



Periodic Review / Retain Regulation Agency Background Document

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) citation	18VAC41-50
Regulation title	Tattooing Regulations
Document preparation date	December 27, 2011

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

Code of Virginia § 54.1-201.5 gives authority to the Board for Barbers and Cosmetology to promulgate regulations. It states, in part, that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board."

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

No viable alternatives for achieving the purpose of the existing regulation could be determined. The regulation enables the Board to fulfill the statutory requirements established in Chapters 2 and 7 of Title 54.1 of the *Code of Virginia*. Further, the regulation is necessary to ensure that the Board's statutory requirements are executed in the least burdensome and most efficient and cost effective manner possible while protecting the health, safety, and welfare of the citizens of Virginia.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
<ul style="list-style-type: none"> • Brian Fillman 	<p>Regulations should be terminated or at least amended. The separation of “regular” tattooing and “permanent makeup” tattooing is unnecessary. It should not be the Boards responsibility to regulate sanitation and cleanliness as anyone who does not properly follow proper sanitation and cleanliness will not remain in business.</p> <p>The industry self regulates. Regulations hinder creativity.</p> <p>Expresses concern of overregulation of tattooing, hair braiding, body piercing, wax technicians, and esthetics.</p>	<p>On April 17, 2002, the General Assembly of Virginia approved an Act to amend and reenact §§ 54.1-700 through 54.1-703 and 54.1-704.1 through 54.1-706 of the <i>Code of Virginia</i>, relating to the regulation of body piercing and tattooing. The comment mainly speaks to amending and reenacting the aforementioned sections of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.</p> <p>Per 18 VAC 41-50-10 of the Tattooing Regulations, a licensed permanent cosmetic tattooer may only tattoo the skin of the face, including but not limited to eyebrows, eyeliners, lip coloring, lip liners, full lips, cheek blush, eye shadow, and on the body for breast and scar repigmentation or camouflage. However, a permanent cosmetic tattooer may not perform tattooing beyond this outlined scope.</p> <p>Per §54.1-700 of the <i>Code of Virginia</i>, a licensed tattooer may perform all the functions of a permanent cosmetic tattooer, in addition to the tattooing upon or under any portion of the skin of a person. A licensed tattooer is not required to hold a separate permanent cosmetic tattooer’s license if they wish to perform permanent cosmetic tattooing functions.</p>
<p>Jan Childress, USA Tattoo Studio</p>	<p>Does not completely agree with regulation of the tattoo industry, however, accepts it and complies.</p> <p>Expresses concern about the focus being on legitimate shops and not tattooers who operate without a license.</p>	<p>The Board encourages anyone knowledgeable of a possible violation of the regulations or statutes to submit a complaint for review. The Compliance and Investigations Division is responsible for enforcing criminal laws under DPOR’s jurisdiction, including practicing without a license. After investigation, criminal matters are referred to local Commonwealth’s Attorneys for prosecution.</p>
<p>Chris Matisa</p>	<p>Guidelines for tattooing and body piercing are archaic.</p> <p>Autoclave is not sufficient.</p>	<p>The Board is responsible for establishing entry-level competence in order to protect the health, safety, and welfare of the public. Comments taken under advisement. Current standards of</p>

	<p>Disposables should be the only option.</p> <p>Knowing parts of an antiquated tattoo machine should not qualify one as a tattoo artist.</p> <p>Everyone should be required to present proper identification and copies of the identification should be kept on file. Minors should be accompanied by only a parent with names and addresses on identification matching.</p> <p>Portions of the final exam should be hands on. The safety portion is important, however, so is the application procedure, i.e. needle depth and over working skin.</p> <p>Expresses concern of the large number of tattooers operating without a license.</p>	<p>practice and sanitation and exam requirements and administration will be reviewed and may be considered in future regulatory review.</p> <p>The Board encourages anyone knowledgeable of a possible violation of the regulations or statutes to submit a complaint for review. The Compliance and Investigations Division is responsible for enforcing criminal laws under DPOR's jurisdiction, including practicing without a license. After investigation, criminal matters are referred to local Commonwealth's Attorneys for prosecution.</p>
<p>Andee Burnett</p>	<p>Praises regulation of the tattooing industry.</p> <p>Cosmetic tattooing should be within the scope of practice of a tattooer.</p> <p>Recommends owners of tattoo and body piercing salons only be required to have one license instead of one for tattoo and one for piercing. This license would also allow the shop owner to perform tattooing and piercing.</p> <p>Expresses a desire to increase communication within the industry and with DPOR.</p> <p>Disagrees with having to file a written complaint in order for action to be taken by DPOR. Contends complaints should be accepted verbally.</p> <p>Recommends DPOR provide a regional or district contact person to ask questions or advise of potential illegal activity.</p>	<p>Board concurs that regulations should protect the health, safety, and welfare of Virginians.</p> <p>Per 18 VAC 41-50-10 of the Tattooing Regulations, a licensed permanent cosmetic tattooer may only tattoo the skin of the face, including but not limited to eyebrows, eyeliners, lip coloring, lip liners, full lips, cheek blush, eye shadow, and on the body for breast and scar repigmentation or camouflage. However, a permanent cosmetic tattooer may not perform tattooing beyond this outlined scope.</p> <p>Per §54.1-700 of the <i>Code of Virginia</i>, a licensed tattooer may perform all the functions of a permanent cosmetic tattooer, in addition to the tattooing upon or under any portion of the skin of a person. A licensed tattooer is not required to hold a separate permanent cosmetic tattooer's license if they wish to perform permanent cosmetic tattooing functions.</p> <p>A salon/parlor license only authorizes the establishment to offer or practice tattooing, whereas the tattooer or body piercing license authorizes the individual to perform tattooing or body piercing.</p> <p>The Board encourages public participation in</p>

		<p>the performance of its duties and responsibilities. The Board holds four regular meetings per calendar year. All meetings are open to the public. The Board holds a public comment period at each regular meeting to provide an opportunity for citizens to address the Board. Additionally, interested parties may follow the Board's activities and proposed regulatory changes using the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov). Registered users may receive electronic mail notification about Board meetings and regulatory activity.</p> <p>Any complaint for any violation of statutes or regulations pertaining to the Board, in order to be investigated by the Department, shall be made in writing, or otherwise made in accordance with Department procedures.</p> <p>Board staff composed of the Executive Director, Board administrator, Administrative Assistant, and licensing specialists are available to answer a citizen's and/or licensee's inquires. The Compliance and Investigations Division ("CID") is responsible for enforcing both regulations and statutes. CID is composed of a variety of sections in order to address the needs of citizens and licensees.</p>
<p>Lynn Smith</p>	<p>The 90 hour requirement for Permanent Cosmetic Tattooers is not sufficient, specifically it does not include enough hands on training.</p> <p>Additionally, having a cosmetology or esthetics license (or medical training) should be a prerequisite to obtaining a Permanent Cosmetic Tattooer's license.</p>	<p>The Board is responsible for establishing entry-level competence in order to protect the health, safety, and welfare of the public. Comments taken under advisement. Current general entry requirements will be reviewed and may be considered in future regulatory review.</p>

The above noted comments were received during the public comment period following publication of the Notice of Periodic Review. An informal advisory group was not formed for purposes of assisting in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation meets the criteria set forth in Executive Order 14 (2010). The regulation contains the requirements for obtaining a license, renewal and reinstatement of licenses, safety and sanitation procedures, standards of professional conduct, to ensure competence and integrity of all licensees and that the health and sanitary standards and safety are adequate in shops, salons, schools, and other facilities where tattooing services are provided, and administer the regulatory program in accordance with Chapter Chapters 2 and 7 of Title 54.1 of the *Code of Virginia*. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The agency is recommending that the regulation stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

Code of Virginia § 54.1-201.5 mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a tattooer, tattooer apprentice, limited term tattooer, permanent cosmetic tattooer, master permanent cosmetic tattooer, tattooing instructor, permanent cosmetic tattooing instructor, tattoo parlor, limited term tattoo parlor, permanent cosmetic tattoo salon, tattooing school, and permanent cosmetic tattooing school. The Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

Comments received during the public comment period revolved around a select few points, mainly; (1) the perceived lack of enforcement of unlicensed practice of tattooing; (2) the differentiation of permanent cosmetic tattooing from tattooing. The regulation is clearly written, easily understandable, and does not overlap, duplicate or conflict with federal or state law or regulation.

The most recent evaluation occurred in 2006.

The Board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

No impact on the institution of the family and family stability has been identified.