

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NOTICE OF PUBLIC HEARING

August 29, 2022  
10:00 a.m. Central Time  
Nebraska State Office Building – Lower Level A  
301 Centennial Mall South, Lincoln, Nebraska  
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive additional 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 language 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; update requirements relating to sanitation and safety for body art facilities; reduce the required amount of continuing education hours for license renewal; update statutory references; 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).

In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments. Interested persons may provide verbal comments in person or by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

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](mailto: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 who are deaf or hard of hearing may call DHHS via the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

## FISCAL IMPACT STATEMENT

Agency: <b>Department of Health and Human Services</b>	
Title: 172	Prepared by: Kris Chiles
Chapter: 44	Date prepared: 8.6.2021
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.~~

002.034 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.

002.045 BODY ARTIST. A body artist is a body piercer, body brander, permanent color technologist, or tattoo artist.

~~002.056 CLIENT. An individual upon whom a body artist performs a body art procedure. Any person with whom the body artist has an agreement to provide body art.~~

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

002.078 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.

002.089 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.~~

002.0914 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.

002.102 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.

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

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

002.135 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 ~~that exposure to the waste directly or indirectly creates a significant risk of disease.~~

002.146 SHARPS. Any rigid object used ~~that to~~ punctured or penetrated the skin or mucosa.

002.157 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.

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

002.179 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 44-003.021(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 44-0123.

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 facilities' licenses~~ 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 44-01~~23~~.

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 **and made available to the Department upon request:**

- (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~~ For body art facilities **there must be 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.~~

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

012.067 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.

012.078 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 or foam; and
- (G) Single-use disposable towels in a clean holder or an electric hand dryer.

012.089 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.

012.089(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 or foam soap;
- (iii) Single-use paper towels; and
- (iv) Waste receptacle.

012.089(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 or foam soap;

- (iii) Single-use paper towels; and
- (iv) Waste receptacle.

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

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

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

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

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

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

012.089(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.

012.089(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.

012.089(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 **with a disposable liner**, immediately following each body art procedure.

012.109 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.

012.140 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.

012.112 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.

012.123 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.

012.134 BODY ARTIST HAND CLEANLINESS. Body artists must wash their hands thoroughly with liquid soap or foam 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.

012.145 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 or foam 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.

012.156 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.~~

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

012.167(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 or foam 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.

012.167(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.

012.167(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 or foam and water or antiseptic.

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

012.178(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.

012.178(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.

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

012.178(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.

012.178(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.

012.178(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.

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

012.189(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.

012.189(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.

012.189(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.

012.1920 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  
08-11-2021

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

### TABLE OF CONTENTS

<u>SUBJECT</u>	<u>CODE SECTION</u>	<u>PAGE</u>
Scope and Authority	44-001	4
Definitions	44-002	4
License Requirements	44-003	3
Guest Body Artist Registration	44-004	5
Expiration of Guest Body Artist Registration	44-005	6
Renewal	44-006	6
Continuing Competency Exemptions	44-007	8
Revocation for Failure to Meet Renewal Requirements	44-008	10
Continuing Competency Requirements	44-009	11
Continuing Competency Sanctions	44-010	11
Re-Credentialing	44-011	12
Administrative Penalty	44-012	25
Consent	44-013	26
Ordinances Governing Body Art	44-014	27
Applications	Available Upon Request	

~~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 31<sup>st</sup> 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 31<sup>st</sup> 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 31<sup>st</sup> 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 4.~~
- ~~\_\_\_\_\_ 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: ~~March 28, 2005~~ April 2, 2005**

TITLE 172 - PROFESSIONAL AND OCCUPATIONAL LICENSURE  
CHAPTER 45 - (Repealed)

TITLE 172 ————— PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 45 ————— BODY ART FACILITIES

### TABLE OF CONTENTS

<u>SUBJECT</u>	<u>CODE SECTION</u>	<u>PAGE</u>
Scope and Authority	45-001	4
Definitions	45-002	4
License Requirements	45-003	2
Renewal	45-004	4
Revocation for Failure to Meet Renewal Requirements	45-005	5
Inspections	45-006	6
Administrative Penalty	45-007	8
Consent	45-008	9
Ordinances Governing Body Art	45-009	9
Applications	Available Upon Request	

~~TITLE 172 — DEPARTMENT PROFESSIONAL AND OCCUPATIONAL LICENSURE~~

~~CHAPTER 45 — BODY ART FACILITIES~~

~~45-001 SCOPE AND AUTHORITY: These regulations apply to the licensing procedures for body art facilities as defined by Neb. Rev. Stat. §§ 71-340 to 71-3,238 and the Uniform Licensing Law.~~

~~45-002 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.~~

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

~~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.~~

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

~~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.~~

~~Minor means any person who has not attained the age of 18 years.~~

~~NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172-NAC-45.~~

~~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.~~

~~Practitioner means a person 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.~~

~~45-003 BODY ART FACILITY LICENSE: Any person who wishes to operate a body art facility must obtain a license. The criteria for issuance of a license and the documentation required by the Department are set forth below.~~

~~45-003.01 Initial Licensure:~~

~~45-003.01A Requirements: An applicant for a license to operate a body art facility must:~~

- ~~1. Meet all requirements specified in 172-NAC-46;~~
- ~~2. Successfully complete an inspection as specified in 172-NAC-45-007.~~

~~45-003.01B Application Process: The following must be submitted to the Department:~~

- ~~1. A complete application on Attachment A attached to these regulations and incorporated by this reference;~~
- ~~2. Attestation by the applicant (this does not apply to applications submitted on or before April 1, 2005):~~
  - ~~a. That s/he has not operated this facility in Nebraska after April 1, 2005 and prior to the application for a license; or~~
  - ~~b. To the actual number of days operated this facility in Nebraska after April 1, 2005 and prior to the application for a license;~~
- ~~3. A floor plan of the proposed facility, including:~~

- ~~a. Restroom(s) location;~~
- ~~b. Sink locations; and~~
- ~~c. Connecting buildings/living space; and~~

~~4. The required license fee specified in 172-NAC-37.~~

~~45-003.01C Administrative Penalty/Other Action: An individual who operates a facility prior to issuance of a credential is subject to assessment of an Administrative Penalty pursuant to 172-NAC-45-008, or such other action as provided in the statutes and regulations governing the credential.~~

~~45-003.01D Department Review: The Department will review the completed application and supporting documentation within 150 days. If the application meets the licensing requirements and complies with the inspection requirements set out in 172-NAC-45-007, the Department will issue a license.~~

~~45-003.02 Change in Owner, Name or Location: Each facility license issued will be in effect solely for the owner or owners and premises named thereon and will lapse automatically upon any change of owner or change of location.~~

~~The licensee must notify the Department at least 30 days before any change of owner or address, and at least 1 week after a facility is permanently closed, except in emergency circumstances as determined by the Department. The criteria for issuance of a license and the documentation required by the Department and the Board are set forth below:~~

~~45-003.02A Change in Owner:~~

~~1. Application Process: The applicant must meet the requirements as set forth in 172-NAC-45-003.01.~~

- ~~a. If the anticipated opening date changes, the owner of the facility must inform the assigned inspector of the new opening date. A facility must not provide any type of body art services prior to licensure.~~

~~2. Department Review: The Department will act within 150 days upon all completed applications.~~

~~45-003.02B Change in Facility Name:~~

~~1. Application Process: The applicant must submit to the Department:~~

- ~~a. A complete application on Attachment A attached to these regulations and incorporated by this reference at least 15 days before the proposed name change of the Facility. Only applications which are complete will be considered;~~

~~b. Indication of the new name of the facility; and~~

~~c. The required fee for a reissued license as specified in 172-NAC-37.~~

- ~~2. Department Review: The Department will act within 150 days upon all completed applications and will re-issue the license with the change of facility name identified on the license.~~

~~45-003.02C Change in Location:~~

- ~~1. Application Process: The applicant must meet the requirements as set forth in 172-NAC 45-003.01.~~
- ~~a. If the anticipated opening date changes, the owner of the facility must inform the assigned inspector of the new opening date. An facility must not provide any type of body art services prior to licensure.~~
- ~~2. Department Review: The Department will act within 150 days upon all completed applications.~~

~~45-003.03 Procedures for Closing an Facility: When any facility is permanently closed, the holder of the facility license must notify the Department no later than 1 week following closure.~~

~~45-004 PROCEDURES FOR RENEWAL OF A LICENSE: All facility licenses issued by the Department under the Act and these regulations expire on March 31<sup>st</sup> of each odd-numbered year.~~

~~45-004.01 Renewal Process: Any licensee who wishes to renew his/her facility license must:~~

- ~~1. Pay the renewal fee as prescribed in 172-NAC 37;~~
- ~~2. Have attained a rating of satisfactory on its most recent operation inspection. The license of any facility not attaining such rating will be placed on inactive status and must not be open to the public until all deficiencies have been corrected; and~~
- ~~3. Cause to be submitted to the Department:~~
- ~~a. The renewal notice; and~~
- ~~b. The renewal fee.~~

~~45-004.02 First Notice: At least 30 days before March 31<sup>st</sup> of each odd-numbered year, the Department will send a renewal notice by means of regular mail to each licensee at the licensee's last place of operation as noted in the records of the Department.~~

~~45-004.02A 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; and~~
- ~~5. The renewal fee as prescribed in 172-NAC 37.~~

~~45-004.02B The licensee must apply for renewal by submitting to the Department:~~



1. The renewal notice; and
2. The renewal fee.

~~45-004.03 Second Notice:~~ The Department must send to each licensee who fails to renew his/her facility license in response to the first notice, a second notice of renewal in accordance with the requirements of 172-NAC-45-004.02 that specifies:

1. That the licensee failed to pay the renewal fee;
2. That the license has expired;
3. That the Department will suspend action for 30 days following the date of expiration;
4. That upon receipt of the renewal fee, together with an additional late fee of \$25, no order of revocation will be entered; and
5. That upon failure to receive \$25 in addition to the regular renewal fee, the license will be revoked as specified in 172-NAC-45-005.

~~45-004.03A~~ The licensee must apply for renewal by submitting to the Department:

1. The renewal notice;
2. Attestation by the licensee:

- a. That s/he has not operated the facility in Nebraska since the expiration of its license; or
  - b. To the actual number of days s/he operated the facility in Nebraska since the expiration of its license; and
3. The renewal fee and the additional late fee of \$25.

~~45-004.04~~ When any licensee fails, within 30 days of expiration of a license, to pay the renewal fee and/or to pay an additional late fee of \$25, the Department will automatically revoke the license without further notice of hearing and makes proper record of the revocation.

~~45-004.05~~ The Department may refuse to renew a license for falsification of any information submitted for renewal of a license. The refusal must be made pursuant to Neb. Rev. Stat. §§ 71-149 to 71-155 and 184-NAC-1, Rules of Practice and Procedure of the Department.

~~45-004.06 Administrative Penalty/Other Action:~~ An individual who operates a facility after the expiration of a credential is subject to assessment of an Administrative Penalty pursuant to 172-NAC-45-008, or such other action as provided in the statutes and regulations governing the credential.

~~45-005 CREDENTIAL REVOCATION FOR FAILURE TO MEET RENEWAL REQUIREMENTS:~~  
The Department may revoke a credential when the credential holder fails to meet the renewal requirements.

~~45-005.01 Revocation for Nonpayment of Renewal Fee or Late Fee within Thirty Days of Expiration of the Credential~~

~~45-005.01A~~ When a credential holder fails to pay the required renewal fee and/or to pay a late fee of \$25 within 30 days of its expiration, the Department automatically revokes the credential without further notice or hearing.

~~45-005.01A1~~ A post revocation notice will be sent which will specify 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; and
- ~~3.~~ The Department has revoked the credential.

~~45-006 REINSTATEMENT:~~ The license of a body art facility that has been revoked for any reason will not be reinstated. An original application in accordance with 172-NAC-45-003 for licensure must be submitted and approved before such facility can reopen for business.

~~45-007 BODY ART FACILITY INSPECTIONS:~~ All body art facilities will receive an initial and thereafter, a renewal inspection. The criteria for inspection required by the Department and the Board is set forth below:

~~45-007.01 Initial Inspection—Purpose and Review Time:~~

~~45-007.01A~~ For initial applications, the following applies:

- ~~1.~~ The applicant must conduct a self-evaluation inspection prior to the proposed opening date of the facility.
- ~~2.~~ The Department will conduct an on-site unannounced inspection within 90 days following issuance of an initial facility license in accordance with 172-NAC-45-007.02. The inspections are limited to the following purposes:
  - ~~a.~~ To ascertain whether all body artists working on the premises are properly licensed;
  - ~~b.~~ To ascertain whether the equipment and sanitation requirements in 172-NAC-46 are met;
  - ~~c.~~ To ascertain whether the physical structure requirements in 172-NAC-46 are met; and
  - ~~d.~~ To ascertain whether the duties of the body artist and manager and/or owner in 172-NAC-46 are met.

- ~~3.~~ At the conclusion of the inspection, the owner or manager of the facility will receive a copy of the rating form. The form must be promptly displayed, and a written statement of any deficiencies noted.

45-007.02 Initial Department Inspection—Rating:

~~45-007.02A~~ The inspector will issue a rating of "Satisfactory" on all initial inspections when the facility receives an overall inspection rating of 100%.

~~45-007.02B~~ The inspector will issue a rating of "Unsatisfactory" on all initial inspections when the facility receives an overall inspection rating of less than 100%.

- ~~1.~~ When a body art facility receives a rating of unsatisfactory, it must submit evidence to the department within 15 days providing proof of corrective action taken. A repeat inspection will be conducted within 60 days after the original inspection to determine if corrective action has occurred. The department may assess a fee for each repeat inspection required.
- ~~2.~~ If the facility receives an unsatisfactory rating on the repeat inspection, or if evidence is not submitted within 15 days, the license will immediately be placed on inactive status pending action by the department, and the facility may not operate in any manner while its license is inactive.
- ~~3.~~ The owner or manager of a facility whose license has been placed on inactive status must appear before the board and the department to show cause why the department should not ask the Attorney General to initiate steps to revoke the license. The department may, as a result of such appearance, grant additional time for corrective action to occur, but the facility may not operate during such time. The facility may not return to operation until it has achieved a satisfactory rating on an inspection.

~~45-007.02C~~ Failure to permit an inspection for the purposes set out in 172 NAC 45-007.01 and 45-007.03 is grounds for denial of an initial body art facility license or for suspension of a body art facility's existing license.

~~45-007.03 Renewal (Routine) Inspection—Purpose and Review Time:~~ The Board or its agent will conduct an on-site inspection of each body art facility.

~~45-007.03A~~ The inspection will be unannounced and it will occur at least every 4 years.

~~45-007.03B~~ The inspection is limited to the following purposes:

- ~~1.~~ To ascertain whether all body artists working on the premises are properly licensed;
- ~~2.~~ To ascertain whether the equipment and sanitation requirements in 172 NAC 46 are met;
- ~~3.~~ To ascertain whether the physical structure requirements in 172 NAC 46 are met; and
- ~~4.~~ To ascertain whether the duties of the body artist and manager and/or owner in 172 NAC 46 are met.

~~45-007.03C~~ The inspector will record the inspection results on a form provided by the Department.

~~45-007.04 Routine Inspection — Rating~~

~~45-007.04A~~ The inspector will issue a rating of "Satisfactory" on all routine inspections when the facility receives an overall inspection rating of 80%.

~~45-007.04B~~ The inspector will issue a rating of "Unsatisfactory" on all routine inspections when the facility receives an overall inspection rating of less than 80%.

- ~~1.~~ When a body art facility receives a rating of unsatisfactory, it must submit evidence to the department within 15 days providing proof of corrective action taken. A repeat inspection will be conducted within 60 days after the original inspection to determine if corrective action has occurred. The department may assess a fee for each repeat inspection required.
- ~~2.~~ If the facility receives an unsatisfactory rating on the repeat inspection, or if evidence is not submitted within 15 days, the license will immediately be placed on inactive status pending action by the department, and the facility may not operate in any manner while its license is inactive.
- ~~3.~~ The owner or manager of a facility whose license has been placed on inactive status must appear before the board and the department to show cause why the department should not ask the Attorney General to initiate steps to revoke the license. The department may, as a result of such appearance, grant additional time for corrective action to occur, but the facility may not operate during such time. The facility may not return to operation until it has achieved a satisfactory rating on an inspection.

~~45-007.04C~~ Failure to permit an inspection for the purposes set out in 172-NAC-45-007.01 and 45-007.03 is grounds for suspension of a body art facility's existing license.

~~45-008 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.

~~45-008.01 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; and~~
  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.~~

~~45-008.02 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 such 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.~~
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.~~

~~45-008.03 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.~~

~~45-009 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.~~

~~45-010 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 the Attorney General: \_\_\_\_\_ March 23, 2005 \_\_\_\_\_  
Filed with the Secretary of State: \_\_\_\_\_ March 28, 2005 \_\_\_\_\_  
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~~NEBRASKA HEALTH AND HUMAN SERVICES~~  
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TITLE 172 - PROFESSIONAL AND OCCUPATIONAL LICENSURE  
CHAPTER 46 - (Repealed)

TITLE 172 ————— PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 46 ————— SAFETY, SANITATION AND STERILIZATION RELATING TO BODY  
ART FACILITIES

### TABLE OF CONTENTS

<u>SUBJECT</u>	<u>CODE SECTION</u>	<u>PAGE</u>
Scope and Authority	46-001	4
Definitions	46-002	4
Documents Posted	46-003	3
Client Records	46-004	3
Physical Structure	46-005	4
Ventilation	46-006	4
Water	46-007	4
Safety	46-008	5
Required Equipment/Furnishings	46-009	5
Furniture	46-010	6
Storage	46-011	6
Towels/Linens	46-012	7
Products	46-013	8
Supplies, Products and Materials	46-014	8
Pigments, Colors and Dyes	46-015	8
Rash or Infection	46-016	8
Licensee Hand Cleanliness	46-017	9
Gloves	46-018	9
Single Use Items	46-019	9
Preparation and Care of the Body Art Area	46-020	9
Sterilization	46-021	10
Autoclave Standards	46-022	10
Disinfectant Solution Storage and Cleanliness	46-023	11
Implements, Supplies, Products or Activities that are NOT Allowed	46-024	11
Consent	46-025	11
Compliance	46-026	12
Ordinances Governing Body Art	46-027	12



~~TITLE 172 — PROFESSIONAL AND OCCUPATIONAL LICENSURE~~

~~CHAPTER 46 — SAFETY, SANITATION AND STERILIZATION RELATING TO BODY ART  
FACILITIES~~

~~46-001 SCOPE AND AUTHORITY: These regulations apply to the safe practice of body art within body art facilities defined in Neb. Rev. Stat. §§ 71-340 through 71-3,238. In order to be properly credentialed with the Department of Health and Human Services Regulation and Licensure, the owners of facilities, body branders, body piercers, permanent color technicians, and tattoo artists must comply with these regulations.~~

46-002 DEFINITIONS

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

~~Aftercare means written instructions given to the client, about caring for the body art and surrounding area.~~

~~Antiseptic means an agent that inhibits the growth and multiplication of, or destroys, disease-causing microorganisms on the skin or mucosa.~~

~~Aseptic techniques means methods used in body art procedures to prevent contamination of a pierced area by microorganisms.~~

~~Autoclave means a sterilization device using steam, heat and pressure which meets the standards of American Society for Mechanical Engineering (ASME).~~

~~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.~~

~~Client means any person with whom the body artist has an agreement to provide body art.~~

~~Closed/covered receptacle, container, bottles and/or drawer means fitting tightly with a lid, door, or shutting of a drawer and may have vents.~~

~~Conspicuous place means reception area, clinical area, or any area where visible and accessible to the public.~~

~~Disinfection means the destruction of disease causing micro-organisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.~~

~~Equipment/Furniture means those items needed to operate an facility which are usually considered stationary, for example, chairs, cabinets, sinks, stations, etc.~~

~~Electrical appliances means portable electric powered appliances.~~

~~Gloves a covering for the hand having separate sections for each finger that is single use, sanitary, and is disposable medical grade.~~

~~Infectious waste means:~~

- ~~1. Blood and body fluids in a liquid or semi-liquid state;~~
- ~~2. Items contaminated with blood or body fluids, which, if compressed or disturbed, may release liquid or semi-liquid blood or body fluids;~~
- ~~3. Sharps which have been used in performing body art.~~
- ~~4. Other waste which contains pathogenic microbial agents or other biologically active materials in sufficient concentrations that exposure to the waste directly or indirectly creates a significant risk of disease.~~

~~Instrument/tool means hand pieces, needles, and other tools that may come in contact with a customer's body or be exposed to body fluids during body art procedures.~~

~~Minor means any person who has not attained the age of 18 years.~~

~~NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172-NAC-46.~~

~~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.~~

~~Practitioner means a person who performs any or all of the practices of body art.~~

~~Sanitize means the application of reducing microorganisms to a safe level.~~

~~Sharps means any rigid object used for the purpose of puncturing, lacerating, or penetrating the skin or mucosa.~~

~~Sharps container means a rigid, leak and puncture resistant, and labeled container, manufactured for the containment of sharps. Labeling must include the international biohazard symbol.~~

~~Single use means products or items that are intended for one-time, one-person use and are disposed of after use on each customer.~~

~~Sterilization means a very powerful process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.~~

~~Supplies/materials means cotton balls/cotton pads or other similar items.~~

~~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.~~

~~46-003 DOCUMENTS POSTED: The owner must ensure that the following documents are posted in each facility in a conspicuous place:~~

- ~~1. A copy of the regulations governing sanitation and safety for the information and guidance of all persons employed and for the general public;~~
- ~~2. The most recent inspection rating sheet for the information of the general public and employees; and~~
- ~~3. The most current licensure renewal card for each person practicing within the facility, for public viewing (photocopies are not acceptable).~~
- ~~4. Pamphlets or literature explaining body art aftercare.~~

~~46-004 CLIENT RECORDS: In order for the licensee to properly assess the client's condition for receiving body art procedures and not violate the client's rights or confidential medical information, the licensee must obtain the following information from the client:~~

- ~~1. Name, Address, Date of Birth, and ID # (drivers license, military ID, State ID, passport, etc) of client;~~
- ~~2. Any known allergies; and~~
- ~~3. Any condition that may affect/hamper healing.~~

~~In addition to the information collected from the client, the client record must include:~~

- ~~1. The name of the body artist who performed the procedure;~~
- ~~2. The date of the procedure;~~
- ~~3. The location of the procedure on the client's body;~~

4. ~~\_\_\_\_\_ A description of the type of procedure provided;~~
5. ~~\_\_\_\_\_ Consent form for all persons under 18 years of age.~~

~~46-004.01 Record Keeping and Retention Schedule: The owner must ensure that the following records are kept and retained as follows and available to the inspector:~~

1. ~~\_\_\_\_\_ Photo identification of each person providing body art procedures;~~
2. ~~\_\_\_\_\_ Client records, which must be maintained in a confidential manner, and be retained for 3 years; and~~
3. ~~\_\_\_\_\_ Consent forms for persons under the age of 18 which must be kept for 5 years.~~

~~46-005 PHYSICAL STRUCTURE: The owner must ensure that the facility is well lighted, well ventilated and kept in a clean, orderly, sanitary condition at all times.~~

~~46-005.01 Surfaces: All walls, floors and all procedure surfaces in rooms or areas where body art procedures are performed must be smooth, washable, and in good repair.~~

~~46.005.02 Address: All body art facilities must have a dedicated physical address.~~

~~46-005.03 Entrance and Exits: All body art facilities must have:~~

1. ~~\_\_\_\_\_ An entrance leading directly into the establishment; and~~
2. ~~\_\_\_\_\_ No direct opening between an establishment and any building or portion of a building used as living or sleeping quarters or as a food, liquor, or tobacco establishments.~~

~~Exception: Body art facilities located in a nail technology salon or cosmetology salon may share an entrance into the entire establishment, however, the body art facility must be separated by at least 6-foot high walls.~~

~~The owner must ensure that the openings to the outside are protected by means of self-closing doors or screened/closed windows to prevent the presence of insects, vermin, or rodents.~~

~~46.005.04 Privacy Area: Each facility must have an area that can be screened from public view for customers requesting privacy or for all genitalia body art procedures.~~

~~46-006 VENTILATION: The owner must ensure that a consistent fresh air supply is provided to the facility. In addition, fans may be provided to circulate the air within the facility. S/he may do so by using one or more of the following:~~

1. ~~\_\_\_\_\_ A ventilation system which is in good, working condition; or~~
2. ~~\_\_\_\_\_ A furnace or air conditioner in which:
  - a. ~~\_\_\_\_\_ The air distribution system filters are cleaned or replaced annually or more often if needed to avoid restriction of airflow; and~~~~

- b. ~~The furnace fan setting is placed on "continuous" or "on" setting at all times the facility is occupied to ensure fresh air is coming into the facility; or~~
- 3. ~~Open windows/doors with a screen and a fan to provide and circulate fresh outside air.~~

#### 46-007 WATER

~~43.007.01 The owner must ensure that the facility has a supply of hot and cold running water in sufficient quantities to conduct the facility in a sanitary manner, specifically that:~~

- 1. ~~In cities or villages in which an authorized public water supply is available, the facility must be connected to the public water supply and comply with state law, city or village ordinances, and local health authority requirements.~~

~~46-007.02 The owner must ensure that wastewater is disposed of through a system that carries it away from buildings and is either:~~

- ~~1. A public sewer connection; or~~
- ~~2. A private disposal system that complies with state law, city or village ordinances, and local health authority requirements.~~

46-008 SAFETY: The owner must maintain the facility in a safe condition. S/he must ensure that:

- 1. ~~Floors, floor coverings, walls, woodwork, ceilings, furniture, fixtures and equipment are clean and in good repair;~~
- 2. ~~Floors are free of unsafe objects and slippery or uneven surfaces;~~
- 3. ~~Doors, stairways, passageways, aisles or other means of exit provide safe and adequate access;~~
- 4. ~~Electrical appliances or apparatus are clean and have no worn or bare wiring to avoid fires, shocks, and electrocution; and~~
- 5. ~~Water or product spills on the floor are removed immediately and the floor is dried to avoid falls.~~

46-009 REQUIRED EQUIPMENT/FURNISHINGS: The owner must ensure that each facility has the following equipment/furnishings and that the equipment/furnishings are in good repair, cleanable and in a sanitary condition at all times:

- 1. ~~Hand washing sink, which is clean and includes:~~
  - a. ~~Hot and cold running water that passes through a mixing type of faucet;~~
  - b. ~~Liquid soap;~~
  - c. ~~Single-use paper towels; and~~
  - d. ~~Waste receptacle.~~
- 2. ~~Equipment washing sink for employee use only, which is clean and includes:~~

- a. ~~Hot and cold running water that passes through a mixing type of faucet;~~
- b. ~~Liquid soap;~~
- c. ~~Single-use paper towels; and~~
- d. ~~Waste receptacle.~~

~~Facilities which use all disposable equipment are not required to have an equipment washing sink.~~

- ~~3. Sharps Container: Contaminated sharps must be disposed of in approved sharps container in a manner to ensure the prevention of cross-contamination.~~
- ~~4. Autoclave(s): Autoclave(s) used for sterilizing metal tools/equipment must be clean and the owner must ensure that the employee follows manufacture's direction for use.
  - a. ~~If all disposable equipment/instruments are used, an autoclave is not required.~~
  - b. ~~If ultrasonic cleaning units or dry heat sterilizers are used, they must not be the only means of sterilization and must be used and maintained in accord with manufacturer's recommendations and be kept clean and sanitary.~~~~
- ~~5. Waste Receptacle: At least 1 waste receptacle for each workstation, which is covered and has a plastic liner.~~
- ~~6. Work Tables or Counters: All work table or counters must be smooth, non-absorbent, non-porous and cleanable. Each workstation must include a surface cleaner (germicidal).~~
- ~~7. Disposable Ink Caps: Ink caps are required if providing tattooing and permanent color technology procedures.
  - a. ~~If the licensee uses an ink cap holder, the holder must be smooth, non-absorbent, non-porous and sterilizable.~~~~
- ~~8. First Aid Kit~~
- ~~9. Customer Chair(s) and Body Artist(s) Chairs: The chairs must be made of cleanable material; cloth chairs are not acceptable.~~
- ~~10. Storage Cabinets or Containers: Clean cabinets/containers for storing clean and sterilized instruments and supplies.~~
- ~~11. Barriers: A barrier must be used to ensure the prevention of cross-contamination.~~

~~46-010 FURNITURE:~~ The owner must ensure that all furniture is in good repair and in a sanitary condition at all times.

~~46-011 STORAGE: The owner must ensure that storage within the facility meets the following requirements. Body artists must comply with the following requirements:~~

- ~~1. Flammable and combustible chemicals are stored away from potential sources of ignition such as an open flame or an electrical device.~~
- ~~2. All chemicals are stored in closed bottles or containers and labeled.~~
- ~~3. No cleaning/sterilizing products are stored:
  - ~~a. Where food is kept;~~
  - ~~b. In the restroom, unless in a locked cabinet; or~~
  - ~~c. With single use supplies.~~~~
- ~~4. Storage units:
  - ~~a. Cabinets, drawers, containers used for storage of supplies, instruments and towels are clean.~~~~
- ~~5. Supplies:
  - ~~a. Unused supplies are stored in a clean, enclosed container or drawer;~~
  - ~~b. Used/soiled disposable supplies are discarded immediately in a clean, closed waste receptacle with a plastic liner; and~~
  - ~~c. Labeled accordingly.~~~~
- ~~6. Instrument Storage:
  - ~~a. Instruments that have been used on a client or soiled in any manner are placed in a properly labeled covered receptacle until sterilized; and~~
  - ~~b. Sterilized instruments are individually packed and stored in a clean closed container or drawer until used.~~~~
- ~~7. Contaminated sharps must be stored and disposed of in approved sharps container to ensure the prevention of cross-contamination.~~
- ~~8. Infectious Waste must be:
  - ~~a. Handled and stored so that human exposure is prevented; and~~
  - ~~b. Discarded in double lined plastic bags in covered waste receptacle or in an approved "red" bag marked with the international biohazard symbol and stored safely until transported by a licensed infectious waste hauler to an appropriate treatment or disposal facility.~~~~

~~46-012 TOWELS/LINENS: The owner must ensure that the use of towels/linens in the facility meets the following requirements and body artists must comply with the following requirements:~~

~~46-012.01 Used/Soiled Towel/Linen Storage:~~

- ~~1. Cloth linens (such as capes) are deposited in a closed receptacle after use;~~
- ~~2. Used/soiled cloth linens are not used again until properly laundered and sanitized; and~~

- ~~3. Only disposable single-use towels are used for body art services and must be discarded in a closed waste receptacle, with a plastic liner, immediately following each body art service.~~

~~46-012.02 Laundry: Cloth towels are laundered either:~~

- ~~1. By regular commercial laundering; or~~
- ~~2. By a noncommercial laundering process which includes immersion in water at 140 degrees Fahrenheit for not less than 15 minutes during the washing or rinsing operation.~~

~~46-012.03 Clean Towel/Linen Storage:~~

- ~~1. All clean linens are stored in a clean, enclosed cabinet or container until used.~~
- ~~2. All disposable towels are stored in a clean, enclosed cabinet or container until used.~~

~~46-013 PRODUCTS: The owner must ensure that the use of products in the facility meets the following requirements and body artists must comply with the following requirements.~~

- ~~1. All liquids, cosmetics, creams, gels, pastes, powders, and other products are kept in clean, closed containers;~~
- ~~2. Original product bottles and containers have an original manufacturer label;~~
- ~~3. When only a portion of the product is to be used on a client, the product is 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; and~~
- ~~4. If a product is poured into another container, such as a shaker, dispenser pump container, or spray container, the container is labeled to identify the product.~~

~~46-014 SUPPLIES, PRODUCTS AND MATERIALS: The owner must ensure that the use of supplies, products and materials in the facility meets the following requirements and body artists must comply with the following requirements.~~

- ~~1. Supplies and implements which 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, are disposed of in a covered waste receptacle, with a plastic liner, immediately after use.~~
- ~~2. All products applied to the skin, including stencils must be single-use and disposable. Acetate stencils will not be allowed for re-use if sanitization procedures are not performed between uses. Petroleum jellies, soaps, and other products used in the application of stencils must be dispensed and applied on the area to be tattooed with sterile gauze or in a manner to prevent contamination of the original container and its contents. The gauze must be used only once and then discarded.~~



~~46-015 PIGMENTS, COLORS AND DYES: Pigments, colors and dyes used from stock solutions for each customer must be placed in a single-use receptacle and the receptacle and remaining solution must be discarded and disposed of after each use.~~

~~46-016 RASH OR INFECTION:~~

- ~~1. No licensee affected with boils, infected wounds, open sores, abrasions, keloids, weeping dermatological lesions, rash or acute respiratory infection may work in any capacity in which there is likelihood that they could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.~~
- ~~2. A client must not receive body art procedures on areas which are irritated/inflamed or have moles, rash, broken skin, or infection.~~

~~46-017 LICENSEE HAND CLEANLINESS: Every body artist must wash his/her hands thoroughly with liquid soap and water 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.~~

~~46-018 GLOVES: The owner must ensure that each licensee, wears gloves in accordance with the following:~~

- ~~1. When performing body art procedures. The licensee must wash his/her hands prior to gloving. Gloves must be disposed after the completion of each procedure on each customer. If gloves become torn, punctured or otherwise contaminated, licensees must remove and dispose of the gloves, wash his/her hands with liquid soap and water, and dry with a disposable towel, and then put on a new pair of gloves before resuming the body art procedure.~~

~~46-019 SINGLE USE ITEMS: Single-use items must not be used on more than one client for any reason. After use, all single-use needles, razors, razor blades and other sharps must be immediately disposed of in a waste receptacle.~~

~~46-020 PREPARATION AND CARE OF THE BODY ART AREA: 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, etc may be used. An antiseptic mouth rinse must be used prior to any oral procedure. The towel, pad, and/or blotter, must be discarded after a single use.~~

- ~~1. Shaving: If shaving is necessary, single-use disposable razors or safety razors with single-service blades or clippers. Single-service must be discarded after each use and the reusable holder must be autoclaved after use. Clippers must be 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. The washing pad must be discarded after a single use.~~

- ~~2. Oral body art: Before an oral body art procedure may be performed, the customer must rinse his/her mouth with an antiseptic mouthwash which is provided to the customer in single use cups.~~
- ~~3. Blood Flow: In the event of blood flow, all products used to check the flow of blood or to absorb blood must be sanitary and single-use products.~~

~~46-021 STERILIZATION: The owner must ensure that after use by each customer, all non-disposable instruments and procedure work surfaced are cleaned and sterilized with a sanitizer that has a demonstrated tuberculocidal activity, as indicated by the product label.~~

- ~~1. Jewelry used for new body piercing must be sterilized with an autoclave or chem-clave. Acrylic jewelry can not be used for a new piercing. Jewelry used in healed body piercing does not have to be sterilized, but must be used according to product label.~~
- ~~2. Clippers must be disinfected with a liquid chemical sterilant after each use.~~
- ~~3. All non-disposable instruments used for body art must be cleansed and sterilized after each use. Autoclave or chem-clave sterilization must be conducted for the cycle of time and corresponding operating pressure recommended by the manufacturer of the autoclave. Sanitizers used in the cleaning process must have demonstrated tuberculocidal activity, as indicated by the product label and be registered with the U.S. Environmental Protection Agency.~~
- ~~4. Instruments that are to be autoclaved within the facility must be packed in single-use paper pre-packs or other containers designed for sterilizing instruments and marked with the expiration date. The expiration date must not exceed 90 days from the date autoclaved.~~
- ~~5. All sterilized instruments must remain stored in sterilized packages until just prior to performing a body art procedure. Where several instruments are sterilized at the same time in the same package, such as in a single use setup, once the container is opened any instrument not used immediately in a procedure must be resterilized.~~
- ~~6. Every batch of sterilized equipment must be monitored for sterilization by use of a heat sensitive indicator that is capable of indicating approximate time and temperature achieved.~~

#### 46-022 AUTOCLAVE STANDARDS

- ~~1. 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 once for each autoclave every 30 days and must be verified through an independent laboratory or tester. A tester must be qualified by the CDC, American Dental Association (ADA), or FDA. A record of all spore tests must be~~

~~maintained for 2 years, prior to April 1, 2005, the facility must have tests available for the past 60 days:~~

- ~~a. An autoclave which has received a positive spore test must be immediately removed from service. Prior to using, the owner must ensure that there is evidence of 1 negative spore test. If the autoclave requires repair work, it can not be utilized until it has received 2 negative spore tests.~~
- ~~2. Autoclaves must be cleaned and serviced at the frequency recommended by the manufacturer. A copy of the manufacturers cleaning and servicing instructions must be maintained in the facility.~~

~~**46-023 DISINFECTANT SOLUTION STORAGE AND CLEANLINESS:** The owner must ensure that the use of disinfectant solution in the facility is used and maintained in accordance with the manufactures directions and body artists must comply with the following requirements:~~

- ~~1. Keep the disinfectant solution covered at all times; and~~
- ~~2. Change the disinfectant solution whenever visibly cloudy or dirty.~~

~~**46-024 IMPLEMENTS, SUPPLIES, PRODUCTS, OR ACTIVITIES THAT ARE NOT ALLOWED**~~

~~**46-024.01** While in the facility, the owner or body artists must not engage in or allow any other person, to engage in any of the following activities:~~

- ~~1. Consuming food or beverages in any area where body art is performed, except that clients may be allowed to consume food or non-intoxicating drinks.~~
- ~~2. Storing food in the same area where chemical supplies are used or stored.~~
- ~~3. Using, consuming, serving, or in any manner possessing or distributing intoxicating beverages or controlled substances upon its premises during the hours the facility is open to the public and/or any procedures are being performed.~~
- ~~4. Performing body art when s/he is 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.~~

~~**46-024.02** The owner and body artist must not bring or permit animals, including pets, in the facility except for the following:~~

- ~~1. Animals used as guides for visually impaired or hearing impaired persons, or service dogs for physically disabled; or~~
- ~~2. Fish in covered aquariums.~~

~~**46-025 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.~~

Effective Date  
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~~172-NAC-46~~

- ~~1. The person providing the body art service must retain a copy of the consent for 5 years.~~
- ~~2. The body artists retains the right to refuse body art procedures to a person under 18 years of age.~~

~~46-026 COMPLIANCE: The owner must ensure that each licensee present in the facility understands his/her personal responsibility to observe these rules of sanitation and safety at all times that the facility is open for business to the public and must ensure procedures are in place to ensure the prevention of cross-contamination.~~

~~46-027 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 the Attorney General: March 11, 2005~~

~~Approved by the Governor: March 28, 2005~~

~~Filed with the Secretary of State: March 28, 2005~~

~~Effective Date: \_\_\_\_\_~~ **April 2, 2005**