

HEALTH

PUBLIC HEALTH SERVICES BRANCH

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH

CONSUMER, ENVIRONMENTAL, AND OCCUPATIONAL HEALTH SERVICE

PUBLIC HEALTH AND FOOD PROTECTION PROGRAM

Body Art and Ear-Piercing Facility Standards

Proposed Readoption with Amendments: N.J.A.C. 8:27

Proposed Repeals: N.J.A.C. 8:27-4.3 and 4.7

Proposed Repeals and New Rules: N.J.A.C. 8:27-8, 9.1, 11.1, and 11.5

Proposed New Rules: N.J.A.C. 8:27-4.1, 4.4, 4.8, and 4.9, and 8:27 Appendix

Authorized By: Judith M. Persichilli, RN, BSN, MA, Commissioner, Department of Health, in consultation with the Public Health Council.

Authority: N.J.S.A. 24:1-1 et seq., particularly 24:2-1, 24:5-18, and 24:17-1 et seq., and 26:1A-7(n), (o), and (p); and Reorganization Plan No. 003-2005 (Governor Codey, June 27, 2005).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-012.

Submit written comments by April 8, 2022, electronically to

<http://www.nj.gov/health/legal/ecomments.shtml> or by regular mail postmarked by April 8, 2022, to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner
New Jersey Department of Health
PO Box 360
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The agency proposal follows:

Summary

Title 24 of the Revised Statutes at Subtitle 1, Food and Drugs (comprising N.J.S.A. 24:1 through 17) implements the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq., and establishes additional and comparable State laws relating to food, drugs, devices, and cosmetics. N.J.S.A. 24:2-1 charges the Department of Health (Department) to promulgate rules to implement, and, with other health authorities having concurrent jurisdiction, to execute and enforce, the subtitle. N.J.S.A. 24:17-1 et seq., authorizes the Department, and other health authorities, to assess and recover penalties for violations of the subtitle and the rules that the Department promulgates pursuant to N.J.S.A. 24:2-1.

N.J.S.A. 26:1A-7 authorizes the “Public Health Council … to establish, and from time to time amend and repeal … reasonable sanitary regulations … as may be necessary properly to preserve and improve the public health in this State. The regulations so established shall be called the State Sanitary Code. The State Sanitary Code may cover any subject affecting public health, or the preservation and improvement of public health and the prevention of disease in the State of New Jersey.”

On December 1, 1997, the Public Health Council, through the Department, issued a notice of preproposal of new rules to establish “Sanitary Standards for Invasive

Cosmetic Procedures.” 29 N.J.R. 5041(b) (December 1, 1997), pursuant to the authority that N.J.S.A. 26:1A-7 confers on the Public Health Council to regulate matters affecting public health through the State Sanitary Code. The notice of preproposal solicited comments on public health and safety issues attributed to “invasive cosmetic procedures,” including tattooing (both decorative and cosmetic micropigmentation), body piercing, ear piercing, and branding. 29 N.J.R. at 5041-42. The notice of preproposal noted that the improper performance of these invasive cosmetic procedures can transmit infectious diseases, including hepatitis B, hepatitis C, and human immunodeficiency virus, and infectious organisms, including *pseudomonas* spp., *staphylococcus* spp., and *streptococcus* spp. 29 N.J.R. at 5042.

P.L. 1997, c. 177, an act authorizing the Public Health Council to regulate tattoo parlors and amending P.L. 1947, c. 326 (approved January 8, 1998), amended N.J.S.A. 26:1A-7 to state that the “State Sanitary Code … may contain sanitary regulations: … (n) regulating the conduct of tattoo parlors; (o) regulating the conduct of body piercing; and (p) regulating the conduct of cosmetic tattooing.”

Thereafter, the Public Health Council, through the Department, convened an advisory committee comprising of members of the regulated community, public health professionals, and members of the health care industry to review the comments submitted in response to the notice of preproposal and develop reasonable safety standards for this industry.

In early 2001, the Public Health Council, through the Department, proposed new rules at N.J.A.C. 8:27, Body Art Procedures, to establish standards applicable to owners and operators of body art establishments. 33 N.J.R. 949(a).

P.L. 2001, c. 190, which was effective November 28, 2001, established N.J.S.A. 2C:40-21, which makes it a disorderly persons offense to perform tattooing or body piercing on a minor under age 18, without the written permission of the minor's parent, guardian, or other person standing in the place of the minor's parent.

Effective February 19, 2002, the Public Health Council, through the Department, adopted the proposed new rules at N.J.A.C. 8:27. 34 N.J.R. 923(b).

Reorganization Plan No. 003-2005 (Governor Codey, June 27, 2005) recast the role of the Public Health Council as being of a consultative and advisory nature in relation to the powers of the Commissioner of the Department. Governor Codey therein ordered that the "functions, powers and duties of the Public Health Council ... other than the Council's advisory and consultative functions, are continued and are transferred to the Department of Health ... to be allocated within the Department as determined by the Commissioner." 37 N.J.R. 2735(a).

Thereafter, in accordance with this authority, the Department, in consultation with the Public Health Council, convened an advisory committee, comprising of representatives of the New Jersey Health Officers Association, the New Jersey Environmental Health Association, the New Jersey Healthcare Central Service Association, the Ear Piercing Manufacturers of the United States, Inc., tattoo practitioners, body piercing practitioners, and permanent cosmetic practitioners. The function of the advisory committee was to review the existing rules at N.J.A.C. 8:27. The advisory committee recommended substantive and technical changes throughout the chapter, and the Department began to develop a rulemaking to implement these and other changes to update the chapter. However, the Department was unable to

conclude preparation of the rulemaking in time to prevent expiration of the chapter. Therefore, in early 2007, the Department, in consultation with the Public Health Council, proposed to readopt N.J.A.C. 8:27 without change, to maintain the chapter's effectiveness until the rulemaking was ready to proceed, and adopted the proposed readoption later that year. 39 N.J.R. 826(a); 3914(b).

P.L. 2011, c. 45, at § 1 (approved April 6, 2011), amended the Administrative Procedure Act at N.J.S.A. 52:14B-5.1. The amendment operated to extend the expiration date of N.J.A.C. 8:27 by two years, that is, from August 15, 2012, to August 15, 2014. See 43 N.J.R. 1203(a).

In mid-2014, the Department, in consultation with the Public Health Council, readopted N.J.A.C. 8:27 without change, thereby extending the expiration of the chapter to July 11, 2021. 46 N.J.R. 1816(a).

In late 2016, the Department received, and in early 2017, published a notice of receipt of a petition for rulemaking with respect to the rules governing "permanent makeup" (also known as "permanent cosmetics") at N.J.A.C. 8:27. 49 N.J.R. 146(a). The Department thereupon published a notice of action on the petition for rulemaking, indicating that the Department was referring the petition for rulemaking to the Consumer, Environmental and Occupational Health Service of the Division of Epidemiology, Environmental, and Occupational Health of the Public Health Services Branch of the Department, for further deliberation. 49 N.J.R. 286(a). The Consumer, Environmental and Occupational Health Service has considered the petition and made recommendations thereon, which the Department proposes to implement through this rulemaking.

N.J.A.C. 8:27 was scheduled to expire on July 11, 2021. Pursuant to Executive Order No. 127 (2020) and P.L. 2021, c. 103, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) was extended through January 1, 2022. Therefore, this chapter has not yet expired and is extended 180 days from the later of the existing expiration date or the date of publication of this notice of proposed readoption, whichever is later, which date is January 2, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 103.

The Department has reviewed N.J.A.C. 8:27 and has determined that, subject to the proposed amendments, repeals, and new rules described below, the existing chapter remains necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which it was originally promulgated, as amended and supplemented over time, and should be readopted. The filing of this notice of proposal to readopt the chapter prior to chapter expiration operates to extend the chapter expiration date 180 days from the date the notice of readoption was filed with the Office of Administrative Law, to June 19, 2022, pursuant to N.J.S.A. 52:14B-5.1.

The Department is providing a 60-day comment period for this rulemaking. Therefore, the notice of proposal is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department proposes to rename the chapter to reflect that it applies to facilities that provide ear-piercing services, in addition to body art services. The Department proposes technical amendments throughout N.J.A.C. 8:27 to update contact information, cross-references, and references to publications that the chapter

incorporates by reference, as amended and supplemented; to reflect the reorganization, and attendant renaming, of the Department pursuant to N.J.S.A. 26:1A-2.1; and to replace undefined terms with defined terms, such as by using the defined term, “establishment,” instead of the undefined term, “facility”; the proposed newly defined term, “health care provider,” instead of the term, “physician”; the defined term, “pigment,” instead of the undefined terms, “ink” and “colorant”; and the defined term, “operator,” instead of the undefined terms, “facility owner” or “management.” The Department proposes to restate several sections to indicate that the chapter imposes compliance obligations on operators to ensure that personnel, practitioners, and apprentices at an establishment conform and adhere to the standards that the chapter establishes, as conditions of operators’ continued permission or licensure in good standing to operate. The Department proposes non-substantial amendments throughout the chapter to correct punctuation, spelling, and grammar, and improve sentence structure.

Subchapter 1 establishes general provisions. The Department proposes to amend existing N.J.A.C. 8:27-1.2, Scope. Proposed newly codified subsection (a) would: (1) indicate that the chapter establishes standards that apply to persons and entities applying for licensure or permission to operate body art and ear-piercing establishments unless a subchapter specifies otherwise; (2) delete the reference to the chapter as being applicable to “businesses”; and (3) state that the chapter applies to “operators” of establishments. Proposed new subsection (b) would indicate that the qualifying conditions for persons whom operators authorize to perform body art and ear-piercing procedures do not apply to the performance thereof by health care providers.

Proposed newly codified subsection (c) and new subsection (d) would amend existing text to reflect the implementation, regulatory, and enforcement authority that portions of Titles 24 and 26 of the Revised Statutes confer on the Department, other health authorities, and State and local police.

Existing N.J.A.C. 8:27-1.3, Definitions, establishes definitions of terms used in the chapter. The Department proposes to amend the section to add definitions of the following terms: “adverse reaction,” “Alliance of Professional Piercers,” “Alliance of Professional Tattooists,” “American Academy of Micropigmentation,” “areola restoration,” “bloodborne pathogens standard,” “concealment,” “hand hygiene guideline,” “health care provider,” “HIV,” “measure of pH” or “pH,” “medical gloves,” “microblading,” “minor,” “occupational exposure,” “pigment,” “Public Health and Food Protection Program,” “responsible person,” “safety data sheet,” “Society of Permanent Cosmetic Professionals,” “SofTap®, Inc.,” “standard precautions,” and “trainer or instructor.”

The Department proposes to delete the existing definitions of the terms “acceptable” and “approved,” as the provided definitions do not enhance understanding of these terms, the meanings of which are clear in context.

The Department proposes to amend the existing definition of the term “body art” to indicate that the term does not include the practice of “ear-piercing,” which is an existing defined term.

The Department proposes to delete the existing definitions of the terms “medical grade gloves” and “universal precautions,” to correspond respectively to the addition of the proposed new terms, “medical gloves” and “standard precautions.”

The Department proposes to amend the existing definition of the term “after care,” to change the term to “after-care instruction,” and to indicate that the term means instruction that a practitioner gives to a client for the care of a body art site and surrounding area during the healing period immediately post-procedure and thereafter, and to indicate that instruction means both in spoken and written words.

The Department proposes to amend the existing definition of the term “camouflage,” to mean a procedure that a permanent cosmetics practitioner performs to restore the appearance of skin that has been altered by an injury, a clinical condition, or clinical treatment.

The Department proposes to amend the existing definition of the term “communicable diseases,” to place the term in the singular, that is, “communicable disease,” and to have the meaning that N.J.A.C. 8:57 establishes for that term.

The Department proposes to amend the existing definition of the term “cutting,” to include scarification and the use of acid for the purposes of creating a scar as being within the meaning of the term. The Department proposes to exclude “microblading,” a form of micropigmentation, from this definition.

The Department proposes to amend the existing definition of the term “disinfection,” to include specific procedures for the disinfection of jewelry for body piercing.

The Department proposes to amend the existing definition of the term “establishment,” to include ear-piercing establishments and to delete the undefined term, “technician.”

The Department proposes to amend the existing definition of the term “health authority,” to reflect that the term includes local health agencies with jurisdiction.

The Department proposes to amend the existing definition of the term “operator,” to delete reference to a “business,” in deference to the defined term “establishment” and to reflect that an owner’s designee to serve as the operator of an establishment might not hold an ownership interest in the establishment.

The Department proposes to amend the existing definition of the term “permanent cosmetics,” to delete the reference to the alternative term “dermal pigmentation,” which does not appear in the chapter, and to include the term “microblading.”

The Department proposes to amend the existing definition of the term “single use,” to mean for use one time on one client, to indicate that the listed items are examples of single-use items, and to add “markers” to this list.

Subchapter 2 establishes administration standards. The Department proposes to amend the required minimum content of a body art establishment license or permit application at N.J.A.C. 8:27-2.1 to require applicants to specify the services to be provided at the establishment, to identify the practitioners and apprentices to be employed by or provide services at the establishment, to submit the client consent forms that the establishment plans to have clients execute, and to require applicants to notify the health authority if a person other than listed regular practitioners or apprentices will be performing body art in the establishment. The Department proposes to amend N.J.A.C. 8:27-2.6(a) to include prohibitions against the performance of skin implantations; scarification or use of a laser to remove pigment; body art or ear-piercing

upon a minor without the presence, written consent, and proper identification of a parent or legal guardian, unless the minor provides a court order declaring the minor to be emancipated; the use of a high-impact stud-and-clasp piercing system on the trailing edge of the ear or at any body location other than the earlobe; areola restoration or camouflage other than at a permanent cosmetics establishment; operation of a body art or ear-piercing establishment other than in accordance with applicable requirements of this chapter; performance of body art or ear piercing in an establishment, unless the operator or a responsible person is present on the premises and supervising the establishment; and performance of, or advertising of body art services by, persons who do not possess a license from the health authority or whose license is not in good standing.

The Department proposes to delete existing N.J.A.C. 8:27-2.6(a)5, which prohibits body art procedures on minors without the presence and consent of a parent or guardian and restate the content of this provision at amended N.J.A.C. 8:27-2.6(a)3. Proposed new N.J.A.C. 8:27-2.6(a)5 would prohibit the use of a high-impact stud-and-clasp piercing system on the trailing edge of the ear or at any body location other than the earlobe. The Department proposes to delete existing N.J.A.C. 8:27-2.6(a)6 and 7, as they are redundant of proposed new N.J.A.C. 8:27-2.6(a)7 and existing N.J.A.C. 8:27-11.3. The Department proposes to add new N.J.A.C. 8:27-2.6(a)6, which would prohibit areola restoration, camouflage, or microblading in establishments other than permanent cosmetics establishments. Proposed new N.J.A.C. 8:27-2.6(a)7 would prohibit the operation of a body or ear-piercing establishment other than in accordance with the applicable requirements at N.J.A.C. 8:27. The Department proposes to delete

existing N.J.A.C. 8:27-2.6(a)8, which prohibits advertising body art procedures prior to obtaining a license or permit from the health authority, and restate the content of this provision at N.J.A.C. 8:27-2.6(b). The Department proposes new N.J.A.C. 8:27-2.6(a)8, which would prohibit the performance of body art or ear piercing in an establishment, unless the operator or responsible person is present and supervising the establishment. The Department proposes new N.J.A.C. 8:27-2.6(c), which provides for enforcement actions for violations of any provision at N.J.A.C. 8:27-2.6(a) and (b).

Subchapter 3 establishes physical plant and environment standards.

Subchapter 4 establishes standards for health safety and occupational health.

The Department proposes to amend the awkward wording of the subchapter heading to "Client and Occupational Health and Safety." The Department is proposing to revise this subchapter to collect and restate health and safety standards of general applicability to all body art establishments, some of which already appear in the body art discipline-specific subchapters at Subchapters 6, 7, 8, and 10. The Department is proposing corresponding deletions of these standards from the discipline-specific subchapters to avoid redundancy.

Proposed new N.J.A.C. 8:27-4.1, Scope, would establish the scope of the subchapter as applicable only to body art establishments, which would not include ear-piercing establishments. Existing Subchapter 9, as proposed for amendment, would establish the client and occupational health and safety standards that would apply to ear-piercing establishments.

The Department proposes to repeal existing N.J.A.C. 8:27-4.3, which establishes standards for medical consultation and add new N.J.A.C. 8:27-4.4, Health care provider

instruction required for certain procedures, which would establish standards for health care provider instruction for certain procedures. Proposed new subsection (a) would require camouflage and areola restoration to be performed by a permanent cosmetics practitioner under the written instructions, guidelines, and treatment plan of a client's health care provider. Proposed new subsection (b) would indicate that subsection (a) would not apply to concealment procedures.

Recodified N.J.A.C. 8:27-4.6 establishes reporting requirements. The Department proposes non-substantial amendments at subsections (a) and (b), proposed to be recodified, in part, as new paragraphs (a)1 and 2, consistent with the description of chapter-wide amendments, above. Proposed newly codified N.J.A.C. 8:27-4.6(a)3 would list events that trigger an obligation to report to a local health authority. The Department proposes amendments to existing text, to be codified as new subsection (b), to indicate the obligation of local health authorities to report communicable diseases in accordance with N.J.A.C. 8:57.

Existing N.J.A.C. 8:27-4.6 establishes standards for hand washing and personal hygiene and existing N.J.A.C. 8:27-4.7 addresses employee health, and communicable and bloodborne diseases. The Department proposes to merge the content of these two sections through the repeal of existing N.J.A.C. 8:27-4.7, and the recodification of existing N.J.A.C. 8:27-4.6 as new N.J.A.C. 8:27-4.7, and to amend the section heading to "Hand hygiene, use of standard precautions, infection control, bloodborne pathogens training, and records maintenance." The Department proposes to amend subsection (b) to require practitioners and apprentices to adhere to the Hand Hygiene Guidelines. The Department proposes to delete existing subsections (c) through (f) to remove standards

that are redundant of obligations established elsewhere, such as the obligation to wear personal protective equipment and to dispose of single-use equipment after use, in accordance with the standard precautions. The Department proposes to amend existing subsection (g), to be recodified as new subsection (c), to require operators to provide alternatives to latex-containing equipment to which practitioners, apprentices, and/or clients who have latex allergies might be exposed. Proposed new subsection (d) would require operators to ensure that practitioners and apprentices adhere to the standard precautions. Proposed new subsection (e) would require operators to establish and implement written policies and procedures to address the matters listed at paragraphs (e)1 through 6. Paragraph (g)3 would require operators, subject to proposed new subparagraph (g)3i, to exclude from attendance at an establishment, any worker (including apprentices and consultants) who has a suspected or confirmed communicable disease, absent a health care provider's written confirmation that a condition is not transmissible, and to retain the written confirmation in the worker's file. This would not exclude persons with HIV, hepatitis B, or hepatitis C from performing body art. Proposed new paragraph (g)4 would reflect that all persons are obliged to adhere to the standard precautions and bloodborne pathogens standard, regardless of the person's status as having suspected or confirmed infection with HIV, hepatitis B, or hepatitis C. Proposed new paragraph (g)5 would require operators to ensure that workers at an establishment receive a hepatitis B vaccination in accordance with the bloodborne pathogens standard and to retain the vaccination record with the worker's file. Proposed new paragraph (g)6 would require operators of body art establishments to maintain documentation of completion of bloodborne pathogens training in the file of

each practitioner, apprentice, and other employee who is required by law to receive bloodborne pathogens training. The applicability of 29 CFR 1910.1030(g)(2) to a practitioner or apprentice at an establishment depends on the person's status as an employee of the operator. Proposed new subsection (f) would note that operators who enroll in consultation services provided by the Occupational Safety and Health Administration (OSHA) of the United States Department of Labor can have bloodborne pathogens training provided free of charge to staff.

According to the Occupational Safety and Health Administration of the United States Department of Labor (OSHA), the applicability of 29 CFR 1910.1030(g)(2) to a practitioner or apprentice at an establishment depends on the person's status as an employee of the operator.

The requirement of employer provision of training does not apply to private contractors and student apprentices, unless they serve as an operator's employees in other capacities that subject them to occupational exposure. See the following Standard Interpretation Letters of OSHA: July 29, 2002, to Mr. Vidra, at <https://www.osha.gov/laws-regulations/standardinterpretations/2002-07-29>; July 31, 2008, to Mr. Vidra and Ms. Lachance, at <https://www.osha.gov/laws-regulations/standardinterpretations/2008-07-31>; and June 20, 2016, to Ms. Lachance, at <https://www.osha.gov/laws-regulations/standardinterpretations/2016-06-20-0>.

Proposed new N.J.A.C. 8:27-4.8, Minimum standards for operators of body art establishments in the appointment of practitioners and apprentices, would establish the minimum standards for operators' appointment of practitioners and apprentices. Proposed new subsection (a) would require operators to obtain, and maintain a record

of, documents indicative of the required minimum educational and experiential qualifications of each practitioner and apprentice who will practice at an establishment, including a record of the successful completion of a bloodborne pathogens training; and to make each file available to the Department or health authority, upon request.

Proposed new subsection (b) would require operators to ensure that each employee who has occupational exposure receives bloodborne pathogens training pursuant to 29 CFR 1910.1030(g)(2), that is, at no cost to the employee, during working hours, and with employee participation.

Proposed new N.J.A.C. 8:27-4.9, Pigments, would establish pigment standards. Proposed new subsection (a) would require operators to ensure that body art practitioners and apprentices use only pigments that comply with 21 CFR Chapters 73, 74, and 700; are nontoxic, non-irritating to tissue, stable to light, and inert to tissue metabolism; do not contain talc, coal tar, known carcinogens, or more than certain amounts of lead, mercury, or arsenic; and are prepared using nontoxic materials, stored out of direct sunlight, and not autoclaved. Proposed new subsection (b) would require operators to ensure that practitioners and apprentices apply pigments using single-use containers for each client, remove excess pigments using single-use, lint-free paper products, annotate pigment data in the client record of the procedure, and use pigment removal solutions bearing labels that list their ingredients, including percentages of active ingredients, measure of pH, preservatives, and directions for use. Proposed new subsection (c) would require operators to obtain, maintain, and make available, upon request, to clients and the health authority, the safety data sheet for each pigment in use at an establishment.

Subchapter 5 establishes sterilization and disinfection standards.

Subchapter 6 establishes standards for body piercing. Existing N.J.A.C. 8:27-6.1 establishes training requirements for persons who perform body piercing. The Department proposes to amend N.J.A.C. 8:27-6.1(b) to reflect that a person serving as an apprentice is not a “practitioner” and to delete paragraph (b)3, which establishes standards for body piercing practitioners’ completion of bloodborne pathogens training. As described above, the proposed amendments at Subchapter 4 would capture and restate the health and safety standards of general applicability to all body art establishments, including the bloodborne pathogens training standard. Therefore, the proposed amendment would delete the redundant provision from Subchapter 6. The Department proposes to delete N.J.A.C. 8:27-6.1(c) as redundant of proposed amended N.J.A.C. 8:27-6.1(b).

The Department proposes to amend N.J.A.C. 8:27-6.2(a) to require the jewelry to be used in body piercing to conform to the Alliance of Professional Piercers’ Initial Jewelry Standards. The Department proposes to delete existing subsection (b) and merge the content of this subsection with N.J.A.C. 8:27-6.2(a)2. Proposed new subparagraph 6.2(a)1 would include sterilization as an alternative to disinfecting jewelry. The Department proposes to amend existing subsection (c) to indicate the acceptable types of bags for jewelry storage. The Department proposes to amend subsection (f) to establish that jewelry that is intended for specified parts of the body is not to be used at any other body locations. The Department proposes to amend subsection (g) to ensure that operators provide written notice to the client regarding the pre-worn status of jewelry before use.

Subchapter 7, Tattooing, establishes standards for tattooing. Existing N.J.A.C. 8:27-7.1 establishes training requirements for persons who perform tattooing. The Department proposes to amend N.J.A.C. 8:27-7.1 at subsection (b) to reflect that a person serving as an apprentice is not a “practitioner” and to delete paragraph (b)3, which establishes standards for tattoo practitioners’ completion of bloodborne pathogens training. As described above, the proposed amendments at Subchapter 4 would capture and restate the health and safety standards of general applicability to all body art establishments, including the bloodborne pathogens training standard. Therefore, the proposed amendment would delete the redundant provision from Subchapter 7. The Department proposes to delete N.J.A.C. 8:27-7.1(c), as redundant of proposed amended N.J.A.C. 8:27-7.1(b).

Subchapter 8 establishes standards for establishments that perform permanent cosmetics. The Department proposes to repeal existing N.J.A.C. 8:27-8 and to add new rules in its place.

Proposed new N.J.A.C. 8:27-8.1 would establish minimum standards for operators in the appointment of practitioners and apprentices. Proposed new N.J.A.C. 8:27-8.1(a) would require operators of body art establishments to permit only permanent cosmetics practitioners who have the qualifications identified at paragraphs (a)1 and 2 to perform permanent cosmetics at their establishments, subject to proposed new subsections (d) and (e) (respectively addressing areola restoration and camouflage by permanent cosmetics practitioners). Proposed new subsection (b) would require operators to permit persons to serve as apprentices at an establishment if they have the qualifications identified at paragraphs (b)1 and 2. Proposed new subsection (c) would

provide an alternative means by which permanent cosmetics practitioners could meet the requirement at paragraph (a)2, with respect to the number of procedures performed under the direct supervision of a trainer or an instructor, by performing one additional permanent cosmetics procedure of each type specified at paragraph (a)2 above, and the subsequent follow-up or touch-up of that procedure, under the direct supervision of a trainer or an instructor.

Proposed new N.J.A.C. 8:27-8.1(d) and (e) would provide additional qualifications that operators are to verify with respect to permanent cosmetics practitioners who are to perform the disciplines of areola restoration and camouflage. Proposed new subsection (f) would require the operator of a permanent cosmetics establishment to identify in documentation on file with the health authority, any practitioners or health care providers who would engage in the disciplines of areola restoration and camouflage at the establishment. Proposed new subsection (g) would require operators to maintain a file for each practitioner and apprentice containing documentation of their qualifications and other required records, and to make these records available upon request of health authorities.

Proposed new N.J.A.C. 8:27-8.2 would establish the minimum standards for operators to provide permanent cosmetics apprenticeship programs at an establishment. Proposed new subsection (a) would identify these requirements. Proposed new paragraph (a)1 would require operators of apprenticeship programs in an establishment to have the fact that the establishment will provide an apprenticeship program and the identities of trainers or instructors included within the documentation the establishment has on file with the health authority. Proposed new paragraph (a)2

would establish the required content of apprenticeship programs. Proposed new paragraph (a)3 would establish the minimum number of procedures that an apprenticeship program is to require an apprentice to perform. Proposed new paragraphs (a)4, 5, and 6 would establish apprentice supervisory standards. Proposed new paragraph (a)7 would establish requirements for maintenance of records of apprenticeships. Proposed new paragraph (a)8 would require an operator to retain the apprentice's training log for five years from the commencement of the apprenticeship; and to maintain the log onsite for at least the six months following an apprentice's completion or discontinuation of an apprenticeship, and to provide a copy of the apprentice's logged activity to the apprentice, in accordance with paragraph (a)9. Paragraph (a)9 would require an operator shall provide a copy of an apprentice's activity log to a current or former apprentice within one business day of a request, if the log is onsite at the establishment premises; and within 10 business days of a request if the log is other than onsite.

Proposed new N.J.A.C. 8:27-8.3 would establish operator responsibilities with respect to hand cleaning and skin preparation by practitioners and apprentices in the performance of permanent cosmetic procedures.

Proposed new N.J.A.C. 8:27-8.4 would establish practice standards for permanent cosmetics procedures. Proposed new subsection (a) would require operators to ensure that practitioners and apprentices discard single-use devices after use, administer new client applications forms for touch-up procedures after 180 days have elapsed since the earlier procedure, administer after-care instruction following each procedure, ensure that over-the-counter cosmetics are not present in a procedure

room, refrain from performing permanent cosmetics on unhealthful or impaired skin, refrain from performing permanent cosmetics procedures on persons who are pregnant, or who are taking or have taken within the preceding year, oral tretinoin or isotretinoin medication.

Existing Subchapter 9, Ear Piercing, establishes standards for ear piercing. The Department proposes to repeal and replace existing N.J.A.C. 8:27-9.1, Scope, because the existing rule text is redundant of the existing definition of ear piercing. The proposed new rule would restate the scope of the subchapter as applicable to ear-piercing establishments.

The Department proposes non-substantial amendments at existing N.J.A.C. 8:27-9.2 consistent with the description of chapter-wide amendments. The Department proposes to amend existing N.J.A.C. 8:27-9.3 to reorganize and restate the required content of the application, to add hemophilia to the health conditions that warrant a health care provider's prior authorization and clearance of a client to receive ear piercing, and restate the requirements for parent or guardian authorization of minors to receive ear piercing and the associated documentation and record retention requirements for proof of age, identification, and relationship of the parent or guardian to the minor.

The Department proposes non-substantial amendments at existing N.J.A.C. 8:27-9.4, consistent with the description of chapter-wide amendments. The Department proposes to amend existing N.J.A.C. 8:27-9.5 to establish hand washing procedures that are consistent with the Centers for Disease Control and Prevention recommended guidelines for health care provider hand hygiene summarized at

<https://www.cdc.gov/handhygiene/providers/index.html>, and to require operators to provide alternatives to latex-containing equipment to which practitioners, apprentices, and/or clients who have latex allergies might be exposed.

Subchapter 10 establishes standards for temporary establishments.

Subchapter 11, Enforcement, establishes enforcement standards. The Department proposes to repeal and replace existing N.J.A.C. 8:27-11.1, Scope, to prevent conflict with, or redundancy of, N.J.A.C. 8:27-1.2, as proposed for amendment. Proposed new N.J.A.C. 8:27-11.1 would indicate that the subchapter applies to body art and ear-piercing establishments.

The Department proposes to amend the heading of existing N.J.A.C. 8:27-11.2 to “Inspection, inspection report, and plan of correction,” rather than merely “Inspection.” The Department proposes to amend existing subsection (a) to require local health authorities to inspect each body art and ear-piercing establishment annually and upon receipt of an adverse reaction notification. The Department proposes new subsection (b) to require the State health authority to inspect each temporary body art and ear-piercing establishment in State-operated facilities. The Department proposes to amend recodified subsection (c) to indicate that the chapter implements Titles 24 and 26 of the Revised Statutes (thereby subjecting establishments to a health authority’s right of access to and inspection of premises) and add ear-piercing establishments to the types of establishments subject to inspection. The Department proposes to reorganize the section consistent with the description of chapter-wide amendments. Newly codified subsection (d) would require operators to permit the health authority full access to the establishment and to make records available for inspection and copying. Proposed new

subsection (e) would indicate applicable laws prohibiting obstruction or interference with health authorities in the performance of their duties. Newly codified subsection (f) would establish procedures for issuance of inspection reports, notices of deficiencies, demands for plans of correction, and assessment of applicable fines and/or penalties. Proposed new subsection (g) would establish procedures by which operators, within 10 business days of receipt of a written inspection report, are to submit and implement deficiency correction plans and requests for reconsideration and by which health authorities are to review and accept or reject those plans and requests. Proposed new subsection (h) would require a health authority, within 10 days of receipt of a plan of action or request for reconsideration, to review the plan and/or request and notify the operator of its decision to accept or reject them in whole or part, with reasons and further direction for the operator. Proposed new subsection (i) would permit a health authority to conduct a repeat inspection to confirm the operator's acceptable performance of deficiency corrections. Proposed new subsection (j) would subject an operator to additional or enhanced enforcement action if the operator were to fail to timely pay assessed fines and/or penalties, submit a plan of correction, resubmit a plan of correction that is acceptable to the health authority, if the health authority rejected the operator's initial plan of correction in whole or in part, report to the health authority as to the status of the operator's completion of each part of an accepted plan of correction, and complete corrective measures in accordance with an accepted plan of correction. Proposed new subsection (k) requires local health authorities to submit a written report, using, or containing, at least the information listed in the form at N.J.A.C. 8:27 Appendix, of each adverse reaction notification it receives in the form or containing the

information at chapter Appendix, incorporated herein by reference, to the Department in January of each year; and report to the Department within the reporting periods and in accordance with the reporting procedures specified at N.J.A.C. 8:57 if a notification pursuant to N.J.A.C. 8:27-4.6 and 9.4, or an inspection indicates a suspected or a confirmed case of a reportable communicable disease or a communicable disease outbreak. Proposed new subsection (l) would provide public access to final reports of annual inspections of body art and ear-piercing establishments, reports of inspections of temporary establishments, plans of correction, and final outbreak reports, where applicable. Proposed new subsection (m) would exclude from public access, for consistency with existing N.J.A.C. 8:57-1.14, adverse reaction notifications, communicable disease reports, and records relating to an ongoing epidemiological outbreak investigation of a body art or ear-piercing establishment.

The Department proposes to amend existing N.J.A.C. 8:27-11.3, Criteria for closure and permit or license suspension, (1) to reorganize and restate the grounds for closure and permit or license suspension; (2) to add the following to the list of grounds for closure: failure to report missing or malfunctioning equipment, performance of procedures by unqualified persons, and performance of procedures by unsupervised apprentices; (3) to indicate that suspensions based on crime commissions are to apply to crimes that are committed post-issuance of a license or permit and that are relevant to the practice of body art or ear piercing, provided the health authority was apprised of, and had the opportunity to consider, prior crimes as part of its review of the license or permit application; and (4) to make operators strictly liable for violations,

notwithstanding operators' actual or purported lack of knowledge of the occurrence or performance of the violation.

The Department proposes to amend existing N.J.A.C. 8:27-11.4, Penalties, to identify additional references to the Department's statutory authority to enforce the chapter and to impose penalties for violations of the chapter.

The Department proposes to repeal N.J.A.C. 8:27-11.5, Separability, as unnecessary, because the Department believes a court finding provisions of the chapter invalid would address the issue of continuing validity of the remaining provisions. The Department proposes new N.J.A.C. 8:27-11.5, Adulterated or misbranded device or cosmetic; detention and embargo, to reiterate the statutory authority of health authorities, pursuant to N.J.S.A. 24:4-12, to detain and/or embargo adulterated or misbranded devices within the meaning of Title 24 of the Revised Statutes.

Social Impact

The rules proposed for readoption with amendments, repeals, and new rules would continue to protect the health and safety of patrons and workers in body art and ear-piercing establishments and prevent the spread of infectious and communicable diseases by requiring operators to implement uniform sanitary practices and training. This would enhance public confidence in the safety of obtaining procedures in New Jersey body art and ear-piercing establishments.

Economic Impact

The rules proposed for readoption with amendments, repeals, and new rules would continue to require operators of body art and ear-piercing establishments to incur costs associated with staff training, equipment maintenance, supplying reusable and single-use equipment, recordkeeping, obtaining licensure or permits, and satisfying penalties for violations.

Costs associated with staff training would vary depending on the tuition cost of bloodborne pathogens training. Operators who enroll in Small Business Consultation Services provided by the Occupational Safety and Health Administration (OSHA) of the United States Department of Labor can have bloodborne pathogens training provided free of charge to staff.

Costs associated with equipment maintenance include obtaining and servicing sterilization equipment and obtaining the professional analytical services of independent laboratories for biological monitoring of sterilizers.

Fees for obtaining establishment licenses or permits would continue to vary by municipality. In the Department's experience, based upon informal discussions with municipalities throughout the State, annual municipal fees range from approximately \$50.00 to \$600.00.

Operators may incur penalties for violations in amounts that applicable statutes impose and loss of income associated with suspension or closure. The chapter would not require operators to obtain liability insurance; however, operators that elect to obtain liability insurance would incur costs for associated premium payments.

Local health authorities would continue to incur costs associated with the oversight of establishments and enforcement of the chapter. The license or permit fees that local health authorities establish and the penalties they collect through enforcement proceedings may offset these costs.

The rules proposed for readoption with amendments, repeals, and new rules would continue to require practitioners and apprentices to incur costs associated with tuition and materials for training.

Federal Standards Statement

The rules proposed for readoption with amendments, repeals, and new rules are not proposed under the authority of, or to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements. Therefore, no Federal standards analysis is required.

Jobs Impact

The rules proposed for readoption with amendments, repeals, and new rules would neither increase nor decrease demand for body art and ear-piercing services. Therefore, the Department does not anticipate that the rules proposed for readoption with amendments, repeals, and new rules at N.J.A.C. 8:27 would result in an increase or decrease in the number of jobs for practitioners or trainers in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments, repeals, and new rules would have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The Department estimates that there are hundreds of operators of body art and ear-piercing establishments in the State and hundreds of individual practitioners of body art in the State who are independent contractors. Many operators and independent contractor practitioners are also training providers. All operators and independent contractor practitioners are likely to be small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments, repeals, and new rules would establish training, recordkeeping, reporting, and compliance standards, which would apply to operators of body art and ear-piercing establishments and establish minimum educational and experiential qualifications for practitioners and apprentices that operators allow to work in their establishments. The Summary, above, describes those standards. Operators, and practitioners who are independent contractors, would incur costs to comply with the rules proposed for readoption with amendments, repeals, and new rules. The Economic Impact, above, describes those costs.

Operators and independent contractor practitioners would need to retain the services of professionals to provide training in bloodborne pathogens and/or in the performance of body art and ear piercing. As the Economic Impact, above, describes,

small businesses that enroll in OSHA Small Business Consultation Services can receive required bloodborne pathogens training free of cost.

The Department proposes no lesser or differing standards based on business size because the entire regulated community consists of small businesses and the Department has determined that the rules proposed for readoption with amendments, repeals, and new rules would establish the minimum standards necessary to protect public health and safety.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, repeals, and new rules would have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules proposed for readoption with amendments, repeals, and new rules would evoke a change in the average costs associated with housing because they would establish standards applicable to facilities that perform body art and ear-piercing procedures, and would have no impact on housing costs.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, repeals, and new rules would have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan and there is an extreme unlikelihood that the proposed amendments, repeals, and new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because they would

establish standards applicable to facilities that perform body art and ear-piercing procedures, and would have no impact on development, planning, or housing production in the State.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:27.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:27-4.3, 4.7, 8, 9.1, 11.1, and 11.5.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 27

BODY ART [PROCEDURES] AND EAR-PIERCING FACILITY STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

8:27-1.2 Scope

(a) [This] Except as a subchapter otherwise indicates, this chapter [shall govern all businesses] applies to:

1. Persons and entities that [offer tattooing, permanent cosmetics,] **apply for licensure or permission to operate body art** and [ear and body piercing to the public with the exception of a physician who is authorized by the State Board of Medical Examiners to practice medicine, pursuant to N.J.S.A. 45:9-6 et seq.] **ear-piercing establishments; and**

2. Operators of body art and ear-piercing establishments.

(b) The general and discipline-specific standards in this chapter for qualification and training of practitioners and apprentices to perform body art and ear-piercing procedures at an operator's establishment or under an operator's license or permit do not apply to health care providers performing body art and ear-piercing procedures at an operator's establishment or under an operator's license or permit.

(c) [The provisions] Pursuant to N.J.S.A. 26:1A-7, this chapter is part of the State Sanitary Code [shall have], has the force and effect of law[. Under the authority of N.J.S.A. 26:1A-9, the provisions are], and is enforceable by the New Jersey [State] Department of Health [and Senior Services and local departments of] (Department), other health authorities, and State and local police, pursuant to N.J.S.A. 26:1A-9.

(d) This chapter implements provisions at N.J.S.A. 24:1 through 17, addressing devices and cosmetics, and is enforceable by the Department, other health authorities, and State and local police, pursuant to N.J.S.A. 24:2-1 and 24:17-1 and 2.

8:27-1.3 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise[.]:

[“Acceptable” means satisfactory or adequate; fulfilling the needs or requirements of a specified rule.]

“Adverse reaction” means a negative physiological response to a body art or ear-piercing procedure, such as an injury, rash, infection, or allergy.

“[After care] After-care instruction” means [written instructions given] direction and information that a practitioner gives to [the] a client following the performance of a body art or ear-piercing procedure, in both spoken and printed form, which are specific to the [body art] procedure[(s) rendered, on caring for] performed, and which identify:

1. Client responsibilities and procedures for care of the body art or ear piercing and the surrounding area[. These instructions shall include information on when it is necessary to];

2. Physical, cosmetic, and/or other restrictions;

3. Indicators of infection and other adverse reactions, upon the appearance of which a client should seek medical treatment; and

4. With respect to body piercing, the need to maintain the tightness of balls attached to the barbell studs to prevent:

i. The client’s ingestion of the jewelry; and/or

ii. The imbedding of jewelry into a client’s skin or mucosal linings.

“Alliance of Professional Piercers,” means the entity by that name for which the contact information is PO Box 1287, Lawrence, KS 66044, telephone: (785) 841-6060, website: <https://safepiercing.org>.

“Alliance of Professional Tattooists, Inc.,” means the entity by that name for which the contact information is 7770 Regents Rd., Suite 113, #635, San Diego, CA 92122, telephone: (816) 979-1300, website: <https://safe-tattoos.com>.

“American Academy of Micropigmentation” means the entity by that name for which the contact information is 11641 Sherman Way, North Hollywood, CA 91605, telephone (310) 882-9538, website <https://micropigmentation.org>.

...

“Antiseptic” means an agent that destroys [disease causing] **disease-causing microorganisms on human skin or mucosa.**

...

[“Approved” means written acceptance by the New Jersey State Department of Health and Senior Services.]

“Areola restoration” means a body art procedure that a permanent cosmetics practitioner performs, typically following lumpectomy, mastectomy, breast augmentation surgery, and/or breast reconstruction surgery, to:

- 1. Simulate an areola and/or nipple or establish another image at the current or former site of an areola;**
- 2. Address asymmetry or other aesthetic irregularity;**
- 3. Camouflage post-surgical scarring; and/or**
- 4. Restore the preoperative appearance of a breast.**

...

“Bloodborne pathogens standard” means 29 CFR 1910.1030, and includes interpretations thereof, established in applicable “Standard Interpretations” that the United States Department of Labor, Occupational Safety and Health Administration issues, which are available at <https://www.osha.gov/laws-regs/standardinterpretations/standardnumber/1910/1910.1030%20-%20Index/result>.

“Body art” means the practice of physical body adornment [in permitted establishments by operators utilizing, but not limited to,] **using** the following techniques, **but does not include ear piercing:**

1.-3. (No change.)

...

“Branding” means [scarification through] the application of a heated material (usually metal) to the skin, creating a serious burn [which] **that** eventually results in a scar.

“Camouflage” means **a body art procedure that a permanent cosmetics practitioner performs to restore by pigment insertion** the [application] appearance of [pigment into] skin **that has been** altered by [scars, pigment loss or color abnormalities of the skin so as to make the area appear to be part of the natural, surrounding skin. Examples include treatment of patients with scars from hair transplants, accidents, face lifts, breast reduction, as well as pigment abnormalities including vitiligo.]:

- 1. An injury (such as scarring resulting from an accident, a burn, or a communicable disease, such as varicella or measles);**
 - 2. A clinical condition (such as pigment loss resulting from vitiligo);**
- and/or**
- 3. The clinical treatment of an injury, an illness, or a clinical condition (such as scarring that results from surgery or the application of hair transplants, and hyperpigmentation that results from chemotherapy).**

...

“Communicable disease[s]” means “**communicable** disease[s]” [or conditions diagnosed by a licensed physician as being contagious or transmissible which include, but are not limited to, the following:] **as N.J.A.C. 8:57 defines that term.**

- [1. Chickenpox;
2. Diphtheria;
3. Measles;
4. Meningococcal disease;
5. Mumps;
6. Pertussis (whooping cough);
7. Plague;
8. Rubella;
9. Scabies;
10. Staphylococcal skin infection (boils, infected wounds);
11. Streptoccal infections (strep throat);
12. Tine (ring worm); and

13. Tuberculosis.]

“Concealment” means a body art procedure that a tattoo or permanent cosmetics practitioner performs to change the appearance of an atypical area of skin or existing body art by covering the area with patterns, pictures, or legends; provided a tattoo artist shall not perform concealment to restore the appearance of skin altered by an injury, an illness, or the treatment thereof, that is, to perform camouflage.

...

“Cutting” (also known as scarification) means creating a design [cut into the] by cutting skin or other soft tissue [using a sharp blade, leaving] to leave a scar[. Often], using acid, a sharp blade, a knife, or another chemical, implement, or device the manufacturer of which neither designed nor intended for the purpose of performing body art.

1. In “cutting,” one might rub pigment or another substance into the [design is rubbed immediately with ink] cut skin, leaving a colored or raised scar.

2. The term “cutting” does not include microblading.

“Disinfection” means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

1. Disinfection for purposes of preparing jewelry for body piercing consists of:

i. Thorough cleaning of the jewelry in an ultrasonic cleaner;

- ii. Soaking the jewelry in a solution of 70 percent to 90 percent isopropyl alcohol for 15 minutes; and
- iii. Allowing the jewelry to air dry prior to packaging.

“Ear piercing” means the puncturing of **the** ear lobe and the trailing edge of the ear using a pre-sterilized [single use stud and clasp ear piercing] **single-use, stud-and-clasp ear-piercing** system following **the** manufacturer’s instructions.

...

“Establishment” means a physical place of business[,] **that is** permanent in nature, and includes all areas used by [a] **persons performing** body art [technician] **or ear piercing** and **their** clients, including, but not limited to, treatment areas and waiting/reception areas.

...

“Hand Hygiene Guideline” means CDC, *Guideline for Hand Hygiene in Health-Care Settings: Recommendations of the Healthcare Infection Control Practices Advisory Committee and the HICPAC/SHEA/APIC/IDSA Hand Hygiene Task Force*, MMWR 2002;51(16)(RR16):1-44, incorporated herein by reference, as amended and supplemented, and available at

<https://www.cdc.gov/handhygiene/providers/guideline.html>.

“Health authority” means a [Registered Environmental Health Specialist] **registered environmental health specialist** or [Health Officer] **health officer** representing the [New Jersey] Department [of Health and Senior Services] or [the] **a local health [department] agency with jurisdiction**.

“Health care provider” means a physician or physician assistant licensed by the State of New Jersey pursuant to Title 45 of the Revised Statutes who is acting within the licensee’s applicable scope of practice, as determined by the applicable licensing board.

...

“HIV” means human immunodeficiency virus, in accordance with the Revised Surveillance Case Definition at

<https://www.cdc.gov/mmwr/preview/mmwrhtml/rr6303a1.htm>

...

“Lip” means either of the two [fleshly] **fleshy parts or folds that surround the mouth or oral cavity and are used for human speech.**

...

[“Medical grade gloves” means a Food and Drug Administration (FDA) Class I medical device made of natural rubber, vinyl or synthetic material (that is, neoprene, polyvinyl chloride, styrene butadiene) that is worn to prevent contamination between client and practitioner.]

“Measure of pH” or “pH” means the acidity or alkalinity of a solution relative to the pH scale.

“Medical gloves” means gloves that are a “device” within the meaning of that term at Department 201(h) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), and that comport with the medical device standards at 21 CFR Parts 878, 880, and 895 for surgeons’ gloves and patient examination gloves.

1. Pursuant to a Final Rule of the Food and Drug Administration of the United States Department of Health and Human Services, the following are banned devices: powdered surgeons' gloves, powdered patient examination gloves, and absorbable powder for lubricating surgeons' gloves. 81 FR 91722 (published December 19, 2016; effective January 18, 2017), available at <https://www.federalregister.gov/d/2016-30382>.

“Microblading” means a permanent cosmetics procedure performed by a qualified permanent cosmetics practitioner or apprentice at a permanent cosmetics establishment, using a configuration of needles attached to a handle, often described as a blend between a scalpel and a fine-toothed comb, to manually create small cuts that resemble eyebrow hairs, which are then filled in with pigment to achieve the appearance of fuller brows, and as further described in the National Environmental Health Association, *Policy Statement on Microblading* (Denver, CO, July 2018), incorporated herein by reference, as amended and supplemented, available at

https://www.neha.org/sites/default/files/publications/position-papers/NEHA_Policy_Statement_Microblading_FINAL.pdf.

“Minor” means a person under 18 years of age.

...

“Occupational exposure” means occupational exposure as the bloodborne pathogens standard defines that term.

“Operator” means [and includes the] **an owner [or the owner's designee] **of an** establishment.**

1. The term, “operator,” includes a person whom an owner designates as having [ownership,] control [or], custody [of any place of business or employment and who manages], and/or management of the day-to-day operations, of [the] a body art establishment.

“Permanent cosmetics[,]” or “micropigmentation” [or “dermal pigmentation”] means the **intradermal** implanting of inert pigments, colors, and/or dyes [intradermally], which results in permanent alteration of tissue to gain a cosmetic effect, **and includes the form of micropigmentation known as “microblading.”**

...

[“Physician” means a person who is licensed by the State Board of Medical Examiners to practice medicine, pursuant to N.J.S.A. 45:9-1, 26:1A-9 et seq.]

...

“Pigment” means “color additive” as 21 CFR Part 70, particularly at § 70.3, defines that term.

...

“Public Health and Food Protection Program” means the Public Health and Food Protection Program within the Consumer, Environmental, and Occupational Health Service of the Division of Epidemiology, Environmental and Occupational Health within the Public Health Services Branch of the Department, for which the contact information is Public Health and Food Protection Program, PO Box 369, Trenton, NJ 08625-0369, telephone (609) 913-5150.

“Responsible person” means an adult who is a practitioner and whom the operator specially trains in the obligations and duties of an operator.

“Safety data sheet” means “safety data sheet” as the hazard communication standard at 29 CFR 1910.1200 defines that term.

...

“Single use” means [products, instruments or items that are intended for one-time use] **to be used one time for only one client** and [are disposed of] **to be discarded** after [each] use [including, but not limited to,].

1. Examples of single-use items are cotton swabs [or], **cotton balls, tissues [or], paper products, paper or plastic cups, gauze [and], dressings, bandages, sanitary coverings, razors, needles, [scalpel blades,] stencils, [ink] pigment cups, gowns, markers, and [protective] medical gloves.**

“Society of Permanent Cosmetic Professionals” means the entity by that name for which the contact information is 69 N Broadway St, Des Plaines, IL 60016, telephone (847) 635-1330, website <https://www.spcp.org>.

“SofTap®, Inc.” means the entity by that name for which the contact information is 550 North Canyons Parkway, Livermore, CA 94551, telephone (925) 248-6301, website <https://www.softaps.com>.

“Standard precautions” means Parts II D, E, and F of Siegel JD, Rhinehart E, Jackson M, Chiarello L, and the Healthcare Infection Control Practices Advisory Committee, *2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings*, incorporated herein by reference, as amended and supplemented (last update July 2019), available at <https://www.cdc.gov/infectioncontrol/guidelines/isolation/index.html>, provided references therein to:

- 1. The terms “healthcare facility,” “healthcare organization,” and the like shall be construed to mean an establishment;**
 - 2. The terms “healthcare worker,” “healthcare professional,” and the like shall be construed to mean a practitioner, apprentice, and other staff with occupational exposure; and**
 - 3. The term “patient” shall be construed to mean client.**
- ...

“Trainer or instructor of permanent cosmetics” means a permanent cosmetics practitioner holding one or more of the following credentials:

- 1. American Academy of Micropigmentation Board Certified Platinum Trainer;**
 - 2. Society of Permanent Cosmetic Professionals Trainer Membership; or**
 - 3. SofTap®, Inc., Trainer.**
- ...

[“Universal precautions” means a set of guidelines and controls, published by the Center 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, both incorporated herein by reference. 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 products.]

...

SUBCHAPTER 2. ADMINISTRATION

8:27-2.1 Procedure to locate and construct establishment

(a) [Any person desiring to construct, expand, alter, or operate a permanent cosmetic, tattooing, or ear or body piercing establishment] **An operator** shall apply, in writing, to the [local] health authority for review and approval before [such] **commencing the construction, expansion, alteration, or operation [is begun. Such application]** **of a body art or ear-piercing establishment.**

(b) An application for authorization to operate a body art establishment shall [include] **require an applicant to submit at least** the following information:

1. The applicant's legal name, home address and telephone number, full business name, business address, post office address, and telephone number. The application shall also include whether the applicant is an individual, partnership, firm, or corporation. If the applicant is a partnership, the names and addresses of the partners shall be included on the application. If the applicant is a corporation, the names and addresses of all corporate officers shall be included on the application;

2. Plans and specifications shall illustrate the location of the proposed establishment and a floor plan of the establishment as it is proposed to be operated. An exact inventory of all processing equipment as it is to be used. Plans shall indicate the layout of the reception area, the procedure areas, the cleaning and sterilization area, the storage area, and the toilet facilities;

3. (No change.)

4. A complete description of all services to be provided, the proposed hours of operation, the name of the operator, [and] the names of all **regular** practitioners and [their exact duties, a copy of] **apprentices, the body art or ear-piercing disciplines that they will perform at the establishment, and the forms of written informed consent that are to be presented to clients** for each **type of** procedure[; that the establishment proposes to offer.

i. **An operator shall notify the health authority before persons other than listed regular practitioners, such as apprentices, occasional or temporary practitioners, or health care providers, are to perform body art or ear-piercing services at the establishment, and shall obtain the same documentation that operators are to obtain from practitioners and apprentices pursuant to N.J.A.C. 8:27-4.8, and ear-piercing practitioners pursuant to N.J.A.C. 8:27-9.6.**

5.-7. (No change.)

(b)-(c) (No change.)

8:27-2.6 Prohibitions

[(a) A person who violates a prohibition under this section shall be subject to enforcement action authorized by this chapter, civil penalties as provided by N.J.S.A. 26:1A-10 and all other applicable law and/or injunctive action as provided by law.

1. Implants under the skin shall not be performed in a body art establishment.
2. Scarification such as branding and cutting shall not be performed in a body art establishment.
3. No person shall perform any]

(a) Operators shall ensure that the following prohibited activities do not occur at a body art or ear-piercing establishment:

- 1. The implantation of any object under the skin;**
- 2. The performance of scarification or the removal of pigment by laser;**
- 3. The performance of a body [piercing] art or ear-piercing procedure upon a [person under 18 years of age] minor without the presence, written consent, and proper identification of a parent or legal guardian[.], unless the minor provides a court order declaring the minor to be an emancipated minor;**
4. [No person shall perform] **The performance of** genital piercing upon a [person under 18 years of age] **minor**, regardless of parental consent[.]
5. No tattoo or permanent cosmetics shall be applied to any person under 18 years of age, without the presence, written consent, and proper identification of a parent or legal guardian.
6. No person shall practice or attempt to practice body art in a non-licensed facility.

7. No person shall operate a facility];

5. The use of a high-impact stud-and-clasp piercing system on the trailing edge of the ear or at any body location other than the earlobe;

6. The performance of the disciplines of areola restoration, camouflage, or microblading, other than at a permanent cosmetics establishment in accordance with N.J.A.C. 8:27-8.1.

7. The operation of a body art or ear-piercing establishment other than in accordance with the applicable requirements of this chapter; and

8. The performance of body art or ear piercing in an establishment, unless [it is at all times under the direct supervision of an] the operator[.

8. No person shall display a sign or in any way advertise or purport to be a body art practitioner or to be engaged in the business of body art without first obtaining a license or permit for the facility from the health authority.

(b) An emancipated minor shall be exempt from (a)3 and 5 above upon legal proof documenting said emancipation.] **or a responsible person is present on the premises and supervising the establishment, provided:**

i. Notwithstanding the operator's designation of a responsible person, the operator retains responsibility for compliance and liability associated with any action or inaction on the part of the responsible person.

(b) The following constitute the unlawful practice of body art and are subject to the enforcement proceedings, civil penalties, and other applicable remedies, as provided at (c) below:

1. Advertisement or performance of a body art or ear-piercing procedure for which this chapter requires an operator's license by a person who does not have an operator's license or whose license is not in effect and good standing; and

2. The performance by any person, regardless of licensure status, of any activity prohibited pursuant to (a) above.

(c) A person who commits an act prohibited pursuant to (a) above or engages in the unlawful practice of body art pursuant to (b) above is subject to the enforcement actions established at N.J.A.C. 8:27-11, civil penalties, as provided at N.J.S.A. 26:1A-10, and other applicable remedies, sanctions, and/or injunctive relief provided by law.

SUBCHAPTER 4. [HEALTH SAFETY] CLIENT AND OCCUPATIONAL HEALTH AND SAFETY

8:27-4.1 Scope

This subchapter applies to body art establishments.

Recodify existing 8:27-4.1 and 4.2 as **4.2 and 4.3** (No change in text.)

8:27-4.4 Health care provider instruction required for certain procedures

(a) A permanent cosmetics practitioner who is credentialed to perform areola restoration or camouflage shall do so in accordance with specific written

instructions issued by the client's health care provider, which the practitioner shall maintain with the client's application.

(b) Subsection (a) above does not apply to concealment procedures, which can be performed by both permanent cosmetics and tattoo practitioners.

8:27-[4.4]**4.5** (No change in text.)

8:27-[4.5]**4.6** [Reporting] **Operator reporting** requirements

(a) Operators shall ensure that:

[(a)] 1. [A] The establishment creates a written record of [any] reports it receives from clients or health care providers of adverse reactions, such as infection[s reported to the practitioner], after the performance of a body art procedure [is performed shall be maintained in the client's application].

i. The written record shall [include] identify the site of the [infection] reaction, the date [an infection was reported to] the [practitioner] client first perceived the reaction, the date the establishment received the report, and, if the establishment issued recommendations [made] to the client[.] to respond to the adverse reaction, the recommendations;

2. The establishment maintains a written record of adverse reactions created pursuant to (a)1 above with the client application for the procedure; and

[(b)] 3. [All infections requiring a medical referral, allergic reactions to colorants or injuries resulting from any body art procedure which become known to the operator shall be reported to] The establishment notifies the local health authority, either by

telephone or in-person, within 24 hours[. The health authority shall report such infections/injuries to the Department of Health and Senior Services in January of each year.] of receiving the client's report of an adverse reaction, and then, in writing, within two business days of receiving the report, if:

- i. The client obtained, or states an intention to obtain, medical treatment for the reaction;
- ii. The establishment recommends that the client seek medical treatment; or
- iii. The adverse reaction is or appears to be an allergic response to pigment.

8:27-[4.6]4.7 Hand [washing and personal] hygiene, use of standard precautions, infection control, bloodborne pathogens training, and records maintenance

(a) (No change.)

(b) [Before performing] Operators shall ensure that before, during, and after the performance of body art procedures, [the] practitioners [shall thoroughly wash his or her hands in hot running water with liquid soap, then rinse hands, then rinse and dry with disposable paper towels] and apprentices adhere to the Hand Hygiene

Guideline.

[(c) The practitioner shall wear disposable medical grade gloves at all times during the procedure.

(d) Gloves shall be changed if they become contaminated by contact with any non-clean surfaces, objects, contact with a third person, or torn.

(e) Gloves shall be discarded after completion of each procedure on an individual client.

Under no circumstances shall a single pair of gloves be used on more than one person.

(f) At the completion of the procedure, the practitioner shall dispose of the gloves and the hands shall be thoroughly washed.]

[(g)] (c) [Written] Operators shall establish written policies and procedures [shall be established for management] addressing the needs of employees [or], practitioners, apprentices, and clients [that] who have latex allergies and shall supply alternatives to latex medical gloves and other latex-containing items to which practitioners, apprentices, and clients who have latex allergies may be exposed to in the establishment.

(d) Operators shall ensure that practitioners and apprentices adhere to applicable provisions of the standard precautions and the bloodborne pathogens standards before, during, and after the performance of body art procedures and whenever a practitioner, apprentice, or another worker has actual or potential occupational exposure.

(e) Operators shall establish and implement policies and procedures to ensure that:

1. The skin of practitioners and apprentices is free of rash or infection;
2. Persons who have boils, infected wounds, open sores, abrasions, and/or weeping dermatological lesions do not work in, or be present at, a body art establishment until the operator has and maintains written documentation, issued by the person's health care provider, indicating that the condition is neither transmissible nor communicable;

3. Practitioners, apprentices, and workers who have an acute respiratory infection or suspected or confirmed communicable disease are not present at the body art establishment and do not return to the establishment until the operator receives written documentation issued by a health care provider indicating that the condition is not transmissible, which documentation the operator shall maintain in the establishment's file on the affected practitioner, apprentice, or worker.

i. Paragraph (e)3 above shall not be construed to exclude persons with bloodborne diseases, such as hepatitis B, hepatitis C, and HIV from performing body art in a body art establishment;

4. All practitioners, apprentices, and workers, including those having suspected or confirmed infection with bloodborne diseases, adhere to the standard precautions and the bloodborne pathogens standard;

5. At an operator's expense and on the operator's time, the operator offers employees (who may include practitioners and apprentices) the hepatitis B vaccination in accordance with the bloodborne pathogens standard, written evidence of which offer the operator maintains in the establishment's file on each employee; and

6. The operator maintains a copy of the document, such as a certificate of completion, memorializing completion of bloodborne pathogens training for each practitioner, apprentice, or other employee who is required by applicable law to receive this training, in the file the establishment maintains for each practitioner, apprentice, and employee.

(f) Operators that enroll in the On-Site Consultation Program of the New Jersey Department of Labor and Workforce Development can receive bloodborne pathogens and other OSHA compliance guidance and training without charge.

See

[https://www.nj.gov/labor/lsse/employer/Occupational Safety and Health Onsite Consultation Program.html](https://www.nj.gov/labor/lsse/employer/Occupational_Safety_and_Health_Onsite_Consultation_Program.html)

8:27-4.8 Minimum standards for operators of body art establishments in the appointment of practitioners and apprentices

(a) The operator of a body art establishment shall:

- 1. Allow only qualified practitioners and apprentices, as specified at N.J.A.C. 8:27-6.1, 7.1, and/or 8.1, as applicable, to perform body art procedures at the establishment;**
- 2. Require practitioners to present documentation that each practitioner meets the qualifications at N.J.A.C. 8:27-6.1, 7.1, and/or 8.1, as applicable, subject to (b) below;**
- 3. Require apprentices to present documentation of each apprentice's successful completion of a bloodborne pathogens course, subject to (b) below;**
- 4. Maintain a personnel or apprenticeship file on each person that the operator allows to perform or study the particular body art discipline that the establishment is authorized to provide, in which the operator retains copies of the documentation that operators are to obtain from practitioners and apprentices pursuant to this section; and**

5. Make each personnel and apprenticeship file available for Department or health authority inspection upon request.

(b) In accordance with the bloodborne pathogens standard, particularly at 29 CFR 1910.1030(g)(2), an operator who employs a person to work in an establishment shall:

1. Provide bloodborne pathogens training to each employee who has occupational exposure, at no cost to the employee and during working hours; and

2. Institute a bloodborne pathogens training program and ensure employee participation in the program.

8:27-4.9 Pigments

(a) Operators shall ensure that pigments that practitioners and apprentices use to perform body art:

1. Comply with applicable Federal standards, such as the Federal Food, Drug, and Cosmetic Act, Title 21 of the United States Code, and regulations promulgated pursuant thereto at Title 21 of the Code of Federal Regulations, including standards for color additives;

2. Are non-irritating to tissue, stable to light, and inert to tissue metabolism;

3. Do not contain substances that are known to be human carcinogens or may reasonably be anticipated to be human carcinogens, as specified in National Toxicology Program, Report on Carcinogens, 14th Edition (2016), Research

Triangle Park, NC, United States Department of Health and Human Services, Public Health Service, incorporated herein by reference, as amended and supplemented, and available at <https://ntp.niehs.nih.gov/go/roc14>;

4. Do not contain substances at exposure levels that are known, or may reasonably be anticipated, to have adverse noncancer health effects as determined by the National Toxicology Program, which are listed at <https://ntp.niehs.nih.gov/whatwestudy/assessments/noncancer/index.html>, incorporated herein by reference, as amended and supplemented;

5. Are stored out of direct sunlight; and
6. Are not subjected to autoclave processing.

(b) Operators shall ensure that practitioners and apprentices:

1. Apply pigments using single-use, individual pigment containers for each client;
2. Remove excess pigment applied to the skin with single-use, lint-free paper products;
3. Record the pigments used for each procedure, including the lot number of each pigment, in the client record of the procedure; and
4. Use pigment removal solutions bearing labels that list their ingredients, including percentages of active ingredients, measure of pH, preservatives, and directions for use.

(c) Operators shall:

1. Obtain from pigment suppliers, the safety data sheet for each pigment in use at the establishment; and

2. Maintain and make the safety data sheets, for pigments, topical anesthetics, and disinfectants, available to employees in accordance with applicable Federal and State occupational health and safety laws, and, upon request, to practitioners, apprentices, clients, and health authorities.

SUBCHAPTER 6. BODY PIERCING

8:27-6.1 [Training requirements] **Qualifications of body piercing practitioners and apprentices**

[(a) An operator shall furnish proof of having experience in the operation of a body piercing facility for a period of at least 12 months and shall furnish all the following forms of proof to fulfill this experience requirement:

1. A signed testament from a previous employer that the applicant has been piercing professionally at least one full year;
2. A business license, business records or purchasing records verifying that the applicant operates out of a legitimate business;
3. The make, model and serial number of applicant's autoclave listed on the back of a photograph of the autoclave; and
4. One or more samples of the applicant's advertising.]

[(b)] **(a) [A] To qualify as a body piercing practitioner, a person shall [perform the art of] submit to the establishment operator originals, or electronic or paper copies, of:**

- 1. Records demonstrating that the person has completed an apprenticeship in body piercing, [at a body piercing facility as an apprentice for a minimum of 1,000**

hours prior to being qualified as a practitioner and shall] **consistent with (b) below, such as:**

[1. Furnish business records, which may include tax]

i. **Tax** records[, references];

ii. **References** from former employers[, or certificates of course];

iii. **Certificates or diplomas indicating the person's completion [or memberships] of an apprenticeship; and**

iv. **Membership in good standing in a professional body piercing**

organization[s such as the Association of Professional Piercers or other organizations recognized by the New Jersey Department of Health and Senior Services] **that conditions membership on the applicant's documentation to the organization of education and experience that are at least equivalent to the apprenticeship criteria at (b) below.**

(1) Upon information and belief, and subject to verification as that entity might amend and supplement its membership criteria, membership as a "business member," a "business member-at-large," and/or an "associate piercer member," of the Association of Professional Piercers, <https://www.safepiercing.org>, meets the apprenticeship criteria at (b) below;

2. [Submit a minimum of] **At least 10 [original] client applications, accompanying adverse reaction reports (if applicable), and photographs (or digital images) of [various] body piercings [which] that the practitioner has personally performed [and a minimum of three signed testaments from previous clients; and].**

[3. Provide evidence of completion of a bloodborne pathogen course from the American Red Cross, the Association of Professional Piercers or a provider approved by the New Jersey Department of Health and Senior Services.]

[(c)] (b) [An] A completed apprenticeship consists of the apprentice [shall perform the art of] having performed body piercing at a body piercing [facility] establishment as an apprentice for a minimum of 1,000 hours under the direct supervision of a practitioner.

8:27-6.2 Jewelry

[(a) All body piercing jewelry shall be made of high quality 14 karat solid gold, surgical grade stainless steel, niobium, titanium, platinum or inert plastics.]

(a) Operators shall ensure that jewelry used in body piercing is:

1. Compliant with the Association of Professional Piercers Initial Jewelry Standards (adopted February 05, 2009, most recent revision approved May 28, 2019), incorporated herein by reference, as amended and supplemented, available at <https://www.safepiercing.org/jewelry-for-initial-piercings>;

[(b)] 2. [All insertable jewelry shall be sterilized] Sterilized or disinfected; [prior to insertion at a new piercing site. Disinfection shall include the following:

- 1. Thorough cleaning of the jewelry in an ultrasonic cleaner;**
- 2. Soaking the jewelry in a solution of 70 percent to 90 percent isopropyl alcohol for 15 minutes; and**
- 3. Allowing the jewelry to air dry prior to packaging.]**

[(c)] **3.** [Jewelry that shall] **If** not [be] immediately used after disinfection [shall be], packaged in a [zip lock] **heat-sealed or zipper-topped (such as a Ziploc®)** plastic bag[.];

[(d) Jewelry that is damaged, scratched, intended for ear piercing or not expressly designed for body piercing shall not be used.]

(e) Jewelry made of silver, gold plated or gold filled or other corrosive metal shall not be used.]

4. If manufacturer-designated only for use in or at specified body parts or areas, used only in the designated locations on the body and is not used in other body locations; and

[(f)] **5.** [Body piercing jewelry] **If** previously worn by anyone other than the client [shall be], cleaned and autoclaved **and the operator shall ensure that the client receives written notice of the jewelry's pre-worn status before use.**

[(g) Jewelry or ear studs designed for the ears shall not be used in other parts of the body.]

8:27-6.3 Skin preparation

(a) Operators shall ensure that practitioners and apprentices:

[(a)] **1.** [No] **Do not perform** body piercing procedures [shall be done] on **or at** skin surfaces [which] **that** have sunburn, rash, keloids, pimples, boils, infection[s], open lesion[s], **or** scar tissue, or manifest [any evidence] **an indication of an** unhealthy condition[s.];

2. Thoroughly disinfect the area at which a body piercing is to be located before marking the specific placement area; and

[(b)] 3. [Placement of the] **Mark areas at which body piercings are to be [pierced shall be marked] **placed using** only [with a medical grade] **medical-grade,** non-toxic, **single-use** markers [after the area is thoroughly disinfected. Gentian violet may be utilized] **or,** for marking [of] **an** oral piercing **location, gentian violet applied with a single-use applicator.****

[(c) Markers shall not be reused.]

SUBCHAPTER 7. TATTOOING

8:27-7.1 [Training] Qualifications of tattooing practitioners and apprentices

[(a) An operator shall furnish proof of having experience in the operation of a tattooing facility as a full time occupation or a designated operator for a period of at least 12 months and shall furnish all the following forms of proof to fulfill this experience requirement:

- 1. A signed testament from a previous employer that the applicant has been piercing professionally at least one full year;**
- 2. A business license, tax records, business records or purchasing records along with other proof that the applicant operates out of a legitimate business;**
- 3. The make, model and serial number of applicant's autoclave listed on the back of a photograph of the autoclave; and**
- 4. One or more samples of the applicant's advertising.]**

[(b)] (a) [A] To qualify as a tattooing practitioner, a person shall [have performed the art of] submit to the establishment operator originals, or electronic or paper copies, of:

1. Records demonstrating that the person has completed an apprenticeship in tattooing, [as an apprentice for a minimum of 2,000 hours prior to being qualified as a practitioner and shall] consistent with (b) below, such as:

[1. Furnish business records, which may include tax]

i. Tax records[, references];

ii. References from former employers[, or certificates of course];

iii. Certificates or diplomas indicating the person's completion [or memberships] of an apprenticeship;

iv. Membership in good standing in a professional tattooing organization[s], such as the Alliance of Professional Tattooists [or other organizations recognized by the New Jersey Department of Health and Senior Services;], Inc., that conditions membership on the applicant's documentation to the organization of education and experience that are at least equivalent to the apprenticeship criteria at (b) below; and

2. [Submit a minimum of] At least 10 [original] client applications, accompanying adverse reaction reports (if applicable), and photographs (or digital images) of tattoos [which] that the tattooist has personally performed [and a minimum of three signed testaments from previous clients; and].

[3. Provide evidence of completion of a bloodborne pathogen course by the American Red Cross, Alliance of Professional Tattooists, or a provider approved by the New Jersey Department of Health and Senior Services.]

[(c)] (b) [An] A completed apprenticeship consists of the apprentice [shall perform the art of] having performed tattooing at a tattooing [facility] establishment as an apprentice for a minimum of 2,000 hours under the direct supervision of a practitioner.

SUBCHAPTER 8. PERMANENT COSMETICS

8:27-8.1 Qualifications of permanent cosmetics practitioners and apprentices

(a) Subject to (d) and (e) below, to qualify as a permanent cosmetics practitioner, a person shall submit to the establishment operator, originals, or electronic or paper copies, of:

1. Record demonstrating successful completion of the basic training program in permanent cosmetics specified at (b) below, evidence of which is an original certificate, diploma, or other documentation that a training program issues to indicate successful completion; and

2. Subject to (c) below, records demonstrating that the person, under the direct supervision of a trainer or instructor, personally performed permanent cosmetics procedures of the types and quantities of each procedure specified below, evidence of which is a copy of the client application for each procedure and a photograph of the completed permanent cosmetics procedure that corresponds to each client application:

i. Five eyebrow simulation procedures;

- ii. Five lip lining or shading procedures; and
 - iii. Five eyeliner or eyelash enhancement procedures.
- (b) To qualify as a permanent cosmetics apprentice, a person shall submit to the establishment operator, originals, or electronic or paper copies, of:
 1. Records demonstrating completion of a basic training program that required the person to:
 - i. Successfully complete at least 100 hours of training provided by one or more trainers or instructors evidence, of which is an original certificate, diploma, or other documentation that a training program issues to indicate successful completion; and
 - ii. Obtain a passing grade on one of the following examinations:
 - (1) The American Academy of Micropigmentation permanent cosmetics practitioner examination;
 - (2) The Society of Permanent Cosmetic Professionals certified permanent cosmetic professional examination; or
 - (3) The SofTap®, Inc., permanent cosmetics practitioner examination.
- (c) As an alternative to meeting the criteria at (a)2 above, a person who performs procedures of the type, and in the quantity, specified at (a)2 above, but not under the direct supervision of a trainer or an instructor, shall perform one additional permanent cosmetics procedure of each type specified at (a)2 above, and the subsequent follow-up or touch-up of that procedure, under the direct supervision of a trainer or an instructor, evidence of which is a copy of the client application

for the procedure that the trainer or instructor verifies as the apprentice's work by signature, date, and credential, and a photograph of the completed permanent cosmetics procedure that corresponds to the client application.

(d) An operator shall ensure that a qualified permanent cosmetics practitioner who is to perform the discipline of areola restoration, has the credentials specified at (a) above and:

1. Has completed one full year of experience as a full-time permanent cosmetics practitioner, evidence of which is timesheets, paystubs, an employer or operator certification under the penalty of perjury, or other documentation that enables the health authority to confirm the length of the practitioner's practice experience;

2. Has personally performed 50 permanent cosmetics procedures, which can include those at (a)2 and/or (c) above require, evidence of which is a copy of the client application for each procedure and a photograph of the completed permanent cosmetics procedure that corresponds to each client application; and

3. Has successfully completed a training program in areola restoration of at least 16 hours in length provided by a trainer or an instructor, evidence of which is an original certificate, diploma, or other documentation that a training program issues to indicate successful completion.

(e) An operator shall ensure that a qualified permanent cosmetics practitioner who is to perform the discipline of camouflage has the credentials specified at (a) above and:

1. Has completed one full year of experience as a full-time permanent cosmetics practitioner, evidence of which is timesheets, paystubs, an employer or operator certification under the penalty of perjury, or other documentation that enables the health authority to confirm the length of the practitioner's practice experience;

2. Has personally performed 100 permanent cosmetics procedures, which can include those required pursuant to (a)2 and/or (d)2 above, evidence of which is a copy of the client application for each procedure and a photograph of the completed permanent cosmetics procedure that corresponds to each client application; and

3. Has successfully completed a training program in camouflage of at least 16 hours in length provided by a trainer or an instructor, evidence of which is an original certificate, diploma, or other documentation of successful completion that a training program issues.

(f) An operator of a permanent cosmetics establishment shall not allow the performance of permanent cosmetics procedures in the disciplines of areola restoration or camouflage, unless the operator's documentation on file with the local health authority states that the establishment will perform permanent cosmetics in the disciplines of areola restoration or camouflage; and identifies the permanent cosmetics practitioners who are to perform areola restoration or camouflage at the establishment; and

(g) An operator of a body art establishment shall maintain a file for each practitioner and apprentice containing copies of applicable documentation of

qualifications and other required records, and to make these records available upon request of the health authorities.

8:27-8.2 Minimum standards for permanent cosmetics apprenticeship programs

(a) The operator of a permanent cosmetics establishment that elects to offer an apprenticeship program in permanent cosmetics shall ensure that the apprenticeship program meets, and adheres to, the following minimum standards:

1. An operator of a permanent cosmetics establishment shall not allow the conduct of a permanent cosmetics apprenticeship program, unless the operator's documentation on file with the health authority states that the establishment will provide an apprenticeship program, names the permanent cosmetics practitioners who are to serve as trainers or instructors, and states that the trainers or instructors are qualified;

2. The theoretical and practical components of the apprenticeship program curriculum shall meet or exceed the curriculum for the basic permanent cosmetics training program of the Society of Permanent Cosmetic Professionals, the American Academy of Micropigmentation, or SofTap®, Inc.;

3. Upon successful completion of an apprenticeship program, an apprentice shall have performed under the direct supervision of one or more trainers or instructors at least five:

- i. Eyebrow simulation procedures;**
- ii. Lip lining or shading procedures; and**

iii. Eyeliner and/or eyelash enhancement procedures;

4. Subject to (a)6 below, no trainer or instructor shall serve as the supervising trainer or instructor of more than four apprentices who are physically present at the same time in an establishment to perform apprenticeship duties;

5. An operator shall not allow an apprentice to perform a permanent cosmetics procedure on a person unless, during the performance of the procedure, the apprentice's supervising trainer or instructor constantly is:

- i. Present in person in the workstation and not performing procedures on another client at the same time; and

ii. Visually observing the apprentice and the person receiving the procedure:

6. A trainer or an instructor shall not supervise the performance of a permanent cosmetics procedure by more than one apprentice at a time;

7. An operator contemporaneously shall maintain, during each day of an apprentice's training, a log that identifies:

- i. The dates and hours the apprentice trains each day;
- ii. The persons serving as the apprentice's supervising trainers or instructors each day;

iii. The types of procedures performed, and training provided, each day in hours (or portions thereof); and

iv. The status of the apprentice's efforts to complete each of the minimum curriculum components at (a)3 above;

- 8. Regardless of whether an apprentice completes an apprenticeship program, an operator shall:**
- i. Retain the log that (a)7 above requires for five years from the commencement of the apprenticeship, provided the operator shall maintain the log onsite for at least the six months following an apprentice's completion or discontinuation of an apprenticeship; and**
 - ii. Provide a copy of the apprentice's logged activity to the apprentice in accordance with (a)9 below;**

9. An operator shall provide a copy of an apprentice's activity log to a current or former apprentice:

- i. Within one business day of a request, if the operator maintains the log onsite of the establishment premises; and**
- ii. Within 10 business days of a request if the operator maintains the log other than onsite.**

8:27-8.3 Skin preparation for permanent cosmetics procedures

(a) Operators shall ensure that practitioners and apprentices:

- 1. Comply with N.J.A.C. 8:27-4.7 before preparing a client's skin for the application of permanent cosmetics; and**
- 2. Prepare a client's skin at the site of the permanent cosmetics application by:**
 - i. Cleaning the skin thoroughly with dispensed soap, in foam or liquid form, and water;**

- ii. Applying isopropyl alcohol of at least 70 percent concentration to the permanent cosmetics application site; and
 - iii. Allowing the skin to dry before commencing the procedure.

8:27-8.4 Practice standards for permanent cosmetics procedures

(a) Operators shall establish and implement policies and procedures that ensure that, in performing permanent cosmetics procedures, practitioners and apprentices, as applicable:

- 1. Discard single-use devices after use;**
- 2. Administer, and have the client execute, a new client application form in accordance with N.J.A.C. 8:27-4.2 by, and with, each client who requests a touch-up of prior permanent cosmetics work of the establishment if more than 180 days have elapsed since the performance of the prior work;**
- 3. Administer after-care instruction before each procedure;**
- 4. Do not allow to remain in a procedure room, when not in use, opened over-the-counter cosmetics that are for use by, or on, members of the public;**
- 5. Do not perform permanent cosmetics procedures on skin surfaces that have sunburn, rash, keloids, pimples, boils, infections, or open lesions, or bear indicia of illness or unhealthful conditions; and**
- 6. Do not perform permanent cosmetics procedures on persons who are:**
 - i. Pregnant; or**
 - ii. Taking, or took, within the preceding year, oral tretinoin or isotretinoin medication.**

SUBCHAPTER 9. EAR PIERCING

8:27-9.1 Scope

This subchapter applies to operators of ear-piercing establishments that a health authority authorizes pursuant to N.J.A.C. 8:27-9.2.

8:27-9.2 Approval to operate

(a) [The ear piercing] **A person or entity seeking to operate an ear-piercing establishment shall [obtain a license or permit from] apply to the health authority[. This license shall be renewed] for a license or permit, which shall have an effective period of one year, and annually shall apply for renewal of a license or permit.**

1. [The] **An operator shall display the** license or permit [shall be displayed] in a conspicuous place on the premises where [it may be readily observed by all] clients **can readily observe it.**

2. No person shall operate an [ear piercing] **ear-piercing** establishment [whose] **without a license or permit that is in good standing and has not been suspended or revoked.**

8:27-9.3 Client records

(a) [All] **Operators shall retain** client records [shall be retained] for a minimum of three years and [made] **make them** available to [the] **a** health authority [on] **upon** request.

(b) [Each client shall] **Subject to (d) below, an operator shall require a person applying for ear-piercing procedures to complete an application [for ear piercing procedures. The application shall include the following] that requires:**

1. The **applicant to submit the following information on the application:**
 - i. **The applicant's name, date of birth, and address [of the client; an emergency] and, if the applicant is executing the application as the parent or guardian of a minor, the name, date of birth, and address of the minor;**
 - ii. **The telephone number and name of the applicant's emergency contact; [individual for the client; the]**
 - iii. **Whether the applicant is on blood-thinning medication, or has hemophilia, diabetes, allergies, and/or ear cysts; and**
 - iv. **The application date and, if different, the date of the procedure; [the]**

2. The practitioner to submit the following information on the application:

- i. **The name of the practitioner who [performed] is to perform, and does perform, the procedure(s); [the] and**
- ii. **The location on the ear where the procedure [was] is to be performed; [the signature of the client authorizing the procedure(s)] and[, if the client is a minor, proof of parental or legal guardian's presence and signature authorizing the procedure(s);**

2. An informed consent shall be established for each procedure and shall include an annotation on the informed consent that a verbal and written after care plan has been provided to the client. The informed consent shall minimally consist of the client's

signed acceptance of the recommended procedure by the named practitioner, its risks, alternatives, and generally accepted results; and]

3. Subject to (d) below, the practitioner to obtain from the applicant, personally examine, make a photocopy of, and affix the copy to the application, an original government-issued photographic identification of the applicant.

(c) An operator shall ensure that the practitioner who is to perform an ear-piercing procedure:

- 1. Explains, in spoken words, the risks associated with the procedure and the after-care instruction; and**
- 2. Obtains the applicant's written informed consent on the application form.**

(d) The application form shall provide:

- 1. A written statement of the risks associated with the procedure;**
- 2. A space at which an applicant is to sign;**
- 3. A statement that the applicant's signature indicates that:**
 - i. The applicant's responses to the application questions, including the applicant's disclosure of health conditions, are truthful;**
 - [3.] ii. The [client shall be advised in writing] applicant understands that [any blood thinning] the applicant's use of blood-thinning medication[s,] and/or having medical conditions, such as diabetes, allergies, hemophilia, and/or cysts, [shall] increase the risks associated with the procedure and that, if the client uses blood-thinning medication or has any of these medical conditions, the client must consult a [physician] health care provider and**

submit the provider's authorization and clearance before [proceeding] the establishment can proceed with the ear piercing[.];

iii. The applicant understands and accepts the risks associated with the procedure;

iv. The applicant consents to the performance of the procedure;

v. The government-issued identification that the applicant provides (pursuant to (d) below) is the applicant's authentic identification; and

vi. The applicant acknowledges receipt of written and spoken after-care instruction from the practitioner and agrees to adhere to that instruction.

[(c)] (d) [Ear] An operator shall not permit the performance of ear piercing [of] on a [person under 18 years of age shall not be performed] **minor without the written consent **and physical presence** of the **minor's** parent or legal guardian[.]**

1. The parent or legal guardian shall accompany the client] at the time of the ear piercing[.], **and shall ensure that:**

[2. Government-issued photographic identification (I.D.) of the client shall be provided at the time of the piercing and the I.D. number shall be recorded on the application.

3. Identification of the parent or legal guardian shall be provided at the time of the ear piercing and the name, address, phone number and identification number shall be recorded on the application.]

1. The parent or legal guardian executes the application as the applicant's parent or legal guardian pursuant to (b) and (c) above;

2. The practitioner who is to perform the procedure personally examines, and makes photocopies, which are to be affixed to the application, of government-issued identification of the minor, and government-issued photographic identification of the parent or legal guardian, which collectively show the age of both, and the relationship between, the minor and the parent or guardian; and

3. If the address the applicant provides pursuant to (b)1i above is not the same for both the minor and the parent or guardian, then the practitioner shall require the applicant to provide a copy of a court order or other government-issued documentation showing that the parent or guardian has custody of the minor, a copy of which the practitioner shall affix to the application.

i. Neither the practitioner nor the application form shall inform the applicant of this requirement in advance of an applicant's execution and submission of an application.

ii. if an applicant is unable to provide documentation showing custody of the minor and the procedure is not performed, the applicant shall retain the application on file for at least 180 days, and shall cross-check any new applications against the retained applications during that period.

8:27-9.4 Reporting requirements

(a) [All] An operator of an ear-piercing establishment shall report to the health authority, within 24 hours of becoming aware or being informed of,

infections [requiring a medical referral] or injuries resulting from [ear piercing] **ear-piercing** procedures [which become known to the operator shall be reported to the local health authority within 24 hours] **performed at the establishment.** [The]

(b) A health authority that receives reports pursuant to (a) above shall submit those reports [such infections/injuries] to the Department [of Health and Senior Services] in **the succeeding January of each year, using the form at the chapter Appendix.**

8:27-9.5 Hand washing and personal hygiene

(a) [When] Operators shall ensure that practitioners performing ear piercings[, the practitioner shall maintain]:

1. Maintain a high standard of personal cleanliness, which shall include wearing clean outer garments, washing **their** hands after smoking, eating, drinking, or visiting the restroom[.]

(b) Before] before performing each [ear piercing] **ear-piercing** procedure, [the practitioner shall first thoroughly wash his or her hands in hot running water using liquid soap, then rinse his or her hands using hot running water, and dry his or her hands using clean disposable paper towels] **in accordance with (b) or (c) below, and wearing medical gloves.**

[1. A waterless hand agent may be used where hand washing sinks are not readily available.]

(b) Required hand washing consists of a person:

- 1. Wetting the hands first with water;**
- 2. Applying soap in foam or liquid form to the hands;**

- 3. Rubbing the hands together vigorously for at least 15 seconds, covering all surfaces of the hands and fingers with soap;**
- 4. Rinsing the hands with water; and**
- 5. Using single-use paper towels to dry the hands and to turn off the faucet.**

(c) If hand washing sinks with running water are not readily available, hand washing shall be performed by use of alcohol-based hand rub, provided the hands are not visibly dirty or soiled with blood or body fluids, in which case, hand washing pursuant to (b) above shall be performed first, elsewhere, followed by use of alcohol-based hand rub upon the practitioner's return to the establishment premises.

(d) An operator that provides a reusable soap dispenser for practitioner hand washing shall ensure that the dispenser is emptied and cleaned before being refilled.

[(c)] (e) [The] Operators shall ensure that practitioners [shall] wear [disposable] single-use medical [grade procedure] gloves on both hands [before proceeding with any ear piercing] at all times during the performance of ear-piercing procedures.

[(d)] Under no circumstances shall a single pair of gloves be used on more than one person.

[(e)] (f) [Policies] Operators shall establish written policies and procedures [shall be established for management] addressing the needs of employees [or], piercers, and clients who have latex allergies, and shall supply alternatives to latex medical gloves and other latex-containing items to which employees, piercers, and clients who have latex allergies may be exposed in the establishment.

SUBCHAPTER 11. ENFORCEMENT

8:27-11.1 Scope

This subchapter applies to body art and ear-piercing establishments.

8:27-11.2 Inspection, inspection report, and plan of correction

(a) The **local** health authority **with jurisdiction** shall inspect every **body art and ear-piercing** establishment [as often as the] **at least annually and upon receipt of an adverse reaction notification pursuant to N.J.A.C. 8:27-4.6.**

(b) **The State health authority shall inspect each temporary body art establishment occurring in State-operated facilities.**

(c) **Each body art and ear-piercing establishment is subject to applicable provisions of Titles 24 and 26 of the Revised Statutes, including the right of a health authority [deems necessary using an inspection report form approved by the Department of Health and Senior Services] to have access to and inspect premises, records, and items located therein.**

1. A representative of the health authority shall [provide] **present** proper identification **to an operator, or other person in charge at an establishment, upon commencing an inspection.**

[2.] (d) [The] **An** operator shall [permit]:

1. **Permit a health authority to have full access to [all parts of] the establishment; and**

2. Make available for inspection and copying, upon request of the health authority, all [pertinent] records [required for the inspection shall be made available to the health authority representative for review] that this chapter requires the operator to maintain.

(e) A person who obstructs or interferes with a health authority in the performance of an inspection or other duty is subject to penalty pursuant to applicable provisions of Titles 24 and 26 of the Revised Statutes.

[3.] (f) [An] Following an inspection, a health authority shall issue a written inspection report [shall identify in a narrative form] in which the health authority:

1. Identifies any [violations of] deficiencies in the operator's compliance with Titles 24 and 26 of the Revised Statutes, and/or this chapter [and shall be cross-referenced], citing to the section of the title or chapter, [being violated].

4. Results of the inspection shall be made available] with respect to which the [public upon request.] operator is deficient;

2. Identifies deficiencies that the operator immediately must abate to avoid suspension or closure pursuant to N.J.A.C. 8:27-11.3; and

3. Specifies applicable fines and/or penalties for each cited deficiency pursuant to N.J.A.C. 8:27-11.4.

(g) Within 10 business days of an operator's receipt of a health authority's written inspection report that identifies deficiencies pursuant to (d) above, the operator:

1. Shall submit, to the health authority, a written plan of correction in which the operator specifies the manner and the dates by which the operator will correct, and avoid in the future, each cited deficiency; and

2. May submit to the health authority:

- i. A request for reconsideration of a deficiency finding that the operator contends to be inconsistent with the facts or an applicable compliance standard; and**
- ii. Supplemental documents or materials in support of the operator's contention.**

(h) Within 10 business days of its receipt of a plan of correction and/or request for reconsideration pursuant to (f) above, a health authority shall review the plan and/or the request and:

- 1. Notify the operator, in writing, of:**
 - i. The health authority's determination to accept and/or reject an operator's plan of correction in whole or in part;**
 - ii. The reasons it rejects any parts of the plan of correction by explaining how a rejected proposed corrective measure would be inadequate to meet an applicable compliance standard; and**
 - iii. The health authority's determination on an operator's request for reconsideration and any associated requirements to implement the determination;**
- 2. Direct and authorize the operator to complete the accepted parts of the plan of correction and notify the health authority, in writing, as to the status of completion of each corrective measure on or before the date the plan of correction specifies for completion of each measure; and**

3. Direct the operator to submit a revised plan of correction as to any rejected parts of the submitted plan within 10 business days of the date of the notice of rejection.

(i) A health authority may conduct a repeat inspection to confirm the operator's acceptable performance of deficiency corrections.

(j) An operator is subject to additional or enhanced enforcement action, pursuant to N.J.A.C. 8:27-11.3, if the operator fails to timely:

1. Pay assessed fines and/or penalties;

2. Submit a plan of correction;

3. Resubmit a plan of correction that is acceptable to the health authority, if the health authority rejected the operator's initial plan of correction in whole or in part;

4. Report to the health authority as to the status of the operator's completion of each part of an accepted plan of correction; and

5. Complete corrective measures in accordance with an accepted plan of correction.

(k) A local health authority shall:

1. Submit a written report using, or containing at least the information listed in the form at N.J.A.C. 8:27 Appendix, which is incorporated herein by reference, of each adverse reaction notification it receives pursuant to N.J.A.C. 8:27-4.6, to the Department in January of each year; and

2. Report to the Department within the reporting periods and in accordance with the reporting procedures specified at N.J.A.C. 8:57, if a notification pursuant

to N.J.A.C. 8:27-4.6 or an inspection indicates a suspected or a confirmed case of a reportable communicable disease or a communicable disease outbreak.

(l) The following are government records subject to public access and disclosure in accordance with N.J.S.A. 47:1A-1 et seq., and other applicable laws:

1. Final reports of annual inspections of body art and ear-piercing establishments;
2. Reports of inspections of temporary establishments;
3. Plans of correction; and
4. A final report of an outbreak epidemiological investigation of or related to a body art or an ear-piercing establishment.

(m) The following are not government records subject to public access and disclosure in accordance with N.J.S.A. 47:1A-1 et seq., and other applicable laws:

1. A report of an adverse reaction notification issued pursuant to N.J.A.C. 8:27-4.6;
2. Communicable disease reports; and
3. Subject to (l)4 above, records relating to an outbreak epidemiological investigation of a body art or an ear-piercing establishment.

8:27-11.3 Criteria for closure and permit or license suspension

(a) [The approval,] A health authority immediately may close an establishment and/or suspend an operator's license or permit [of any person] to operate a body art or ear-piercing establishment [may be suspended at any time, when in the opinion of]

if the health authority **finds that** such action is necessary to abate [a present] **an actual or [threatened menace] imminent threat** to [the] public health.

(b) [The following shall be reason(s) for] **Following is a non-exclusive list of examples of conditions that pose an actual or imminent threat to public health and warrant a health authority's immediate closure of an establishment:**

1. (No change.)

2. Failure of an operator to report malfunctioning or missing required equipment to the health authority pursuant to N.J.A.C. 8:27-5.4, except as provided at (c) below;

[2.] **3. Unsanitary or unsafe conditions [which may adversely impact the health of the public];**

[3.] **4. The health authority has reasonable cause to suspect that an operator, a practitioner, or an apprentice is, or may be, transmitting a communicable disease [is, or may be, transmitted by an operator/practitioner];**

[4.] **5. [The] A practitioner[(s) has demonstrated] demonstrates gross incompetence in performing body [piercing,] art or ear piercing[, tattooing, or micropigmentation];**

[5.] **6. [The owner or practitioner(s) obtained] An operator obtains, or [attempted] attempts to obtain, a permit or license by means of fraud, misrepresentation, or concealment;**

[6.] **7. [The owner has been] Subject to (b)7i below, an operator, a practitioner, or an apprentice is convicted in this State, or any other state, of a crime**

directly related to the practice of [tattooing, micropigmentation,] body [piercing,] **art** or ear piercing[;].

i. This provision applies only to a crime occurring subsequent to the health authority's issuance of a license or permit to operate, provided the operator fully disclosed to the health authority all prior crimes of the operator, practitioners, and/or apprentices of the establishment, the relevance of which, the health authority considered in determining the applicant's fitness to receive the requested license or permit to operate and/or the appropriateness of the operator allowing the convicted practitioner or apprentice to perform services at the establishment;

8. An operator engages in, or condones, and/or a practitioner or an apprentice engages in, illegal activity on the establishment premises;

[7.] 9. [The owner or practitioner(s) has permitted] An operator allows, or fails to prevent, the performance of, a genital piercing upon a person under 18 years of age at the establishment; [or]

[8.] 10. [The] An operator [has failed] allows, or fails to prevent, the performance of implants, branding, [and] and/or cutting [to be performed in] at a body art establishment[.]; and/or

11. A person who does not meet the training, experiential, and credentialing requirements of this chapter performs body art procedures in a body art establishment.

(c) [The following shall be cause for,] This subsection contains a non-exclusive list of examples of conditions and circumstances that pose an actual or imminent

threat to public health and warrant at [a minimum,] **least** a seven-day suspension **of an operator's license or permit:**

- 1.-2. (No change.)
3. Failure to notify the health authority within 24 hours of positive biological indicator test result of the autoclave; [or]
4. Using an [ear piercing] **ear-piercing** instrument for any part of the body other than the ear lobes and trailing edge of the ear[.]; **or**
- 5. An apprentice performs a body art procedure without direct supervision by the apprentice's supervising trainer or instructor.**

(d) An operator's actual, or purported, lack of knowledge of a condition listed at (a) or (b) above shall not provide a basis of defense or objection to an action of a health authority to close, or suspend, the operating authority of an establishment.

(e) A local health authority shall submit a written report, using, or containing, at least the information listed in the form at N.J.A.C. 8:27 Appendix, of notifications it receives pursuant to (b)3 above to the Department in January of each year, and within the reporting periods and in accordance with the reporting procedures specified at N.J.A.C. 8:57, if a notification indicates a suspected or a confirmed case of a reportable communicable disease or a communicable disease outbreak.

8:27-11.4 Penalties

Any person who [shall] violates any provision of this chapter **or an applicable provision of Subtitle 1 of Title 24, or Title 26, of the Revised Statutes**, or who [shall] **fails or refuses** to comply with a lawful order or directive of the health authority, shall be

liable for penalties **and/or subject to injunctive action and other remedies** as provided by **applicable law, including, but not limited to, N.J.S.A. 24:2-2.1 et seq., 24:17-1 et seq., and 26:1A-10, 27, and [all other applicable law and/or injunctive action as provided by law, or both] 28.**

8:27-11.5 Adulterated or misbranded device or cosmetic; detention and embargo

If a health authority finds, or has probable cause to believe, that a device or cosmetic, such as pigment, at an establishment is adulterated or misbranded within the meaning of Title 24 of the Revised Statutes (see particularly N.J.S.A. 24:5-1 et seq.), the health authority shall detain and/or embargo the device or cosmetic in accordance with N.J.S.A. 24:4-12.

APPENDIX

New Jersey Department of Health

REPORT OF INFECTION OR INJURY

BODY ART OR EAR-PIERCING ESTABLISHMENT

Copies of the Body Art and Ear-Piercing Infection/Injury Report forms must be emailed to the Department of Health in January of each year

SECTION I - INFORMATION ON LOCAL HEALTH DEPARTMENT (LHD) RESPONDING TO REPORT		
Name of Local Health Department		
Address, City, State, Zip Code		
Name of LHD Official Receiving Report	Telephone No.	Email Address
SECTION II - INFORMATION REPORTED TO THE ESTABLISHMENT		
1. Date and Time Incident Reported to the Establishment	2. Name of Person Reporting Incident to the Establishment	
3. Relationship of Reporting Person to Ill or Injured Person	4. Name of Person Performing the Procedure	
5. Name and Address of Establishment at Which Procedure Was Performed		6. Business Telephone No.
7. Parent or Legal Guardian's Signed Consent for Procedure to be Performed if Victim is a Minor: <input type="checkbox"/> Copy of Consent Obtained by LHD		8. Client's Application and Aftercare Instructions: <input type="checkbox"/> Copy Obtained by Local Health Department
9. Name of Ill or Injured Person (Last, First, MI)		10. Date of Birth
11. Street Address		12. Home Telephone No.:
13. City, State, Zip Code		14. Business Telephone No.:
15. Date of Procedure	16. Time of Procedure	17. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Identifies as Other
18. Race <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Don't Know <input type="checkbox"/> Prefers Not to Say		
19. Did ill or injured person list any of the following medical conditions in application? <input type="checkbox"/> Diabetes <input type="checkbox"/> Allergies <input type="checkbox"/> Skin Conditions <input type="checkbox"/> Medications <input type="checkbox"/> Other: _____		
SECTION III - INVESTIGATION		
A - LOCAL HEALTH AUTHORITY INTERVIEW WITH ILL OR INJURED PERSON		
20. Date of Interview		

INTERVIEWER'S INSTRUCTIONS:

Read everything to the individual being interviewed and check all appropriate answers.

INTERVIEWER'S SCRIPT:

Hello! I am _____ with the _____ Health Department and we are working with the New Jersey Department of Health to identify risk factors for infections or injuries which may have resulted from a body art procedure. We are trying to determine the cause so that we can prevent any future problems. May I have 15 minutes of your time?

If answer is YES – Skip to "Information on Ill or Injured Person."

If answer is NO – Is there a better time when I can call?

Day: _____ Date: _____ Time: _____ AM PM

If answer is NO, also state the following: It is really important that we find out what is causing this problem. All your answers will be kept confidential, and I will try to keep this interview as short as possible.

REPORT OF INFECTION OR INJURY — BODY ART OR EAR-PIERCING ESTABLISHMENT, CONTINUED

B - INFORMATION ON ILL OR INJURED PERSON

INTERVIEWER'S SCRIPT:

First, I would like to obtain some basic information (continue with questions).

21. What kind of work do you do?	
<input type="checkbox"/> Office <input type="checkbox"/> Service <input type="checkbox"/> Construction <input type="checkbox"/> Professional <input type="checkbox"/> Student <input type="checkbox"/> Other: _____	
22. Did you stop working as a result of your infection/injury?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
23. If Yes, what date did you return to work?	
24. Did you do any of the following within one month after the procedure?	
a. Did you go swimming after the procedure?	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. Were you in the sun after the procedure?	<input type="checkbox"/> Yes <input type="checkbox"/> No
c. Were you involved in any sports/physical activities after the procedure?	<input type="checkbox"/> Yes <input type="checkbox"/> No
d. Any other activities that you think affected the site of the procedure?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes (items a through d) explain:	

C - INFORMATION ON THE PROCEDURE

INTERVIEWER'S SCRIPT:

INTERVIEWER'S TURN: Now I would like to ask you some questions related to the body art or ear-piercing procedure.

25. Which procedure was performed?				
<input type="checkbox"/> Tattoo	<input type="checkbox"/> Permanent Cosmetics	<input type="checkbox"/> Ear Piercing	<input type="checkbox"/> Body Piercing	
26. On what part of the body was the procedure performed?				
<input type="checkbox"/> Nose	<input type="checkbox"/> Tongue	<input type="checkbox"/> Ear Lobe	<input type="checkbox"/> Hand	<input type="checkbox"/> Back
<input type="checkbox"/> Lip	<input type="checkbox"/> Face	<input type="checkbox"/> Nipple	<input type="checkbox"/> Arm	<input type="checkbox"/> Abdomen
<input type="checkbox"/> Eyebrow	<input type="checkbox"/> Trailing Edge of Ear	<input type="checkbox"/> Navel	<input type="checkbox"/> Foot	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Eyelid	<input type="checkbox"/> Upper Outer Edge of Ear	<input type="checkbox"/> Genitals	<input type="checkbox"/> Leg	
27. How long did the procedure take?				
<input type="checkbox"/> Less Than 1 Hour	<input type="checkbox"/> 1 to 2 Hours	<input type="checkbox"/> 2 to 3 Hours	<input type="checkbox"/> Greater Than 3 Hours	
28. Type of jewelry person performing the procedure used (gold, silver, etc.):		29. Did you receive after care instructions from the person performing the procedure?		
		<input type="checkbox"/> Yes	<input type="checkbox"/> No	

D - MEDICAL AND TREATMENT INFORMATION

Now I would like to ask you some questions about your reaction to the procedure. Please answer Yes if you have had any of the following symptoms. (Note: Refer all outstanding medical issues to a health care professional.)

30. What date did the symptoms first appear?	31. Were you taking any medications prior to the procedure? <input type="checkbox"/> No <input type="checkbox"/> Yes - Name of Medication:																
32. Were you admitted to a hospital, emergency clinic or emergency room? a. What hospital? _____ b. Location: _____ c. Admission Date: _____ d. Telephone No.: _____																	
33. Did you see a health care professional for this skin reaction or infection? a. Name of health care professional: _____ b. Address: _____ c. Admission Date: _____ d. Telephone No.: _____																	
34. Did your health care professional confirm any of the following? <table style="margin-left: auto; margin-right: auto;"> <tr> <td><input type="checkbox"/> Inflammation</td> <td><input type="checkbox"/> Lesions</td> <td><input type="checkbox"/> Headache</td> <td><input type="checkbox"/> Vomiting</td> </tr> <tr> <td><input type="checkbox"/> Fever</td> <td><input type="checkbox"/> Allergic Reaction</td> <td><input type="checkbox"/> Rash</td> <td><input type="checkbox"/> Jaundice</td> </tr> <tr> <td><input type="checkbox"/> Pain</td> <td><input type="checkbox"/> Keloids</td> <td><input type="checkbox"/> Nausea</td> <td><input type="checkbox"/> Blurred Vision</td> </tr> <tr> <td><input type="checkbox"/> Warts</td> <td><input type="checkbox"/> Malaise</td> <td></td> <td><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Inflammation	<input type="checkbox"/> Lesions	<input type="checkbox"/> Headache	<input type="checkbox"/> Vomiting	<input type="checkbox"/> Fever	<input type="checkbox"/> Allergic Reaction	<input type="checkbox"/> Rash	<input type="checkbox"/> Jaundice	<input type="checkbox"/> Pain	<input type="checkbox"/> Keloids	<input type="checkbox"/> Nausea	<input type="checkbox"/> Blurred Vision	<input type="checkbox"/> Warts	<input type="checkbox"/> Malaise		<input type="checkbox"/> Other: _____
<input type="checkbox"/> Inflammation	<input type="checkbox"/> Lesions	<input type="checkbox"/> Headache	<input type="checkbox"/> Vomiting														
<input type="checkbox"/> Fever	<input type="checkbox"/> Allergic Reaction	<input type="checkbox"/> Rash	<input type="checkbox"/> Jaundice														
<input type="checkbox"/> Pain	<input type="checkbox"/> Keloids	<input type="checkbox"/> Nausea	<input type="checkbox"/> Blurred Vision														
<input type="checkbox"/> Warts	<input type="checkbox"/> Malaise		<input type="checkbox"/> Other: _____														

REPORT OF INFECTION OR INJURY — BODY ART OR EAR-PIERCING ESTABLISHMENT, CONTINUED

D - MEDICAL AND TREATMENT INFORMATION, CONTINUED			
35. Did your health care professional make a diagnosis? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, what was the diagnosis? <input type="checkbox"/> Keratoconjunctivitis <input type="checkbox"/> Pyogenic Granuloma <input type="checkbox"/> Corneal Abrasion <input type="checkbox"/> Chipped Tooth/Teeth <input type="checkbox"/> Cellulitis <input type="checkbox"/> Impetigo <input type="checkbox"/> Allergic Reaction to Pigments <input type="checkbox"/> Loss of Eyelashes <input type="checkbox"/> Staphylococcal <input type="checkbox"/> Eczema <input type="checkbox"/> Allergic Reaction to Latex <input type="checkbox"/> Ectropion <input type="checkbox"/> Streptococcal <input type="checkbox"/> Viral Hepatitis <input type="checkbox"/> Pigment Migration <input type="checkbox"/> Other (be specific): _____			
36. Did the health care professional give you any medications? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, -Name(s) of Medication: _____		37. Did the health care professional order any laboratory tests? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, what was it for: <input type="checkbox"/> HIV <input type="checkbox"/> Hepatitis B Virus <input type="checkbox"/> Both <input type="checkbox"/> Other: _____	
38. What were the results of the laboratory tests?			
E - FOLLOW-UP ACTION BY LOCAL HEALTH DEPARTMENT			
39. Date of Last Inspection of Establishment			
40. Was an investigation conducted as a result of this Infection/Injury Report? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, date of investigation: If Yes, provide comments below			
41. Was enforcement action taken? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, date of enforcement action: If Yes, provide comments below			
42. Comments:			