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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 97-135

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Section 252.24 (1) (b), Stats., defines the term “body piercing” in part to mean the perforation of any human body part or human tissue, except an ear. Section HFS 173.03 (5) defines the term “body pierce” in part to mean the perforation of any human body part or tissue, except an ear lobe. [See, also, s. HFS 173.03 (7).] Presumably, the intent of the rule is to regulate body piercing on parts of an ear other than the ear lobe. If so, the rule does not appear to be statutorily authorized. In any case, the definition in the rule should be consistent with the definition contained in the statute.

b. Section HFS 173.05 (1) (b) 3. states that no person under 18 years of age may be tattooed except as prescribed by a physician under s. 948.70 (3), Stats. The referenced provision of the statutes does not refer to a prescription. Section 948.70 (2), Stats., provides that, subject to sub. (3), any person who tattoos or offers to tattoo a child is subject to a Class D forfeiture. In sub. (3), the statute provides that a physician may tattoo or offer to tattoo a child in the course of the physician’s professional practice. The rule’s attempt to allow a physician to delegate the power to tattoo a child to a tattooist does not appear to be authorized by the statutes.

c. Section 252.245 (9), Stats., requires the Department of Health and Family Services (DHFS) to promulgate rules monitoring and evaluating the activities of, and providing education and training to, agent local health departments which are designated by DHFS to issue licenses and make investigations or inspections of tattooists and tattoo establishments and body piercers and body-piercing establishments. Will these rules be promulgated in a separate rule-making order?

2. Form, Style and Placement in Administrative Code

A paragraph break should be inserted before s. HFS 173.03 (11).

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section HFS 173.05 (1) refers to a consent form approved by the department. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

b. In s. HFS 173.12 (2) (b), the cite to s. 252.04 (1), Stats., is incorrect. Is the correct cite s. 252.03 (1), Stats.? Also, the cross-reference should be rewritten to read “ss. 227.51 (3) and 252.03 (1), Stats.”

c. In s. HFS 173.12 (4), the phrase “of this section” should be deleted.

d. In s. HFS 173.13, it appears that the cross-reference to “s. HFS 173.03 (1) or (2)” should be replaced by a reference to “s. HFS 173.04 (1) or (2).”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. HFS 173.03 (1), it appears that the word “permits” should be replaced by the word “licenses,” in order to be consistent with the remainder of ch. HFS 173 and the applicable provisions of ch. 252, Stats.

b. In s. HFS 173.03 (20), what does “or equivalent” refer to?

c. In s. HFS 173.03 (24), “Tempered” should be replaced with “Tempered water.”

d. In s. HFS 173.03 (25), the term “temporary establishment” is defined in terms of an event lasting for a maximum period of seven 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?

e. In s. HFS 173.04 (1) (b) 5., the word “preinspection” is confusing. It would be clearer to use “inspection” or “the inspection required for obtaining a license.”

f. In s. HFS 173.04 (2), “self” should be replaced by the phrase “himself or herself.”

g. In s. HFS 173.06 (1), the phrase “durable, non-porous material and maintained” should be replaced by the phrase “durable and nonporous material and shall be maintained.”

h. In s. 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? This should be clarified.

i. In s. HFS 173.06 (12), what does the word “severe” mean?

j. In s. HFS 173.07 (5) (e), it would make more sense to state that body-piercing jewelry “shall be cleaned, sterilized and individually packaged prior to use.”

k. In s. 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?

l. In s. HFS 173.09 (2) (c), does spore-testing test for spore-kill effectiveness? Perhaps this paragraph should be clarified.

m. In s. HFS 173.09 (2) (f), “or becomes” should be inserted before “wet.”

n. In s. HFS 173.11 (1) (d), what does the word “habitual” mean?

o. In s. HFS 173.12 (2) (b), “Where” should be replaced with “If.” Also, in the second sentence, “The order shall take effect on delivery” should be replaced with “The order shall take effect upon delivery.” Finally, in the fourth sentence, a comma should be inserted after “If.”