

APA-1
4/18

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 420 Alabama Department of Public Health

Rule Number 420-3-23.02

Rule Title Definitions

 New XXXX Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facts of the rulemaking process designed solely for the purpose of and so they have as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

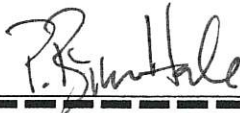
Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of §41-22-23, Code of Alabama, 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of Certifying Officer



Date

4/17/19

REC'D & FILED

2019 APR 18 PM 3:53

LEGISLATIVE SVC AGENCY

FORM APA2
10/17

STATE BOARD OF HEALTH
NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Public Health

RULE NUMBER AND TITLE: 420-3-23.02, Definitions

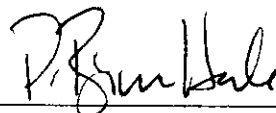
INTENDED ACTION: To amend the current rules.

SUBSTANCE OF PROPOSED ACTION: This amendment will allow for the Department to add definitions for dermal piercings and microblading.

TIME, PLACE, AND MANNER OF PRESENTING VIEWS: A public hearing will be held on May 22, 2019, at 9:00 a.m., at the RSA Tower, Suite 1540, 201 Monroe Street, Montgomery, AL 36104.

FINAL DATE FOR COMMENTS AND COMPLETION OF NOTICE: Written or oral comments will be received until the close of the record at 5:00 p.m. on Friday, June 4, 2019. All comments and requests for copies of the proposed amendments should be addressed to the contact person listed below.

CONTACT PERSON AT AGENCY: Mark Sestak, Office of Environmental Services, Department of Public Health, P.O. Box 303017, Montgomery, Alabama 36130-3017, Telephone number: (334) 206-5375.



P. Brian Hale, Agency Secretary

420-3-23-.02 Definitions.

(1) **"Biohazard waste"** means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps; and any wastes containing blood and other potentially infectious materials.

(2) **"Body art"** means the practice of physical body adornment using invasive procedures and, for the purpose of these rules, is an inclusive term for any procedures utilizing body piercing, tattooing, cosmetic tattooing, branding, or scarification. *Physicians licensed by the Alabama Licensure Commission and who perform body art procedures as part of patient treatment are exempt from these rules. Nor does this definition include, for the purposes of these rules, piercing of the ear using pre-sterilized single use stud and clasp ear piercing systems.*

(3) **"Body art facility"** or **"Tattoo facility"** means the geographic location at which an individual does one or more of the following for compensation:

(a) Places an indelible mark upon the body of another individual by the insertion of a pigment in or under the skin.

(b) Places an indelible design upon the body of another individual by production of scars (branding).

(c) Performs body piercing.

(4) **"Body piercing"** means the perforation of human tissue other than ear for a non-medical purpose. This includes dermal piercings such as surface anchors or single point piercings.

(5) **"Branding"** means a permanent mark made on human tissue by burning with a hot iron or other instrument.

(6) **"Clean technique"** means the technique used to prevent or reduce the transmission of microorganisms from one person to another or from one place to another. It includes, but is not limited to:

(a) Meticulous handwashing with soap and water;

(b) Maintaining the sterility of supplies;

(c) Using barriers; in particular, clean, disposable, single-use gloves;

(d) Proper cleaning and preparation of the body site area; and

(e) Maintaining a clean and sanitary environment by using a detergent to remove soil and a disinfectant agent to clean up a spill of blood or other potentially infectious materials.

(7) **“Cosmetic tattooing”** means a tattoo procedure designed primarily to place a permanent color or pigment in or under the skin or mucosa and that is intended to be used in lieu of cosmetic make-up, such as permanent eyeliner or lip color; also known as micropigmentation.

(8) **“Critical item”** means:

(a) a provision of these rules that, if in non-compliance, has the potential for immediate impact on the public health by resulting in infection of either clients or staff of a body art facility, or disease transmission among clients or staff of a body art facility, or

(b) an administrative provision of these rules that is necessary to ascertain the likelihood of infection or disease transmission among clients or staff of a body art facility or to inform the public, and

(c) are referred to in Appendix A of these rules.

(9) **“Department”** means the State Department of Public Health.

(10) “Dermal piercing” means a piercing that lies on any flat surface of the body and is held in place with a dermal anchor that is installed underneath the skin; also known as microdermal piercing.

(10) (11) **“Disinfectant”** means an agent that destroys microorganisms, particularly pathogenic microorganisms.

(a) These can be disinfectants or sanitizers that are registered with the U.S. Environmental Protection Agency (EPA). Household bleach (sodium hypochlorite) with no fragrance or other additives may also be used as a germicide.

(b) Over-the-counter pre-mixed bleach products can be used or a 1:100 dilution of household chlorine bleach (5.25% percent sodium hypochlorite) can be made fresh daily and dispensed from a spray bottle (500ppm, 1/4 cup per gallon of water or 2 tablespoons per quart of water).

(11) (12) **“Disinfection”** means a process that eliminates many or all pathogenic microorganisms, *with the exception of bacterial spores*, on inanimate objects, thereby rendering them safe for use or handling.

(12) (13) **“Equipment”** means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all

other apparatus and appurtenances used in connection with the operation of a body art facility.

~~(13)~~ **(14) "Handwashing sink"** means a lavatory equipped with hot and cold running water under pressure, through a mixing valve, used solely for washing hands, arms, or other portions of the body.

~~(14)~~ **(15) "Hot water"** means water which attains and maintains a temperature of at least 100° F.

~~(15)~~ **(16) "Informed consent"** means a written consent signed by the client prior to having any body art procedure performed and which provides information and/or counseling on risks and possible complications of the procedure to be performed.

~~(16)~~ **(17) "Instruments used for body art"** means hand pieces, needles, needle bars, and other instruments that may come in contact with a client's body or possible exposure to bodily fluids during body art procedures.

~~(17)~~ **(18) "Invasive"** means entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break, or compromise the skin or mucosa.

~~(18)~~ **(19) "Jewelry"** means any personal ornament inserted into a newly pierced area. Jewelry for body piercing use shall be made of surgical implant grade stainless steel; solid 14k or 18k white or yellow gold; niobium, titanium, or platinum; which is free of nicks, scratches, or irregular surfaces; has been properly sterilized prior to use, and has not been previously used. The Department may approve other materials upon request and review.

~~(19)~~ **(20) "License"** means the written document issued by the Department for the operation of a tattoo facility. Approval is given in accordance with these rules and is separate from any other licensing requirement of any local laws, rules, or ordinances.

(21) "Microblading" means a tattoo procedure in which a small handheld tool made of several tiny needles is used to add semi-permanent pigment to the skin. Facilities wherein microblading procedures are performed, and the person conducting the microblading procedure, are subject to all requirements of these rules as a "Tattoo facility" and "Operator."

~~(20)~~ **(22) "Minor"** means an individual under 18 years of age who is not emancipated. An emancipated minor is or has been married or has by court order otherwise been legally freed from the care, custody, and control of his or her parents.

~~(21)~~ **(23) "Operator"** means any person who controls, operates, manages, conducts, or practices body art activities at a body art facility and who is responsible for compliance with these rules, whether actually performing body art activities or not. The

term includes technicians or apprentices who work under the operator and perform body art activities.

~~(22)~~**(24)** **"Permit"** means the written document issued by the Department to an individual denoting that the individual has received training as specified in these rules. The permit is given in accordance with these rules and is separate from any other licensing requirement of these rules for the body art facility or any local laws, rules, or ordinances.

~~(23)~~**(25)** **"Person"** means an individual, any form of business or social organization, or any other non-governmental legal entity including but not limited to a corporation, partnership, limited liability company, association, trust, or unincorporated organization.

~~(24)~~**(26)** **"Physician"** means a person licensed by the Alabama Licensure Commission to practice medicine in all its branches.

~~(25)~~**(27)** **"Procedure surface"** means any surface of an inanimate object that contacts the client's unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure, or any associated work area which may require sanitizing.

~~(26)~~**(28)** **"Sanitize/sanitization procedure"** means a process of using a disinfectant to reduce the numbers of microorganisms on cleaned surfaces and equipment to a safe level.

~~(27)~~**(29)** **"Shall"** means a mandatory requirement.

~~(28)~~**(30)** **"Sharps"** means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa, including, but not limited to, pre-sterilized, single use needles, scalpel blades, and razor blades.

~~(29)~~**(31)** **"Sharps container"** means puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal and is labeled with the International Biohazard Symbol.

~~(30)~~**(32)** **"Single-use"** means products or items that are intended for one-time, one-person use and are disposed of after use on each client. This includes, but is not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, tattoo needles, scalpel blades, stencils, ink cups, and protective gloves.

~~(31)~~**(33)** **"Site care"** means written instructions on caring for the body art and surrounding area given to the client, and specific to the body art procedure(s) rendered.

(37) (34) "Standards precautions" means a set of guidelines and controls established by the Center for Disease Control and Prevention (CDC) for the prevention of transmission of bloodborne pathogens (specifically; the human immunodeficiency virus ([HIV]), hepatitis B virus ([HBV]), and hepatitis C virus ([HCV])).

(a) This method of infection control requires the employer and employee to assume that all human blood and body fluids are potentially infectious.

(b) Precautions include hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid-contaminated products.

(32)(35) "Sterilization" means the complete elimination or destruction of all forms of microbial life, including highly resistant bacterial spores and is accomplished by the use, according to manufacturer's directions, of a properly functioning autoclave or dry heat sterilizer that is manufactured to be used for sterilization.

(33) (36) "Tattoo" means an indelible mark made upon the body of another individual by the insertion of a pigment in or under the skin or an indelible design upon the body of another individual by production of scars other than by branding.

(34) (37) "Tattoo facility" means a facility as defined under "Body art facility" in this rule.

(35) (38) "Tattooing" means any method of placing ink or other pigment into or under the skin or mucosa of another individual by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This includes all forms of cosmetic tattooing and semi permanent eyebrow tattooing such as microblading.

(36) (39) "Temporary body art facility" means any place or premise operating at a non-mobile, fixed location where an operator performs body art procedures for no more than 14 days consecutively in conjunction with a single event or celebration.

AUTHORS: Ronald Dawsey, Mark Sestak, Phyllis Fenn, and Lauren Gambill

STATUTORY AUTHORITY: Section 22-17A-7, Code of Alabama, 1975.

EFFECTIVE DATE: May 4, 2001. AMEND: Adopted December 20, 2006 effective date January 24, 2007. AMEND: Filed xx-xx-xxxx, effective date xx-xx-xxxx.