Information Summary and Recommendations

Tattoo Artists and Tattoo Parlors Sunrise Review

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The Sunrise Review Process

Legislative Intent

It is the Legislature's intent to permit all qualified individuals to enter a health care profession. If there is an overwhelming need for the state to protect the public, then entry may be restricted. Where such a need to restrict entry and protect the public is identified, the regulation adopted should be set at the least restrictive level.

The Sunrise Act, RCW 18.120.010, states that a health care profession should be regulated only when:

- Unregulated practice can clearly harm or endanger the health, safety or welfare of the public and the potential for harm is easily recognizable and not remote or dependent upon tenuous argument;
- The public can reasonably benefit from an assurance of initial and continuing professional ability; and
- The public cannot be protected by other more cost effective means.

There are three types of credentialing:

- *Registration*. A process by which the state maintains an official roster of names and addresses of the practitioners in a given profession. The roster contains the location, nature and operation of the health care activity practiced and, if required, a description of the service provided. A registrant could be subject to the Uniform Disciplinary Act, Chapter 18.130 RCW.
- *Certification*. A voluntary process by which the state grants recognition to an individual who has met certain qualifications. Non-certified persons may perform the same tasks, but may not use "certified" in the title. A certified person is subject to the Uniform Disciplinary Act, Chapter 18.130 RCW.
- *Licensure*. A method of regulation by which the state grants permission to engage in a health care profession only to persons who meet predetermined qualifications. Licensure protects the scope of practice and the title. A licensee is subject to the Uniform Disciplinary Act, Chapter 18.130 RCW.

Overview of Proceedings

The Department of Health notified the applicant group, all professional associations and board and committee chairs and staff of the Sunrise Review. Meetings and discussions were held and documents circulated to all interested parties.

Regulatory agencies in all other states were requested to provide sunrise reviews, regulatory standards, or other information which would be useful in evaluating the proposal to regulate tattoo artists and tattoo parlors. A literature review was conducted. Staff have reviewed all submitted information and asked for feedback from interested parties.

A public hearing was conducted in Olympia. The hearing panel included department and State Board of Health staff. Persons were allowed to give time limited presentations. A general discussion and response period followed the hearing as well as an additional ten-day written comment period.

Following the public hearing and additional written comments, a recommendation was made based on all information received and in consultation with the public hearing panel. The applicant group and other interested parties were briefed on the draft recommendations. The proposed final draft will be reviewed and approved by the Licensing and Certification Assistant Secretary and Department Secretary. The final report was transmitted to the Legislature via the Office of Financial Management.

Executive Summary

The Department of Health was requested to conduct a Sunrise Review on House Bill 1448, a proposal to regulate tattooers and tattoo parlors. It also proposes that minors under the age of 18 must have parental permission for a tattoo, and persons tattooing a minor would be guilty of a misdemeanor and liable to pay for removal of a tattoo.

No party came forward as an applicant for this legislation. Information was gathered from other states, available literature, local health departments, tattoo artists, blood banks, the Food and Drug Administration, Centers for Disease Control, city governments and the Department of Health, Division of Health Promotion and Disease Prevention.

The following recommendations are proposed by the Department of Health: (1) tattoo artists and tattoo parlors should not be regulated as health care professionals or facilities in Washington State; and (2) the state of Washington should implement a statute making it illegal for anyone to tattoo a minor under the age of 18 without parental consent. If the Legislature determines that additional consideration be given, the Department recommends the following: (1) the general population, particularly adolescents, should be better educated regarding potential harm from transmitting infection through contaminated tattooing equipment or failure to maintain post-operative care after receiving a tattoo; (2) voluntary state guidelines for the maintenance of public health standards by tattoo artists and tattoo parlors should be developed and implemented; (3) the Department of Licensing should look at the scope of practice for the cosmetology professions to determine if their required training is appropriate for the application of permanent makeup; and (4) the Department of Licensing should consider requiring tattoo services to be performed in licensed establishments in commercially zoned areas.

Current Regulation

There are no national standards for the education and training of tattoo artists in the United States. Most train under the supervision of an experienced tattoo artist. Two national professional organizations are available for tattoo artists, The National Tattoo Association and the Alliance of Professional Tattooists. Both hold national conventions and hygiene workshops presented by physicians. The Alliance of Professional Tattooists has published recommended sanitation and procedure guidelines. In addition, the Washington Professional Tattoo Artist's Association has developed recommended standards for tattoo artists and parlors in consultation with local health departments.

Washington State does not regulate tattoo artists or parlors specifically as health care professionals or facilities.

Proposal for Sunrise Review

Representative Gary Locke, House Appropriations Committee Chair, has requested that the Department of Health conduct a Sunrise Review on House Bill 1448, a proposal to regulate tattooers and tattoo parlors. The bill also proposes that minors under the age of 18 must have parental permission for a tattoo, and persons tattooing a minor are guilty of a misdemeanor and liable to pay for removal of a tattoo.

The Department of Health used the normal process of alerting interested parties for Sunrise Review. No party has come forward as the "applicant group" on this legislation. Chapter 18.120 RCW calls for an applicant group (which can be one individual) to submit an application covering the criteria specified in the statute.

The Legislature has asked the Department of Health to continue the sunrise process without the benefit of an applicant group. The Department of Health gathered information from other states and available literature, and consulted with local public health authorities on the potential range of health hazards known to be associated with tattoos. This report reflects that research.

Summary of Information Collected/Submitted

Department staff reviewed the information received during the review process. Some was solicited from interested parties; other information was provided to the department without being solicited. This "Information Summary" section provides the department's paraphrasing of all such information. It does not reflect the department's findings, which are found in a later section of this report.

The section is divided into three parts which correspond to the three main criteria given by the legislature to determine if a profession should be regulated by the state and if so, to what extent.

Harm to the Public:

Tattoo parlors could pose a risk to the consumer if appropriate sanitation practices are not followed. Tattooing, by its nature, involves the use of needles in the process, thus presenting a potential for transmission of pathogenic organisms between clients.

Information received from local health departments as well as established tattoo artists indicates that use of disposable needles and gloves and autoclaving or sterilizing reusable equipment is standard practice. Established tattoo parlors generally do not tattoo minors without confirmed permission from a parent. In addition, most tattoo establishments will refuse to tattoo anyone under the influence of alcohol. This is not only because of the natural lack of reasoning one experiences when under the influence of alcohol, but because of its dilation effect on the superficial blood vessels as well as the tattooee's inability to concentrate on instructions for skin care after the procedure.

"Underground" tattooing, which is practiced out of a "suitcase" or behind the shield of a private residence, is usually performed under poor sanitary conditions and may pose health risks. These risks include infection and allergic reaction. Hepatitis B infection and cutaneous transmission of Tuberculosis have been reported nationally. However, the actual number of cases in Washington State are very low and tattoos are not necessarily the proven source. Three cases of Hepatitis B were reported by the Southwest Washington Health District in patients who had received tattoos within six months prior to the infection. In every case, intravenous drug use or multiple sex partners were factors that could have caused the infection. The Cowlitz-Wahkiakum Health District reported one case of Hepatitis B which was contracted through an "underground" tattooer. Other possible causes were ruled out. The local health departments did not report any cases of possible tattoo-related Tuberculosis or other infections in Washington State.

Although some claim that there is a serious potential risk of the spread of HIV through contaminated needles, there are no confirmed, documented cases in the country. One national journal article cited two cases that possibly linked tattoos with HIV. However, these tattoos were given in a prison environment with unsterilized needles which had been used to tattoo other inmates. Both patients denied homosexual activity, intravenous drug use and blood transfusions. In one case the patient had a steady female sexual partner for the previous three years. In the second case, the patient admitted to having sex with prostitutes before incarceration.

It should be noted that the practice of tattooing, or the possession of tattooing equipment, is considered illegal in Washington State prisons because of potential health risks.

Other than body art, a common form of tattooing is permanent makeup. This involves tattooing lines of colored pigment along the upper and lower lids and inserting pigments into eyebrows, lips and cheeks. Eyelid and eyebrow tattooing carries a high degree of risk. If the tattooing is too deep, pigment can enter the tissue of the lid and cause a fan-

shaped pigment to spread. It can also migrate into the nerves, muscles and the lymphatic system and cause severe medical complications. If the needle is improperly angled, hair roots are destroyed. Even worse, the needle may scratch or puncture the eye and result in permanent damage. There is also the possibility of infection and allergic reaction. The actual number of health complications caused by facial tattooing is undeterminable because these problems are usually treated by physicians or plastic surgeons. They are not reported to local health departments as are cases of HIV, Hepatitis B or Tuberculosis.

Facial tattooing is not commonly practiced by tattoo artists, but rather by licensed cosmetologists. Whether or not a cosmetologist is adequately trained to perform facial tattooing is a separate issue and may need to be considered by the Department of Licensing which licenses cosmetologists. The law relating to cosmetologists, barbers, manicurists and estheticians does not address facial tattooing. Some states, such as Hawaii, consider facial tattooing a separate practice that may only be performed by licensed physicians.

The Northwest Regional Blood Bank has indicated that facial tattooing poses a problem because people performing the process refer to it as "permanent makeup" rather than tattooing. People are not allowed to give blood if they have received a tattoo within a year. When asked if they have had a tattoo, people who have facial tattooing deny receiving one, because they consider the tattoo "permanent makeup."

The Food and Drug Administration has neither approved or disapproved tattoo inks. Their primary concern when Oregon recently passed legislation regulating tattoo artists and parlors was the use of "coal tar" found in permanent eye makeup which is used for coloring eyebrow and eyelash hair.

Benefit to the Public:

Information received indicates that the major health threat caused by tattooing is created by the underground tattooer. Unfortunately, underground tattooing will continue to be as difficult to monitor as intravenous drug use and would not be substantially impacted by regulation. At least 50 percent of underground tattooing activity is performed on minors.

Tattooing is common among some adolescents. A study was conducted which included respondents from a residential drug and alcohol treatment program in suburban Washington, DC, detainees in the King County Juvenile Detention Center in Seattle, and from a private pediatric practice in a middle-class community in suburban Virginia. Thirty-seven percent of the total population was not aware of the potential for transmitting infection through contaminated tattooing equipment. In general, the results indicate the need for more education of all adolescents about the relationship between infection and tattooing.

The researchers concluded that clinicians with tattooed adolescent patients should use the following findings as a stimulus for discussions about self-care and disease prevention. Tattooing is most often associated with underlying family and peer modeling, low self-esteem, drug and alcohol abuse, delinquency, an impulsive personality style, and deviant behaviors. It also concluded that clinicians should be aware of the potential significance and underlying motivations for tattooing in adolescence and discuss their behavior while providing guidance to young patients.

Other literature reviewed suggested that an active health promotion policy, beginning in schools, could provide appropriate education in the matter of tattoos and their consequences. The greatest positive effect could result by this educational message being promoted by a plastic surgeon or dermatologist, aimed at susceptible adolescents who, once they are out of their teens, may decide that they have made a mistake.

Numerous methods for the removal of tattoos exist, such as laser treatment, skin grafting or sanding, but none is ideal and these techniques are time-consuming and expensive. It is also very painful and generally has less than satisfactory results. The method of tattoo removal usually depends upon the size of the tattoo.

Other Means of Regulation:

A business license is required in the state of Washington for tattoo parlors, as is any other business which provides services. The 1993 Legislature identified tattooing as a service for which a sales tax is charged.

The Department of Labor and Industries requires the employees of a tattoo parlor to follow general safety standards. If the employee handles equipment or punctures the skin, blood-borne standards must be followed.

The health officer of a local health department has the authority to close or take action against a tattoo parlor if it poses a threat to public health. RCW 70.05.070 states that the local health officer:

> "Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;
>
> Control and prevent the spread of any dangerous, contagious or infections diseases that may occur within his or her jurisdiction; and
>
> Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction."

In addition to the above, some cities regulate tattoo artists and/or parlors, charge licensing fees, have implemented regulations including minimum age limits, and are subject to inspection and revocation by local health departments. Most cities require a business license. The following chart indicates some examples of local regulation:

City Regulations

City	Tattoo Artist	Tattoo Parlor	Implement Standards	Regulate Minors	Inspected By
Seattle	n/a	$325	yes	18 years	Seattle Health Dept.
Tacoma	$150	$50	yes	18 years	Pierce Co. Health Dept.
Yakima	$25		yes	21 years	Yakima Health Dist.

Regulation In Other States (As reported to Department of Health)

Tattooing is legal in most of the United States. States and local jurisdictions vary in their approach to tattooing. Most states have no regulation other than making it unlawful to tattoo persons under the age of eighteen. Other states and jurisdictions, such as Missouri, Oklahoma and South Carolina, prohibit the practice entirely, while in others tattooing can be performed only by persons licensed to practice medicine or dentistry.

Some states have established minimum standards to be used as guidelines for tattoo artists and establishments. The regulatory agencies in these states do not enforce the standards. These states report that voluntary compliance is excellent.

The New York State Department of Health initially considered three options to reduce the risk of blood-borne disease associated with tattooing. The options were (1) complete ban; (2) develop regulations to control and license; and (3) develop and distribute guidelines. Option one was discarded because they did not feel it would be effective. New York City had banned tattooing in 1964, but tattooists continued to work "underground." Option two was considered but not implemented due to the lack of funds to cover licensing, testing, and on-site inspection. Option three was selected and the guidelines field tested successfully.

State	Status of Regulation
PA, IL, MN, AR, WI, NM, UT, ID, AK, MI, CA, ND, NE, AL, MT, MD, DC, KY	None
IL, NH, NC, PA, TN, TX, FL, WV, ME, SD, NY, RI, IA, MI, HI, AR,	Statutes Set A Minimum Age Requirement
NY, SD, MO	Implemented Guidelines
CT, FL, IN, MA, VT	Performed By Persons Licensed To Practice Medicine Or Dentistry Only
NH, NJ, TN, NC	Regulated At Local Level
RI, IA, WV, ME, HI, TX, OR, AR	Full Regulation
MS, OK, SC	Illegal

The average tattoo artist makes a minimal salary. The few states that regulate tattoo artists and/or parlors acknowledge the probable existence of "underground" activity. Licensure fees have the tendency of exacerbating the underground activity.

The estimated number of tattoo artists in Washington State is 80, with the number of tattoo parlors estimated at 35. With full compliance of the proposal in House Bill 1448, the annual registration fee would be at least $150 for tattoo artists and $165 for tattoo parlors. It should be remembered that this fee is for a registry only and not full licensure. Registrants would not be subject to the Uniform Disciplinary Act.

Of course, if regulation drives the artists underground, the fees will increase in order to cover the cost of supporting the program while regulating fewer artists and parlors.

In addition, under the proposal the local health departments are responsible for regular inspections of tattoo parlors as well as inspections when complaints are reported. The degree of inspection would depend on future standards, if implemented. Based on advise of a local health department, we considered the workload of an inspection similar to that of a restaurant. The very rough estimate given by local health departments was about $150 per inspection.

Fees Charged In Other States

STATE	ARTIST		PARLOR	
	New	Renewal	New	Renewal
Hawaii	200	20	200	20
Rhode Island	50	50	50	50
West Virginia	n/a	n/a	200	200
Texas	not established	not established	not established	not established
Maine	50	50	n/a	n/a
Iowa	60	60	180	180
Oregon	not established	not established	not established	not established

Recommendation

☞ Tattoo Artists and tattoo parlors should not be regulated as health care professionals or facilities in Washington State.

Rationale:

1. The practice of tattooing does not meet the criteria in Chapter 70.02 RCW defining health care professionals and facilities.

2. An overwhelming need to protect the public has not been demonstrated.

3. Information received from local health departments, the Food and Drug Administration, Centers for Disease Control, and the Department of Health indicates that any health risk resulting from tattooing is minimal.

4. There are mechanisms already in place in Washington State for regulating tattoo artists and tattoo parlors. Local governments, health departments and business licenses are examples.

5. States regulating tattoo artists and/or parlors have acknowledged a potential for increased underground activity.

If the Legislature decides not to accept the above recommendation, the following alternatiaves should be considered:

☞ The state of Washington should implement a statute making it illegal for anyone to tattoo a minor under the age of 18 without parental consent.

Rationale:

1. Tattoos alter one's personal appearance permanently. Tattoo removal is costly, painful and generally the results are less than satisfactory. The decision-making process of whether or not to receive a tattoo requires a great deal of maturity.

2. Established tattoo parlors generally will not tattoo a minor under the age of 16 for any reason, and require parental consent for minors under age 18. Underground tattooers generally are not discriminatory with their clientele, as at least 50 percent of their clients are minors. This statute would provide recourse for civil action against any tattoo artist or underground tattooer who violates the statute.

☞ The general population, particularly adolescents, should be better educated regarding potential harm from transmitting infection through contaminated tattooing equipment or failure to maintain post-operative care after receiving a tattoo.

Rationale:

1. Studies indicate that a very high percentage of adolescents (37 percent) are not aware of the potential for transmitting infection through contaminated tattooing equipment. There is also a lack of awareness of the proper methods of post-operative care.

☞ Voluntary state guidelines for the maintenance of public health standards by tattoo artists and tattoo parlors should be distributed to all tattoo artists and parlors.

Rationale:

1. Information received from local health departments indicates that tattoo artists and tattoo parlors have acceptable sanitation standards.

2. The Washington Professional Tattoo Artist's Association has developed recommended guidelines. In conjunction with the local health departments and Department of Health, they should finalize and disseminate these standards to all tattoo artists and established tattoo parlors.

3. Information received from states developing and distributing voluntary guidelines indicates that compliance has been excellent.

☞ The Department of Licensing review the scope of practice for the cosmetology professions to determine if the required training is appropriate for the application of permanent makeup.

Rationale:

1. Permanent makeup, the tattooing procedure with the most potential for health risks, is usually a recommended procedure applied by a cosmetologist and practiced in a beauty parlor.

2. Those performing this process refer to it as "permanent makeup" rather than "tattooing." This creates an additional health risk in blood banks because donors do not consider their "permanent makeup" a tattoo, respond "no" when asked if they have received a tattoo, and can potentially donate contaminated blood.

☞ The Department of Licensing should consider requiring tattoo services to be performed in a licensed establishment in a commercially zoned area.

Rationale:

1. Underground tattooing is commonly practiced out of a suitcase or behind the shield of a private residence. All established tattoo parlors with a physical address in a commercial establishment are required to have a business license. This recommendation could decrease the underground tattoo activity by increasing the recourse for civil action against those practicing without a business license in other than a commercially zoned environment.

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H-1677.1

SUBSTITUTE HOUSE BILL 1448

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Zellinsky, Scott, Schmidt and Sheldon)

Read first time 02/24/93.

AN ACT Relating to business regulations; adding a new chapter to Title 18 RCW; creating a new section; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Tattoo" means a permanent mark or design made on the skin by a process of pricking and ingraining an indelible pigment or raising a scar.

(2) "Tattooer" means a person who performs the act of applying a tattoo on a human being.

(3) "Tattoo parlor" means a place of business where tattooing takes place.

NEW SECTION. **Sec. 2.** (1) All tattooers shall pay a fee to register with the secretary of health and pay an annual renewal registration fee determined by the secretary of health as provided in RCW 43.70.250 on or before the certificate holder's birth anniversary

date. Registration shall be renewed for a period of one year or longer in the discretion of the secretary of health.

(2) All tattoo parlors shall pay a fee to register with the secretary of health, and pay an annual renewal registration fee determined by the secretary of health as provided in RCW 43.70.250 on or before the anniversary date of the first registration.

(3) The fee for the certificate shall cover expenses incurred by the department of health for administering the registration program.

(4) The department of health shall adopt those rules necessary to implement this chapter, including rules establishing sanitation standards for tattoo parlors and providing inspection procedures to be followed by local health departments.

(5) The department of health shall maintain a registry of tattooers and tattoo parlors and provide a copy of the register upon request to any tattooer, tattoo parlor, law enforcement agency, government agency, or member of the public. The department of health shall provide an updated copy of the registry on a regular basis to the state board of health and all local health departments. The registry shall include a record of every sanitation violation reported by a local health department.

(6) Nothing in this chapter may be construed to prohibit or restrict the practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state who is performing services within the person's authorized scope of practice.

NEW SECTION. **Sec. 3.** In addition to any other authority provided by law, the secretary of health has the authority to:

(1) Appoint an advisory committee, if necessary; and

(2) Establish forms and procedures necessary to administer this chapter.

NEW SECTION. **Sec. 4.** Each local health department, as defined in RCW 70.05.010, shall regularly inspect the tattoo parlors within its jurisdiction in accordance with rules adopted by the department of health. If a local health department finds that a tattoo parlor has violated the sanitation standards adopted by the department of health, the local health department shall immediately notify the department of health of the violation.

NEW SECTION. **Sec. 5.** (1) It is a misdemeanor for a tattooer to apply a tattoo on a person who is under eighteen years of age, unless the person receiving the tattoo presents the tattooer with a notarized letter from a parent or guardian allowing the minor to receive a tattoo.

(2) When a tattooer applies a tattoo in violation of subsection (1) of this section, either the tattooer or the tattoo parlor, or both, shall be liable for the cost of removal of the minor's tattoo.

(3) It is a separate offense, punishable as a misdemeanor, for a tattooer or tattoo parlor to refuse to remove or refuse to pay for the removal of a minor's tattoo as required by subsection (2) of this section.

NEW SECTION. **Sec. 6.** The secretary of the department of health may take those steps necessary to ensure that sections 2 through 4 of this act are implemented on the effective date of this act.

NEW SECTION. **Sec. 7.** Sections 2 through 4 of this act shall take effect July 1, 1994.

NEW SECTION. **Sec. 8.** Sections 1 through 5 of this act shall constitute a new chapter in Title 18 RCW.

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recycled paper