



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

May 6, 1998

To: The Members
Assembly Committee on Consumer Affairs

From: Representative Clifford Otte, Chair *C.O.*

MEMO

On May 6, 1998, the following clearinghouse rule was referred to the Assembly Committee on Consumer Affairs:

Clearinghouse Rule 97-135, relating to the regulation of tattooists and tattoo establishment and regulation of body piercers and body-piercing establishments.

The deadline for committee action on this rule is **June 8, 1998**. Please find herewith a copy of the rule. If you are interested in requesting a hearing and/or submitting comments, please do by **May 15, 1998**.

Assembly

Committee Report

The committee on **Consumer Affairs**, reports and recommends:

Clearinghouse Rule 97-135

Relating to regulation of tattooists and tattoo establishment and regulation of body piercers and body-piercing establishments.

Submitted by the Department of Health and Family Services.

June 4, 1998 - NO ACTION TAKEN



Representative Clifford Otte
Chair

PROPOSED ADMINISTRATIVE RULES - HFS 173
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.

Need for Rules

A recent session law, 1995 Wisconsin Act 468, effective October 1, 1996, created ss. 252.23, 252.24 and 252.245, Stats., to provide for the regulation of tattooing and body piercing. The new statutes prohibit anyone from doing tattooing or body piercing or representing self as a tattooist or body piercer or using or assuming the title tattooist or body piercer without being licensed by the Department. The Department is directed to provide uniform, statewide licensing and regulation of tattooists and tattoo establishments and uniform statewide licensing and regulation of body piercers and body piercing establishments, and for these purposes to promulgate as rules licensing standards and procedures as well as standards for the performance of tattooing and body piercing and for maintenance of the establishments where these are done which will promote safe and adequate care and treatment of individuals receiving tattooing or body piercing and eliminate or greatly reduce the danger of exposing these individuals to communicable disease or infection.

These are the Department's rules. The rules cover application for a license, annual licensing fees, pre-licensure inspection, conditions for serving patrons, patron records, physical facilities, personnel, hygienic practices, equipment, cleaning and sterilization of equipment before re-use, preparation of the skin before a procedure is begun, special requirements for temporary establishments, and enforcement provisions.

Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse were accepted, except the following:

1.c. Comment: Section 252.245 (9), Stats., requires the Department to promulgate rules monitoring and evaluating the activities of, and providing education and training to, agent local health departments. Will these rules be promulgated in a separate rulemaking order?

Response: No. Section 252.245 (9), Stats., requires only rules for state fees. Those rules are included in HFS 173.13.

5.d. Comment: In HFS 173.03 (25), the term "temporary establishment" is defined in terms of an event lasting for a maximum of 7 days. Does the rule make clear how many such events may occur in one year or whether an unlimited number of consecutive temporary establishments may be licensed?

Response: The rule does not limit the number of consecutive temporary establishment licenses which may be issued within a twelve-month period.

5.h. Comment: In HFS 173.06 (7)(c), is the provision of tempered water meant to be an alternative to making hot and cold water under pressure available? Clarify.

Response: It is intended to be an alternative to hot water. To make this clear, the phrase, "rather than hot water," has been added to the rule. "Tempered water" is defined as water ranging from 85°F. to less than 110°F. Use of the term is consistent with its use in other HFS codes. See HFS 196.14 (3).

5.k. Comment: In HFS 173.08 (2), is there a difference between "containers of dye or ink" and "[p]igment and ink cups"? If not, the second and fourth sentences are inconsistent. If so, should pigment be mentioned in the second sentence and dye in the fourth?

Response: Ink is a synthetic substance and pigments are colors. The inconsistencies in use of terms, i.e., ink, dyes and pigments, have been changed.

Public Hearings

The Department held 4 public hearings on proposed ch. HFS 173. The hearings were in Madison, Wausau, La Crosse and Milwaukee in December, 1997 and January, 1998. Forty-six persons attended, and 17 of them presented testimony on the proposed rules. In addition, 5 persons submitted written comments during the public review period ending on January 21, 1998. A list of persons who either attended a hearing or submitted written comments to the Department on the proposed rules during the public review period, along with a summary of their comments and the Department's responses, are included as an attachment to this document.

In response to comments received during public review of the proposed rules, the Department added a requirement that adverse effects of the tattooing or body-piercing procedure be made part of the patron's record; specified that the hand soap to be available at each handwashing facility be "anti-bacterial;" and changed the term biodegradable waste to infectious waste.

Final Regulatory Flexibility Analysis

Most of the estimated 125 tattoo, body-piercing and combination tattoo and body-piercing establishments in Wisconsin are small businesses as "small business" is defined in s. 227.114 (1)(a), Stats.

Sections 252.23 and 253.24, Stats., prohibit persons from doing tattooing or body piercing or operating a tattooing or body-piercing establishment unless licensed by the Department, and direct the Department to promulgate rules setting standards and procedures for the annual issuance of licenses, standards for the performance of tattooing and body piercing and standards for tattooing and body-piercing establishments. The rules and their

enforcement are intended to help protect the health and safety of patrons of tattoo and body-piercing establishments.

The standards included in the rules are minimal standards for protecting public health and safety. They do not at this time include performance standards.

**SUMMARY OF PUBLIC HEARINGS ON
PROPOSED HFS 173
TATTOOING AND BODY PIERCING**

December 11, 1997 & January 12, 14 and 16, 1998

A. ALL PERSONS WHO ATTENDED HEARINGS ON HFS 173 OR SUBMITTED WRITTEN COMMENTS ON THE PROPOSED RULES DURING THE PUBLIC REVIEW PERIOD (Note: The number preceding a name is used in Part B of this document to indicate the person who offered the comment)

- | | | |
|-----|--|--------------------------|
| 1. | Derek Lowe - representing Gold's
Tattoo
Madison, Wisconsin | Public hearing testimony |
| 2. | Steve Gold - owner of Gold's Tattoo
Madison, Wisconsin | Public hearing testimony |
| 3. | Michael Manning - owner of Choice
Tattoos
Wauzeka, Wisconsin | Public hearing testimony |
| 4. | Jan Radolfo - representing Juneau
County Health Department | Observation only |
| 5. | Robert Brahmer - owner of Point Blank
Tattoo
Wisconsin Dells, Wisconsin | Observation only |
| 6. | Joan Lietz - Greendale Health
Department
Greendale, Wisconsin | Observation only |
| 7. | Paul Dadian - representing Absolute
Tattooing of Menomonee Falls,
Sheboygan and Waukesha | Public hearing testimony |
| 8. | Julio Avia - representing Absolute
Tattooing
Greenfield, Wisconsin | Public hearing testimony |
| 9. | Renee Pastorius - owner of Main Street
Tattoo
Kewaskum, Wisconsin | Public hearing testimony |
| 10. | Brian Allen - representing Point Blank
Tattoo
Wisconsin Dells, Wisconsin | Observation only |

- | | | |
|-----|---|---|
| 11. | Tony Pan Sanfelipo (Self)
Milwaukee, Wisconsin | Public hearing testimony and written comments |
| 12. | John Servants – representing Accents in
Ink Tattoo and Piercing Studio
Oak Creek, Wisconsin | Public hearing testimony |
| 13. | Jim Melotte (Self)
Waukesha, Wisconsin | Observation only |
| 14. | Jan Jaden – Sheboygan County Health
Department
Sheboygan, Wisconsin | Observation only |
| 15. | Gregg Bremser – owner of Lake
Geneva Tattoo
Lake Geneva, Wisconsin | Observation only |
| 16. | Linda Elmer – representing City of
Milwaukee
Milwaukee, Wisconsin | Public hearing testimony |
| 17. | Sheri Strege (Self)
Glendale, Wisconsin | Observation only |
| 18. | James Long – representing Wisconsin
Division of Health | Observation only |
| 19. | Wendy Baker – representing Main
Street Tattoo
Kewaskum, Wisconsin | Observation only |
| 20. | Cynthia Tomasello - (Self)
Shorewood, Wisconsin | Observation only |
| 21. | Nancy and Bill Hanson – owners
representing Black Dragon Tattoo
Waukesha, Wisconsin | Observation only |
| 22. | Melisa Strobbe – owner of Tie Me
Down Piercing
Milwaukee, Wisconsin | Observation only |
| 23. | Connie Gensler – representing Oneida
County Health Department | Observation only |
| 24. | Kathryn Sutliff – representing Oneida
County Health Department | Observation only |

- | | | |
|-----|---|---|
| 25. | Barb Kalous – co-owner Raptor’s Roost
Tattoo Studio
Minocqua, Wisconsin | Public hearing testimony |
| 26. | Tom Coulthurst – co-owner Raptor’s
Roost Tattoo Studio
Minocqua, Wisconsin | Public hearing testimony |
| 27. | Marty Adams – representing Brown
County Health Department
Green Bay, Wisconsin | Public hearing testimony |
| 28. | Scott Verville – owner American
Tattoo
Waukesha, Wisconsin | Public hearing testimony |
| 29. | Jonathon LaFave – (Self)
Wausau, Wisconsin | Public hearing testimony |
| 30. | Vicki Roberts – citizen of Wausau | Public hearing testimony and written comments |
| 31. | John Paul – representing Brown County
Health Department
Green Bay, Wisconsin | Public hearing testimony |
| 32. | Lewis Nowak – representing Brown
County Health Department
Green Bay, Wisconsin | Public hearing testimony |
| 33. | Tom Wittkopf – representing National
Environmental Health Association
Wausau, Wisconsin | Public hearing testimony |
| 34. | David Jaecks – owner of Wausau
Tattoo
Wausau, Wisconsin | Public hearing testimony |
| 35. | Al Graewin – representing La Crosse
County Health Department
La Crosse, Wisconsin | Public hearing testimony |
| 36. | Ron Berg – representing La Crosse
County Health Department
La Crosse, Wisconsin | Public hearing testimony |
| 37. | Faye Millage (Self)
Platteville, Wisconsin | Public hearing testimony |

- | | | |
|-----|---|---|
| 38. | Randy Mellem - (Self)
La Crosse, Wisconsin | Public hearing testimony |
| 39. | Dale Groeskurth - representing La
Crosse County Health Department
La Crosse, Wisconsin | Observation only |
| 40. | Jean Edsall - representing La Crosse
County Health Department
La Crosse, Wisconsin | Observation only |
| 41. | Tracy Mihm - (Self)
La Crosse, Wisconsin | Observation only |
| 42. | Sheila McNulty - (Self)
La Crosse, Wisconsin | Observation only |
| 43. | Kelly Berthiaunu - (Self)
La Crosse, Wisconsin | Observation only |
| 44. | Jim Ryder - representing Eau Claire
City-County Health Department
Eau Claire, Wisconsin | Public hearing testimony and written comments |
| 45. | Nancy Westphal - representing
Appleton Health Department
Appleton, Wisconsin | Written comments |
| 46. | Rick Harnowski - owner of Skin
Illustrations
Green Bay, Wisconsin | Written comments |
| 47. | Thomas Radmer - Kenosha County
Board of Health
Kenosha, Wisconsin | Written comments |
| 48. | David Krey - representing Milwaukee
Health Department
Milwaukee, Wisconsin | Observation only |
| 49. | Frank Mateo - representing Kenosha
County Health Department
Kenosha, Wisconsin | Written comments |
| 50. | R. J. Gogan, M.D. | Observation only |

**B. PROPOSED HFS 173, TATTOOING AND BODY PIERCING
SUMMARY OF PUBLIC HEARING TESTIMONY INCLUDING WRITTEN COMMENTS,
& DEPARTMENT RESPONSES**

<u>RULE REFERENCE</u>	<u>COMMENT</u>	<u>DEPARTMENT RESPONSE</u>
1. HFS 173	Add proficiency requirements for practitioners. (27, 29, 30, 31, 34)	Department will propose a prerequisite program in the near future.
2. HFS 173	Make private procedure rooms a requirement. (38)	No change. Present rule proposal provides for sufficient privacy.
3. HFS 173	Require that reusable tattoo needles be examined under magnifying glass for suitability. (37)	No change. The present provisions are intended to address health concerns.
4. HFS 173	Can an agent impose more stringent requirements? (16, 44)	Section 252.245 (6), Wis. Stats., permits an agent acting under a local ordinance and regulations adopted by the local health department to be more stringent provided such provisions do not conflict with the Department rules.
5. HFS 173	Suggest that a sponsor location be required on practitioner application. (16)	No change. Shop affiliation is not a legal prerequisite for obtaining a practitioner license.
6. HFS 173	Would the Association of Professional Tattooing course meet proficiency requirements? (12)	The proposed rules do not at this time require proficiency testing for a practitioner license. Therefore, the rules do not now include criteria.
7. HFS 173	Will sanitarians have adequate training and know what to look for? (9)	All sanitarians, including agent sanitarians, will receive proper training.
8. HFS 173	Supports proposed rules as written. (1, 2, 3, 4, 5, 9, 19, 22, 25, 26, 28, 29, 35, 39, 40, 48)	Acknowledged.
9. HFS 173.02 (2)	Does not want to allow variances. (49)	No change. Circumstances where comparable compliance is achieved may receive a variance.

RULE REFERENCE

COMMENT

DEPARTMENT RESPONSE

10. HFS 173.04 (4)	Would like more specific definition for autoclave. (27)	Agreed.
11. HFS 173.03 (5)	Amend definition of "body pierce" to not exempt ears. (35, 36)	No change. Section 272.24 (1)(b), Wis. Stats., specifically exempts ears for licensing.
12. HFS 173.04 (1)	Insert provision for a conditional permit. (33)	No change. A 30 day grace period will be provided in policy guidelines.
13. HFS 173.04 (1)	How will unlicensed operations be addressed? (7, 37)	HFS 173.12 (3) provides penalty provisions for operating without a license.
14. HFS 173.04 (1)(b) 4 and 15. HFS 173.04 (2)	Fees for temporary establishment and practitioner licenses seem excessive. (30, 34)	The fees as proposed reflect cost of administering the program.
16. HFS 173.04 (2)	Would like body piercing conducted by physician or dentist. (47)	No change. Sections 252.23 and 253.24, Wis. Stats., provide for licensing of practitioners, without limitation to physicians and dentists.
17. HFS 173.04 (4)	Change language in proposed rules when referring to practitioners to be consistent with the statutes. (44)	No change. The present wording is sufficiently precise.
18. HFS 173.05	Consider requiring the posting of a notice that patients should have current tetanus shot, and warning of complications which may occur from body piercing. (35)	No change. Piercings are conducted on adults or persons 16 to 17 years of age with written parental consent.
19. HFS 173.05 (1)(b)	Do not allow body piercing of persons under 18 years of age. (45)	No change. The practice should be allowed, as provided, with parental consent for persons between the age of 16 and 17 years of age.

RULE REFERENCE

COMMENT

DEPARTMENT RESPONSE

20. HFS 173.05 (1)(b) 3.	Permit minors to be tattooed with parental consent. (37)	Section 948.70, Wis. Stats., prohibits the tattooing of children except by a physician in the course of his or her practice.
21. HFS 173.05 (2)	Can an agent ban temporary tattoo or body-piercing establishments? (16)	No provision may specifically conflict with ss. 252.23 or 252.24, Stats.; therefore, these activities may not be specifically banned.
22. HFS 173.05 (2)	Require adverse effects to be documented in the patron's record. (49)	Agreed.
23. HFS 173.06 (1)	Insert "light-colored" as a requirement for floors. (49)	No change. Current criteria are sufficient.
24. HFS 173.06 (3)	Require two levels of lighting: at floor and application level. (33)	No change. Current minimum level of 50-foot candles is sufficient.
25. HFS 173.06 (7)	Require a handwash facility for each area where tattooing or body piercing is conducted. (36)	No change. Current language provides for a handwash sink that is conveniently located in the tattoo or body piercing area.
26. HFS 173.06 (7)(b)	Add term "anti-bacterial" to the hand soap requirement for handwash facilities. (30, 34)	Agreed.
27. HFS 173.06 (8)	Include a definition for biohazardous waste in the rules. (36, 49)	The term is changed to "infectious waste".
28. HFS 173.07	Require practitioner to have annual exam by physician. (45)	No change. Implementation would not be practical due to privacy concerns. Examinations not required in other professions.
29. HFS 173.07 (1)	Permit practitioners with skin conditions to be able to work if skin is covered. (7, 11, 29, 30, 34)	No change. Present provisions allow practice if skin condition is not exposed.

RULE REFERENCE

COMMENT

DEPARTMENT RESPONSE

- | | | |
|-----------------------|--|--|
| 30. HFS 173.07 (5)(e) | Allow only single use needles for tattooing. (9, 45). | No change. With the necessary equipment for cleaning and sanitizing, combined with mandatory sterilization of needles, reuse of needles should not be a problem. |
| 31. HFS 173.09 (2) | Eliminate requirement for autoclave. (31, 32) | No change. Use of autoclave is necessary to assure proper sterilization. |
| 32. HFS 173.09 (2)(c) | Do not require that spore testing be done by an independent laboratory. (11, 30, 34) | No change. Present methodology is necessary to assure proper sterilization procedures are followed. |
| 33. HFS 173.11 (1) | Do not allow temporary tattoo or body-piercing establishments. (45) | No change. Such activities are of relatively low risk when proper procedures, facilities and equipment are utilized. |
| 34. HFS 173.11 (1) | Do not require a temporary permit. (3) | No change. The requirement is necessary to ensure that proper procedures and facilities are used and that hygienic practices are followed. |
| 35. HFS 173.12 | Expressed concern about patron confidentiality when inspectors are given access to patron records. (8, 11) | The rules permit only the Department's authorized employe or agent to examine records. |

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

To create HFS 173, relating to regulation of tattooists and tattoo establishments and regulation of body piercers and body-piercing establishments.

Analysis Prepared by the Department of Health and Family Services

A recent session law, 1995 Wisconsin Act 468, effective October 1, 1996, created ss. 252.23, 252.24 and 252.245, Stats., to provide for the regulation of tattooing and body piercing. The new statutes prohibit anyone from doing tattooing or body piercing or representing self as a tattooist or body piercer or using or assuming the title tattooist or body piercer without being licensed by the Department. The Department is directed to provide uniform, statewide licensing and regulation of tattooists and tattoo establishments and uniform statewide licensing and regulation of body piercers and body piercing establishments, and for these purposes to promulgate as rules licensing standards and procedures as well as standards for the performance of tattooing and body piercing and for maintenance of the establishments where these are done which will promote safe and adequate care and treatment of individuals receiving tattooing or body piercing and eliminate or greatly reduce the danger of exposing these individuals to communicable disease or infection.

These are the Department's rules. The rules cover application for a license, annual licensing fees, pre-licensure inspection, conditions for serving patrons, patron records, physical facilities, personnel, hygienic practices, equipment, cleaning and sterilization of equipment before re-use, preparation of the skin before a procedure is begun, special requirements for temporary establishments, and enforcement provisions.

The fees established by this order do not apply to facilities regulated by local health departments granted agent status under s. 252.245, Stats. License fees for those establishments are established by the agent local health departments, pursuant to s. 252.245 (4), Stats. However, this order provides that, as permitted by s. 252.245 (9), Stats., amounts which are 20% of the Department's fees are to be considered "state fees" to be collected for the Department by agent local health departments to pay for the Department's costs in establishing and maintaining the licensing standards and monitoring and training agent local health department staff.

The Department's authority to create these rules is found in ss. 252.23 (4), 252.24 (4) and 252.245 (9), Stats. The rules interpret ss. 252.23, 252.24 and 252.245 (9), Stats.

SECTION 1. Chapter HFS 173 is created to read:

CHAPTER HFS 173

TATTOOING AND BODY PIERCING

- HFS 173.01 Authority and purpose**
- HFS 173.02 Scope**
- HFS 173.03 Definitions**
- HFS 173.04 Licenses**
- HFS 173.05 Patrons**
- HFS 173.06 Physical facilities and environment**
- HFS 173.07 Personnel**
- HFS 173.08 Equipment**
- HFS 173.09 Cleaning and sterilization**
- HFS 173.10 Preparation and care of site**
- HFS 173.11 Temporary establishments**
- HFS 173.12 Enforcement**
- HFS 173.13 State fees**

HFS 173.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 252.23 (4), 252.24 (4) and 252.245 (9), Stats., for the purpose of regulating tattooists, tattoo establishments, body piercers and body-piercing establishments in order to protect public health and safety.

HFS 173.02 SCOPE. (1) **APPLICABILITY.** This chapter applies to all tattooists, body piercers, tattoo establishments and body-piercing establishments.

(2) **APPROVED COMPARABLE COMPLIANCE.** When it appears to the department that strict adherence to a provision of this chapter is impractical for a particular tattooist, tattoo establishment, body piercer or body-piercing establishment, the department may approve a modification in that requirement for that person or establishment if the department is provided with satisfactory proof that the grant of a variance will not jeopardize the public's health, safety or welfare.

HFS 173.03 DEFINITIONS. In this chapter:

(1) "Agent" means a local health department serving a population greater than 5,000 which is designated by the department under a written agreement authorized by s. 252.245 (1), Stats., to issue licenses to and make investigations or inspections of tattooists, tattoo establishments, body piercers and body-piercing establishments.

(2) "Antiseptic" means a chemical that kills or inhibits the growth of organisms on skin or living tissue.

(3) "Approved" means acceptable to the department based on its determination of conformance to this chapter and good public health practices.

(4) "Autoclave" means an apparatus that is registered and listed with the federal food and drug administration for sterilizing articles by using superheated steam under pressure.

(5) "Body pierce," as a verb, means to perforate any human body part or tissue, except an ear, and to place a foreign object in the perforation to prevent the perforation from closing.

(6) "Body piercer" means a person who performs body piercing on another person at that person's request.

(7) "Body piercing" means perforating any human body part or tissue, except an ear, and placing a foreign object in the perforation to prevent the perforation from closing.

(8) "Body-piercing establishment" means the premises where a body piercer performs body piercing.

(9) "Cleaning" means the removal of foreign material from objects, normally accomplished with detergent, water and mechanical action.

(10) "Department" means the Wisconsin department of health and family services

(11) "Disinfectant" means a chemical that is capable of destroying disease-causing organisms on inanimate objects, with the exception of bacterial spores.

(12) "Hot water" means water at a temperature of 110°F. or higher.

(13) "Local health department" means an agency of local government that takes any of the forms specified in s. 250.01 (4), Stats.

(14) "Operator" means the owner or person responsible to the owner for the operation of a tattoo or body-piercing establishment.

(15) "Patron" means a person receiving a tattoo or body piercing.

(16) "Practitioner" means a tattooist or body piercer.

(17) "Premises" means a building, structure, area or location where tattooing or body piercing is performed.

(18) "Sharps waste" means waste that consists of medical equipment or clinical laboratory articles that may cause punctures or cuts, such as hypodermic needles, syringes with attached needles and lancets, whether contaminated, unused or disinfected.

(19) "Single-use" means a product or item that is disposed of after one use, such as a cotton swab, a tissue or paper product, a paper or soft plastic cup, or gauze or other sanitary covering.

(20) "Sterilization" means the killing of all organisms and spores through use of an autoclave operated at a minimum of 250°F. (121°C.) at pressure of at least 15 pounds per square inch for not less than 30 minutes or through use of an autoclave approved by the

department that is operated at different temperature and pressure levels but is equally effective in killing all organisms and spores.

(21) "Tattoo," as a verb, means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce an indelible mark or figure through the skin.

(22) "Tattoo establishment" means the premises where a tattooist applies a tattoo to another person.

(23) "Tattooist" means a person who tattoos another person at that person's request.

(24) "Tempered water" means water ranging in temperature from 85°F. to less than 110°F.

(25) "Temporary establishment" means a single building, structure, area or location where a tattooist or body piercer performs tattooing or body piercing for a maximum of 7 days per event.

HFS 173.04 LICENSES. (1) APPLICATION FOR ESTABLISHMENT LICENSE.

(a) Requirement. No person may operate a tattoo establishment or body-piercing establishment or a combined tattoo and body-piercing establishment unless he or she has obtained a license for the establishment from the department or its agent by application made upon a form furnished by the department or its agent. An application submitted to the department shall be accompanied by the fee required under par. (b).

Note: To obtain a copy of the establishment application form, write: Bureau of Public Health, P. O. Box 309, Madison, Wisconsin 53701.

(b) Department fees. The operator of a tattoo establishment or body-piercing establishment or a combined tattoo and body-piercing establishment shall pay an annual license fee to the department as follows:

1. For a body-piercing establishment, \$100.
2. For a tattoo establishment, \$100.
3. For a combined tattoo and body-piercing establishment, \$150.
4. For a temporary tattoo or body-piercing establishment or a temporary combined tattoo and body-piercing establishment, \$100 per event.
5. For inspection of a new establishment, a preinspection fee of \$75.

(2) APPLICATION FOR PRACTITIONER LICENSE. (a) Requirement. No person may tattoo or body pierce another person, use or assume the title of tattooist or body piercer or designate or represent himself or herself as a body piercer unless the person has obtained a license from the department by application made upon a form furnished by the department. An application submitted to the department shall be accompanied by the fee required under par. (b).

Note: To obtain a copy of the practitioner application form, write: Bureau of Public Health, P. O. Box 309, Madison, Wisconsin 53701.

(b) Department fees. A person who wishes to practice as a tattooist or body piercer shall pay an annual fee to the department as follows:

1. For a body piercer, \$50.
2. For a tattooist, \$50.

(3) ACTION BY THE DEPARTMENT. (a) Within 30 days after receiving a completed application for a license, the department or its agent shall either approve the

application and issue a license or deny the application. If an application for a license is denied, the department or its agent shall give the applicant reasons, in writing, for the denial and provide information about how the applicant may appeal that decision under s. HFS 173.12 (4).

(b) The department or its agent shall not issue a license to a new tattoo or body-piercing establishment or a new operator at an existing establishment without completing a prior inspection of the establishment to ensure that the establishment complies with the requirements of this chapter.

(4) **DISPLAY OF LICENSE.** The operator of a tattoo or body-piercing establishment shall conspicuously display in the establishment the licenses issued by the department or its agent for the establishment and for all practitioners working in the establishment.

(5) **CHANGE OF OPERATOR.** The operator of a tattoo or body-piercing establishment shall promptly notify the department or its agent of his or her intention to cease operations and shall supply the department with the name and mailing address of any new operator. A license is not transferable. A new operator shall submit an application under sub.(1) for a new license.

HFS 173.05 PATRONS. (1) **LIMITATIONS.** (a) Consent. A tattooist or body piercer may not tattoo or body pierce a patron without first obtaining the signed, informed consent of the person on a form approved by the department.

Note: To obtain a copy of an approved consent form, which may be reproduced, write: Bureau of Public Health, P. O. Box 309, Madison, Wisconsin 53701.

(b) Minors. 1. No person under 16 years of age may be body pierced.

2. No person age 16 or 17 may be body pierced unless an informed consent form has been signed by his or her parent or legal guardian in the presence of the operator.

3. No person under 18 years of age may be tattooed except by a physician in the course of the physician's professional practice, as permitted under s. 948.70 (3), Stats.

4. A body-piercing establishment shall post a notice in a conspicuous place in the establishment stating that it is illegal to body pierce a person under the age of 18 without the signed, informed consent of that person's parent or legal guardian.

5. A tattoo establishment shall post a sign in a conspicuous place in the establishment stating that no person under the age of 18 may be tattooed.

(c) Barriers to procedure. A tattooist or body piercer may not tattoo or body pierce any of the following:

1. A person who appears to be under the influence of alcohol or a mind-altering drug.

2. A person who has evident skin lesions or skin infections in the area of the procedure.

(2) **RECORD.** Every tattooist and body piercer shall keep a record of each patron. A patron's record shall include the patron's name, address, age and consent form, the name of the practitioner doing the procedure and any adverse effects arising from the procedure. A patron's record shall be retained for a minimum of 2 years following completion of the procedure.

HFS 173.06 PHYSICAL FACILITIES AND ENVIRONMENT. (1) **FLOORS.**

Floors in the area where tattoo or body-piercing procedures are performed shall be constructed of smooth, durable and non-porous material and shall be maintained in a clean condition and in good repair. Carpeting is prohibited.

(2) **WALLS AND CEILINGS.** Walls and ceilings in the area where tattoo and body-piercing procedures are performed shall be light-colored, smooth and easily cleanable.

(3) **LIGHTING.** Tattoo and body-piercing application areas shall maintain a minimum illumination of 50 footcandles.

(4) **PREMISES.** The premises and all facilities used in connection with the premises shall be maintained in a clean, sanitary and vermin-free condition.

(5) **LIVING AREAS.** Tattoo and body-piercing areas shall be completely separated from any living quarters by floor-to-ceiling partitioning and solid doors which are kept closed during business hours. A direct outside entrance to the tattoo or body-piercing establishment shall be provided.

(6) **TOILET ROOMS.** (a) All tattoo and body-piercing establishments shall have a public toilet and handwashing facility which is separated from any living area.

(b) Toilet room fixtures shall be kept clean and in good repair. An easily cleanable covered waste receptacle shall be provided in the toilet room.

(7) **HANDWASHING FACILITIES.** (a) At least one handwashing facility shall be conveniently located in the tattoo or body-piercing area, in addition to what is provided in the toilet room.

(b) Anti-bacterial soap in a dispenser and single-service towels for drying hands shall be provided at all handwashing facilities.

(c) Hot and cold potable water under pressure shall be available at all handwashing facilities except that tempered water rather than hot water may be provided.

(8) **REFUSE.** Easily cleanable waste containers with non-absorbent, durable plastic liners shall be used for disposal of all tissues, towels, gauze pads and other similar items used

on a patron. Infectious waste, including sharps waste, shall be stored and disposed of in an approved manner consistent with subch. II of ch. NR 526.

(9) **EQUIPMENT STORAGE.** Instruments, dyes, pigments, stencils and other tattoo and body-piercing equipment shall be stored in closed cabinets exclusively used for that purpose.

(10) **PRIVACY.** A panel or other barrier of sufficient height and width to effectively separate a patron on whom a procedure is being performed from any unwanted observers or waiting patrons shall be in place or readily available at the patron's request.

(11) **SMOKING AND EATING PROHIBITED IN AREA OF PROCEDURE.** No smoking or consumption of food or drink is permitted in the area where a tattoo or body-piercing procedure is performed, except that clients may consume a non-alcoholic beverage during the procedure.

(12) **ANIMALS PROHIBITED IN ESTABLISHMENT.** No animals, except for those that provide services to persons with disabilities, are permitted in a tattoo or body-piercing establishment.

HFS 173.07 PERSONNEL. (1) **ABSENCE OF SKIN CONDITION.** No tattooist or body piercer with an exposed rash, skin lesion or boil may engage in the practice of tattooing or body piercing.

(2) **RESTRICTION.** No tattooist or body piercer may work while under the influence of alcohol or a mind-altering drug.

(3) **PERSONAL CLEANLINESS.** (a) Tattooists and body piercers shall thoroughly wash their hands and the exposed portions of their arms with dispensed soap and tempered

water before and after each tattoo or body-piercing procedure and more often as necessary to keep them clean.

(b) Tattooists and body piercers shall dry their hands and arms with individual single-service towels.

(c) Tattooists and body piercers shall maintain a high degree of personal cleanliness and shall conform to good hygiene practices during procedures.

(4) CLOTHING. All tattooists and body piercers shall wear clean, washable outer clothing.

(5) HYGIENIC PRACTICES. (a) When preparing the skin and during a procedure, a tattooist or body piercer shall wear non-absorbent gloves which shall be disposed of after completing the procedure.

(b) If interrupted during a procedure, a tattooist or body piercer shall rewash his or her hands and put on new gloves if the interruption required use of hands.

(c) Tattooists shall use single-use plastic covers to cover spray bottles or other reusable accessories to minimize the possibility of transmitting body fluids or disease during application of tattoos to successive patrons.

(d) Disposable-type razors shall be for single-use only and disposed of in accordance with ch. NR 526. Electric razors used for skin preparation prior to a procedure shall have screens cleaned and disinfected between patron use.

(e) Body-piercing needles shall be disposable, sterile and for single-patron use only. Tattoo needles may be reused if cleaned, sterilized and stored in an approved manner between patrons. Body piercing jewelry shall be cleaned, individually packaged and sterilized prior to use.

HFS 173.08 EQUIPMENT. (1) All surfaces, counters and general-use equipment in the tattoo or body-piercing area shall be cleaned and disinfected before a patron is seated.

(2) All inks and pigments shall be obtained from sources generally recognized as safe. Information indicating the sources of all inks and pigments shall be available to the department or agent upon request. Sterile single-use or sterile individual containers of pigment or ink shall be used for each patron. No pigment or ink in which needles were dipped may be used on another person. Pigment and ink cups shall be for single-patron use. All bulk materials used for the procedure shall be dispensed with single-use utensils. The remainder of dispensed portions shall be disposed of after application.

(3) Needles, bars and tubes shall be constructed in a manner that permits easy cleaning and sterilizing.

(4) Acetate tattoo stencils shall be single-use.

HFS 173.09 CLEANING AND STERILIZATION. (1) CLEANING. (a) After each use, tattooing and body-piercing equipment shall be cleaned to remove blood and tissue residue before sterilization.

(b) Reusable needles, tubes and body-piercing equipment shall be placed in a covered stainless steel container of cleaning or disinfectant solution until they can be cleaned and sterilized.

(c) All containers holding contaminated needles, tubes, reusable body-piercing equipment and container lids shall be cleaned and disinfected at least daily.

(d) The tattoo machine shall be cleaned and disinfected before each use.

(e) Gloved personnel shall clean needles and tubes prior to sterilization by doing all of the following:

1. Manually pre-cleaning the items with care taken to ensure removal of residue; thoroughly rinsing the items with warm water and then draining the water; cleaning the items by soaking them in a protein-dissolving detergent-enzyme cleaner used according to manufacturer's instructions; and cleaning the items further in an ultrasonic cleaning unit which operates at 40 to 60 hertz and is used according to the manufacturer's instructions.

2. Rinsing and drying the items.

(f) Prior to autoclaving, all needles and tubes shall be packaged either individually or in quantities appropriate for individual procedures. Packages shall be identifiable and dated.

(2) STERILIZATION. (a) Equipment requiring sterilization shall be pressure-sterilized at the establishment in an autoclave and in accordance with the manufacturer's instructions.

(b) Each batch of sterilized equipment shall be monitored for sterilization by use of heat-sensitive indicators capable of indicating approximate time and temperature achieved.

(c) Autoclaves shall be spore-tested at least monthly. Spore kill test effectiveness shall be conducted by an independent laboratory.

(d) Sterilized equipment shall be wrapped or covered and stored in a manner which will ensure that it will remain sterile until used.

(e) Each tattoo or body-piercing establishment shall maintain sterilization records including spore tests for at least one year from the date of the last entry, which shall include the following information:

1. Date of sterilization.
2. Name of the person operating the equipment.
3. Result of heat-sensitive indicator.

(f) Sterilized equipment shall be re-sterilized if the package is opened, damaged or becomes wet.

(g) All methods of sterilization other than autoclaving are prohibited.

HFS 173.10 PREPARATION AND CARE OF SITE. (1) **PREPARATION BY PRACTITIONER.** Before beginning a procedure, the tattooist or body piercer shall clean the skin area for the tattooing or piercing and then prepare it with an antiseptic. The solution shall be applied with cotton, gauze or single-use toweling.

(2) **CARE INSTRUCTIONS FOR PATRON.** After completing a procedure, the tattooist or body-piercer shall provide the patron with oral and written instructions on the care of the tattoo or pierce.

HFS 173.11 TEMPORARY ESTABLISHMENTS. In addition to requirements under ss. HFS 173.01 to 173.10 that apply to all tattoo and body-piercing establishments, the following requirements apply specifically to temporary establishments:

(1) **LICENSE.** (a) No temporary establishment may be operated without a license granted by the department or its agent. Application for a temporary license shall be made under s. HFS 173.04 (1).

(b) No temporary license may be issued without a prior inspection.

(c) A temporary establishment's license along with the license of each on-staff tattooist or body piercer shall be conspicuously displayed in the temporary establishment.

(d) An operator of a temporary establishment whom the department or its agent has found to repeatedly violate any provision of this chapter may be denied a license to operate the establishment or may have the license revoked.

(2) **WATER.** A temporary establishment shall have all of the following:

- (a) An approved toilet and handwashing facility.
- (b) Potable water under pressure.
- (c) Hot or tempered water for handwashing and cleaning.
- (d) Connection to an approved sewage collection system.

HFS 173.12 ENFORCEMENT. (1) **ACCESS.** An authorized employe or agent of the department, upon presenting proper identification, shall be permitted to enter any tattoo or body-piercing establishment at any reasonable time to determine if the establishment and the practitioners are in compliance with this chapter. The department's authorized employe or agent shall be permitted to examine the records of the establishment to obtain information about supplies purchased, received or used and information relating to patrons who received tattoos or body piercing.

(2) **ENFORCEMENT POLICY.** (a) **Order to correct violations.** If upon inspection of a tattoo or body-piercing establishment, the authorized employe or agent of the department finds that the tattoo or body-piercing establishment is not planned, equipped or operated as required by this chapter, the employe or agent shall notify the operator in writing. The notice shall include an order that directs the operator to make specified changes that will bring the establishment into compliance with standards established in this chapter and that stipulates the time period within which compliance is to take place. If the order to correct violations is not carried out by the expiration of the time period stipulated in the order, or any reasonable extension of time granted for compliance, the department may issue an order suspending or revoking the license to operate the tattoo or body-piercing establishment or the practitioner's license, or both.

(b) Order to deal with an immediate danger to public health. If there is reasonable cause to believe that any construction, sanitary condition, operation of the premises or of equipment or a procedural practice creates an immediate danger to health, an authorized employe or agent of the department may, pursuant to ss. 227.51 (3) and 252.04 (1) and (7), Stats., acting as the designee of the administrator of the department's division of health, and without written notice, issue a temporary order to remove the immediate danger to health. The order shall take effect upon delivery to the operator or other person in charge of the tattoo or body-piercing establishment and shall remain in effect for 14 days unless it is terminated by the department by notice to the operator within that period or is kept in effect beyond that period, pending a hearing, by department notification to the operator. The order shall be limited to prohibiting specific procedures or methods of operation, or a combination of these, except that if a more limited order will not remove the immediate danger to health, the order may direct that all operations authorized by the license cease. If, before scheduled expiration of the temporary order, the department determines that the immediate danger to health does in fact exist and continues to exist, the temporary order shall remain in effect with notification to the operator. The department shall then notify the department of administration's division of hearings and appeals to schedule and hold a hearing under ch. 227, Stats., no later than 15 days after notification of the operator and to issue a final decision on the matter within 10 days after the hearing, unless the immediate danger to health is removed or the order is not contested and the operator and the department mutually agree that no purpose would be served by a hearing.

(3) PENALTY PROVISION. Pursuant to s. 252.25, Stats., any person who willfully violates or obstructs the execution of s. 252.23 or 252.24, Stats., or this chapter for which no other penalty is prescribed, shall be imprisoned for not more than 30 days or fined not more than \$500 or both. This shall include performing tattooing or body piercing without a license.

(4) APPEAL BY THE OPERATOR OR PRACTITIONER. Any operator or practitioner aggrieved by an order of the department under s. HFS 173.04 (2) or 173.11 (1) (d), or under sub. (2)(a), may request a hearing to challenge the order. A request for a hearing under this subsection shall be submitted to the department of administration's division of hearings and appeals and shall be received by that office within 15 days after issuance of the order. Procedures for hearings shall be in accordance with ch. 227, Stats. After the hearing, the division of hearings and appeals shall affirm, set aside or modify the order. The final decision may be appealed to the circuit court as provided in ch. 227, Stats.

Note: The mailing address of the division of hearings and appeals is P. O. Box 7875, Madison, Wisconsin 53707.

(5) LOCAL ENFORCEMENT. Notwithstanding subs. (2) and (4), if an agent issues licenses directly under s. 252.245, Stats, the agent shall create enforcement and appeal procedures in accordance with s. 66.124, Stats., which shall supersede enforcement and appeal procedures under subs. (2) and (4).

HFS 173.13 STATE FEES. Pursuant to s. 252.245 (9), Stats. a local health department serving as an agent of the department for purposes of administering this chapter shall include a state fee in each fee the agent establishes for a license issued under this chapter. The state fee shall be 10% of the department's fee established under s. HFS 173.03 (1) or (2), and shall be forwarded to the department.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health
and Family Services

DATE:

By: _____
Joe Leean
Secretary

SEAL: