

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

October 10, 2019
1:00 p.m. Central Time
Gold's Building, Room 534
1033 O Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on the adoption of amendments to and repeal of the following regulations:

The following regulation is proposed for AMENDMENT:

Title 172 NAC 44 – *Practice of Body Art*

The proposed changes will streamline the regulations by removing all duplicative statutory regulation from the regulations; remove any repetitive regulatory language that is found in 172 NAC 9 and 10; and combine the current Chapters 44, 45, and 46 into one chapter of regulations. The proposed changes will also require body art facilities to complete a self-inspection; clarify language and requirements relating to sanitation and safety for body art facilities; reduce the required amount of continuing education hours for license renewal; remove requirement of first aid training for license renewal; require passage of jurisprudence examination to be licensed as a body artist; update definitions; and update formatting.

The following regulations are proposed for REPEAL in their entirety. Portions of the current Chapters 45 and 46 are being included in the proposed amendments to Chapter 44.

172 NAC 45 – *Body Art Facilities*

172 NAC 46 – *Safety, Sanitation and Sterilization Relating to Body Art Facilities*

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 172	Prepared by: Kris Chiles
Chapter: 44	Date prepared: 5/20/2019
Subject: Body Artist and Body Art Facilities	Telephone: 402-471-0185

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

172 NAC 44 combines 172 NAC 44, 45, and 46. We are repealing chapters 45 and 46.

Provide an Estimated Cost & Description of Impact: N/A, there are no new fees being charged and the current fees are established in 172 NAC 2.

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 44 BODY ARTISTS AND BODY ART FACILITIES

001. SCOPE AND AUTHORITY. This chapter applies to the practice of body art and body art facilities as defined by Nebraska Revised Statute (Neb. Rev. Stat.) §§ 38-1001 to 38-10,171 of the Cosmetology, Electrology, Esthetics, Nail Technology and Body Art Practice Act and the Uniform Credentialing Act.

002. DEFINITIONS. Definitions are found in the Cosmetology, Electrology, Esthetic, Nail Technology, and Body Art Practice Act, the Uniform Credentialing Act, 172 Nebraska Administrative Code (NAC) 9 and 10, and this chapter.

002.01 AFTERCARE. Written instructions given to the client, informing the client how to take care of the site of a body art procedure and its surrounding area.

002.02 ANTISEPTIC. A disinfecting agent that reduces the number of microorganisms present on the skin or mucosa.

002.03 ANTISEPTIC TECHNIQUES. Disinfecting methods used in body art procedures to minimize contamination of an area by pathogens.

002.04 AUTOCLAVE. A sterilization device using steam, heat and pressure which meets the standards of the American Society for Mechanical Engineering (ASME). Ultrasonic cleaning units or dry heat sterilizers are not autoclaves.

002.05 BODY ARTIST. A body artist is a body piercer, body brander, permanent color technologist, or tattooist artist.

002.06 CLIENT. Any person with whom the body artist has an agreement to provide body art.

002.07 CLOSED OR COVERED RECEPTACLE, CONTAINER, BOTTLE, AND DRAWER. Fitting tightly with a lid, door, or shutting of a drawer, and may have vents.

002.08 DISINFECT. The use of a chemical intended to kill bacteria, virus or fungus on a non-porous object or surface. Ultra-violet lights are not acceptable for disinfection.

002.09 DISINFECTION. The destruction of disease-causing microorganisms on non-porous objects or surfaces.

002.10 EQUIPMENT AND FURNITURE. Items needed to operate a facility which include chairs, cabinets, sinks, and stations.

002.11 GLOVES. Single use covering for the hand having separate sections for each finger, worn for protection against disease transmission, that is disposable medical or examination grade.

002.12 INSTRUMENT OR TOOL. Hand pieces, needles, and other tools, including suspension hooks, that may come in contact with a client's body or be exposed to body fluids during body art procedures.

002.13 JURISPRUDENCE EXAMINATION. An examination, approved by the board, relating to statutes and regulations governing the practice of body art.

002.14 MINOR. Any person who has not attained the age of 18 years.

002.15 REGULATED OR INFECTIOUS WASTE. Waste that is described as follows:

- (A) Blood and body fluids in a liquid or semi-liquid state;
- (B) Items contaminated with blood or body fluids, which, if compressed or disturbed, may release liquid or semi-liquid blood or body fluids;
- (C) Sharps which have been used in performing body art; and
- (D) Pathological and microbial waste containing blood or other potentially infectious materials.

002.16 SHARPS. Any rigid object used that punctured or penetrated the skin or mucosa.

002.17 SHARPS CONTAINER. A closable rigid, leak and puncture resistant, and labeled container, manufactured for the containment of sharps. Labeling must include the international biohazard symbol.

002.18 SINGLE USE. Products or items intended for one-time, one-person use that are disposed of after use on each client.

002.19 STERILIZATION. The destruction of all forms of microbial life, including highly resistant bacterial spores.

003. BODY ARTIST LICENSE. To obtain a license, an individual must submit a complete application provided by the Department and provide documentation demonstrating that the applicant meets the licensing requirements of Neb. Rev. Stat. § 38-1060, 172 NAC 10, and this chapter.

003.01 HIGH SCHOOL EDUCATION. Applicants must submit a photocopy of a high school diploma, General Educational Development certificate (GED), or equivalent document.

003.02 TRAINING. Applicants must submit documentation showing completion of a basic first aid class and bloodborne pathogens training, which includes sanitation, infection control and sterilization. This training must have been completed within 1 year immediately prior to

submitting the application for a license as a body artist. The training must be sponsored by one of the following:

- (A) A professional body art organization or association;
- (B) Local government;
- (C) A hospital;
- (D) A college;
- (E) The Occupation and Safety Hazards Administration (OSHA);
- (F) A national or local Safety Counsel;
- (G) The American Heart Association; or
- (H) The American Red Cross.

003.03 EXAMINATION. Applicants must provide documentation of successful completion of the jurisprudence examination with a score of at least 75%.

004. BODY ART RENEWAL, WAIVER OF CONTINUING COMPETENCY, AND INACTIVE STATUS. The applicant must meet the requirements set out in 172 NAC 10 and this chapter. All body art licenses issued by the Department will expire on March 31 of each odd-numbered year.

005. CONTINUING COMPETENCY REQUIREMENTS. During the 24 months prior to the license renewal date, each body artist must complete at least 2 hours of bloodborne pathogens training which includes training on sanitation, infection control and sterilization. The training must be sponsored by an organization or association set out in 172 NAC 44-003.01(B).

006. REINSTATEMENT OF A BODY ART LICENSE. The applicant must meet the requirements set out in 172 NAC 10.

007. BODY ART FACILITY LICENSE. To obtain a facility license, an individual must submit a complete application provided by the Department and provide documentation demonstrating that the applicant meets the licensing requirements of Neb. Rev. Stat. §§ 38-130 and 38-1080, 172 NAC 9, and this chapter.

007.01 FLOOR PLAN. Applicants must submit a floor plan of the proposed facility which includes the following:

- (A) Restroom(s) location;
- (B) Sink locations; and
- (C) Connecting buildings or living space.

007.02 SELF-EVALUATION. Applicants must complete a self-evaluation inspection report showing compliance with 172 NAC 44-013.

008. CHANGE IN LICENSE FOR EXISTING FACILITIES. Owners may request a change in name, ownership, or location of a facility.

008.01 CHANGE IN NAME. To change the name of a facility, the applicant must submit a request for a change in the establishment or school name at least 30 days prior to the change and submit the required fee for a reissued license.

008.02 CHANGE IN OWNERSHIP OR LOCATION. To change ownership or location of a facility, the applicant must apply to the Department for and obtain another license as specified in 172 NAC 44-007 at least 30 days prior to the change.

009. BODY ART FACILITY RENEWAL. The applicant must meet the requirements set out in 172 NAC 9 and this chapter. All body art establishments issued by the Department expire March 31 of each odd-numbered year.

010. BODY ART FACILITY REAPPLICATION. Facilities that were previously licensed in Nebraska and seek the authority to return to operation must meet the requirements set out in 172 NAC 9.

011. BODY ART FACILITY INSPECTIONS. All body art facilities will receive an inspection that includes compliance with 172 NAC 44-013.

011.01 INITIAL SELF-EVALUATION INSPECTION. Under 172 NAC 44-007, the applicant must conduct a self-evaluation inspection prior to the proposed opening date of the facility.

011.02 INITIAL ON-SITE INSPECTION. The Department will conduct an initial unannounced on-site inspection within 1 year of receipt of a completed application for a facility.

011.03 TIMING OF INSPECTIONS. The Department may conduct an on-site unannounced inspection at any time it deems necessary.

012. REQUIRED DOCUMENTS, PHYSICAL STRUCTURE, EQUIPMENT, AND SUPPLIES FOR A BODY ART FACILITY. All body art facilities must comply with the following requirements.

012.01 DOCUMENTS POSTED. The following documents must be posted in each facility in an area visible and assessable to the public:

- (A) A copy of the current regulations governing sanitation and safety, 172 NAC 44;
- (B) The current inspection report;
- (C) A copy of the current license for each person practicing within the facility; and
- (D) Pamphlets or literature explaining body art aftercare.

012.02 IDENTIFICATION. Each person providing body art procedures must have a government-issued or state-issued photo identification card or document available for viewing by the Department inspector.

012.03 CLIENT RECORDS. Body art facilities must maintain client records. The following specifies the information that must be documented in client records and the retention schedule:

012.03(A) ALL CLIENTS. The following information must be maintained in the client record:

- (i) Name, address, and date of birth of the client;
- (ii) A copy of the client's federal or state Identification which has a current photograph and date of birth on the document, such as, driver's license, military identification document, state identification documents, or passport;

- (iii) Any known client allergies;
- (iv) Any condition that may affect or hamper healing;
- (v) The name of the body artist who performed the procedure;
- (vi) The date of the procedure;
- (vii) The location of the procedure on the client's body; and
- (viii) A description of the type of procedure provided.

012.03(B) CLIENTS UNDER 18 YEARS OF AGE. If the client is under 18 years of age, the following information must be maintained in the client record in addition to the information set out in 172 NAC 44-012.03(A):

- (i) A copy of the parent or legal guardian's federal or state identification which has a current photograph and date of birth on the document, such as, driver's license, military identification, state identification, or passport;
- (ii) Consent form for all persons under 18 years of age, signed by the parent or legal guardian and client; and
- (iii) A copy of a document that verifies the parent or guardian of the minor, such as, birth certificate, adoption record, guardian records, or court documents.

012.03(C) CLIENT RECORD RETENTION SCHEDULE. Client records must be retained as follows:

- (i) All records must be maintained in a confidential manner;
- (ii) For clients 18 or older, the records must be retained for 3 years;
- (iii) For clients under 18 years of age, the client records and consent forms must be retained for 5 years; and
- (iv) For inspection purposes, all client records for the past year must be maintained on-site at the facility.

012.04 PHYSICAL STRUCTURE. The facility must be well lighted, well ventilated and kept in a clean, orderly, and sanitary condition at all times. The following applies:

- (A) All walls, floors and procedure areas must be washable, in good repair, and in a safe and sanitary condition;
- (B) All body art facilities must have a dedicated physical address;
- (C) All body art facilities must have:
 - (i) An entrance leading directly into the facility;
 - (ii) There can be no direct opening between a facility and any building or portion of a building used as a food, liquor, or tobacco facility; and
 - (iii) Body art facilities located in a cosmetology salon, esthetic salon, or nail technology salon may share an entrance into the entire facility; the body art facility must be separated from the salon by at least 6-foot high walls. The same room can be shared by an esthetician and permanent color technician.
- (D) Each facility must have an area that can be screened from public view for clients requesting privacy or for all genitalia body art procedures; and
- (E) Branding procedures must be provided in an enclosed room with doors that shut.

012.05 VENTILATION FOR BRANDING SERVICES. The following ventilation requirements apply:

- (A) The facility must have a direct ventilation system which is in good working condition;

- (B) A respirator, appropriately sized for the room, must be worn by the body brander and anyone who is in the room observing the procedure; and
- (C) The facility must have an ultra-violet air purifier.

012.06 WATER. The facility must have hot and cold running water.

012.07 SAFETY. The facility must be maintained in a safe and sanitary condition and meet the following requirements:

- (A) Floors, floor coverings, walls, woodwork, ceilings, furniture, fixtures and equipment must be clean and in good repair;
- (B) Floors must be free of unsafe objects and slippery or uneven surfaces;
- (C) Doorways, stairways, passageways, aisles or other means of exit must provide safe and adequate access;
- (D) Electrical appliances must be clean and have no worn or bare wiring; and
- (E) Water or product spills on the floor must be removed immediately and floor dried.

012.08 RESTROOM FACILITIES. Restrooms must be clean and sanitary at all times and include the following:

- (A) A toilet which is operational;
- (B) Suitable holders for toilet paper;
- (C) An adequate supply of toilet paper;
- (D) A clean waste receptacle;
- (E) A sink which is operational and has hot and cold running water;
- (F) Liquid soap; and
- (G) Single-use disposable towels in a clean holder or an electric hand dryer.

012.09 REQUIRED EQUIPMENT AND FURNISHINGS. Each facility must have the following equipment and furnishings that are in good repair, cleanable, and in a sanitary condition at all times.

012.09(A) PROCEDURE HAND WASHING SINK AREA. The hand washing sink area must be clean and include:

- (i) A hand washing sink with hot and cold running water that passes through a mixing type of faucet;
- (ii) Liquid soap;
- (iii) Single-use paper towels; and
- (iv) Waste receptacle.

012.09(B) EQUIPMENT WASHING SINK AREA FOR EMPLOYEE USE ONLY. Facilities which use all disposable equipment are not required to have an equipment washing sink area. The equipment washing sink area must be clean, dedicated to equipment washing only, and include:

- (i) An equipment washing sink with hot and cold running water that passes through a mixing type of faucet;
- (ii) Liquid soap;
- (iii) Single-use paper towels; and
- (iv) Waste receptacle.

012.09(C) SHARPS CONTAINER. Contaminated sharps must be disposed of in an approved sharps container in a manner to ensure the prevention of cross-contamination.

012.09(D) AUTOCLAVE. If the facility uses non-disposable equipment or instruments, it must have an autoclave.

012.09(E) WASTE RECEPTACLE. A facility must have at least 1 waste receptacle for each workstation, which is covered and has a plastic liner.

012.09(F) WORK TABLES OR COUNTERS. All work tables or counters must be smooth, non-absorbent, non-porous, and disinfected.

012.09(G) FIRST AID KIT. All facilities must have a first aid kit.

012.09(H) CLIENT CHAIRS AND BODY ARTIST CHAIRS. Chairs must be made of cleanable non-porous material.

012.09(I) BARRIERS. Disposable protection or covering on equipment and supplies must be used during procedures and be changed between procedures to ensure the prevention of cross-contamination.

012.09(J) STORAGE. The facility must have clean cabinets or containers for storing clean instruments, supplies, cloth towels and linens. Storage within the facility must comply with the following requirements.

- (i) Flammable and combustible chemicals must be stored away from potential sources of ignition such as an open flame or an electrical device;
- (ii) All chemicals must be stored in closed bottles or containers and properly labeled;
- (iii) Cabinets, drawers, containers used for storage of supplies, instruments and towels must be clean;
- (iv) Unused supplies must be stored in a clean, enclosed container, cabinet, or drawer and supplies must be labeled accordingly;
- (v) Instruments that have been used on a client or soiled in any manner must be placed in a properly labeled covered receptacle until disinfected;
- (vi) Cloth linens must be deposited in a closed receptacle after use;
- (vii) Used or soiled cloth linens must not be used again until properly laundered and sanitized and must be kept in a closed receptacle;
- (viii) Clean cloth towels or linens must be stored in a clean, labeled, enclosed cabinet or container until used; and
- (ix) Disinfectant solution must be used and maintained in accordance with the manufacturer's directions and covered at all times.

012.09(K) DISPOSABLE SINGLE-USE TOWEL. Only disposable single-use towels must be used for body art procedures and must be discarded in a double-lined closed receptacle, immediately following each body art procedure.

012.10 PRODUCTS. Products must comply with the following requirements:

- (A) All liquids, inks, creams, gels, pastes, powders, and other products must be kept in clean, closed containers;

- (B) Original product bottles and containers must have an original manufacturer's label;
- (C) When only a portion of the product is to be used on a client, the product must be removed from the container by a spatula, scoop, spoon, or dropper so that the product does not come in direct contact with the client and to assure the remaining product is not contaminated;
- (D) If a product is poured into another container, the container must be ~~is~~ labeled to identify the product;
- (E) Manufacturer's directions must be followed when using products;
- (F) Single-use products that are not sharps that come in direct contact with a client and cannot be disinfected, such as cotton pads, cotton balls, pads, "Q-tips", sponges, bandages, tapes, surgical dressing and other similar items, must be disposed of in a covered waste receptacle with a plastic liner immediately after use;
- (G) All products applied to the skin, including stencils, must be single-use and disposable. Acetate stencils cannot be re-used. Petroleum jellies, soaps, and other products used in the application of stencils must be dispensed and applied on the area to be tattooed in a manner to prevent contamination of the original container and its contents; and
- (H) All products used to stop bleeding or to absorb blood must be sanitary and be single-use.

012.11 PIGMENTS, DYES, INKS, AND LIQUIDS. Pigments, dyes, inks, and liquids used from stock solutions for each client must be placed in a single-use cup or cap and remaining solution must be discarded and disposed of after each use.

012.12 INK CAPS. Ink caps are required if providing tattooing and permanent color technology procedures. If the body artist uses a reusable ink cap holder, the holder must be smooth, non-absorbent, non-porous, and able to be autoclaved.

012.13 RASH OR INFECTION. Any skin or mucosa surface to receive a body art procedure must be free of suspected rash or any suspected visible infection. The body artist must be free from any infection or other visible disease that may be transmitted as a result of carrying out the body art procedure.

012.14 BODY ARTIST HAND CLEANLINESS. Body artists must wash their hands thoroughly with liquid soap and water or an antiseptic and dry them with single-use disposable towels before and after serving each client and at any time during the procedure when the hands may become contaminated.

012.15 GLOVES. When performing body art procedures, the body artist must wash his or her hands prior to gloving. Gloves must be disposed of after the completion of each procedure on each client. If gloves become torn, punctured or otherwise contaminated, the body artist must remove and dispose of the gloves, wash his or her hands with liquid soap and water or an antiseptic, dry with a disposable towel, and then put on a new pair of gloves before resuming the body art procedure.

012.16 REGULATED OR INFECTIOUS WASTE. Regulated or infectious waste must be:

- (A) Handled and stored so that human exposure is prevented; and

- (B) Discarded in double-lined plastic bag in a covered waste receptacle or in an approved “red” bag marked with the international biohazard symbol and stored safely until transported by an approved, regulated infectious waste hauler to an appropriate treatment or disposal facility.

012.17 PREPARATION AND CARE OF THE BODY ART PROCEDURE AREA. The following requirements apply to the preparation and care of the body art procedure area.

012.17(A) WASHING. Before performing body art procedures, the immediate area of the skin or mucous membrane where the body art procedure is to be placed must be washed with liquid soap and water. Only single-use disposable towels, washing pads, blotters, or similar single use materials may be used and these materials must be discarded after a single use.

012.17(B) ORAL BODY ART. Before an oral body art procedure may be performed, the client must rinse his or her mouth with an antiseptic mouthwash which must be provided to the client in single-use cups.

012.17(C) SHAVING. If shaving is necessary, single-use disposable razors or safety razors with single-procedure blades must be used. Single-procedure blades must be discarded after each use and the reusable holder must be autoclaved after each use. Non-disposable clippers may be used prior to any procedure then cleaned and sprayed with a disinfectant solution after each client. Following shaving, the skin and surrounding area must be washed with liquid soap and water or antiseptic.

012.18 AUTOCLAVE, STERILIZATION, AND ULTRASONIC CLEANING UNITS. The following is required:

012.18(A) AUTOCLAVE. If the facility uses non-disposable equipment and instruments, it must have an autoclave used for sterilizing metal tools or equipment that must be clean and body artists must follow the manufacturer’s directions for use.

012.18(B) AUTOCLAVED INSTRUMENTS. Instruments that are to be autoclaved within the facility must be sterilized in single-use paper pre-packs or other containers designed for sterilizing instruments. If pre-packaged or packages which have been autoclaved in the facility are torn, wet, or compromised, they cannot be used until they are re-packaged and re-autoclaved. Any package which has an expiration date printed on the package cannot be used after the expiration date has passed; they must be re-packed and re-autoclaved prior to use.

012.18(C) JEWELRY STERILIZATION. Jewelry used for new body piercing must be sterilized with an autoclave and the jewelry must be nonporous, smooth, and disinfected.

012.18(D) NON-DISPOSABLE INSTRUMENT STERILIZATION. All non-disposable instruments used for body art must be sterilized after each use. Autoclave sterilization must be conducted for the cycle of time and corresponding operating pressure recommended by the manufacturer of the autoclave.

012.18(E) STERILIZED INSTRUMENTS. Every batch of sterilized instruments must be monitored for sterilization by use of a heat sensitive indicator or integrator that is capable of indicating approximate time and temperature achieved. Sterilized instruments must be individually packed and stored in a clean closed container or drawer until used. Sterilized unwrapped instruments must be stored in a covered container or drawer, and sterilized again immediately prior to use.

012.18(F) ULTRASONIC CLEANING UNITS. If ultrasonic cleaning units or dry heat sterilizers are used, they must be used in addition to autoclaving, must be used and maintained in accordance with the manufacturer's recommendations, and be clean and sanitary.

012.19 AUTOCLAVE STANDARDS. The following autoclave standards must be followed.

012.19(A) SPORE DESTRUCTION TESTS. Spore destruction tests must be performed to prove that autoclaves are capable of attaining the minimum operating standards. Spore tests must be performed at a minimum of one time every 30 days for each autoclave and must be verified through an independent laboratory or tester. A testing facility must be qualified by the Centers for Disease Control and Prevention (CDC), the American Dental Association (ADA), the American Medical Association (AMA), or the Food and Drug Administration (FDA). A record of all spore tests must be maintained for 3 years and must be maintained for a minimum of 1 year on site.

012.19(B) POSITIVE SPORE TEST. An autoclave which has received a positive spore test must be immediately removed from procedure and cannot be used again until it receives a passing or negative growth report from a qualified testing facility. Equipment and tools run through a positive cycle should not be used until re-sterilized properly.

012.19(C) CLEANING AND SERVICING AUTOCLAVES. All autoclaves must be cleaned and maintained according to manufacturer's instructions. A copy of the manufacturer's cleaning and servicing instructions must be maintained in the facility.

012.20 NOT ALLOWED OR TO BE USED IN THE FACILITY. The following are not allowed in a body art facility:

- (A) Smoking or vaping;
- (B) Body artists consuming food or beverages in any area where body art is performed; clients may be allowed to consume food or non-intoxicating drinks;
- (C) Body artists and clients consuming, serving, or in any manner possessing or distributing intoxicating beverages upon the facility premises;
- (D) Performing body art procedures on clients who are under the influence of alcohol, narcotic drugs, stimulants, or depressants or on any person who appears to be under the influence of alcohol, narcotic drugs, stimulants, or depressants;
- (E) Dermal or biopsy punches and lasers;
- (F) Unlicensed persons or persons with an expired or inactive license providing body art procedures;
- (G) Animals and pets, except service animals; and
- (H) Fish aquariums in any procedure area, except covered aquariums are allowed in the waiting room and non-procedure areas.

DRAFT
06-13-2019

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

172 NAC 44

013. FEES. Fees are set out in 172 NAC 2.

TITLE 172 ————— PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 44 ————— PRACTICE OF BODY ART

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TITLE 172 ————— PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 44 ————— PRACTICE OF BODY ART

~~44-001 SCOPE AND AUTHORITY: These regulations govern the practice of body art as defined by Neb. Rev. Stat. §§ 71-340 to 71-3,238 and the Uniform Licensing Law.~~

~~44-002 DEFINITIONS~~

~~Act means Neb. Rev. Stat. §§71-340 to 71-3,238, known as the Nebraska Cosmetology Act.~~

~~Attest/Attestation means that the individual declares that all statements on the application and/or petition are true and complete.~~

~~Body art means body piercing, branding, permanent color technology, and tattooing.~~

~~Body art facility means any room or space or any part thereof where body art is performed or where the business of body art is conducted.~~

~~Body piercing means puncturing the skin of a person by aid of needles or other instruments designed or used to puncture the skin for the purpose of inserting removable jewelry or other objects through the human body, except that body piercing does not include puncturing the external part of the human earlobe.~~

~~Branding means a permanent mark made on human tissue by burning with a hot iron or other instrument.~~

~~Board means the Board of Cosmetology Examiners.~~

~~Completed application means an application with all information requested on the application supplied, the signature of the applicant, fees, and all required documentation submitted.~~

~~Continuing Competency means to ensure:~~

- ~~1. The maintenance by a credentialed person of knowledge and skills necessary to competently practice body art;~~
- ~~2. The utilization of new techniques based on scientific and clinical advances; and~~
- ~~3. The promotion of research to assure expansive and comprehensive services to the public.~~

~~It is the competency required as a condition of licensure renewal, pursuant to Neb. Rev. Stat. § 71-161.09.~~

Department means the Department of Health and Human Services Regulation and Licensure.

Director means the Director of Regulation and Licensure or the Chief Medical Officer if one has been appointed pursuant to Neb. Rev. Stat. § 81-3201, for performance of the duties set out in that statute.

Division means the Credentialing Division of the Department of Health and Human Services Regulation and Licensure.

Guest body artist means a person registered under the Nebraska Cosmetology Act to demonstrate body art products or procedures for the purpose of imparting professional knowledge and information to persons licensed in this state to perform body art or to persons owning or operating a licensed body art facility under the sponsorship of a licensed body art facility or a person licensed in this state to perform body art.

Inactive status means the voluntary termination of the right or privilege to practice as a body artist. The licensee retains the right or privilege to represent himself/herself as having an inactive license.

Jurisdiction means the District of Columbia and any state, territory, or possession of the United States of America.

NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 44.

Permanent color technology means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being so as to form indelible marks for cosmetic purposes.

Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or similar entity and includes any trustee, receiver, assignee, or personal representative thereof.

Practitioner means a person who performs any or all of the practices of cosmetology, nail technology, esthetics, or electrology for compensation or who performs any or all of the practices of body art.

Tattoo means the indelible decorative mark, figure, or design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being.

Tattooing means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being so as to form indelible marks for decorative or figurative purposes.

Verified means sworn to before a notary public or equivalent title.

~~44-003 BODY ARTIST LICENSE: Any person who engages in, or follows, or advertises, or holds oneself out as engaging in or following any of the practices of body art or acts as a practitioner must be licensed. Licensure is required before any person may engage in the full, unsupervised practice of body art, and no person may assume the title of body artist without first being licensed by the Department pursuant to the Nebraska Cosmetology Act. A separate license will be issued for each practice. The criteria for issuance of a license to practice body piercing, branding, permanent color technology, and/or tattooing and the documentation required by the Department and the Board are set forth below.~~

~~44-003.01 Licensure to practice body piercing, branding, permanent color technology, and/or tattooing:~~

~~44-003.01A Requirements: An applicant for a license must:~~

- ~~1. Be at least 18 years of age;~~
- ~~2. Have a high school diploma or General Education Development Certificate (GED); and~~
- ~~3. Have completed at least 4 hours of training within 3 years immediately prior to making application for a license as a body artist. Such training must include:
 - ~~a. At least 2 hours of Bloodborne Pathogens (disease) training, which includes sanitation, infection control and sterilization. An examination is required as a condition of training completion.
 - ~~(1) The examination must include questions relating to the following:
 - ~~(a) Sanitation;~~
 - ~~(b) Safety (including emergency procedures);~~
 - ~~(c) Infection control including cross-contamination and barrier control; and~~
 - ~~(d) Sterilization including use of an autoclave; and~~~~
 - ~~b. A basic first aid class which teaches participants how to:
 - ~~(1) Recognize emergency situations;~~
 - ~~(2) Check the scene and call for help;~~
 - ~~(3) Avoid bloodborne pathogen exposure;~~
 - ~~(4) Care for wounds;~~
 - ~~(5) Manage sudden illnesses; and~~
 - ~~(6) Minimize shock.~~~~~~~~

~~The training may be obtained through any of the following:~~

- ~~1. Nationally accredited organization;~~
- ~~2. Local government sponsored;~~

- ~~3. Hospital sponsored;~~
- ~~4. College sponsored;~~
- ~~5. OSHA (Occupation and Safety Hazards Act) sponsored; or~~
- ~~6. Red Cross.~~

~~44-003.01B Application Process:~~ The following must be submitted to the Department:

- ~~1. A photocopy of a birth certificate, baptismal certificate, or other equivalent document, which shows proof of attaining the age of 18 years;~~
- ~~2. A photocopy of a high school diploma, general educational development certificate, or equivalent document showing evidence of graduation;~~
- ~~3. Evidence of training as defined in 172 NAC 44-003.01A, item 3;~~
- ~~4. A complete application on Attachment A attached to these regulations and incorporated by this reference, and the applicant's social security number. Only applications which are complete will be considered;~~
- ~~5. If the applicant has been convicted of a felony or misdemeanor:
 - ~~a. Official Court Record, which includes charges and disposition;~~
 - ~~b. Copies of arrest records;~~
 - ~~c. A letter from the applicant explaining the nature of the conviction;~~
 - ~~d. All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~e. A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and~~~~
- ~~6. Attestation by the applicant:
 - ~~a. That s/he has not practiced in Nebraska after April 1, 2005 and prior to the application for a license; or~~
 - ~~b. To the actual number of days practiced in Nebraska after April 1, 2005 and prior to the application for a license; and~~~~
- ~~7. The required licensure fee as prescribed in 172 NAC 37.~~

~~44-003.02 Pro-rated Fee:~~ When a credential will expire within 180 days after its initial issuance date, the Department will collect \$25, the Licensee Assistance Program fee of \$1, and the credential will be valid until the next subsequent renewal date.

~~44-003.03 Administrative Penalty/Other Action:~~ An individual who practices prior

~~to issuance of a credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 44-012, or such other action as provided in the statutes and regulations governing the credential.~~

~~44-003.04 Department Review: The Department will act within 150 days on all completed applications for licensure.~~

~~44-004 GUEST BODY ARTIST REGISTRATION: Registration is required before any person may act as a guest body artist, and no person will assume any title indicative of any of such areas of activity without first being registered. The criteria for issuance of registration and the documentation required by the Department and the Board are set forth below.~~

~~44-004.01 Guest Body Artist~~

~~44-004.01A Requirements: An applicant for registration as a guest body artist must:~~

- ~~1. Hold current licensure as a body artist in another jurisdiction or have the education or experience relating to the applicable category of continuing competency; and~~
- ~~2. Be under the sponsorship of a licensed Nebraska body art facility or licensed body artist.~~

~~44-004.01B Application Process: The following must be submitted to the Department:~~

- ~~1. Verification of sponsorship by a licensed body art facility or licensed body artist;~~
- ~~2. A complete application on Attachment C attached to these regulations and incorporated by this reference. Only applications which are complete will be considered;~~
- ~~3. The registration fee as prescribed in 172 NAC 37; and~~
- ~~4. For applicants licensed in another jurisdiction, a certification that the applicant is currently licensed on Attachment C1 attached to these regulations and incorporated by this reference or an alternate form which contains the same information. This may be submitted to the Department by the applicant or the certifying or licensing agency; or~~
- ~~5. For applicants not licensed in another jurisdiction, documentation of education and experience relating to the applicable category of continuing competency. This may be submitted to the Department by the applicant or the certifying or licensing agency.~~

~~44-004.01C Department Review: The Department will act within 150 days upon all completed applications.~~

~~44-005 EXPIRATION OF REGISTRATION AS A GUEST BODY ARTIST: Registration is granted for a set period of time and cannot be renewed. The registration will expire 2 years following the initial date of issuance.~~

~~44-006 PROCEDURES FOR RENEWAL OF A LICENSE: All body art licenses issued by the Department pursuant to the Act and these regulations expire on March 31st of odd-numbered years.~~

~~44-006.01 Renewal Process: Any licensee who wishes to renew his/her license must:~~

- ~~1. Meet the continuing competency requirements as specified in 172 NAC 44-009;~~
- ~~2. Pay the renewal fee as prescribed in 172 NAC 37; and~~
- ~~3. Respond to the following questions:~~

- ~~a. Has your license in any health care profession in another state been
_____ revoked, suspended, limited or disciplined in any manner?~~
- ~~b. Have you been convicted of a misdemeanor or felony?~~

~~These questions relate to the time period since the last renewal of the license or during the time period since initial licensure in Nebraska if such occurred within the two years prior to the license expiration date.~~

- ~~_____ 4. Cause to be submitted to the Department:~~
 - ~~a. The renewal notice;~~
 - ~~b. The renewal fee;~~
 - ~~c. Attestation of completing the required continuing competency earned within 24 months of the date of expiration or waiver of continuing competency. Attestation to meeting continuing competency requirements satisfies the submission of the documentation requirement of Neb. Rev. Stat. §71-110;~~
 - ~~d. If any disciplinary action was taken against the applicant's license by another state, an official copy of the disciplinary action, including charges and disposition; and~~
 - ~~e. If the licensee has been convicted of a felony or misdemeanor:
 - ~~(1) Official Court Record, which includes charges and disposition;~~
 - ~~(2) Copies of arrest records;~~
 - ~~(3) A letter from the licensee explaining the nature of the conviction;~~
 - ~~(4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~(5) A letter from the probation officer addressing probationary conditions and current status, if the licensee is currently on probation.~~~~

~~44-006.02 First Notice: At least 30 days before the expiration date, the Department will send a renewal notice by means of regular mail to each licensee at the licensee's last place of residence as noted in the records of the Department. It is the responsibility of the licensee prior to the renewal period to notify the Department of any name and/or address changes.~~

~~44-006.02A The renewal notice must specify:~~

- ~~1. The name of the licensee;~~
- ~~2. The licensee's last known address of record;~~
- ~~3. The license number;~~
- ~~4. The expiration date of the license;~~
- ~~5. The renewal fee as prescribed in 172 NAC 37;~~
- ~~6. The continued competency required for renewal or waiver of continuing competency; and~~
- ~~7. The option to place the license on inactive status.~~

~~44-006.02B The licensee must apply for renewal by submitting to the Department:~~

- ~~1. The renewal notice;~~
- ~~2. The renewal fee;~~
- ~~3. The licensee's social security number;~~
- ~~4. Attestation of completing the required continuing competency earned within 24 months of the date of expiration or waiver of continuing competency; and~~
- ~~5. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).~~

~~44-006.02C If the licensee wishes to place his/her license on inactive status s/he must request that his/her license be placed on inactive status by submitting to the Department:~~

- ~~_____ 1. The renewal notice with a check in the box marked inactive; and~~
- ~~_____ 2. The fee of \$25.~~

~~44-006.02D The Department will notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on inactive status.~~

~~44-006.03 Second Notice: The Department will send to each licensee who fails to renew his/her license or place the license on inactive status in response to the first notice, a second notice of renewal in accordance with the requirements of 172 NAC 44-006.01 that specifies:~~

- ~~1. That the licensee failed to pay the renewal fee;~~
- ~~2. That the license has expired;~~
- ~~3. That the licensee is subject to an administrative penalty pursuant to 172 NAC 44-012 if s/he practices after the expiration date;~~
- ~~4. That upon receipt of the renewal fee, together with an additional late fee of \$25, and documentation of continuing competency or waiver of continuing competency within that time, no order of revocation will be entered; and~~
- ~~5. That upon failure to receive \$25 in addition to the regular renewal fee, and documentation of continuing competency hours, the license will be revoked as specified in 172 NAC 44-008.~~

~~44-006.03A The licensee must apply for renewal by submitting to the Department:~~

- ~~_____ 1. The renewal notice;~~
- ~~_____ 2. The renewal fee and the additional late fee of \$25;~~
- ~~_____ 3. The licensee's social security number;~~

- ~~4. Attestation by the licensee:
 - ~~(1) That s/he has not practiced in Nebraska since the expiration of his/her license; or~~
 - ~~(2) To the actual number of days practiced in Nebraska since the expiration of his/her license;~~~~
- ~~5. Attestation of completing the required continuing competency earned within 24 months of the date of expiration or application for waiver of continuing competency; and~~
- ~~6. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).~~

~~44-006.03B If the licensee wishes to place his/her license on inactive status s/he must request that his/her license be placed on inactive status by submitting to the Department:~~

- ~~1. The renewal notice with a check in the box marked inactive; and~~
- ~~2. The fee of \$25.~~

~~44-006.03C The Department will notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on inactive status.~~

~~44-006.04 When any licensee fails, within 30 days of expiration of a license, to pay the renewal fee, to submit proof of documentation of continuing competency, and/or to pay an additional late fee of \$25, the Department will automatically revoke the license without further notice or hearing and make proper record of the revocation.~~

~~44-006.05 Failure to meet the continuing competency requirement for renewal within 30 days of expiration of his/her license will constitute non-renewal of a license, unless a waiver of continuing competency is granted or the license is placed on inactive status. When any licensee fails, within 30 days of expiration of a license, to meet the continuing competency requirements for renewal and pay an additional late fee of \$25, the Department revokes the license after notice and opportunity for hearing. Hearings held before the Department will be conducted in accordance with Neb. Rev. Stat. §§ 84-901 to 84-920, Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure of the Department.~~

~~44-006.06 When the licensee has given notification to the Department that s/he desires to have the license placed on inactive status upon expiration, 172 NAC 44-006.04 and 44-006.05 will not apply.~~

~~44-006.07 The Department may refuse to renew a license for falsification of any information submitted for renewal of a license. The refusal will be made pursuant to Neb. Rev. Stat. §§ 71-149 to 71-155 and 184 NAC 1, Rules of Practice and Procedure of the Department.~~

~~44-006.08 An individual who practices after expiration of his/her credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 44-012, or such other action as provided in the statutes and regulations governing the credential.~~

44-007 EXEMPTION FROM CONTINUING COMPETENCY REQUIREMENTS

44-007.01 Grounds for Exemption: The Department, will exempt a licensee from the

~~continuing competency requirements for any two-year licensing period when a licensee submits documentation that the licensee meets the requirements for exemption.~~

~~44-007.01A Circumstances and documentation will include:~~

- ~~1. Any licensee submitting proof that s/he was suffering from a serious or disabling illness or disability that prevented him/her from completing the continuing competency requirements is exempt for the biennium (24 months) if, by the renewal date, s/he is able to practice effectively and to attend continuing competency programs.~~
 - ~~a. The licensee must submit a statement from a physician stating that the licensee was injured or ill, the duration of the illness or injury, and the recovery period, and that the licensee was unable to attend continuing competency activities during that period.~~
- ~~2. Any licensee submitting proof of service in the regular armed forces of the United States during any part of the immediately preceding biennium (24 months) is exempt for that biennium.~~
 - ~~a. The licensee must submit official documentation stating dates of service.~~
- ~~3. Any person receiving an initial license in Nebraska during the second year of the biennium (24 months) is exempt from the continuing competency requirement for that biennium only.~~

~~44-007.01B Application:~~ ~~Any licensee who seeks an exemption from continuing competency must apply to the Department to be exempt from continuing competency. This application must be made on the renewal form and it must be received by Credentialing Division on or before March 31st of odd-numbered years.~~

~~44-007.01C~~ ~~The Department will grant or deny an application for exemption from completion of the continuing competency requirements.~~

- ~~1. When the Department determines to deny an application for exemption of completion of continuing competency requirements, it will send to the applicant's last name and address of record in the Department, a notice setting forth the reasons for the denial determination.~~
 - ~~a. The applicant has 15 days from the date of the denial notice to make a written request to the Department for an appeal. The appeal will be conducted in accordance with 184 NAC 1, Rules of Practice and Procedure for the Department.~~
- ~~2. When the Department determines to grant an exemption from~~

~~completion of continuing competency, the applicant is issued a renewed license if all other requirements are met.~~

~~44-007.01D Failure to submit required documentation of approved continuing competency will constitute grounds for non-renewal of licensure, unless an exemption from continuing competency is granted. Such non-renewal will result in revocation of licensure.~~

~~44-007.01E Falsification of any information submitted for renewal of licensure may require the Department to refuse to renew a license. Such refusal will be made pursuant to Neb. Rev. Stat. §§ 71-149 to 71-155 and in accordance with 184 NAC 1 Rules of Practice and Procedure of the Department.~~

~~**44-008 CREDENTIAL REVOCATION FOR FAILURE TO MEET RENEWAL REQUIREMENTS:**
The Department may revoke a credential when the credential holder fails to meet the renewal requirements.~~

~~**44-008.01 Revocation for Nonpayment of Renewal Fee or Late Fee, or Failure to Submit Documentation of Continuing Competency within Thirty Days of Expiration of the Credential**~~

~~44-008.01A When a credential holder fails to pay the required renewal fee, to submit documentation of continuing competency, and/or to pay a late fee of \$25 and fails to request that his/her credential be placed on inactive status within 30 days of its expiration, the Department automatically revokes the credential without further notice or hearing.~~

~~———— 44-008.01A1 A post revocation notice will be sent which specifies that:~~

- ~~———— 1. The credential holder was given a first and final notice of renewal requirements and the respective dates for these notices;~~
- ~~———— 2. The credential holder failed to renew the credential or to request that his/her credential be placed on inactive status;~~
- ~~———— 3. The Department has revoked the credential; and~~
- ~~———— 4. The credential holder has a right to request reinstatement of the credential.~~

~~———— **44-008.02 Revocation for Failure to Meet Continuing Competency Requirements**~~

~~44-008.02B When a credential holder fails within 30 days of the expiration of his/her credential to meet the continuing competency requirement, the Department revokes his/her credential after notice and opportunity for a hearing.~~

~~44-008.02B1 The revocation notice for failure to meet continuing competency requirements specifies that:~~

- ~~———— 1. The credential holder was given a first and second notice of failure to meet the continuing competency requirement and the respective dates of each notice;~~
- ~~———— 2. The credential holder failed to meet continuing competency renewal requirements or to have his/her credential timely placed on inactive~~

status;

- ~~3. The credential has been revoked for failure to meet continuing competency requirements within thirty days after expiration of the credential and that the revocation will become final unless a request for hearing is filed by the credential holder with the Department within 30 days of date of receipt of the notice; and~~
- ~~4. The credential holder has a right to request reinstatement of the credential after revocation.~~

44-009 CONTINUING COMPETENCY REQUIREMENTS FOR LICENSEES

~~44-009.01 General Requirements:~~ Licensees are required on or before March 31st of each odd-numbered year to complete at least 2 hours of Bloodborne Pathogens (disease) training which includes sanitation, infection control and sterilization; and requires an examination as a condition of training completion. The examination must include questions relating to the following:

- ~~1. Sanitation;~~
- ~~2. Safety (including emergency procedures);~~
- ~~3. Infection control including cross-contamination and barrier control; and~~
- ~~4. Sterilization including use of an autoclave.~~

~~44-009.01A~~ The training may be obtained through any of the following:

- ~~1. Nationally accredited organization;~~
- ~~2. Local government sponsored;~~
- ~~3. Hospital sponsored;~~
- ~~4. College sponsored;~~
- ~~5. OSHA (Occupation and Safety Hazards Act) sponsored; or~~
- ~~6. Red Cross.~~

~~44-009.02 Licensee Responsibilities:~~ The licensee is responsible for maintaining a record of attendance and documentation of attendance at continuing competency programs for 3 years.

~~44-009.02A Evidence of Program Completion:~~ Presentation of the Certificate of Attendance constitutes evidence that the person complied with all requirements of the program and did complete the program.

44-010 SANCTIONS RELATING TO CONTINUING COMPETENCY

~~44-010.01 Exemptions:~~ The Department may deny an application for exemption from continuing competency requirements or revoke an exemption on any of the following grounds:

- ~~1. Failure to meet the requirements of 172 NAC 44-007; or~~
- ~~2. Fraud or misrepresentation on an application.~~

~~44-010.02 False Information:~~ Licensees who submit attestations of continuing

~~competency or applications for exemption of continuing competency which contain false information violate Neb. Rev. Stat. §§ 71-147 and 71-148, and are subject to disciplinary action.~~

~~44-010.03 Failure to Meet Continuing Competency Requirements: The Department will revoke the license of any licensee who has failed to satisfy the continuing competency requirements of Neb. Rev. Stat. §§ 71-3,107 through 71-3,117 or these regulations, unless such licensee has been granted a waiver. The Department will provide notices to the licensee of failure to meet continuing competency requirements in accordance with the procedures set forth in Neb. Rev. Stat. §71-110. Upon the failure of the licensee to respond to such notices, the Department will issue an order of revocation. Revocation is final, unless within 30 days after the mailing of the order, the licensee provides written notice to the Department of a desire for hearing. Hearings will be conducted in accordance with Neb. Rev. Stat. § 84-901 to 84-920, and 184 NAC 1, the Rules of Practice and Procedure of the Department.~~

~~44-011 RE-CREDENTIALING: This section applies to individuals previously issued a Nebraska credential who have lost the legal authority to practice in total or in part and who seek the authority to return to practice in Nebraska with a valid Nebraska credential.~~

~~44-011.01 Eligibility~~

~~44-011.01A An individual whose credential has been previously:~~

- ~~1. Placed on inactive status;~~
- ~~2. Revoked for failure to meet the renewal requirements;~~
- ~~3. Suspended or limited for disciplinary reasons; or~~
- ~~4. Voluntarily surrendered or voluntarily limited for an indefinite period of time;~~

~~may request, at any time, to be re-credentialed and re-authorized to practice under the credential, in accord with these regulations.~~

~~44-011.01B An individual whose credential has been revoked for disciplinary reasons may apply for reinstatement only after a period of two years has elapsed from the date of revocation.~~

~~44-011.01C An individual who practices prior to re-credentialing is subject to:~~

- ~~1. Assessment of an Administrative Penalty pursuant to 172 NAC 44-012; and~~
- ~~2. Limitation or other sanction on the credential, or denial of the request to be re-credentialed and re-authorized to practice under the credential, and referral for prosecution for uncredentialed practice, as provided in the statutes and regulations governing the credential.~~

~~44-011.02 Requirements to Move a Credential from Inactive to Active Status: A person whose credential has been placed on inactive status may have his/her credential moved from inactive to active status upon proof to the Department that s/he meets the following requirements:~~

- ~~1. Meet renewal requirements, including:
 - ~~a. The continuing competency requirements;~~
 - ~~b. Paying the renewal fee and any other applicable fees;~~~~
- ~~2. Attest:
 - ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
 - ~~b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.~~~~

~~44-011.03 Procedures for Moving from Inactive to Active Status: To move a credential from inactive status to active status, the applicant must submit the following to the Department:~~

- ~~1. A written application which contains the following information about the applicant:
 - ~~a. Name;~~
 - ~~b. Address;~~
 - ~~c. Social security number;~~
 - ~~d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential; and~~
 - ~~e. A statement describing all:
 - ~~(1) Felony or misdemeanor convictions during the time period since the credential was active;
 - ~~(a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
 - ~~[1] Official Court Record, which includes charges and disposition;~~
 - ~~[2] Arrest records;~~
 - ~~[3] A letter from the applicant explaining the nature of the conviction;~~
 - ~~[4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~[5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~~~~~
 - ~~(2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;
 - ~~(a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~~~
 - ~~(3) Disciplinary charges pending against any professional credential held~~~~~~

- _____ by the applicant.
- _____ f. Verification that the continuing competency requirements for renewal have been met;
- _____ 2. The renewal fee and any other applicable fees; and
- _____ 3. Attestation by applicant:
- _____ a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
- _____ b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

- _____ ~~44-011.03A~~ If an applicant has practiced while his/her credential was inactive, the Department may:
- _____ 1. Assess an Administrative Penalty pursuant to 172 NAC 44-012;
 - _____ 2. Initiate disciplinary action against the credential;
 - _____ 3. Deny the request to move the credential from inactive to active status; or
 - _____ 4. Move the credential to active status and impose limitation(s) or other sanctions on the credential.

_____ ~~44-011.03B~~ If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

- _____ 1. Initiate disciplinary action against the credential;
- _____ 2. Deny the request to move the credential from inactive to active status; or
- _____ 3. Move the credential to active status and impose limitation(s) or other sanctions on the credential.

_____ ~~44-011.03C~~ In either event pursuant to 172 NAC 44-011.03A or 44-011.03B, a notice and the opportunity for hearing will be given to the applicant.

_____ ~~44-011.03D~~ The Department will act within 150 days on all completed applications.

_____ ~~44-011.04~~ Requirements for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies not more than one year following revocation for failure to meet renewal requirements must:

- _____ 1. Meet the renewal requirements, including:
 - _____ a. The continuing competency requirements; and
 - _____ b. Paying the renewal fee, the late fee of \$35 and any other applicable fees;
- _____ 2. Attest:
 - _____ a. That s/he has not practiced in Nebraska since s/he last held an active credential, or
 - _____ b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

_____ ~~44-011.05~~ Procedures for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: To reinstate a credential not more than one year following revocation for failure to meet renewal requirements, the applicant must submit the following to the Department:

- ~~1. A written application which contains the following information about the applicant:
 - ~~a. Name;~~
 - ~~b. Address;~~
 - ~~c. Social security number;~~
 - ~~d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential; and~~
 - ~~e. A statement describing all:
 - ~~(1) Felony or misdemeanor convictions during the time period since the credential was active;
 - ~~[a] If the applicant has been convicted of a felony or misdemeanor, provide copies of:
 - ~~[1] Official Court Record, which includes charges and disposition;~~
 - ~~[2] Arrest records;~~
 - ~~[3] A letter from the applicant explaining the nature of the conviction;~~
 - ~~[4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~[5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~~~~~
 - ~~(2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was revoked;
 - ~~[a] If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~~~
 - ~~(3) Disciplinary charges pending against any professional credential held by the applicant.~~~~
 - ~~f. Attestation that the continuing competency requirements for renewal have been met;~~~~
- ~~2. The renewal fee, the late fee of \$35 and any other applicable fees.~~
- ~~3. Attestation by the applicant:
 - ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
 - ~~b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.
 - ~~(1) If an applicant has practiced after his/her credential was revoked, the Department may assess an Administrative Penalty pursuant to 172 NAC 44-012 in which case a notice and opportunity for hearing will be sent to the applicant.~~
 - ~~(2) If an applicant has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken as provided in 172 NAC 44-011.05B.~~~~~~

~~The Department will forward the application to the Board for its recommendation pursuant to Neb. Rev. Stat. § 71-110 (5).~~

~~44-011.05A The Board's recommendation to the Department may be to:~~

- ~~1. Reinstatement of the credential;~~
- ~~2. Reinstatement of the credential with terms, conditions, or restrictions; or~~
- ~~3. Denial of reinstatement.~~

~~44-011.05B Upon receipt of the Board's recommendation, the Department will, within 150~~

~~days, send to the applicant a written notice of the Department's response. The Department may:~~

~~1. Reinstatement of the credential. An Administrative Penalty may be assessed pursuant to 172 NAC 44-012 if warranted;~~

~~2. If the Department determines that the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. §§ 71-147 or 71-148, the Department may:~~

~~a. Reinstatement of the credential with terms, conditions or restrictions. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920. An Administrative Penalty may be assessed pursuant to 172 NAC 44-012 if warranted; or~~

~~b. Denial of reinstatement. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~44-011.06 Requirements for Reinstatement More Than One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies more than one year after revocation for failure to meet the renewal requirements must:~~

~~1. Petition the Board for reinstatement pursuant to Neb. Rev. Stat. § 71-161.05. The petition for reinstatement must be accompanied by:~~

~~a. Verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and~~

~~b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.~~

~~2. Meet the renewal requirements, including:~~

~~a. The continuing competency requirements; and~~

~~b. Paying the renewal fee, the late fee of \$75 and any other applicable fees.~~

~~3. Attest:~~

~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~

~~b. To the actual number of days practiced if the petitioner has practiced in~~

~~Nebraska since s/he last held an active credential.~~

~~44-011.07 Procedures for Reinstatement More Than One Year Following Revocation for Failure to Meet Renewal Requirements: An applicant for reinstatement more than one year following revocation for failure to meet renewal requirements must submit to the Board:~~

- ~~1. A petition for reinstatement:
 - ~~a. Stating the reason the petitioner believes his/her credential should be reinstated;~~
 - ~~b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.~~
 - ~~c. Containing the following information about the petitioner:
 - ~~(1) Name;~~
 - ~~(2) Address;~~
 - ~~(3) Social security number;~~
 - ~~(4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential; and~~
 - ~~(5) A statement describing all:
 - ~~(a) Felony or misdemeanor convictions during the time period since the credential was active;
 - ~~[1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:
 - ~~[a] Official Court Record, which includes charges and disposition;~~
 - ~~[b] Arrest records;~~
 - ~~[c] A letter from the petitioner explaining the nature of the conviction;~~
 - ~~[d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~[e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.~~~~~~
 - ~~(b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was revoked;
 - ~~[1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~~~
 - ~~(c) Disciplinary charges pending against any professional credential held by the petitioner.~~~~~~~~

- ~~_____ (6) Attestation that the continuing competency requirements for renewal have been met.~~
- ~~_____ 2. The renewal fee, the late fee of \$75 and any other applicable fees; and~~
- ~~_____ 3. Attestation by the petitioner:~~
- ~~_____ a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
- ~~_____ b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~
- ~~_____ (1) If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 44-012 in which case a notice and opportunity for hearing will be sent to the petitioner.~~
- ~~_____ (2) If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 44-001.08F.~~
- ~~_____ 44-011.07A The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.~~
- ~~_____ 44-011.07B Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.~~
- ~~_____ 44-011.07C If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.~~
- ~~_____ 44-011.07D Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Board, if formally requested by the petitioner.~~
- ~~_____ 44-011.07D1 The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.~~
- ~~_____ 44-011.07E If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.~~
- ~~_____ 44-011.07F The Board will review the petition to recommend reinstatement and the record of any hearing held, and submits its recommendation regarding reinstatement and the record on which such recommendation is made to the Department within 180 days of receipt of the petition to recommend reinstatement.~~
- ~~_____ 44-011.07F1 If the Board recommends reinstatement of the credential, the Department may:~~
- ~~_____ 1. Accept the Board's recommendation and grant reinstatement of the~~

~~_____~~ credential.

- ~~_____~~ 2. If the Department determines that the Board's recommendation is: in excess of statutory authority; made upon unlawful procedure; unsupported by competent, material, and substantial evidence; or arbitrary or capricious, the Department may not accept the Board's recommendation and either:
- ~~_____~~ a. Deny reinstatement of the credential; or
 - ~~_____~~ b. Grant reinstatement with terms, conditions, or restrictions.

~~_____~~ 44-011.07F2 If the Board recommends denial of reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

~~_____~~ 44-011.07F3 If the Board recommends reinstatement with terms, conditions, or restrictions, the Department may:

- ~~_____~~ 1. Accept the Board's recommendation and grant reinstatement with terms, conditions, or restrictions; or
- ~~_____~~ 2. Not accept the Board's recommendation and either:
 - ~~_____~~ a. Deny reinstatement of the credential; or
 - ~~_____~~ b. Grant reinstatement of the credential.

~~_____~~ 44-011.07F4 The Department will, within 150 days of receipt of the Board's recommendation, send to the petitioner a written notice of the Department's reinstatement with or without terms, conditions, or restrictions or denial of reinstatement of the credential.

~~_____~~ 44-011.07F5 The petitioner may appeal the Department's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

~~_____~~ 44-011.08 Requirements to Reinstate a Credential Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must meet the following requirements:

- ~~_____~~ 1. Petition the Board for reinstatement;
 - ~~_____~~ a. The petition for reinstatement must be accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and
 - ~~_____~~ b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.
- ~~_____~~ 2. Pay the reinstatement fee of \$75 and other profession-specific requirements if expressly set by law; and
- ~~_____~~ 3. If the credential was revoked or suspended, attest:

- ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
- ~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~

~~44-011.09 Procedures for Reinstatement Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must submit to the Board:~~

- ~~1. A petition for reinstatement:
 - ~~a. Stating the reason the petitioner believes his/her credential should be reinstated;~~
 - ~~b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.~~
 - ~~c. Containing the following information about the petitioner:
 - ~~(1) Name;~~
 - ~~(2) Address;~~
 - ~~(3) Social security number;~~
 - ~~(4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;~~
 - ~~(5) A statement describing all:
 - ~~(a) Felony or misdemeanor convictions during the time period since the credential was suspended, limited, or revoked;~~
 - ~~[1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:
 - ~~[a] Official Court Record, which includes charges and disposition;~~
 - ~~[b] Arrest records;~~
 - ~~[c] A letter from the petitioner explaining the nature of the conviction;~~
 - ~~[d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~[e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.~~~~
 - ~~(b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was suspended, limited, or revoked;~~
 - ~~[1] If any disciplinary action was taken against the~~~~~~~~

~~petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition;~~

~~(c) Disciplinary charges pending against any professional credential held by the petitioner; and~~

~~(6) Any continuing competency activities.~~

~~2. The reinstatement fee of \$75; and~~

~~3. Attestation by the petitioner, if the credential was revoked or suspended:~~

~~a. That s/he has not practiced in Nebraska since s/he last held an active credential;~~

~~or~~

~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~

~~(1) If a petitioner has practiced after his/her credential was revoked, the Department may assess an Administrative Penalty pursuant to 172 NAC 44-012 in which case a separate notice and opportunity for hearing will be~~

~~sent to the petitioner.~~

~~(2) If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the~~

~~credential, other action may be taken pursuant to 172 NAC 44-011.09G.~~

~~44-011.09A The Board will make a recommendation to the Director regarding reinstatement following disciplinary action. In determining whether reinstatement should be recommended, the Board may:~~

~~1. Request the Department investigate all activities of the petitioner since the disciplinary action was taken against him/her, including activities prohibited by Neb. Rev. Stat. §§71-147 and 71-148.~~

~~2. Require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the Board, the petitioner being free also to consult a physician or physicians of his/her own choice for a complete diagnostic examination and make available a report or reports thereof to the Board;~~

~~3. Require the petitioner to pass a written, oral, or practical examination or any combination of such examinations; or~~

~~4. Require the petitioner to complete additional education.~~

~~44-011.09B The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.~~

~~44-011.09C Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.~~

~~44-011.09D If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.~~

~~44-011.09E~~ Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Board, if formally requested by the petitioner.

~~44-011.09E1~~ The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.

~~44-011.09E2~~ If the petitioner had a hearing or an opportunity for a hearing on a prior petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04 within a period of two years immediately preceding the filing of the current petition, the Board may grant or deny, without a hearing, the current petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04.

~~44-011.09F~~ If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.

~~44-011.09G~~ The Board reviews the petition to recommend reinstatement, any examination or investigatory information and the record of hearing, if one was held. The Board will submit its recommendation to the Director within 180 days of receipt of the petition to recommend reinstatement.

~~44-011.09G1~~ If the Board recommends reinstatement of the credential:

1. The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.

2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.

a. The application must include:

(1) Name of the petitioner; and

(2) Signed statement that the petitioner requests the Director to issue the credential in accordance with the Board's recommendation for reinstatement.

3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:

a. The application;

b. The written recommendation of the Board, including any finding of fact or order of the Board;

c. The petition submitted to the Board;

d. The record of hearing, if any; and

- ~~e. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the petitioner.~~
- ~~4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.~~
 - ~~a. When the Director affirms, modifies, or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner; and~~
 - ~~b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~44-011.09G2 If the Board recommends reinstatement of the credential with terms, conditions, or restrictions:~~

- ~~1. The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.~~
- ~~2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.~~
 - ~~a. The application must include:
 - ~~(1) Name of the petitioner; and~~
 - ~~(2) Signed statement that the petitioner requests the Director to issue the credential in accordance with the Board's recommendation for reinstatement.~~~~
- ~~3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
 - ~~a. The application;~~
 - ~~b. The written recommendation of the Board, including any finding of fact or order of the Board;~~
 - ~~c. The petition submitted to the Board;~~
 - ~~d. The record of hearing, if any; and~~
 - ~~e. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the~~~~

~~Board and the petitioner.~~

~~4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.~~

~~a. When the Director affirms, modifies, or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner; and~~

~~b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~44-011.09G3 If the Board denies reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation to deny reinstatement. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~44-011.10 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for an Indefinite Period of Time~~

~~44-011.10A Credentials voluntarily surrendered or limited for an indefinite period of time pursuant to Neb. Rev. Stat. §71-161.11 may be restored at the discretion of the Department.~~

~~44-011.10A1 An applicant for restoration of a credential that was voluntarily surrendered or limited for an indefinite period of time must submit to the Department:~~

~~1. A written application which contains the following information about the applicant:~~

~~a. Name;~~

~~b. Address;~~

~~c. Social security number;~~

~~d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;~~

~~e. A statement describing all:~~

~~(1) Felony or misdemeanor convictions during the time period since the credential was active;~~

~~(a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:~~

~~[1] Official Court Record, which includes charges~~

- ~~_____ and disposition;~~
- ~~_____ [2] Arrest records;~~
- ~~_____ [3] A letter from the applicant explaining the
_____ nature of the conviction;~~
- ~~_____ [4] All addiction/mental health evaluations and
_____ proof of treatment, if the conviction
_____ involved a drug and/or alcohol related
_____ offense
_____ and if treatment was obtained and/or
_____ required; and~~
- ~~_____ [5] A letter from the probation officer
_____ addressing probationary conditions and
_____ current status, if the applicant is currently
_____ on probation.~~
- ~~_____ (2) Revocations, suspensions, or other disciplinary actions
_____ against any professional credential held by the
_____ applicant during the time period since the credential
_____ was active;~~
- ~~_____ (a) If any disciplinary action was taken against the
_____ applicant's credential by another state, submit an
_____ official copy of the disciplinary action, including
_____ charges and disposition; and~~
- ~~_____ (3) Disciplinary charges pending against any professional
_____ credential held by the applicant.~~
- ~~_____ f. Any continuing competency activities; and~~
- ~~_____ g. Attestation:~~
 - ~~_____ (1) That s/he has not practiced in Nebraska prior to the
_____ voluntary surrender of his/her credential; or~~
 - ~~_____ (2) To the actual number of days practiced if the applicant has
_____ practiced in Nebraska prior to the voluntary surrender of
_____ his/her credential.~~

~~44-011.10A2 If an applicant has practiced while his/her credential was voluntarily
surrendered, the Department may:~~

- ~~1. Assess an Administrative Penalty pursuant to 172 NAC 44-012;~~
- ~~2. Initiate disciplinary action against the credential;~~
- ~~3. Deny the request to restore the credential; or~~
- ~~4. Restore the credential to active status and impose limitation(s) or other
sanctions on the credential.~~

~~44-011.10A3 If an applicant has committed any other violation of the statutes and
regulations governing the credential while his/her credential was voluntarily
surrendered or limited, the Department may:~~

- ~~1. Initiate disciplinary action against the credential;~~
- ~~2. Deny the request for restoration of the credential; or~~
- ~~3. Restore the credential to active status and impose limitation(s) or other
sanctions on the credential.~~

~~44-011.10A4 In either event pursuant to 172 NAC 44-011.10A2 or 44-011.10A3,
a notice and the opportunity for hearing will be given to the applicant.~~

~~44-011.10A5~~ The Department will act within 150 days on all completed applications.

~~44-011.11 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for a Specific and Definite Period of Time~~

~~44-011.11A~~ Credentials voluntarily surrendered or limited for a specific and definite period of time as agreed to between the holder and Department pursuant to Neb. Rev. Stat. § 71-161.11 will be automatically restored at the expiration of that period of time.

~~44-011.11B~~ If an individual has practiced while his/her credential was voluntarily surrendered for a specific and definite period of time, the Department may assess an Administrative Penalty pursuant to 172 NAC 44-012.

~~44-011.12 Credentials Voluntarily Surrendered or Limited Permanently~~

~~44-011.12A~~ Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored.

~~44-012 ADMINISTRATIVE PENALTY:~~ The Department may assess an administrative penalty when evidence exists that a person or entity practices without a credential. Practice without a credential for the purpose of this regulation means practice:

- ~~1. Prior to the issuance of a credential;~~
- ~~2. Following the expiration of a credential; or~~
- ~~3. Prior to the reinstatement of a credential.~~

~~44-012.01 Evidence of Practice:~~ The Department will consider any of the following conditions as prima facie evidence of practice without a credential:

- ~~1. The person admits to engaging in practice;~~
- ~~2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;~~
- ~~3. Billing or payment records document the provision of service, care, or treatment by the person;~~
- ~~4. Service, care, or treatment records document the provision of service, care, or treatment by the person;~~
- ~~5. Appointment records indicate that the person was engaged in practice; or~~
- ~~6. The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.~~

~~For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.~~

~~44-012.02 Penalty:~~ The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess the penalty, the Department will:

1. ~~Provide written notice of the assessment to the person. The notice will specify:~~
 - a. ~~The total amount of the administrative penalty;~~
 - b. ~~The evidence on which the administrative penalty is based;~~
 - c. ~~That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;~~
 - d. ~~That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund; and~~
 - e. ~~That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property; and~~

2. ~~Send by certified mail, a written notice of the administrative penalty to the _____ last known address of the person to whom the penalty is assessed.~~

~~44-012.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and the Department's rules and regulations adopted pursuant to these statutes.~~

~~44-013 CONSENT: No person may perform body art on or to any person under 18 years of age without prior written consent of the parent or court-appointed guardian of such person. The person giving consent must be present during the procedure.~~

~~44-014 ORDINANCES GOVERNING BODY ART: The licensure of persons performing body art or operating a body art facility under the Nebraska Cosmetology Act must not be construed to restrict or prohibit a governing body of a county, city, or village from providing further requirements for performing body art or operating a body art facility within its jurisdiction under ordinances at least as stringent as, or more stringent than, the regulations of the Nebraska Cosmetology Act.~~

Approved by Attorney General: _____ March 23, 2005
Approved by Governor: _____ March 28, 2005
Filed with Secretary of State: _____ March 28, 2005

EFFECTIVE DATE: _____ April 2, 2005

TITLE 172 - PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 45 - (Repealed)

TITLE 172 - PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 46 - (Repealed)