

**REPORT OF THE
DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF HEALTH PROFESSIONS ON**

**The Need To Regulate Tattooists
and Tattoo Parlors in the
Commonwealth of Virginia**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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COMMONWEALTH of VIRGINIA
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TO: The Honorable Lawrence Douglas Wilder
 Governor of the Commonwealth of Virginia

The Members of the General Assembly of Virginia

It is my privilege to present this report constituting the response of the Board of Health Professions to 1993 amendments to the Appropriations Act of 1992-1994.

The amendments directed the Board to study the need for any regulation of tattooists and tattoo parlors, and to provide its recommendation to the Governor and the General Assembly.


Bernard L. Henderson, Jr.

BLHJr/rdm
Enclosure

VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS

Bernard L. Henderson, Jr., Director

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EXECUTIVE SUMMARY

As requested by the 1993 Session of the Virginia General Assembly, the Board of Health Professions has studied the need to regulate tattooists and tattoo parlors in the Commonwealth. The scope of the study included "traditional" tattoo parlors, salons in which tattooing is used to imprint permanent "make-up," and the practice of body piercing by tattooists. Study methods included the conduct of a public hearing and solicitation of public comment, a review of the regulation of these activities in other jurisdictions and within the Commonwealth, a review of the literature, site visits and interviews, consultation with other State agencies and private organizations, and the application of seven criteria used by the Board to determine if the public health, safety and welfare require that an health occupation or profession be regulated.

The criteria are similar to those used by the Board of Professional and Occupational Regulation within the Department of Professional and Occupational Regulation to determine if non-health occupations or professions require regulation in the public interest. An example of a related non-health occupation regulated by that agency is the licensure of cosmetologists by the Board of Cosmetology.

Tattooists are not health care practitioners, and their activities are not considered to constitute the practice of cosmetology by the Board of Cosmetology. Application of the seven criteria for evaluating proposals for occupational regulatory programs nonetheless provides a useful perspective. The criteria help determine: (1) if there is a risk for harm from unregulated practices, and how this risk arises; (2) whether specialized skills and training are required; (3) whether members of the occupational group practice autonomously; (4) how the scope of practice differs from other occupations and professions; (5) whether the economic

costs of regulation are warranted; (6) whether there are alternatives to occupational regulation that could protect the public; and (7) what mechanism is the least restrictive for providing the desired level of public protection.

This Executive Summary presents the conclusions of the Board's review. The conclusions were drawn from application of the Board's criteria to the evidence presented and discovered in the research conducted as part of this review. The findings and recommendations which follow were endorsed unanimously by members of the Board of Health Professions at its meeting on October 19, 1993.

Findings

1. There is a risk for harm to the public from the practice of tattooing -- including the application of permanent make-up by tattooing -- and from body piercing. The risk arises from characteristics of these practices, characteristics of clients served, and characteristics of the workplace environment and supervisory practices.

Tattooing and body piercing are invasive procedures in which the skin is penetrated by a foreign object. If proper sterilization and antiseptic procedures are not followed by tattooists and body piercers, there is a risk of transmission of bloodborne or other infections.

Tattooing and body piercing may cause allergic reactions in persons sensitive to dyes or metals used in ornamentation. The procedures involve discomfort for which effective anesthesia is not legally available from unlicensed providers.

2. The public can be protected from this risk by requiring the use of universal precautions related to the transmission of bloodborne infections, by disclosure requirements to facilitate informed choice, and by strengthening the regulation of tattoo facilities by local jurisdictions. Tattoo facilities should be defined to include permanent make-up salons.

Informed personal decisions to obtain tattoos, permanent make-up and body piercing should be based on an understanding of risk. Minors may not be able to fully comprehend the implications of these risks, even when full disclosure occurs.

Recommendations

The Board of Health Professions endorses the following recommendations to the Governor and the General Assembly.

1. State licensure or certification of tattooists, permanent make-up artists, and body piercers is not warranted by evidence of risk for harm to the public. Disclosure requirements, the strengthening of regulation by local jurisdictions, and a requirement to use universal standards for the prevention of disease transmission are less restrictive means for protecting the public.
2. The General Assembly should consider legislation to add disclosure requirements related to tattooing to the Virginia Consumer Protection Act. Among the matters that should require disclosure are the following:
 - a. permanent make-up involves the use of tattooing, often through multiple applications.
 - b. tattooing and body piercing are invasive procedures in which the skin is penetrated by a foreign object.
 - c. if proper sterilization and antiseptic procedures are not followed, there may be risk for the transmission of bloodborne or other infections.
 - d. tattoos are permanent in nature and difficult to remove.
 - e. tattooing and body piercing involve discomfort for which appropriate anesthesia may not be legally available from tattooists or body piercers.

- f. tattooing and body piercing may cause allergic reactions in persons sensitive to tattoo dyes and metals used in body ornamentation.
3. The General Assembly should consider revisions to the criminal code to require the use of Center for Disease Control (U.S. Public Health Service) universal disease prevention precautions by all tattooists and body piercers. Failure to observe these precautions should be punishable by law.
4. The General Assembly should consider strengthening the regulation of tattoo parlors, permanent make-up salons, and body piercing by local jurisdictions. Replacement of discretionary authority by a mandate for local regulation should be considered.

Cost and Implementation of Recommendations

The request for this review included the proviso that the Board of Health Professions "recommend to the Governor and the General Assembly the impact of such regulation [as may be recommended] and any legislative action which it deems appropriate."

Because the Board of Health Professions' statutory authority is confined to matters related to the regulation of health occupations and professions, it is unable to provide firm estimates of cost or expert advice on legislative actions to amend the Virginia Consumer Protection Act and the criminal code. It is clear, however, that the limited number of members of this occupational class cannot support the operation of an occupational regulatory board. The Department of Professional and Occupational Regulation -- the agency most likely to house a board for the regulation of a non-health occupation -- estimates that at least one-hundred practitioners are required to support the direct costs of operating a regulatory board. There are estimated to be fewer than fifty tattooists and body piercers practicing in the Commonwealth.

In addition to direct costs, regulation of occupations increases costs to consumers by restricting the number of practitioners who may provide a service. Other states that have studied the regulation of tattooists have concluded that the costs of such regulation would result in driving the industry further underground, to the detriment of the intended objective of protecting the public. The Board of Health Professions has concluded that the direct, indirect, and unintended costs of regulating tattooists as an occupational class far exceed the costs of the recommended actions to strengthen regulation by localities, require disclosure of relevant risks, and mandate precautions against disease transmission.

The Board of Health Professions appreciates this opportunity to be of service to the Governor and the General Assembly of the Commonwealth of Virginia. The report which follows provides the full rationale for the findings, recommendations, and observations presented in this Executive Summary.

Background and Authority

Senate Bill 550 and House Bill 1250 (The Appropriations Act: 1992-1994, as amended) direct the Board of Health Professions (BHP) to :

... conduct a study to determine if tattoo parlors and the practice of tattooing should be regulated, and if so, recommend to the Governor and the General Assembly the fiscal impact of such regulation and any legislative action which it deems appropriate...

Concerns which led to the request for this review include:

- the application of tattoos on minors;
- the possibility of transmission of bloodborne and other communicable or infectious diseases, including but not limited to human immunodeficiency virus (HIV) and hepatitis B virus (HBV);
- the increasing popularity of permanent make-up using tattoo techniques, and of the practice of body piercing by tattooists and others.

The Board of Health Professions is authorized to review the need to regulate health occupations and professions (Code § 54.1-2510). Whenever the Board determines that the public interest requires regulation of a health occupation, it is responsible for recommending to the General Assembly the appropriate degree of regulation and a system for that regulation. The Board may also recommend alternatives to occupational regulation to protect the public without abridging the constitutionally protected right of any citizen to practice any lawful trade, profession, or occupation.

In reviewing the need to regulate currently unregulated occupations, the Board applies seven criteria which appear on the next page. These criteria were created to assess the need to regulate health occupations and professions. While useful for general guidance, the criteria are not calibrated either to assess the need for State regulation of facilities, or the need to license, certify or otherwise regulate occupations and professions that do not provide health care services.

**VIRGINIA BOARD OF HEALTH PROFESSIONS
CRITERIA FOR EVALUATING THE NEED FOR REGULATION**

Adopted October, 1991

Criterion One: Risk for Harm to the Consumer

The unregulated practice of the health occupation will harm or endanger the public health, safety or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices inherent in the occupation, (b) characteristics of the clients served, (c) the setting or supervisory arrangements for the delivery of the health services, or (d) from any combination of these factors.

Criterion Two: Specialized Skills and Training

The practice of the health occupation requires specialized education and training, and the public needs to have benefit by assurance of initial and continuing occupational competence.

Criterion Three: Autonomous Practice

The functions and responsibilities of the practitioner require independent judgment and the members of the occupational group practice autonomously.

Criterion Four: Scope of Practice

The scope of practice is distinguishable from other licensed, certified and registered occupations, in spite of possible overlapping of professional duties, methods of examination, instrumentation, or therapeutic modalities.

Criterion Five: Economic Impact

The economic costs to the public of regulating the occupational group are justified. These costs result from restriction of the supply of practitioners, and the cost of operation of regulatory boards and agencies.

Criterion Six: Alternatives to Regulation

There are no alternatives to State regulation of the occupation which adequately protect the public. Inspections and injunctions, disclosure requirements, and the strengthening of consumer protection laws and regulations are examples of methods of addressing the risk for public harm that do not require regulation of the occupation or profession.

Criterion Seven: Least Restrictive Regulation

When it is determined that the State regulation of the occupation or profession is necessary, the least restrictive level of occupational regulation consistent with public protection will be recommended to the Governor, the General Assembly and the Director of the Department of Health Professions.

This report to the Governor and the General Assembly presents the methods used by the Board of Health Professions to study this issue, and summarizes the Board's findings and recommendations. The report is augmented by more extensive information presented in several appendices.

Study Methods

The following methods were used to study the need for State regulation of tattooists and tattoo parlors.

1. Literature Review.
2. Review of Regulation of Tattooists and Tattoo Parlors in the Commonwealth and in Other Jurisdictions.
3. Site-Visits and Interviews
4. Public Hearing and Solicitation of Public Comments.
5. Consultation with Other State Agencies
 - Department of Health
 - Department of Labor and Industry
 - Department of Professional and Occupational Regulation
 - Department of Agriculture and Consumer Affairs
 - Department of Corrections

Literature Review

Tattooing is the ancient art of introducing an indelible pigment under the surface of the skin by use of a needle, dating back at least 8,000 years. Western culture was first exposed to tattooing in the South Pacific in the 1770's. It is thought that Joseph Banks, in 1771, was the first traveler to return to England with a tattoo acquired in Polynesia. Much of the astonishment, fear, curiosity and fascination exhibited in England at that time persists in contemporary Western culture.

Tattoos are acquired for medical or cosmetic reasons, or as an artistic expression of individual or group identity. Tattooing as an individualistic artistic expression, or to indicate group membership or solidarity represents the most common usage. Cosmetic applications typically involve coloration of the lips, the outlining the lips, cheeks, eyebrows, eyelids, or the placement of permanent "beauty marks." Medical uses of tattooing involve the coloration of scars, birth marks, and transplanted skin.

Tattooing is experiencing a resurgence of popularity. It is estimated that about three percent of the population has a tattoo. Men more than women acquire tattoos but anecdotal reports note an increase in interest and numbers of women undergoing the procedure. Tattoos can be permanent when created using a needle or they may be temporary when simply applied to the surface of the skin. Public protection concerns are focused on permanent applications.

Tattooing is generally considered safe when appropriate procedures are used to sterilize equipment, maintain sanitary environmental conditions, and limit services to potentially infectious clients. Clients also have a responsibility to care for the tattooed skin area for a week or more after receiving one. Failure to do so may contribute to infections originating at the site of the tattoo.

The literature review included examination of why tattoos are wanted and by whom, the composition of tattoo inks, reactions to tattooing, disease transmission risks, and tattoo removal. In addition, a review of the limited literature on permanent make-up and body piercing, including ear piercing was conducted. Of greatest interest to this review are those aspects related to risk for harm to the public health safety and welfare.

In the context of the Board's criteria, the literature and other information confirms that there is a risk for harm, and that this risk results from:

- o practices inherent in tattooing,
- o the characteristics of tattoo clients, and
- o the setting or supervisory arrangements for the delivery of tattooing services.

It is important to note, however, that protection against this risk can be assured through a less restrictive mechanism than the regulation of tattooists as an occupational class.

Practices inherent in tattooing. Tattooing is not a benign process. It involves piercing the skin with needles bearing various pigments to cause the permanent imprint of a design. There is pain associated with the process, and the body responds to these incursions in specific and predictable ways with initial sloughing of the overlying epidermis, variable dermal inflammation, and gradual assimilation of the pigment into macrophages. Eventually, much of the pigment is carried to the regional draining lymph nodes, with a residue staying within macrophages localized to dermal perivascular regions. Tattooing can result in a variety of relatively uncommon complications and adverse reactions to the pigment, and certain infectious diseases, notably hepatitis, may be inadvertently transmitted through tattooing when the instruments are inadequately sterilized, or when poor technique is used.

Although researchers have studied the relationship of infectious hepatitis, serum hepatitis, and HIV transmission with tattooing, direct causal relationships have been difficult or impossible to establish. Tattooing -- especially as carried out in prisons or with the use of unsterile equipment, or among high risk groups -- is a possible means of HIV transmission, but the literature documents no causal linkage to date between tattooing and HIV transmission. Moreover, the Center for Disease Control, U.S. Public Health Service, has discerned no relationship between tattoos and HIV, and reports no cases of HIV transmission attributable to tattooing.

Research findings do suggest an association between infectious hepatitis B (HBV) and tattooing. This risk appears to increase with improper sterilization or non-sterilization of needles. A study of a significant number of suburban U.S. subjects with chronic serum hepatitis C (HCV) found no identifiable risk factors associated with tattooing, but an Australian study of HCV among blood donors found that intravenous drug use, multiple lifetime sexual partners, and having a tattoo were significantly and independently associated with HCV. The strongest associations were among injecting drug users.

Other studies also show a relationship between tattoos and HCV. In one such report, both HBV and HCV infection were strongly associated with the presence of tattoos and the number of tattooed sites. Characteristics of the

tattooist were also important risk factors: risk was higher if the tattoo was applied by a non-professional friend than by a professional tattooist.

These studies have focused on "traditional" tattooing. No systematic studies are known of the relationship between disease transmission and permanent make-up tattoos. The use of tattoos to imprint permanent make-up is a relatively recent phenomenon in U.S. culture. It is a flourishing enterprise, sometimes undertaken in traditional tattoo parlors, but more frequently in "salon" settings. While there is a reluctance to advertise that the means of imprinting permanent make-up is tattooing, this is in fact the case, and the body surfaces that are tattooed with permanent make-up are both rich in blood vessels and proximate to important sensory organs. It stands to reason that to the same or even greater degree that tattooing causes discomfort or pain, creates predictable biological, physical and psychological responses to invasion, results in complications and adverse reactions to pigments, and is a risk factor in disease transmission, these risks are present in the application of permanent make-up. As in the case of traditional tattooing, risk for disease transmission is negated or substantially diminished when proper sterilization and application techniques are used.

Some tattooists also engage in body piercing, although this practice is not the focus of this review. Body piercing is clearly an invasive procedure. While the most common piercing site is the earlobe, piercings are increasingly done on eyebrows, the nose, nasal septum, lips, tongue, nipples, and male and female genitalia. Reviews of the relationship between body piercing and disease transmission have reported results similar to those of studies of traditional tattooing: there is a risk for disease transmission, but this risk can be reduced or eliminated through the use of sterilization and antiseptic techniques. There is also a substantiated risk for allergic reactions to materials used in body ornamentation. This risk applies to the common practice of ear piercing as well as to other piercing sites.

Characteristics of clients served. It is impossible to derive a single profile of tattoo clientele. There are distinct differences in the characteristics of clients served by "traditional" tattoo parlors, by tattooists who market to growing numbers of middle-class professional men and women, and by permanent make-up salons.

Some studies suggest a strong association between traditional tattoo clients and impulsive, hostile and delinquent behavior. Others show concurrence of tattoos, sexual experience with multiple partners, and intravenous drug use. These high-risk client behaviors create the need for protection against the risk for disease transmission for the tattooist as well as for the client. The subjects of these studies were typically male, often drawn from prison or other conscript populations. Profiles of these tattooed subjects cannot be inferred to be present in other tattooed populations.

Today, nearly one-half of all tattoos are being applied to women, many of whom are professionals or artists. One study of career women who had tattoos for at least six months showed that these women were motivated to be tattooed as an expression of individuality. This differs from the motivation of traditional tattoo clients, who use tattoos, discretely, to indicate membership in subcultures. Career women with tattoos were infrequently affected by "purchase risk" (pain, expense, inexperience), or health risk, but "possession risk" (negative responses from self, family or society) did occur.

Possession risk -- including one's own reaction to the permanent presence of a tattoo -- may lead to later requests for the removal of the tattoo. Tattoo removal is a difficult, risky task. Post-procedural scars are inevitable and unavoidable. Unrealistic expectations about cosmetic results and ignorance of the number of operations required to remove tattoos are quite common. Some medical professionals feel that abrasion is the best removal procedure. Others use various surgical excision techniques or lasers. Tattoo artists themselves prefer either scarification, using an acid substance to remove the tattoo pigments and create a scar in its place, or a modification of the "French method," involving superficial dermabrasion followed by application of a tannic acid solution, and painting the treatment site with a silver nitrate stick. A heavy eschar then forms which separates in 2-3 weeks.

As with the application of original tattoos, tattoo removal may be painful, produce unwanted results, and subject the client to risk of infection and disease transmission. It is also expensive, typically costing much more than the original tattoo.

Clients of permanent make-up salons or body piercers have not been systematically studied, but anecdotal evidence from public comments and the public hearing on this issue indicate that some clients are unhappy following cosmetic or artistic tattooing, and that medical treatment may be needed for complications arising from tattooing or piercing.

While a single stereotype obviously cannot be applied to all clients, it is clear that some regret their decision to acquire a tattoo, and that removal of all vestiges of that original decision is difficult and expensive, and may be impossible.

Characteristics of settings and supervision. Tattooists estimate that there are fewer than twenty-five (25) traditional tattoo parlors in the Commonwealth. The number of permanent make-up salons is unknown, but growing. Some tattoo parlors also apply permanent make-up and perform body piercing, but many permanent make-up salons avoid any association with traditional tattoo parlors, and most body piercers are neither tattooists nor work in tattoo parlors.

Traditional tattooists and body piercers learn their craft from skilled mentors. Permanent make-up tattooists more typically learn from short courses lasting several days. Tattooists working in parlors or salons typically practice autonomously, without supervision from regulated or unregulated professionals. Body piercers most often work from their homes and not from parlors or salons.

Practice sites and employment arrangements of tattooists and body piercers are significant factors in considering the kind of regulation that may best protect the public, since the use of workplace precautions reduces the need for the licensing or certification of tattooists or body piercers as occupational entities. Any workplace in which one or more employees is engaged in practices that may present a risk for transmission of HIV or HBV to the worker is subject to the Occupational Health and Safety Administration's (OSHA) Bloodborne Pathogen Rule which requires the use of universal precautions in protecting against the risk for disease transmission. While designed to protect health care workers, the use of universal precautions also insulates the client from disease transmission risk.

A significant problem remains in that many tattooists and body piercers are sole proprietors and function without any employees. Anecdotal evidence suggests that, while ear piercing may be done in shopping-mall "pagodas" under a variety of employment arrangements and conditions of compliance with sterilization and antiseptic techniques, an unknown number of piercers work as sole operators from their homes, the homes of clients, or in other settings. In these circumstances the OSHA Rule is not applicable. Moreover, while tattoo businesses are subject to local governmental registration and inspection, not all localities require this registration and inspection, and enforcement may not be vigorous in those that do.

In summary, the literature reveals a risk for harm to the public from the unregulated practice of tattooing. This risk results from tattooing, from the characteristics of some clients, and from the lack of workplace precautions in some settings.

Regulation of Tattooists and Tattoo Parlors

Regulation of businesses such as tattoo parlors and the activities of tattooists may occur at several levels: federal, state or local. In the Commonwealth, there is no regulation of tattooists or tattoo parlors at the State level; the power to regulate is reserved to localities. In this section, information is presented on the applicability of federal laws, regulation in other states and jurisdictions, and the system for regulation in the Commonwealth.

Federal regulation. No federal regulation or rule imposes restrictions on the procurement or use of tattooing equipment or inks. The Food and Drug Administration has neither approved or disapproved tattoo inks, but concern has been expressed about the use of "coal tar" found in permanent eye make-up. The OSHA Bloodborne Pathogens Rule, administered in the Commonwealth by the Virginia Department of Labor and Industry affects any establishment which has one or more employees engaged in tattooing, piercing, or permanent make-up application.

Regulation in other states and jurisdictions. Tattooing is a legal practice in most states, but there is a wide range of regulatory activity. Three (3) states (Mississippi, Oklahoma, South Carolina) ban tattooing altogether. Another five (5) states (Connecticut, Florida, Indiana, Massachusetts, Vermont)

restrict the practice to persons licensed to practice medicine or dentistry or to persons performing under the supervision of these licensed providers. In sixteen (16) states, there are statutes setting a minimum age requirement. In eight (8) states, full regulation has been implemented with licensure of the establishment and the tattooist. Several states have issued voluntary guidelines on sterilization, sanitary practices, or disclosure. Other states, including Virginia, have no statewide regulation, but report a variety of local ordinances.

Concerns about the spread of HIV and other infectious diseases, the popularity of tattoos among young people, and increasing use of tattoos and permanent make-up within the "establishment" have prompted several states to study the need for additional regulation.

The State of Washington published such a study in September, 1993. The report recommended against State regulation of tattooists and tattoo parlors, but suggested: (1) required consent for minors; (2) educating the public on the potential harm from transmitting infection through unsterile equipment or poor after-care; (3) voluntary guidelines for public health standards; and (4) consideration of scope of practice for the cosmetology profession in the application of permanent make-up.

The New York State Department of Health considered a complete ban on tattooing but determined that it would be ineffective. Likewise, that State reported that licensure, testing, and on-site inspections would be too costly and would not apply to "underground" tattooists. Moreover, restrictive regulation would drive the practice further underground. The report recommended development and distribution of guidelines on preventive measures to reduce the risk of bloodborne disease transmission.

In Florida, current law requires that tattooing be performed by a licensed physician or dentist or under "general supervision as defined by the Board of Medicine." That supervision requires review and inspection of techniques, procedures, and equipment utilized by the tattooist; quarterly training of the tattooist by the supervisor; and a written protocol for infection control, sterilization, and emergency procedures. The Executive Branch has proposed regulations for the licensure of tattooists and tattooing establishments, but the State Legislature has not yet acted on these recommendations.

Local regulation in the Commonwealth. In Virginia regulation of tattoo parlors is delegated to the discretion of localities. No known locality regulates tattooists directly. The statute exempts licensed health care providers from local purview.

Regulation of tattoo parlors; definition; exception. - A. Any county, city or town may regulate by ordinance the sanitary condition of the personnel, equipment and premises of tattoo parlors.

B. A "tattoo parlor," as used in this section, is any place in which is offered or practiced the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin by the aid of needles or any other instrument designed to touch or puncture the skin.

C. This section shall not apply to medical doctors, veterinarians, registered nurses or any other medical services personnel licensed pursuant to Title 54 of this Code in performance of their professional duties.

(Code of Virginia § 15.1-28.3)

Several localities have exercised the authority to regulate tattoo parlors, but regulation is not universal, and standards are not uniform. The Virginia Department of Health identifies Fairfax County and the Cities of Hopewell, Petersburg, Emporia, Richmond, Hampton, and Norfolk as administering or enforcing local ordinances related to tattooing. Local ordinances in these jurisdictions focus on conditions under which tattooing may occur. The City of Hampton's ordinance indicates that tattooing is a protected occupation that may be performed only by a duly authorized (licensed) medical doctor or doctor of osteopathy.

In the last five (5) years, the health districts have received forty-six (46) complaints; and the local health departments have received eighteen (18) complaints or inquiries.

The tables below summarize significant features of local ordinances related to tattooing, and the nature and disposition of complaints received by local health districts over the past five (5) years.

Local Ordinances on Tattooing										
Locality	Prohibits	Disclosure of Risks After-care	Informed Consent Form	No Minors • W/O Consent	Inspection	Sanitation Sterilization Requirements	Health Hygiene Requirements for Tattooists	Disposal Requirements	Client Screening	Business Permit
Norfolk	X									
Richmond City		X	X	X Under 18	X	X		X	X	
Fairfax County					X	X	X	X	X	X
Hopewell		X		X Under 21 *	X	X	X	X		X
Emporia		X		X Under 21 *	X	X	X	X		X
Petersburg		X		X Under 18 *	X	X	X	X		X
Hampton	X Except by MD or DO									

Complaints to Local Health Officials			
Districts	No. Complaints	Nature	Response
Arlington	30	- Sanitation & Cleanliness of Instruments. - Concern about AIDS & Hepatitis B.	No Action
Alleghany	5	- Dirty Conditions.	Site Visit and Education
Mount Rogers	4	- Parental Concern about Minors. - Operation at a Public Housing Project.	No Action
Thomas Jefferson	2	- Request by City Manager. - Unsanitary Disposal.	Site Visit and Education
Chesterfield	2	- Location of Activity.	Referred to Licensing
Rappahannock - Rapidan	1	- Infection from Permanent Makeup.	Site Visit and Education
Pittsylvania - Danville	1	- Existence of Parlor.	No Action
Central Virginia	1	- Concern about AIDS.	No Action
<u>Health Departments</u>			
Central Shenandoah	2	- Request for Information.	No Action
Roanoke County	5	- Safety of Parlors.	No Action
New River	2	- Inquiry on Regulation.	No Action
Virginia Beach	1	- Concern about Makeup.	No Action
Wise County	2	- Inquiries on Regulation and AIDS.	No Action
Richmond City	6	- Inquiries on Registration Safety.	Local Ordinance

Site visits and interviews

Staff interviewed a nonrandom sample of tattooists, permanent make-up salon technicians, and one body piercer, and made site visits to a traditional tattoo parlors and a permanent make-up salon. While no formal conclusions may be drawn from these activities, some impressions were worthy of consideration.

Permanent make-up salon. A site visit to one salon led to the impression that the facility was quiet and business-like, and appeared to be clean and sanitary. Tattooing of permanent make-up was applied in a separate room, but the autoclave used for sterilization was shared with hairstylists in the facility and placed in a common room. The tattooist demonstrated the equipment and technique used in applying pigments. Staff concluded that while the operator had a general knowledge of aseptic procedures, a thorough understanding of the technique was lacking. The operator indicated that weekend seminars were all that were needed to learn the application technique. Post-training backup or support seemed lacking. At the time of the visit clients received demonstrations and were consulted about the process, shown examples of previous work, and provided with testimonials. The age range of the female clients was 40 to 60. The services generally available from this establishment are eyebrow, eyeliner, lip liner, lip color, cheek blush, eye shadow, and beauty marks. These services are available during posted business hours and by appointment. The business observed hours of operation typical for the hairstyling and cosmetology industry.

Traditional tattoo parlor. A traditional tattoo parlor was visited. Its hours of operation began in the afternoon and continued until 2:00 a.m. or later; these hours were reported to be standard in the industry. The facilities appeared on the surface to be well kept and clean. Tattoo artists were not always present in the facility. An autoclave was available in the facility and its use was strongly advocated for sterilizing needles and equipment used by the artists. Potential clients were asked about their current state of health prior to obtaining a tattoo. The tattooing process was explained prior to application. The general impression of the site was that of a respectable business operating in a clean environment. Interviews of several tattooists contributed to the impression that tattoo artists are divided between those who strive to conduct their business in a sanitary and professional environment, and those who were relatively unconcerned about sterilization

and risk for harm. In the industry, these latter tattooists are known as "scratchers."

Body piercing. One local body piercer, who works from his home or in the homes of clients, was interviewed. Typically, according to the respondent, piercers work with jewelry supply houses that provide needles and piercing rings along with instruction booklets and videotapes describing their use. According to the piercer, techniques for cleaning equipment should include the use of chemical solutions, boiling and autoclaving. The segregation of piercing needles is recommended: one set for HIV-positive clients, and another for HIV-negative clients. It is preferable that clients buy their own needles and keep them if they anticipate future use. Clients are prepared for piercing by being shaved and rinsed with hydrogen peroxide, followed by a betadine scrub and rinse. An antiseptic preparation should also be applied to the instruments prior to use. Piercing needle sizes range from 8- to 16-gauge. Stainless steel expanders are used for larger holes. Needles should be sterilized after using if they are to be reused.

The piercer recommended that, as in tattooing, clients should be fully informed of the process before consenting to piercing. Other concerns were expressed regarding "back-alley" operators who may use piercing guns improperly. Some may use sewing or leather-piercing needles. Jewelry should be composed of gold, surgical stainless steel, or niobium, a composite metal formed from oxides of the stainless steel production process.

Generally it takes three to six months to form a callous in the piercing channel. Sites that involve body fluid secretion may take longer. Piercings are done in many body locations. Nose and nasal septum pierces are difficult to maintain infection-free because of the extensive aftercare required. Eyebrows are difficult locations to pierce due to the presence of many blood vessels and the possibility of profuse bleeding. The tongue is likely the most difficult piercing location because of the muscular structure, the inability to avoid blood vessels, slow healing time, and the probable risk of infection.

The piercing of male genitalia is becoming more fashionable. After such a piercing, the client should abstain from sex for four to six weeks. Aftercare is essential to prevent acquisition of a sexually transmitted disease. After

healing, condoms should be used to prevent infection of the pierced site. Female genitalia are also pierced; healing and aftercare problems are similar to those occurring following male genital piercing.

Public hearing and public comments

A publicly announced informational hearing was conducted on August 23, 1993 at the Department of Health Professions. The hearing was attended by about 100 persons and generated media coverage as well as comments from the tattooing community, physicians, and consumers. In their testimony, tattooists supported proper sterilization and training, business licenses for establishments, and enforcement of local ordinances and inspections. They believe the greatest risk to the public comes from tattooists who do not practice in established locations or utilize sterile equipment and procedures. Most of those who testified supported some regulatory guidelines or protocols for sanitary practice but conceded that the "underground" tattooist" or "scratcher" would continue to operate outside of regulation or licensure.

Consumers who testified spoke primarily about their problems with the application of permanent make-up. It was reported that the public is misinformed about the nature of the procedure, the level of pain involved, and the risks of infection. Training for operators is usually limited to participation in a weekend seminar; most permanent make-up activity is associated with beauty salons. The public often incorrectly assumes that the practice is licensed or inspected by the Board of Cosmetology. Consumers urged the Board of Health Professions to recommend that disclosure to the public include the fact that permanent make-up involves the use of tattooing, often involving multiple sessions, that pain or discomfort may be experienced, and that anesthesia is not available. Operators who apply permanent make-up tattoos favored some regulation of training required for entry, and of sterilization practices in the workplace.

Two physicians supported regulation and guidelines on safe practice. Tattooing, permanent make-up, and body piercing were described as invasive procedures with potential risk to the public. One psychiatrist reported treating a patient believed to have contracted AIDS through tattooing. While the OSHA Bloodborne Pathogens Rule may be applicable for employees in tattooing/make-up establishments, the physicians indicated that there remains a need for state regulation of tattooists and tattoo parlors to protect public safety and health.

A widely-circulated invitation to comment elicited seven written responses. Some who commented, including tattooists, supported regulation and expressed concern about unsterile practices, lack of disclosure regarding potential complications, and minors receiving tattoos. Tattooists provided guidelines for regulation, sample consent forms, and models for training and inspection requirements. Others, chiefly tattooists, opposed regulation as unlikely to protect consumers from bad practice.

Consultation with other State agencies

The Board consulted with other State agencies including the Department of Agriculture and Consumer Services, Office of the Attorney General (Health and Health Professions Section), Department of Professional and Occupational Regulation (Board of Cosmetology), Department of Health, and Department of Labor and Industry (Virginia Office of Safety and Health). Information was also requested but not received from the Virginia Association of Counties and the Virginia Municipal League. These organizations were asked to respond to the following questions:

1. Does your agency administer or enforce any mechanism for public protection related to tattooists or tattoo parlors? What is the nature of this activity?
2. How many complaints has your agency received relative to the activities of tattooist or tattoo parlors over the past five years, and what were the nature of these complaints? What actions, if any, were taken as a result of the complaints?
3. If a risk to the public health, safety or welfare exists as a result of the activities of tattooists or tattoo parlors, what action, if any should government take to protect the public from this risk?

Responses from the agencies included the following:

1. The Department of Health surveyed the 35 district health departments to determine the level of local regulation and number of complaints received. In addition to forty-six (46) complaints, health districts reported an estimated eighteen (18) inquiries about tattoo parlors related to safety, HIV testing, or regulation over the past five years. (See tables on local ordinances and complaints on page 17)

The State Health Commissioner commented that

"[T]he key to preventing the spread of disease is to ensure tattooists receive education on the means for preventing disease transmission. Tattooists should be required to participate in a state-sponsored education program to protect their health as well as the health of their clients. Professional licensing of tattooists that would include inspections would not be cost-effective. The existing law allowing the establishment of local ordinances is appropriate. Localities having tattoo parlors have the flexibility to develop policies responsive to local needs and concerns."

2. The Division of Consumer Affairs reported no complaints about tattooing or tattoo parlors, but two consumer complaints about permanent make-up relative to pain, side-effects, medication offered (alcohol or demerol) and end results had been referred to the Department of Health Professions. The Department, in turn, referred the complaints to the Commonwealth's Attorney because of lack of jurisdiction over these facilities and practices. The Director of the Division of Consumer Affairs recommended periodic inspection of tattoo and permanent make-up facilities.
3. The Department of Professional and Occupational Regulation (DPOR) does not record complaints about tattooists, permanent make-up or body piercing because the agency does not have jurisdiction over these facilities or practices. By statute, the Board of Cosmetology regulates occupations which provide external and aesthetic procedures for enhancement of human hair and nails. That Board believes that if it is the decision of the General Assembly to require regulation of tattooing and body piercing, a new, separate board should be created. DPOR Department has cautioned, however, that the number of tattooists and facilities may not be large enough to support such a board.

As an alternative, DPOR proposes that the following language be posted in all tattoo, permanent make-up and body piercing locations:

Tattooing and body piercing are invasive procedures in which the skin is penetrated by a foreign object. As with all invasive body procedures, there may be health risks associated with this process.

DPOR also supports a statutory requirement that tattooing be included in the title or description of permanent make-up.

4. The Department of Labor and Industry reported no complaints and no involvement with inspections or regulation of tattoo parlors. If establishments in which tattooing or piercing have employees, the Department has the authority to enforce OSHA standards for their protection.
5. The Department of Corrections reported that they have a policy against tattooing for inmates in all their institutions.

Findings and Recommendations

In considering the information received and analyzed from these research activities, the Board of Health Professions has placed its findings into the context of the seven criteria used to evaluate the need to regulate additional health professions and occupations.

Findings

1. There is a risk for harm to the public from the unregulated practice of tattooing, the application of permanent make-up by tattoo, and body piercing. This risk results from the characteristics of the practice, the characteristics of clients, and the characteristics of the work place environment and supervisory practices.
 - a. tattooing and body piercing are invasive procedures in which the skin is penetrated by a foreign object.
 - b. if proper sterilization and antiseptic procedures are not followed by tattooists or body piercers, there may be a risk of transmission of bloodborne or other infections.

- c. tattooing and body piercing may cause allergic reactions in persons sensitive to dyes or metals used in ornamentation.
- d. tattooing and body piercing involve discomfort for which effective anesthesia is not legally available from unlicensed personnel.

The public can be protected from this risk by requiring the use of universal precautions related to the transmission of bloodborne infections, by disclosure requirements, and by strengthening the regulation of tattoo facilities by local jurisdictions. Tattoo facilities should be defined to include permanent make-up salons.

Personal decisions to obtain tattoos, permanent make-up, and body piercing should be based on understanding of required disclosures. Minors may not be able to fully comprehend the implications of these disclosures.

- 2. The practice of tattooing and body piercing requires specialized training, and the public needs to have benefit by assurance of initial and continuing occupational competence.
- 3. The functions of tattooists and body piercers require independent judgment and members of the occupational group practice autonomously.
- 4. Tattooing is not a health occupation or profession, nor are tattoo artists -- including those who apply permanent make-up -- cosmetologists. The scope of practice of tattooists and body piercers is distinguishable from other licensed, certified and registered occupations, despite overlapping of professional duties, methods of examination, instrumentation, and modalities.
- 5. The economic costs to the public of regulating tattooists or body piercers as health occupations is not justified. There is an insufficient number of tattoo parlors, permanent make-up salons and practitioners to justify the creation of a regulatory board and a licensure or certification program.

6. There are alternatives to State regulation of tattooists and body piercers which adequately protect the public.
 - a. the regulation of tattoo parlors and permanent make-up facilities by local jurisdictions should be strengthened.
 - b. disclosure requirements should be included in the Virginia Consumer Protection Act.
 - c. all tattooists -- including those who apply permanent make-up - - and all body piercers should be required to conform to the provisions of the OSHA Bloodborne Pathogens Rule.
7. The strengthening of local regulation, the addition of disclosure requirements, and the use of universal precautions related to bloodborne disease transmission are sufficient to protect the public, and are less restrictive measures than State regulation of tattooists and body piercers.

Recommendations

Based upon these findings, the Board of Health Professions submits the following recommendations for the consideration of the Governor and the General Assembly.

1. **State licensure or certification of tattooists, permanent make-up artists, and body piercers is not warranted by evidence of risk for harm to the public. Disclosure requirements, the strengthening of regulation by local jurisdictions, and a requirement to use universal standards for the prevention of disease transmission are less restrictive means for protecting the public.**
2. **The General Assembly should consider legislation to add disclosure requirements related to tattooing to the Virginia Consumer Protection Act. Among the matters that should require disclosure are the following:**
 - a. **permanent make-up involves the use of tattooing, often through multiple applications.**

- b. **tattooing and body piercing are invasive procedures in which the skin is penetrated by a foreign object.**
 - c. **if proper sterilization and antiseptic procedures are not followed, there may be risk for the transmission of bloodborne or other infections.**
 - d. **tattoos are permanent in nature and difficult to remove.**
 - e. **tattooing and body piercing involve discomfort for which appropriate anesthesia may not be legally available from tattooists or body piercers.**
 - f. **tattooing and body piercing may cause allergic reactions in persons sensitive to tattoo dyes and metals used in body ornamentation.**
3. **The General Assembly should consider revisions to the criminal code to require the use of Center for Disease Control (U.S. Public Health Service) universal disease prevention precautions by all tattooists and body piercers. Failure to observe these precautions should be punishable by law.**
4. **The General Assembly should consider strengthening the regulation of tattoo parlors, permanent make-up salons, and body piercing by local jurisdictions. Replacement of discretionary authority by a mandate for local regulation should be considered.**

Cost and Implementation of Recommendations

The request for this review included the proviso that the Board of Health Professions "recommend to the Governor and the General Assembly the impact of such regulation [as may be recommended] and any legislative action which it deems appropriate."

Because the Board of Health Professions' statutory authority is confined to matters related to the regulation of health occupations and professions, it is unable to provide firm estimates of cost or expert advice on legislative actions to amend the

Virginia Consumer Protection Act and the criminal code. It is clear, however, that the limited number of members of this occupational class cannot support the operation of an occupational regulatory board. The Department of Professional and Occupational Regulation -- the agency most likely to house a board for the regulation of a non-health occupation -- estimates that at least one-hundred (100) practitioners are required to support the direct costs of operating a regulatory board. There are estimated to be fewer than fifty (50) tattooists and body piercers practicing in the Commonwealth.

In addition to direct costs, regulation of occupations increases costs to consumers by restricting the number of practitioners who may provide a service. Other states that have studied the regulation of tattooists have concluded that the costs of such regulation would result in driving the industry further underground, to the detriment of the intended objective of protecting the public. The Board of Health Professions has concluded that the direct, indirect, and unintended costs of regulating tattooists as an occupational class far exceed the costs of the recommended actions to strengthen regulation by localities, require disclosure of relevant risks, and mandate precautions against disease transmission.

The Board of Health Professions appreciates this opportunity to be of service to the Governor and the General Assembly of the Commonwealth of Virginia.

APPENDIX A

LITERATURE REVIEW AND BIBLIOGRAPHY

The literature review conducted for this study is available from the Deputy Director for Research, Department of Health Professions 6606 West Broad Street, Fourth Floor, Richmond, Virginia 23230-1717. Telephone (804) 662-9904.

A bibliography of literature consulted for the review follows.

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APPENDIX B

SUMMARY OF PUBLIC COMMENTS

A summary of testimony received at a public hearing on August 23, 1993 and of written comments received during the comment period follows.

DEPARTMENT OF HEALTH PROFESSIONS
VIRGINIA BOARD OF HEALTH PROFESSIONS
COMMENTS ON FEASIBILITY OF REGULATING TATTOOISTS AND TATTOO PARLORS

SOURCE OF COMMENT

SUMMARY OF COMMENT

Testimony at Public Hearing
August 24, 1993

F. J. Pepper, M.D. Alexandria	Endorses protection of the public. Reported treatment of AIDS patient who he believed contracted HIV from his tattooing. State should mandate education of tattooists in safe & unsafe practices & proper sterilization. Also suggests mandatory testing of all tattooists or piercers for HIV; refers to § 54.1-100 which allows the state to abridge the professional rights of the individual to practice for the health, safety, & welfare of the public. Satisfied that conditions of statute are met & regulation is necessary.
Robbie Eason	Reported that legitimate tattoo parlors follow local ordinances for cleanliness & go beyond. Believes current regulations, if followed, do protect the public. The application of permanent makeup should be preceded by consultation & disclosure about pain & risks. Public has right to a controlled, clean environment. Reported inspections are unannounced, two or three times a year.
James August Warsing, Jr. Charlottesville	Supports some regulation of tattoo shops and an apprenticeship for tattooists. Supports use of autoclave, disposable needles, & other sterilization techniques & incineration of disposables. Should require parental consent for minors under age 18.
Mark Rubin, Esq. Representing J.D. Crow Ancient Art Tattoo Studios	Presented his client's sterilization precautions, professional appearance, & policy of not tattooing anyone under age 18. Little concern about HIV because pins used do not draw blood; does have concern about Hepatitis B. Current statute allows regulation by local Health Department. Need stiffer fines for failure to get a business license & enforcement of inspections. Does not favor licensure.
Brenda Wallace Richmond	Favors some regulation and inspection by Health Department to protect the public. Favors parental consent for minors. Reported training as an apprentice. Reported that most states have some regulation, such as local ordinances.

DEPARTMENT OF HEALTH PROFESSIONS
VIRGINIA BOARD OF HEALTH PROFESSIONS
COMMENTS ON FEASIBILITY OF REGULATING TATTOOISTS AND TATTOO PARLORS

SOURCE OF COMMENT	SUMMARY OF COMMENT
Gloria Lambert	Expressed concern about permanent makeup as tattooing & as an invasive procedure. Experienced herpes simplex in tattooing of lips and knew others who developed blisters. Sterilization & disposal tips should be used; and there is no pain management or medical assistance available.
Marjorie Vaughan	Presented testimony that permanent makeup should be included as tattooing, since it is invasive. Public need to be protected from untrained people. Reported that there is pain and the potential for disfigurement.
Tim Troke Richmond	Presented a training video for body piercing to demonstrate sanitation. Does not favor licensing, but does favor some regulation by required submission of protocols to local health boards on sterilization techniques. Presented information on needles and inks used. Expressed concern about unsterilized piercing guns used in malls. Does not use anesthetics.
Carol Thomas Petty, M.D. Richmond	Favors regulations & guidelines under the Board of Health Professions for invasive procedures including tattooing, permanent makeup, or piercing. Referred to OSHA guidelines for handling of body fluids as necessary, but prefers additional credentialing. Regulations would help protect the public.
Barbara Thomas Richmond	Favors regulations for permanent makeup separate from tattooing or piercing.
Patricia Norvelle	Favors regulations to ensure training and sterile practice.
Karen Browne	Favors regulations to ensure proper training and sterilization. Reported her training came from a weekend seminar with hands on experience.
Deannie Kruger	Favors regulations. Reported that pain associated with permanent makeup varies with the individual & that she was trained to use autoclave and disposable needles.

DEPARTMENT OF HEALTH PROFESSIONS
VIRGINIA BOARD OF HEALTH PROFESSIONS
COMMENTS ON FEASIBILITY OF REGULATING TATTOOISTS AND TATTOO PARLORS

SOURCE OF COMMENT

SUMMARY OF COMMENT

Written comments received prior
close of Comment Period on
October 1, 1993.

Marc Montoni
Lakeside

Opposes any regulation of piercing, tattooing or permanent makeup. Consumers should seek redress in the courts; government is over-regulating now. Regulation will not prevent bad practice.

Aurealia Nelson
Fredericksburg

Reported seeing blood & unsterile practice at a permanent makeup salon. Supports required training of sterile practices as protection for public.

Betsy W. Shires, R.N., M.S.
Richmond

Expressed concern about minors being tattooed, about sterile techniques and protection, and about disclosure about complications.

Marilyn C. Colangelo
Richmond

Supports regulation of permanent makeup.

Kevin Beale
Richmond

Supports regulation of tattooing.

Brenda & Bryan Wallace
Lanexa

Supports some regulation, inspection, consent form, or training for tattooing. Sent guidelines for formulation of regulations.