.
- (c) Identification must be submitted for each person receiving a tattoo. Acceptable identification shall include any current and valid government issued identification card that contains a picture and a date of birth of the person requesting a tattoo. Other forms of identification may be acceptable if specifically approved by the health officer.

- (d) A photocopy of the identification presented must be kept as part of the required record kept for each patron that is being tattooed.
- (e) It shall be unlawful for any tattoo artist to perform any tattooing on an individual who appears to be under the influence of drugs or intoxicating liquor.

Section 7: Procedures to be Followed in Tattooing

- (a) There shall be printed or mimeographed instructions approved by the health officer given to each patron or customer on the risks involved in the tattoo requested and possible complications. It must also include the care of the skin after tattooing as a precaution to prevent infection.
- (b) A copy of these instructions shall also be posted in a conspicuous place in the tattoo shop, clearly visible to the person being tattooed.
- (c) Each tattoo artist must wear a clean outer garment.
- (d) No person with any disease in a communicable form or suspected of having such a disease shall engage in tattooing. Such diseases may include but shall not be limited to the acute illness phases of the common cold, influenza, tuberculosis, scabies, impetigo, syphilis, chicken pox, mumps, hepatitis, infection on hands or arms, sore throat or jaundice of the skin.
- (e) The health officer may require a certificate signed by a duly licensed physician stating that the person is free from communicable diseases before permission to resume tattooing is granted.
- (f) Before working on each patron, a tattoo artist shall clean his or her fingernails with an individual nail file and shall thoroughly wash and scrub his or her hands with warm running water, an approved soap, and an individual hand brush.
- (g) He shall not allow his or her hands to dry without the use of towel or other mechanical means
- (h) That portion of the patron's skin to be tattooed shall be prepared by washing with warm water and an approved soap.

- (i) When it is necessary to shave the area to be tattooed, a new disposable razor shall be used. Once used on a patron, the razor must be disposed of. That portion of the patron's skin to be tattooed shall be washed again with warm water and an approved soap after the area wash shaved.
- (j) Following the cleaning and/or shaving of the patron's skin, the tattoo artist shall again wash and scrub his or her hands as described in item (f) above.
- (k) The tattoo artist shall wear single service, disposable gloves when applying a tattoo. The gloves must be properly disposed of once they are used for a patron.
- (l) Before placing the design on the patron's skin, the tattoo artist shall treat the skin area with an approved germicidal solution which shall be applied with sterile cotton or sterile gauze. When petroleum jelly (petrolatum) is used, it must be listed in the United States Pharmacopeia or National Formulary, and shall be applied to the area to be tattooed and it shall be in a collapsible metal or plastic tube. The application may be spread by the use of sterile gauze but not directly with the fingers.
- (m) The stencil used by a tattoo artist for transferring the design to the skin shall be thoroughly cleaned and rinsed in an EPA-approved or hospital-grade germicidal solution for at least twenty (20) minutes and then it shall be dried with sterile gauze or in the air before use.
- (n) A media, such as deodorant or similar product, used to transfer a design from a stencil, paper or any other material, must be properly prepared prior to applying on the customer receiving a tattoo. This preparation could include rubbing the surface of the media with a clean cloth that has been soaked in a sanitizing solution, scraping off the surface of the media with a sanitized cutting instrument or any other method approved by the health officer.

Section 8: Dyes and Pigments

- (a) In preparing dyes or pigment to be used by a tattoo artist, only nontoxic and sterile material shall be used. Single-service or individual portions of dyes or pigments in clean, sterilized individual container or single-service containers must be used for each person.
- (b) After tattooing, the remaining unused dye or pigment in the single-service or individual containers must be discarded.

- (c) All dyes or pigment used in tattooing shall be made for tattooing purposes only or from batches certified under the provisions of Parts 70 and 71, Food, Drug and Cosmetics Act. (21 USC 301 et seq.). Tattooing with any other product is a violation of this Code.

Section 9: Sterilization

- (a) A set of individual single-service, sterilized needles and sterilized tubes and bars shall be used by a tattoo artist for each new patron.
- (b) Tubes and bars may be reused only if they are manufactured to be reused, free of any imperfections, have been properly cleaned in a germicidal solution and sterilized as required in this code.
- (c) A sufficient number of sterilized needles, tubes and bars must be on hand to meet the needs for the entire day or night operation.
- (d) Sterilization shall be accomplished by holding in an approved autoclave for twenty (20) minutes at (15) pounds pressure at a temperature of 250 degrees F or 121 degrees C. An acceptable gauge or gauges [indicator] shall be used to show that the proper temperature and pressure has been reached in the autoclave.
- (e) No rusty or faulty needles shall be used for tattooing. All needles and instruments after sterilization shall be handled and stored in a cabinet in such a manner to prevent being contaminated.
- (f) The complete needle, needle bar and tube of the tattoo machine shall be cleaned, properly packaged, and sterilized in an autoclave before each use. The package containing the sterilized equipment must have the date of sterilization. The person who operated the autoclave must initial each package. Instruments not used within fourteen (14) days of sterilization must be repackaged and sterilized prior to use.
- (g) The autoclave shall be operated, cleaned and maintained according to manufacturer's instructions. A copy of the manufacturers recommended procedures for the operation of the autoclave must be available for inspection by the health officer.
- (h) The operator of each tattoo facility shall demonstrate, prior to use, that each autoclave used in the facility is capable of proper sterilization. Testing shall be performed in each calendar quarter during which the establishment operates.

Biological indicators such as spore strips or spore solutions shall be used and verified through an independent laboratory. The name and serial number of the autoclave must appear on the results of each test. The testing laboratory's written guidelines for the proper handling and placement of the biological indicator shall be readily available for inspection by the health officer. Results of the spore test records shall be retained for a period of three (3) years for every autoclave tested and shall be available to the health officer upon request.

- (i) Autoclaves that failed testing shall immediately be taken out of service. Any unused equipment that went through a sterilization process in an autoclave that failed testing must be repackaged and sterilized in an approved autoclave.
- (j) Pre sterilized, single service equipment will be accepted if there is assurances from the supplier that the equipment has been sterilized following generally accepted and verifiable methods acceptable to the health officer. Any reuse of items intended to be single service is prohibited.

Section 10: After Care of Tattoo

- (a) The completed tattoo shall be washed with a piece of sterile gauze or sterile cotton saturated with an approved germicidal solution. It shall be allowed to dry.
- (b) After drying, an anti-bacterial ointment shall be applied from a collapsible metal or plastic tube. The entire area may be covered with a piece of sterile dressing, which may, in turn, be covered with a piece of tissue and fastened to the site with an approved type of adhesive.

Section 11: Severability

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules and Regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.

Section 12: Certificates and Inspections

- (a) Access – The permit issuing official or his designated representative is to be permitted access for purposes of inspection at all times while the tattoo establishment is in operation whether open to the public or not. Refusal of admittance, after proper identification, is cause for action to obtain certification revocation and an order to close.
- (b) Certificates are non-transferable from one owner or operator to another, or from one establishment location to another, or from one tattoo artist to another. The tattoo artist must be able to produce a valid certificate when engaging in the act of tattooing.
- (c) Inspection – The permit issuing official or his designated representative is to make inspections of each tattoo establishment within his jurisdiction from time to time and not less than once during the term of each certificate. During each inspection, violations of this Article are to be recorded on an inspection report form acceptable to the health officer. A copy of the inspection report is to be delivered to the person in charge at the completion of the inspection.
- (d) The person in charge is the individual present in a tattoo establishment who is the apparent supervisor of the establishment at the time. If no individual is the apparent supervisor, then any employee present is the person in charge.

Section 13: Enforcement

- (a) Operation of a tattoo establishment without a valid certificate is a violation of this Article. The health officer or his designated representative may order any tattoo establishment or operation in his jurisdiction operating without a valid certificate to close and cease all tattoo operations immediately and to remain closed until the establishment or operation has obtained and displays a valid certificate.
- (b) For serious, repeated or persistent violations of any of the requirements of the Article or for interference with the health officer or his designated representative in the performance of his duties, the certificate may be revoked after notice and an opportunity for a hearing has been provided by the health officer.
- (c) The health officer may suspend a certificate and order the immediate cessation of tattoo operations within his jurisdiction when, in the opinion, continued operation

is an imminent health hazard to public health. Any person so ordered is to comply immediately and within 15 days is to be provided with an opportunity to be heard and to present proof that continued operation does not constitute a danger to the public health.

- (d) A person applying a tattoo without a valid certificate issued by the health officer is in violation of this Article. The tattoo establishment operator who allows a person to apply a tattoo without a valid certificate will be subject to enforcement as described in subsection (a) of this section.
- (e) Suspension of certificates- Certificates may be suspended temporarily by the health officer, after notice and an opportunity to be heard, for failure of the certificate holder to comply with the requirements of this Article, or with any lawful notice or order issued by the health officer or his designated representative.
- (f) Closure- When action is taken to order closure and cessation of operations, the health officer or his designated representative is to:
 - (1) Conspicuously post a notice or placard at each entrance of the establishment stating the existence of such order and the authority for such order. This order is not to be concealed, mutilated or altered by any person or removed without permission of the health officer.
 - (2) Publish notice of the order with the reasons for the order in one or more newspapers in the County or city in which the tattoo establishment is located.
- (g) Hearings- The hearings provided for in this section are to be conducted by the health officer or his designated hearing officer and shall be conducted following the procedures used to adjudicate other violations of Erie County Sanitary Code, New York State Sanitary Code and the New York State Public Health Law.
- (h) Should a tattoo facility that is ordered closed contain more than just the tattoo facility, the operator may either close the entire facility or remove all materials and equipment used for tattooing from the premises while the close order or suspension of the certificate is in effect.

Section 14: Penalty for Violation

Every person, firm, organization or corporation violating any of the provisions of this Article, or any of the orders, rules and regulations made and promulgated in pursuance hereof, after conviction thereof, shall be punished by a fine of not more than Five Hundred (\$500.00) Dollars for each violation.

The changes to this Article of the Erie County Sanitary Code including the amendments of 2005 become effective July 1, 2006.