

Salt Lake Valley Health Department

Health Regulation

#19

**BODY ART FACILITIES
REGULATION**

**Adopted by the Salt Lake Valley Board of Health
September 2, 1982**

**Revised
November 2, 2006**

**Under Authority of Section 26A-1-114
Utah Code Annotated, 1953, as amended**

1. PURPOSE & APPLICABILITY OF REGULATION

- 1.1. The purpose of this regulation is to set forth permitting procedures and requirements for the maintenance and operation of body art facilities that will protect and promote the public health, safety, and welfare, and prevent the spread of disease.
- 1.2. This regulation applies to individuals performing or receiving body art procedures. This regulation shall not apply to physicians licensed by the State of Utah using body art procedures in the practice of medicine. This regulation shall also not apply to individuals who pierce only the lobe of the ear with a pre-sterilized single-use stud-and-clasp ear-piercing system. Individuals who use ear-piercing systems must conform to the manufacturers' directions on use and applicable U.S. Food and Drug Administration requirements. The Department retains authority to investigate consumer complaints relating to alleged misuse or improper disinfection of ear-piercing systems.

2. DEFINITIONS

For the purpose of this regulation the following terms, phrases and words shall have the meaning herein expressed.

- 2.1. "Aftercare instruction" shall mean written instruction given to the patron about caring for the body art and surrounding area. Aftercare instruction shall be specific as to the procedure rendered and shall inform the patron regarding normal healing after a body art procedure and shall not discourage the patron from consulting a physician when the body art is healing abnormally.
- 2.2. "Antiseptic" shall mean an agent that destroys or inhibits disease-causing micro-organisms on human skin or mucosa.
- 2.3. "Board of Health" shall mean the Salt Lake Valley Board of Health.
- 2.4. "Body Art" shall mean the practice of physical body adornment using, but not limited to the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification. This definition does not include practices that are considered medical procedures by a state medical board and which are not performed in a body art facility.
- 2.5. "Body art facility" shall mean any place or premises, whether public or private, temporary or permanent, where body art is performed.
- 2.6. "Body art equipment" shall mean all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in connection with the operation of a body art facility.

- 2.7. "Body piercing" shall mean puncturing or penetrating the skin of a person and inserting jewelry or other adornment in the opening. Body piercing does not include the practice of ear piercing as defined in subsection 2.10.
- 2.8. "Department" shall mean the Salt Lake Valley Health Department (SLVHD).
- 2.9. "Director" shall mean the Director of the Salt Lake Valley Health Department or his or her designated representative.
- 2.10. "Ear piercing" shall mean the puncturing of the lobe of the ear with a pre-sterilized single-use stud-and-clasp ear-piercing system following the manufacturer's instructions.
- 2.11. "Patron forms" shall mean documents which operators are required to provide to patrons prior to a body art procedure.
- 2.12. "Infectious Waste" shall mean any liquid or semi-liquid blood or other potentially contaminated materials, contaminated items that would release blood, or other potentially infectious material in a liquid or semi-liquid state if compressed. Items that are caked with dried blood or other potentially infectious materials capable of releasing these materials during handling, including sharps and any other wastes containing blood and other potentially infectious materials as defined in 29 C.F.R. 1910.1030 (latest edition), known as Occupational Exposure of Bloodborne Pathogens.
- 2.13. "Nuisance" shall mean an act or condition created by a person who unlawfully commits or omits to perform any duty, which either:
- 2.13.1. seriously injures or endangers the comfort, repose, health or safety of any person,
or
 - 2.13.2. seriously renders a person insecure in life or the use of property.
- 2.14. "Operator" shall mean a person who leases or manages a body art facility or any employee or person who performs body art.
- 2.15. "Owner" shall mean any person who alone or jointly or severally with others:
- 2.15.1. has legal title to any body art facility with or without accompanying actual possession thereof; or
 - 2.15.2. has charge, care, or control of any body art facility as legal or equitable owner, lessee, or is an executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner.
- 2.16. "Patron" shall mean any person who receives a body art procedure in a body art facility.

- 2.17. "Permit" shall mean a written form of authorization in accordance with part 4.1.1 of this regulation.
- 2.18. "Person" shall mean any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institution, bureau, agency, county, city, political subdivision, or any legal entity recognized by law.
- 2.19. "Personal service station" shall mean a booth, table, or chair in which a body art procedure is provided.
- 2.20. "Sterilization" shall mean the destruction of all living organisms including viruses and spores.
- 2.21. "Tattoo" shall mean a mark or design made on or under the skin by a process of pricking or ingraining an indelible pigment, dye or ink into the skin. This term includes all forms of cosmetic tattooing.
- 2.22. "Temporary Body Art Facility" shall mean a location, place, area, structure, or business where either as a sole service or in conjunction with other services, body art is performed for seven days or less.
- 2.23. "Universal precautions" shall mean a set of guidelines and controls published by the Centers for Disease Control and Prevention (CDC) as "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers" in *Morbidity and Mortality Weekly Report (MMWR)*, June 23, 1989, Vol.38, No. S-6, and as "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures," in *MMWR*, July 12, 1991, Vol.40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand-washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated items.

3. GENERAL PROVISIONS

3.1. Jurisdiction of the Department.

- 3.1.1. This regulation is promulgated by the Salt Lake Valley Board of Health as authorized by Section 26A-1-121(1), Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.
- 3.1.2. The Department is empowered to enforce this regulation as authorized by Section 26A-1-114(1)(a), in all incorporated and unincorporated areas served by the

Department, Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.

- 3.2. It shall be unlawful for any person not to comply with any regulation promulgated by the Department unless granted an express variance by the Salt Lake Valley Board of Health.
- 3.3. Compliance with this regulation does not constitute a defense if charged with any environmental crime or violation of any local, state, or federal law.
- 3.4. Legal action taken by the Department under this Regulation does not preclude prosecution for any environmental crime that may have been committed or violation of any other local, state, or federal law.
- 3.5. Nothing in this regulation affects or modifies in any way the obligations or liability of any person under any other regulation or provision thereof issued by the Department, any ordinance issued by Salt Lake County or any municipality located within Salt Lake County, or any state or federally issued law, including common law. However, Departmental regulations supersede other existing local and county standards, regulations and ordinances pertaining to similar subject matter that are inconsistent.
- 3.6. Verbal or contractual obligations shall not diminish or remove the owner's or other responsible person's obligation to comply with this regulation.
- 3.7. **Severance.** If any section, subsection, sentence, clause, or phrase of this regulation is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this regulation.

4. BODY ART PROVISIONS

4.1. Permits and Plan Review.

4.1.1. Department Approval and Permits Required.

- (i) No person shall operate a body art facility without written approval and a corresponding valid Body Art Facility permit from the Department.
- (ii) Notwithstanding subpart (i) above, a person may operate a Temporary Body Art Facility upon obtaining a valid Temporary Body Art Facility Permit from the Department.

4.1.2. Permit Application, Duration, and Renewal.

- (i) Application for a Permit required in part 4.1.1 shall be made upon a form provided by the Department.

- (ii) Application for a Permit required in part 4.1.1 shall be made prior to commencement of operation of the Facility.
- (iii) **Permit Duration and Renewal.** The Body Art Facility Permit shall be issued annually and shall be valid for one year from date of issuance. It is the responsibility of the owner or operator of the Body Art Facility to pursue permit renewal through appropriate channels. The Permit shall be renewable within 60 calendar days prior to the expiration date. A Temporary Body Art Facility Permit shall be valid for seven consecutive days beginning with the date written on the permit.

4.1.3. **Body Art Facility Plan Review.** A Body Art Facility permit applicant or Body Art Permit holder shall be required to submit to the Department prior to the start of construction or remodeling properly prepared plans and specifications for review and approval before:

- (i) The construction of a Body Art Facility;
- (ii) The conversion of an existing structure for use as a Body Art Facility; or
- (iii) The remodeling of a Body Art Facility if the Department determines that plans and specifications are necessary to ensure compliance with this Regulation.

4.2. **Construction and Operation Requirements for Body Art Facilities.** Unless otherwise ordered or approved by the Department, each Body Art Facility shall be constructed, operated, and maintained to meet the following minimum requirements:

4.2.1. **Physical facilities.**

- (i) Walls, floors, tables, counters, chairs, and other surfaces where personal service stations are located shall be constructed of an impervious, smooth, and easily cleanable material.
- (ii) A body art facility shall have a minimum of 45 square feet of floor space for each operator.
- (iii) An operator shall be able to screen a personal service station from other persons.
- (iv) A body art facility shall have a waste container which is constructed of heavy-grade plastic or metal, covered, and foot-pedal operated.
- (v) A body art facility located in a dwelling shall be located in a room which is used exclusively for body art procedures. Ingress and egress to the body

art facility shall be solely through a separate entrance from the outside which is not used to access other rooms in the dwelling.

- (vi) A body art facility shall have a lavatory accessible exclusively to patrons and facility employees. The lavatory shall have a toilet and a handwashing sink with hot and cold water, liquid hand soap, and single-use towels. Body art equipment shall not be washed in the lavatory. The floors and walls in the lavatory must be constructed of smooth, non-absorbent materials.
- (vii) A body art facility shall have a sink with hot and cold water for washing contaminated body art equipment.
- (viii) A body art facility shall be well-ventilated and provided with an artificial light source equivalent to at least 20 foot candles three feet off the floor, except that at least 50 foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are handled.
- (ix) A body art facility shall be equipped with a first aid kit which is adequately stocked and sufficiently maintained.
- (x) The personal service station shall be separated from waiting customers or observers by a wall or panel at least four feet high.
- (xi) A physical barrier shall be placed around the ultrasonic and instrument wash sink to prevent contamination from spreading to the body art procedure area.

4.2.2. **Cleaning and Maintenance.** Walls, floors, tables, counters, chairs, and other surfaces in the body art procedure area shall be kept clean, disinfected, and in good repair.

- (i) Each body art facility shall have an adequate supply of clean towels and linens which shall be laundered after each use. All clean towels and linens shall be stored in a closed cabinet.
- (ii) Floors shall be mopped daily with an U.S. Environmental Protection Agency (“EPA”) registered disinfectant.
- (iii) The operator shall clean and disinfect the tables, counters, chairs, and other surfaces after each use regardless of whether contamination is visible. Disinfection shall be carried out using an EPA registered disinfectant and in accordance with the EPA approved label.

- (iv) Upon use in a body art procedure, the operator shall remove all visible blood and tissue from non-disposable instruments by scrubbing the instruments with hot water and an appropriate soap or detergent solution or by following the instrument manufacturer's instructions on removal of blood and tissue residue.
- (v) Once visible blood and tissue residue is removed, all non-disposable instruments shall be placed in an ultrasonic which is operated for a cycle in accordance with manufacturer's instructions. The ultrasonic shall have a solid tight-fitting lid, which must be left on for at least five minutes after any cycle.
- (vi) Upon removal from the ultrasonic, all non-disposable instruments used for body art shall be rinsed, dried, and packed individually in peel-packs and subsequently sterilized in an autoclave or dry-heat sterilizer (if approved by the Department). All peel-packs shall contain either a sterilizer indicator or internal temperature indicator. Peel packs must be dated with an expiration date not to exceed six months from date of sterilization.
- (vii) The autoclave or dry-heat sterilizer shall be used, cleaned, and maintained according to manufacturers' instructions. A copy of the manufacturers' recommended procedures for the operation of the sterilization unit must be available for inspection by the Department. Sterilized equipment may not be used if the package has been breached or after the expiration date without first repackaging and re-sterilizing. Autoclaves and dry-heat sterilizers shall be located away from personal service stations or areas frequented by the public. If the body art facility uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave or dry-heat sterilizer shall not be required.
- (viii) Prior to use in a body art procedure, the following single-use materials shall be sterilized in an autoclave or dry-heat sanitizer according to the requirements of subparts 4.2.2 (vi) and (vii): piercing needles, corks, rubber bands, cotton swabs, toothpicks, and gauze.
- (ix) The autoclave and dry-heat sterilizer must be tested monthly with a spore-destruction test or other test approved by the Director. These tests shall be verified through an independent laboratory, and the records shall be retained by the operator for a period of four (4) years and made available to the Department upon request.
- (x) Infectious waste shall be handled, stored, transported, and disposed in accordance with 29 C.F.R. Part 1910.1030 and Health Department Regulation #1, Solid Waste Management Facilities.

- (xi) The owner shall ensure that the body art facility has a bloodborne pathogen spill response plan which applies universal precautions as defined in section 2 of this regulation.

4.2.3. Equipment and Instruments.

- (i) All absorbent products used for drying the skin after disinfecting or scrubbing the skin prior to tattooing or during application of dyes or inks shall be sanitary single-service products and discarded immediately after use into a covered waste container.
- (ii) All instruments and supplies shall be stored in clean, dry, containers.
- (iii) All instruments used for body art shall remain stored in sterile packages until just prior to the performance of a body art procedure. When assembling instruments used for body art procedures, the operator shall wear single-use medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.
- (iv) All inks, dyes, pigments, needles and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturers' instructions. Immediately before a tattoo is applied the dye to be used shall be transferred from the dye bottle and placed into single-use containers. Upon completion of the tattoo, used single-use containers and their contents shall be discarded.
- (v) Only sterile pigments, dyes, or inks shall be used in a body art facility.
- (vi) Only implant certified titanium (ASTM F-136), niobium (except matte finish black), solid 14K or 18K white or yellow gold, platinum, PTFE, or Tygon shall be used in new piercings.
- (vii) Gold filled, rolled, or plated jewelry, silver, stainless steel of the 302, 306, or 400 series, and aluminum materials may not be used as body or ear piercings.
- (viii) Piercing needles thinner than 20 gauge or thicker than 6 gauge shall not be used on new piercings.
- (ix) Acetate stencils may be allowed for reuse if sanitization procedures are performed between uses. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the skin with sterile gauze or in a manner to prevent contamination of the original container and its contents.

4.2.4. Operators and Personnel.

- (i) An operator shall be able to demonstrate to the Department that he or she has sufficient knowledge to properly conduct a sanitary body art procedure. A demonstration may include performing a mock tattoo or other body art procedure on a Department representative by carrying out all preparatory procedures but not penetrating the skin.
- (ii) Operators shall maintain a high degree of personal cleanliness and conform to proper hygienic practices while working in a body art facility.
- (iii) Neither the operator nor patron shall be under the influence of drugs, alcohol, or other intoxicating substances during the body art procedure.
- (iv) Operators shall wash their hands thoroughly with liquid hand soap and hot water up to mid-forearm for a minimum of 20 seconds before and after administering body art on each patron. Hands shall be dried with individual, single-use towels or other method approved by the Director.
- (v) No operator shall administer body art if they have a contagious disease.
- (vi) The Director may require medical testing or examinations if a contagious or communicable disease is suspected.
- (vii) Operators shall not perform body art if they have open wounds, cuts, sores, burns, or other skin abnormalities on the hand, or any portion of their body that under normal procedures may come into contact with patron's skin.
- (viii) If the Director has reasonable suspicion of an infection arising out of a body art procedure, he shall make an investigation or examination as appropriate and take action as needed. In addition to other legal remedies, such action may include revocation of the facility permit.
- (ix) The operator shall not eat, drink, or use tobacco in any form while engaged in body art procedures, while sterilizing or handling body art equipment or while in the body art area.
- (x) The owner(s) or operator(s) of a body art facility shall notify the Department of any change in the facility's name, ownership, address or telephone number.

4.2.5. Patron Forms and Records

- (i) **Reports.** A written report of any infection, complication, or disease resulting from any body art procedure shall be forwarded to the

Department within 24 hours of the owner or operator becoming aware of its occurrence. The report shall include:

- a. The name and address of the affected individual;
 - b. The name and location of the body art facility involved;
 - c. The nature of the injury; and
 - d. Any other information considered relevant to the situation.
- (ii) **Patron forms.** Each operator shall require each patron to complete a patron form.
- (iii) Completed patron forms shall contain the following information:
- a. The patron's date of birth as verified from a valid, government issued photo identification;
 - b. Whether the patron has any known allergies to latex, iodine, or other products routinely used in a body art procedure;
 - c. Whether the patron has ingested blood thinners such as aspirin or ibuprofen within 24 hours prior to receiving a body art procedure;
 - d. Whether the patron has consumed alcohol or other intoxicants within 24 hours prior to receiving a body art procedure;
 - e. Whether the patron has a condition that might affect the procedure or healing process such as lupus, diabetes, or hemophilia; and
 - f. Whether the patron has eaten within two hours prior to receiving a body art procedure.
- (iv) The patron form shall inform the patron of risks associated with body art procedures such as the risk of fainting, vomiting, and infection including bacterial endocarditis for patrons with a heart condition.
- (v) Each completed patron form shall be signed by the patron and legal guardian if patron is a minor.
- (vi) Body art facility operators shall retain patron forms for a period of at least four years and shall make the patron forms available to the Department upon request.

4.2.6. **Body Art Procedures.**

- (i) All body art procedures shall be worked from an autoclaved tray set-up or tray liner. Trays shall be made of autoclavable plastic or stainless steel.
- (ii) An operator shall inspect each piercing needle immediately before use to ensure that there are no burrs or irregularities.
- (iii) Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where the body art procedure is to be located shall be washed with soap and water or an approved antiseptic solution.
- (iv) Prior to oral piercing, a patron shall be given a small amount of antimicrobial mouthwash in a disposable cup. The patron should be advised to rinse thoroughly for at least 30 seconds.
- (v) If shaving is necessary, single-use disposable razors or safety razors with single-service blades shall be used. Used blades shall be immediately discarded in an approved sharps container. Reusable razor holders shall be autoclaved after use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.
- (vi) The operator shall remove excess dye or ink from the skin with a sterile, single-service sponge or tissue paper that is used only once and then immediately discarded into a covered container. After completing work on any person, the operator shall wash the tattooed area with sterile gauze saturated with an antiseptic soap solution approved by the Director, or a 70% isopropyl alcohol solution.
- (vii) A tattooed area shall be allowed to dry and petroleum jelly or antibacterial ointment shall be applied, using sterile gauze. A sterile dressing shall then be fastened with adhesive to the tattooed area.
- (viii) Upon completion of a procedure, operators shall provide each patron Department-approved aftercare instructions for the care of the body art procedure site. The aftercare instructions shall contain the name, address, and phone number of the facility.
- (ix) The operator shall wear single-use medical gloves during set-up and cleaning, during disinfection and sterilization procedures, when processing contaminated instruments, when transporting sterilized instruments from the autoclave to designated storage space, and during any contact with a patron at the personal service station.
- (x) The operator shall change gloves;

- a. Before initial skin preparation and marking;
 - b. Before the body art procedure;
 - c. Before post-procedure cleanup; and
 - d. if the gloves become contaminated by contact with unclean surfaces or objects, or by contact with a third person.
- (xi) The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual patron, and hands shall be washed before the next set of gloves is donned. Under no circumstance shall a single pair of gloves be used on more than one person. The operator shall discard any gloves which become pierced or torn during the body art procedure. Used gloves shall not be washed, disinfected, or autoclaved. The use of disposable medical gloves does not preclude or substitute for hand washing procedures as part of a good personnel hygiene program.
- (xii) If, while performing a body art procedure, the operator's glove is pierced, torn, or otherwise contaminated, the gloves shall be immediately discarded, and the hands washed thoroughly before a fresh pair of gloves is donned.
- (xiii) Any item or instrument that may have been exposed to bloodborne pathogen contamination during the procedure shall be sterilized prior to use. Any item or instrument used for body art that is contaminated during the procedure shall be immediately replaced with a sterilized instrument or item before the procedure resumes.
- (xiv) All jewelry must be sterilized before use in new piercings.

4.3. Prohibited Procedures.

- 4.3.1. No body art procedure shall be conducted on skin surfaces that have a rash, pimple, boil, infection or if the patron manifests symptoms of a communicable disease.
- 4.3.2. No local or topical anesthetic or spray for the purpose of deadening the skin shall be used without the approval of the Director.
- 4.3.3. No styptic pencils, alum blocks, or other solid styptics shall be used to stop the flow of blood. Liquid or powdered astringents may be used to stop the flow of blood if applied with a clean spatula, single-use gauze, or cotton.
- 4.3.4. Ear piercing stud and clasp systems shall not be used anywhere on the body other than the lobe of the ear.

5. LICENSES, PERMITS, & REGULATORY FEES

- 5.1. The Department may establish and collect appropriate fees for licenses and permits as set out in this regulation. The Department may collect appropriate fees as set out in this regulation for the performance of services, including plan reviews. If information on a license or permit application changes, the applicant shall notify the Department in writing within 20 calendar days.
- 5.2. **Body Art Facility Permit.** The fee for each Body Art Facility Permit required in part 4.1.1 (i) of this regulation shall be paid to the Department at the time of application. It shall be based on the reasonable expenses incurred by the Department to review plans and specifications, conduct inspection, and act upon the permit application. The annual fee for a Body Art Facility Permit shall be \$100.00 plus \$5.00 for each personal service station.
- 5.3. **Temporary Body Art Facility Permit Fee.** The fee for a Temporary Body Art Facility Permit required in part 4.1.1 (ii) of this regulation shall be paid to the Department at the time of application. It shall be based upon the reasonable expenses incurred by the Department to conduct inspection(s), and act upon the permit application. The annual fee for a Temporary Body Art Facility Permit shall be \$50.00.
- 5.4. **Follow-up Inspection Fees.** The Department will charge a follow-up fee to the owner when conditions found during the inspection require an additional inspection. The fee for a follow-up inspection is \$100.00
- 5.5. **Late Fees.**
 - 5.5.1. The Department may impose upon any party subject to this regulation penalties and charges for failure to timely pay service and license or permit fees as set out in this regulation. Attorney's fees and collection fees may also be applied.
 - 5.5.2. Fees unpaid to the Health Department after 30 calendar days of the due date will be assessed a penalty of 10% of the outstanding balance. Failure to pay the fees and additional charges after 60 days of the due date will be assessed an additional penalty of 15% of the outstanding balance including previous penalties. Failure to pay the fees and additional charges after 100 days of the due date will result in suspension of the permit and the right to operate. A \$40.00 charge will be assessed for each returned check.
- 5.6. Unless otherwise provided for in this regulation or approved by the Director in the Department's Fee Standard, all fees collected by the Department are non-refundable. All licenses and permits issued by the Department are non-transferable.
- 5.7. **Denial, suspension or revocation of approval or permit.** Any permit applied for or issued pursuant to this regulation may be denied, suspended, or revoked by the Director for any of the following reasons:

- 5.7.1. Failure of the permit application, plans, or specifications to show that the body art facility will be operated or maintained in accordance with the requirement and standards of this regulation.
- 5.7.2. Submission of incorrect or false information in the permit application, reports, plans, or specifications;
- 5.7.3. Failure to construct, operate, or maintain the body art facility in accordance with the permit application, reports, plans, and specifications approved by the Director;
- 5.7.4. Operation of the body art facility in a way that causes or creates a nuisance or hazard to the public health, safety, or welfare;
- 5.7.5. Violation of this regulation or any other restrictions, required by the Director;
- 5.7.6. Violation of any condition upon which the permit was issued;
- 5.7.7. Failure to pay the permit fee or any late fee or applicable charges within 100 days of the permit fee's due date;
- 5.7.8. Failure to supply updated information as required in subsection 5.1; or
- 5.7.9. Failure of the owner or operator of a body art facility to permit or allow the Department to conduct inspections to determine compliance with these regulations.

6. INSPECTIONS & INVESTIGATIONS

6.1. To ensure compliance, the Department has the authority to perform inspections, investigations, reviews, and other actions as necessary.

6.2. Authority for Department to Enter Premises.

- 6.2.1. **Regulated Commercial Premises.** Upon presenting proper identification, authorized representatives of the Department may enter upon the premises of properties regulated by the Department to perform routine inspections to ensure compliance with rules, standards, regulations, and ordinances adopted by the Department, the Departments of Health & Environmental Quality, county or municipal governing bodies, or the division of Occupational and Professional Licensing.
- 6.2.2. **Unregulated Commercial Premises.** The Department may enter upon the premises of unregulated commercial properties upon the consent of the owner or otherwise responsible party or upon a warrant issued by a court.

6.2.3. **Private Dwellings.** Inspections of private dwellings are made by consent of owner or otherwise responsible party or upon a warrant issued by a court.

6.2.4 **Consent by License or Permit:** The Department may require licensees or permittees to consent to access for inspections as part of their license or permit. Failure to allow access for inspections as set out in the license or permit may result in the suspension or revocation of the license or permit.

6.3. The owner or other responsible person may request information gathered by the Department during an investigation, inspection or review as authorized by the Government Records Access and Management Act, §§ 63-2-101 to 63-2-1001 Utah Code Ann., 1953 as amended.

7. ENFORCEMENT MECHANISMS. If the Department has investigated or inspected any property or facility and believes the property owner or other responsible party is in violation of this regulation or the Department has other reasonable grounds to believe that there has been a violation of any part of this regulation or that the property owner or otherwise responsible party is not in compliance with this regulation, the Department may take civil enforcement action as authorized by statute, rule, ordinance, and regulation and may also refer the matter for criminal prosecution. Civil enforcement may involve court or administrative actions, injunctive actions, and closures and may involve cost recovery, penalties, and other remedies. Civil and criminal actions may be brought simultaneously. A person does not need to be first adjudged liable in a civil matter before facing criminal charges.

7.1. **Criminal Enforcement Actions.** The Department may recommend criminal prosecution for violations either alone or in conjunction with civil enforcement. Criminal prosecutions for environmental violations of state or federal law may be filed by the District Attorney, Utah Attorney General, United States Department of Justice, or other enforcement entity. Factors that the Department may consider in recommending criminal enforcement include the following factors and any other relevant factors.

7.1.1. The nature and seriousness of the offense including the immediacy of the threat of danger to the life or safety of another or the harm or threatened harm to human health or environment;

7.1.2. The degree to which the violation was designed to provide economic gain or cost avoidance or it involved a pattern of conduct or a common attitude of illegal conduct;

7.1.3. The degree to which the offender is a known violator and has avoided prior actions by the department;

7.1.4. The degree to which prosecution might deter future violations;

- 7.1.5. The person's actual culpability in connection with the offense including the presence in connection with the offense including the presence of criminal intent;
- 7.1.6. The person's willingness to cooperate in the investigation including whether the violator has attempted to conceal evidence or prosecution of others;
- 7.1.7. The appropriateness of referring the case to other agencies having prosecutorial interest; and
- 7.1.8. Possibilities of civil remedies which would be more appropriate than initiating the criminal justice process.

7.2. **Civil Enforcement Actions.** The Department may request that the District Attorney bring an action to restrain or enjoin actions in violation of public health, environmental laws, and other laws or abate conditions in violation of such laws.

7.3. **Administrative Actions.**

7.3.1. The Department may, at its discretion, issue a Notice of Violation & Order of Compliance (NOV).

7.3.2. **Service of NOV.** The Department may provide notice to the owner of the property or otherwise responsible person by sending the NOV via first class mail to the last known address of the owner of the property or other responsible person. If notice is returned undeliverable, the owner of the property or other responsible person may be personally served or be given notice by other methods reasonably calculated to give actual notice to the owner or other responsible party.

7.3.3. **Contents of NOV.** The NOV shall:

- (i) Describe the property and the persons believed to be in violation;
- (ii) Describe the violation;
- (iii) Describe remedial action that will comply with the provisions of this regulation;
- (iv) Set a reasonable time for the performance of any required remedial action(s);
- (v) Describe the procedure to contest the NOV and the time limits for such a contest; and
- (vi) Notify the owner or other responsible person that if no written contest is filed within the time required, the NOV will become final and unappealable to any administrative entity or court.

7.3.4. **Challenging an NOV.** As detailed in the SLVHD's Adjudicative Hearing Procedures, a party aggrieved by an NOV may request a departmental conference, departmental hearing, or departmental appeal in writing within ten (10) days of the date of the NOV.

7.3.5. **Departmental Conference, Settlement Agreements, and Stipulations & Orders.**

- (i) After issuance of the NOV, the alleged violator has the option to request and attend a Departmental Conference to discuss the NOV and settlement with the Department and its legal counsel. No hearing officer will be present. The process of requesting a Departmental Conference are more fully described in the SLVHD's Adjudicative Hearing Procedures.
- (ii) If the parties agree to a settlement, the Department Will prepare, in conjunction with the District Attorney's Office, a binding Settlement Agreement or Stipulation & Consent Order which may require the payment of penalties and the costs of investigation. Parties may also agree to a settlement at any time subsequent to the Departmental Conference. After signing a Settlement Agreement or Stipulation & Consent Decree, the parties waive all rights to further department and court hearings or appeals. Settlement Agreements or Stipulation & Consent orders may be enforced in state courts.

7.3.6. **Hearings & Appeals.** Parties Aggrieved by an NOV may also request a Departmental Hearing or a Departmental Appeal. A hearing officer is present at these proceedings and makes a written determination. The methods of challenging an NOV are more fully described in the SLVHD's Adjudicative Hearing Procedures. Departmental Hearing Orders and Departmental Appeal Orders may be appealed to the entities and within the time limits set out in the SLVHD's Adjudicatory Hearing Procedures.

7.3.7. **Failing to respond to an NOV.** If a party fails to respond to an NOV within the required time, the NOV becomes a final order unappealable to any administrative entity or court. The Department may then enforce the order in state court.

7.4. **Additional Administrative Enforcement Authority.**

7.4.1. The Department may declare unsanitary conditions a nuisance and cause every nuisance affecting the public health to be abated.

7.4.2. Any variances allowed by the Department to the requirements of this regulation shall be only by written approval of the Board.

- 7.4.3. **Exercise of Physical Control.** The Department may establish, maintain, and exercise physical control over property and over individuals as the Department finds necessary for the protection of the public health including but not limited to closing theaters, schools, and other public or private places and prohibit public gatherings. The order shall be effective immediately. Any person to whom the order is directed shall comply immediately but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it.
- 7.4.4. **Emergency Enforcement.** If the Director finds that an emergency exists that requires immediate action to protect the public health, he or she may without notice or hearing issue an order declaring the existence of an emergency and requiring that action be taken as he deems necessary to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply and abate the nuisance immediately; but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it. If circumstances warrant because of the seriousness of the hazard, the Department may act to correct or abate the emergency without issuance of an order or directive or without waiting for the expiration of compliance time previously given in an order.

8. CRIMINAL, CIVIL & ADMINISTRATIVE PENALTIES

8.1. Criminal Penalties.

- 8.1.1. Any person who is found guilty by a court of violating any of the provisions of this regulation, either by failing to do the acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to Section 26A-1-123, Utah Code Annotated, 1953, as amended.
- 8.1.2. Each day such violation is committed or permitted to continue shall constitute a separate violation.
- 8.1.3. Each similar subsequent violation occurring within two years of the initial violation may constitute a class A misdemeanor.

8.2. Civil & Administrative Penalties.

- 8.2.1. Penalties may be included in a Settlement Agreement or Stipulation & Consent Order. Penalties may be assessed according to the following factors:

- (i) The violator's history of compliance or non-compliance;
- (ii) The violator's economic benefit of non-compliance;
- (iii) The documented costs associated with environmental or health damage;
- (iv) The violator's degree of willfulness or negligence; and
- (v) The violator's good faith efforts to comply and cooperate.

8.2.2. The Director may multiply the penalty by the number of days the violation occurred

8.3. Recovery of Investigation & Abatement Costs

8.3.1. The Department may recover its inspection, investigative and abatement expenses and costs from owners or other responsible person.

8.3.2. The Department may record a judgment lien on a violator's property to recover its expenses and costs.

9. EFFECTIVE DATE.

9.1. This Regulation shall become effective upon its enactment by the Salt Lake Valley Board of Health.

APPROVED AND ADOPTED this _____ day of _____, 2006.

SALT LAKE VALLEY BOARD OF HEALTH

By: _____
William S. Kidder, D.D.S.

ATTEST:

By: _____
GARY L. EDWARDS, M.S.
Executive Director
Salt Lake Valley Health Department