

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE
CHAPTER 45 BODY ART FACILITIES

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Effective Date
04-02-05

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

172 NAC 45

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 31st 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 31st 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.

Effective Date
04-02-05

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

172 NAC 45

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
Approved by the Governor:	March 28, 2005
Effective Date:	April 2, 2005