

## TITLE 11

## DEPARTMENT OF HEALTH

## CHAPTER 17

## TATTOO ARTIST

§11-17-1	Scope of rules
§11-17-2	Definitions
§11-17-3	Permit for tattoo shop; fee
§11-17-4	License for tattoo artist; fee
§11-17-5	Revocation or suspension of license or permit
§11-17-6	Sanitation requirements for a tattoo shop
§11-17-7	Restrictions
§11-17-8	Equipment
§11-17-9	Dyes
§11-17-10	Aseptic technique
§11-17-11	Minimum operating standards
§11-17-12	Records
§11-17-13	Penalty
§11-17-14	Severability

Historical Note: Chapter 17 of Title 11, Administrative Rules, is based substantially on Public Health Regulations Chapter 26, Tattoo Artist, Department of Health, State of Hawaii. [Eff. 9/23/49, am 1/31/58, am 6/29/64; R SEP 18 1981]

§11-17-1 Scope of rules. This chapter sets forth minimum requirements for the safety and protection of public health. When standards, ordinances, or rules are established by other divisions or subdivision of government, the more stringent state or county rules shall apply. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-2 Definitions. As used in these rules:

“Adequate,” “approved,” and “proper,” mean the procedure is acceptable to the director based on the determination as to its conformity with aseptic techniques.

“Aseptic technique” means the practice which prevent and hinder the transmission of disease producing micro-organisms from one person or place to another person or place.

“Department” means the department of health of the State of Hawaii.

“Director” means the director of the department of health or a duly authorized agent or representative.

“License” means a license issued to a tattoo artist under this chapter.

“Permit” means a permit issued to a tattoo shop under this chapter.

“Single-service” means articles intended for one-time, one person use and then discarded.

“Tattoo artist” means one who engages in tattooing.

“Tattoo shop” means any premises where a tattoo artist does tattooing for a fee or for other consideration.

“Tattooing” means to mark or to color the skin by pricking and introducing subcutaneously, non-toxic dyes, pigments, or by the production of scars to form indelible marks and figures. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-3 Permit for tattoo shop; fee. (a) No person, partnership, firm, or corporation shall operate a tattoo shop unless such person, partnership, firm, or corporation has registered such shop with the department and has been issued a permit. No permit shall be issued or renewed unless the shop has been inspected by the director and found to be in compliance with the requirements of this chapter.

(b) The permit shall be non-transferable. A valid permit shall be posted in a conspicuous place in every tattoo shop.

(c) Each application under this section shall be accompanied by a fee of \$75 for a permit. For renewal of a permit, each applicant shall pay a fee of \$7.50.

(d) In the event of withdrawal of an application or failure to qualify for a permit, the fee shall not be refunded to the applicant.

(e) All permits shall expire on January 31 of each year. Application for the renewal of a permit shall be submitted to the department in writing before January 31 of each year. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-11, 321-13) (Imp: HRS §§321-11, 321-13)

§11-17-4 License for tattoo artist; fee. (a) No person shall practice the art of tattoo unless the person holds a valid tattoo license issued by the department. A physician licensed to practice medicine in the State is exempt from this chapter.

(b) Any person desiring to engage in tattooing shall apply in writing to the director on the form provided by the department for this purpose. Any applicant who has not previously been issued a license by the director shall be required to pass a written examination before a license may be issued. The applicant shall be required to show by examination a knowledge of the provisions of this chapter including knowledge of bacteriology and aseptic techniques to assure that infection and contagious disease shall not be transmitted by tattoo practices.

(c) No license shall be issued or renewed unless the applicant has undergone a physical examination using report forms provided by the department. The examination shall include a chest x-ray or tuberculin skin test, and a blood test for syphilis. The physical examination record shall be kept on file in the tattoo shop by the permit holder.

(d) Each applicant shall pay an examination fee of \$75 for the initial license. For renewals of this license, the applicant shall pay a fee of \$7.50.

(e) In the event the applicant fails to qualify for a license or for renewal, that fee shall not be refunded to the applicant.

(f) All licenses shall expire on January 31 of each year. All applications for renewal of a license shall be submitted on the form provided by the department in writing before January 31 of each year. Delinquency shall be provided for in §321-15, HRS. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §§321-14, 321-15)

§11-17-5 Revocation or suspension of license or permit. (a) After due notice and hearing the director may suspend or revoke any license or permit issued under this chapter for violation of the provisions of this chapter.

(b) All revocation and suspension action shall not become effective nor final until an opportunity for a hearing has been offered the license or permit holder. All hearings shall comply with chapter 91, HRS and the department of health rules of practice and procedures. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-6 Sanitation requirements for a tattoo shop. A tattoo shop shall comply with the following requirements in order to qualify for an operating permit:

- (1) The owner or operator of a tattoo shop shall locate and construct the shop in areas least subjected to dust contamination.
- (2) The shop shall be maintained in a sanitary condition by the owner or operator.
- (3) The walls and ceilings shall be easily cleanable, smooth, and light colored. All walls and ceilings shall be kept clean and in good repairs.
- (4) All floors shall be of smooth non-absorbent materials and constructed so as to be easily cleanable. All floors shall be kept clean and in good repair.
- (5) Adequate light and ventilation shall be provided.
- (6) Each tattoo shop shall be provided with a sink for the exclusive use of the tattoo artist for hand washing and preparing the customers for tattooing. The sink shall be provided with adequate hot and cold running water under pressure with mixing valve or combination faucet. There shall also be available at the sink approved soap, clean single use towels, and refuse containers.
- (7) Water closet and hand basin shall be available on the premises for use by customers and tattoo artists. The plumbing fixtures and toilet room shall be maintained in a sanitary condition and in good repair.
- (8) Each tattoo artist shall be provided with an adequate work table and storage cabinets. The surface of all work tables shall be constructed of metal or other material which is smooth, light colored, non-absorbent, corrosive-resistant, and easily cleaned.
- (9) The work tables shall be located at least ten feet from observers and waiting customers or shall be separated with a panel or other barrier which shall be at least six feet high. The panel may be constructed with glass, solid plastic, or similar material.
- (10) Approved closed cabinets for the exclusive storage of instruments, dyes, pigments, carbon, stencils, and other paraphernalia used in the shop shall be provided for each tattoo artist.

- (11) The tattoo shop shall have covered receptacles for the disposal of waste materials.
- (12) Each tattoo artist shall have a hand brush and fingernail file which shall be cleaned and disinfected after each use.
- (13) "No smoking" signs shall be posted in the tattooing area.
- (14) Only tattooing shall be permitted in a tattoo shop. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-7 Restrictions. (a) It shall be unlawful to tattoo any person who is under the influence of intoxicating substances. These substances include but shall not be limited to alcohol, drugs, paints, and glues.

(b) It shall be unlawful to tattoo any person under the age of eighteen years without the written consent of the parents or legal guardian. All written consent shall be kept on file in the tattoo shop.

(c) No person with any disease in a communicable form or suspected of having such disease shall engage in tattooing. Such diseases may include but shall not be limited to the common cold, influenza, tuberculosis, scabies, impetigo, syphilis, chickenpox, measles (rubella), German measles (rubella), mumps, whooping cough, hepatitis, infection on hands or arms, sore throat or jaundice. The director may require a certificate signed by a duly licensed physician stating that the tattoo artist is free from communicable disease before returning to work. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-8 Equipment. Not less than twenty-four sets of sterilized needles and tubes or tips shall be on hand for the entire day or night operation. Sterilization shall be done by one of the following methods:

- (1) By holding in an autoclave for fifteen minutes at fifteen pounds pressure.
- (2) By immersion in an approved germicidal solution for an approved period of time. No rusty, dull, or faulty needles shall be used for tattooing.
- (3) Any other method approved by the director. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-9 Dyes. All dyes or pigments used in tattooing shall be from batches certified under the provisions of chapter 328, HRS. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-10 Aseptic technique. (a) Before working on a customer the tattoo artists shall cleanse their hands in the following manner:

- (1) Thoroughly scrub hands and fingernails with soap and a hand brush;
- (2) Rinse hands under warm running water;
- (3) Rinse hands in an approved antiseptic solution such as seventy per cent alcohol; and

- (4) Hands may be dried with clean single use towels or other approved hand drying device;
- (b) The area of the customer's skin to be tattooed shall be prepared by:
  - (1) Washing with warm water and approved soap. A sterile handbrush shall be used to produce a clean skin area;
  - (2) Shaving shall be done with a sterile razor blade; and
  - (3) The shaved area shall be thoroughly cleansed with warm water and approved soap.
- (c) Before placing the design on the customer's skin, the tattoo artist shall treat the skin area with seventy per cent alcohol or other approved germicidal solution which shall be applied with sterile cotton or sterile gauze.
- (d) Only petroleum jelly shall be applied to the area to be tattooed and it shall be in collapsible metal or plastic tubes. The application may be spread by the use of sterile gauze but not directly with the fingers.
- (e) The stencil for transferring the design to the skin shall be thoroughly cleansed and rinsed in an approved germicidal solution and dried with sterile gauze.
- (f) Single-service or individual portion of dyes or pigments in sterilized containers or single-service containers shall be used for each customer. After tattooing, the remaining unused dye or pigments in the single-service or individual containers shall be discarded.
- (g) As the tattoo operation progresses, any excess dye or pigment applied to the skin shall be removed with sterile material.
- (h) The completed tattoo shall be washed with a piece of sterile material saturated with an approved germicidal solution. Antibiotic ointment registered under United States Pharmacopoeia or National Formulary shall be applied from a collapsible metal or plastic tube and the entire area covered with a piece of sterile dressing, which may in turn be covered with a piece of tissue, and fasten to the site with an approved type of adhesive.
- (i) Immediately after tattooing, the tattoo artist shall advise the customer on the care of the tattoo and instruct the customer to consult a physician at the first sign of infection. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-11 Minimum operating standards. (a) The tattoo artist shall use standards of aseptic technique in tattooing, dressing, and other operations that are approved by the director.

- (b) The tattoo artist shall use only supplies and equipment approved by the director.
- (c) The minimum standards of §11-17-7 through §11-17-11 shall be observed at all times. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-12 Records. (a) The permit holder shall maintain proper records of each customer. The records shall include the following information:

- (1) The date when the tattoo was applied.
- (2) The name, address and age of the customer.

- (3) The branch of service, rate or rank, and serial number of the customer if in the armed forces.
- (4) The design and location of the tattoo.
- (5) The name of the tattoo artist.
- (6) The signature of the customer.
- (b) The information required in subsection (a) shall be permanently recorded, in ink or indelible pencil, in a bound book kept solely for this purpose. This book shall be available at reasonable hours for examination by the director and shall be kept in the tattoo shop for two years from the date of last entry.
- (c) Written consents for persons under eighteen years of age shall be kept on file for two years in the tattoo shop. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

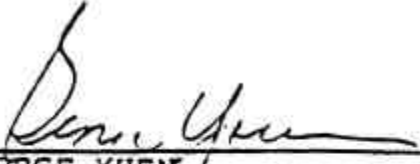
§11-17-13 Penalty. (a) Any person who shall knowingly or wilfully make any false statement to the department relative to any matter under this chapter or who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500 or imprisonment for not more than one year or both.

(b) Any person convicted under this section shall have the license and permit suspended for one year. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-18)


§11-17-14 Severability. Should any section, paragraph, sentence, clause, phrase or application of this chapter be declared unconstitutional or invalid for any reason, the remainder or any other application of this chapter shall not be affected. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

The Department of Health authorized the repeal of Chapter 26, Public Health Regulations and the adoption of Chapter 17 of Title 11, Administrative Rules on AUG 27 1981 following public hearing held on Maui on July 13, 1981, on Hawaii on July 14, 1981, on Oahu on July 15, 1981, on Kauai on July 20, 1981 after public notice was given in the Maui News on June 22, 1981, in the Hawaii Tribune-Herald on June 22, 1981, in the Honolulu Star-Bulletin on June 22, 1981, and in the Garden Isle on June 22, 1981.

Chapter 17 of Title 11, Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
GEORGE YUEN  
Director AUG 27 1981  
Department of Health

APPROVED:

  
GEORGE R. ARIYOSHI  
GOVERNOR  
STATE OF HAWAII  
Dated: 9-3-81

APPROVED AS TO FORM:

  
Deputy Attorney General

Filed: SEP 8 1981

Effective Date: SEP. 1, 1981

## **[PART XXX.] TATTOO ARTISTS**

### **Revision Note**

In this part, "part" substituted for "chapter".

### **Cross References**

Sunset evaluations modified, see §§26H-4, 5.

**[§321-371] Purpose.** The purpose of this part is the protection of public health and safety through the licensing and regulation of tattoo artists. [L 1990, c 285, pt of §2]

**§321-372 Definitions.** As used in this part:

"Department" means the department of health.

"Director" means the director of health.

"Tattoo artist" means any person who creates indelible marks or decorative designs by introducing pigments beneath the surface of the skin, resulting in permanent or semi-permanent markings, with the aid of needles, electric machines, hand tools, or other devices or means. [L 1990, c 285, pt of §2; am L 2009, c 130, §2]

**§321-373 Regulation of tattoo artists.** The department shall adopt rules under chapter 91 to implement this part. The rules shall include but not be limited to:

- (1) Prohibiting the use of injections, unless administered by a physician or osteopathic physician licensed under chapter 453, or by a registered nurse licensed under chapter 457;
- (2) Appropriate restrictions on topical anesthetics;
- (3) Prescribing procedures and conditions for sterilization, storage of sterilized equipment, resterilization, and disposal of discarded needles and other equipment;
- (4) Creating examination standards; and
- (5) Fixing penalties and fines for violations of this part or any of the rules adopted by the department. [L 1990, c 285, pt of §2; am L 1996, c 202, §6; am L 2009, c 11, §35 and c 130, §3]

### **Note**

The L 2009, c 11 amendment is retroactive to April 3, 2008. L 2009, c 11, §76(2).



**[\$321-373.5] Permit; required for tattoo shop and temporary locations.** (a) No person, partnership, firm, corporation, or other legal entity shall operate a tattoo shop or temporary location without a permit pursuant to department rules.

(b) Each initial permit application under this section shall be accompanied by a fee of \$125 for a permit valid for one year. For renewal of a permit, each applicant shall pay a fee of \$75 per year. Initial permit application and renewal fees may be increased by not more than \$10 per year.

(c) All permits shall expire on December 31 of each year. The application for a permit renewal shall be submitted to the department in writing on or before December 31 annually.

(d) The department may issue a temporary permit valid for a maximum of seven consecutive days per calendar year for locations other than a permitted tattoo shop for the purpose of a trade show, product demonstration, or educational demonstration; provided that the show or demonstration shall meet all safety and hygiene standards as specified by the director and in this chapter. The temporary permit application shall be made in writing to the department at least sixty days prior to the scheduled event, shall include specific measures to meet specified health and safety standards, and may be subject to a site inspection. Temporary permit applicants shall pay a \$50 nonrefundable application fee in addition to:

- (1) A \$500 nonrefundable permit fee for an event featuring not more than forty participating tattoo artists; or
- (2) A \$50 nonrefundable permit fee for an event featuring less than three participating tattoo artists demonstrating for educational purposes only, without compensation, consideration, or donation by the public;

provided that the department may annually increase the fees specified in paragraphs (1) and (2) by not more than \$100 and \$10 per year, respectively. [L 2009, c 130, §1]

**§321-374 License required; exemptions.** (a) Except as otherwise provided by law, no person shall practice the occupation of tattoo artist in this State, with or without compensation, consideration, or donation, or shall announce oneself either publicly or privately as prepared or

qualified to practice that occupation without having a valid unrevoked license from the department to do so.

(b) Physicians or osteopathic physicians holding a valid unrevoked license under chapter 453 are exempt from the requirements of this part.

(c) The department may issue, to tattoo artists who are not licensed in the State, temporary licenses that are valid for a maximum of fourteen consecutive days per calendar year for:

- (1) Educational, trade show, or product demonstration purposes; or
- (2) The purpose of practicing the occupation of tattoo artist at a permitted tattoo location.

Temporary licensees shall be subject to this part and applicable rules.

(d) Applications for temporary licenses shall be made in writing to the department at least sixty days prior to the proposed event and accompanied by a nonrefundable application fee of \$100 and written proof satisfying the requirements under subsection (e). An applicant shall be notified of the disposition of the application within twenty business days of the receipt of application.

(e) An applicant for a temporary license shall have either:

- (1) Passed a blood borne pathogen course developed specifically for the tattoo industry, approved by the director, within two years of the date of application; or
- (2) Passed the state tattoo artist written examination within two years of the date of the application.

(f) Temporary license fees may be increased annually by not more than \$10.

(g) Licensed tattoo artists shall tattoo only in a shop or temporary location that has a valid unrevoked permit issued by the director. [L 1990, c 285, pt of §2; am L 1996, c 202, §7; am L 2009, c 11, §36 and c 130, §4]

#### **Note**

The L 2009, c 11, §36 amendment is retroactive to April 3, 2008. L 2009, c 11, §76(2).

**§321-375 Examination, fees required.** (a) No license shall be issued unless the applicant takes an examination as prescribed by the director and receives a passing score or meets the criteria specified in section 321-374(e). No

license shall be issued unless all fees required by the director have been paid.

(b) The department may contract with a professional testing service to prepare, administer, and grade the examination for licensure as a tattoo artist. For these purposes, the department may require applicants to pay the examination fee directly to the testing service. [L 1990, c 285, pt of §2; am L 2009, c 130, §5]

**§321-376 REPEALED.** L 2009, c 130, §8.

#### **Note**

L 2009, c 11, §37 purports to amend this section.

**§321-377 Suspension or revocation of permit or license.** (a) The director may revoke or suspend the permit or license of any person permitted or licensed under this part who:

- (1) Is found guilty of any fraud, deceit, or misconduct in the practice of the occupation of tattoo artist; or
- (2) Violates this part or any of the rules adopted by the department.

(b) In every case where it is proposed to revoke or suspend a permit or license, the director shall give the permittee or licensee concerned notice and a hearing. The notice shall be given in writing by registered or certified mail, with return receipt requested, at least fifteen days before the hearing. All hearings shall be conducted pursuant to chapter 91. [L 1990, c 285, pt of §2; am L 2002, c 34, §1; am L 2009, c 130, §6]

**§321-378 REPEALED.** L 2009, c 130, §9.

**§321-379 Enforcement; penalties.** (a) If the department determines that any person has violated or is violating any provision of this part, any rule adopted pursuant to this part, or any term or condition of a permit or license issued pursuant to this part, the department may take enforcement action and impose penalties as provided in section 321-20, except that the department may impose a penalty not to exceed \$10,000 per offense.

(b) Violations of this part include but are not limited to:

- (1) Submitting to or filing with the department any application, notice, statement, or other document

in procuring or attempting to procure licensure as a tattoo artist that is false or untrue or contains any material misstatement of fact, or assisting another party in doing so;

- (2) Using the title licensed tattoo artist or any other designation tending to imply that the person is a licensed tattoo artist when the person is not in fact licensed or the person's license has been suspended or revoked;
- (3) Violating the conditions or limitations of a permit or a license or assisting another party in violating those conditions;
- (4) Engaging in conduct resulting in physical injury to an individual or the public in the course of professional services or activities;
- (5) Aiding or abetting an unlicensed person, knowingly combining or conspiring with an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as agent or associate of an unlicensed person to evade the use of title restrictions of this part;
- (6) Tattooing any person under the age of eighteen without the written consent of the person's parent or legal guardian or not maintaining the consent forms in a confidential manner at the tattoo shop for not less than two years; or
- (7) Making a false or misleading statement to the department relating to any matter under this part.

(c) An enforcement action under this section may be combined with a permit or license revocation or suspension under section 321-377 and may be brought together as one administrative action.

(d) In any proceeding under this section, the person subject to the proceeding shall be given notice and the opportunity for a hearing in conformity with chapter 91. [L 1990, c 285, pt of §2; am L 2009, c 130, §7]

**§321-380 REPEALED.** L 2009, c 130, §10.

**[§321-381] Biennial renewal; failure to renew.** The biennial renewal fee shall be paid to the department of health on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee on or before such date shall constitute a forfeiture of the license. [L 1990, c 285, pt of §2]

**[\$321-382] Fees.** The director may establish fees by rules pursuant to chapter 91. [L 1990, c 285, pt of §2]

**§321-383 REPEALED.** L 2009, c 13, §11.