STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1964

By: Lindley of the House

and

Morgan of the Senate

COMMITTEE SUBSTITUTE

[public health and safety - amending 21 O.S., Section 841.5 - medical micropigmentation - Oklahoma Medical Micropigmentation Regulation Act - promulgation of rules - amending 21 O.S., Sections 841 and 842 - penalties for tattooing - codification - recodification-

emergency]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1450 of Title 63, unless there is created a duplication in numbering, to read as follows:

A. The Legislature hereby finds that:

1. There is, in addition to cosmetic reasons, a growing need for medical micropigmentation in the treatment of clinical conditions or traumas such as cancer, surgery, or burns;

2. Medical micropigmentation is being performed in Oklahoma; and

3. Oklahoma law does not provide sufficient regulation of medical micropigmentation to assure the protection of the public.

Therefore, there is a need to provide legislation to enable the State Board of Health and the State Department of Health to regulate persons performing medical micropigmentation on the citizens of this state.

B. Sections 1 through 9 of this act shall be known and may be cited as the "Oklahoma Medical Micropigmentation Regulation Act".

SECTION 2. AMENDATORY Section 1, Chapter 142, O.S.L. 2000, as amended by Section 1, Chapter 330, O.S.L. 2000 (21 O.S. Supp. 2000, Section 841.5) is amended to read as follows:

Section 841.5 A. Medical Micropigmentation is defined as a medical procedure in which any color or pigment is applied with a needle or electronic ~~means to produce~~ machine:

1. To produce a permanent mark visible through the skin~~, (1) above~~;

2. Above the jawline and anterior to the ear and frontal hairline including but not limited to application of eyeliner, eye shadow, lips, eyebrows, cheeks, and scars~~, or (2) to~~; and/or

3. For repigmentation of areas involving reconstructive surgery~~,~~ or trauma~~, or repigmentation of the areola; provided, however, medical~~.

B. Medical micropigmentation shall not include placing on the body any pictures, images, numbers, signs, letters of the alphabet, or designs. ~~In certain cases this medical procedure may require the administration of sedating agents by individuals licensed by the Oklahoma Board of Nursing, the State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners, or the Board of Dentistry.~~

C. Medical micropigmentation ~~is~~ shall not be construed to be included in the definition of tattooing as provided in Section 841 of Title 21 of the Oklahoma Statutes.

~~B.~~ D. Medical micropigmentation is restricted to application in a physician's office or a dentist's office by:

1. A ~~registered nurse licensed~~ person licensed to practice registered nursing by the Oklahoma Board of Nursing who ~~is certified in a medical micropigmentation program approved by the State Board of Vocational and Technical Education or who completes the program~~

~~and receives the certificate within twelve (12) months of the inception of the program,~~ holds a current certificate issued by the State Commissioner of Health pursuant to the provisions of the Oklahoma Medical Micropigmentation Regulation Act while under the supervision of a ~~Medical Doctor (MD)~~ physician licensed by the Oklahoma State Board of Medical Licensure and Supervision or ~~a Doctor of Osteopathy (DO) licensed~~ by the State Board of Osteopathic Examiners or a dentist ~~(DDS)~~ licensed by the Board of Dentistry regularly and routinely on-site where medical micropigmentation is being performed;

2. A ~~licensed or unlicenced technician trained and certified in an approved program by the State Board of Vocational and Technical Education or who completes the program and receives the certificate within twelve (12) months of the inception of the program and~~ person who holds a current certificate issued by the State Commissioner of Health pursuant to the provisions of the Oklahoma Medical Micropigmentation Regulation Act while under the direct supervision of a ~~Medical Doctor (MD)~~ physician licensed by the State Board of Medical Licensure and Supervision or ~~a Doctor of Osteopathy (DO) licensed~~ by the State Board of Osteopathic Examiners or a dentist ~~(DDS)~~ licensed by the Board of Dentistry~~.~~ regularly and routinely on-site while medical micropigmentation is being performed; and

3. A ~~Medical Doctor (MD)~~ physician licensed by the State Board of Medical Licensure and Supervision~~, a Doctor of Osteopathy (DO) licensed~~ or by the State Board of Osteopathic Examiners or a Dentist ~~(DDS)~~ licensed by the Oklahoma Board of Dentistry.

~~C. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed ninety (90) days, a fine of not more than one Thousand Dollars ($1,000.00), or by both such fine and imprisonment. Nothing in this section shall prevent any of the respective licensing boards specified in this section from taking~~

~~disciplinary action against a licensee based on a violation of this law.~~

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1452 of Title 63, unless there is created a duplication in numbering, to read as follows:

A. It shall be unlawful for any person to practice medical micropigmentation or to represent himself or herself as a person authorized to practice medical micropigmentation:

1. Without having first complied with the provisions of the Oklahoma Medical Micropigmentation Regulation Act; or

2. Unless otherwise authorized to practice medical micropigmentation pursuant to the Oklahoma Medical Micropigmentation Regulation Act.

B. The State Department of Health shall be responsible for the implementation and enforcement of the provisions of the Oklahoma Medical Micropigmentation Regulation Act regarding medical micropigmentation in the same manner as the Department fulfills its regulatory duties in other areas of responsibility regarding public health including but not limited to:

1. Taking such steps for the enforcement of the Oklahoma Medical Micropigmentation Regulation Act as the Department deems necessary including but not limited to seeking injunctive relief against:

a. any person certified to perform medical micropigmentation pursuant to the Oklahoma Medical Micropigmentation Regulation Act and who is alleged to be in violation of the Oklahoma Medical Micropigmentation Regulation Act or rule or order issued pursuant thereto, and

b. any person who does not hold a certificate or is not authorized to practice medical micropigmentation pursuant to the Oklahoma Medical Micropigmentation

Regulation Act and is practicing or holding himself or herself as authorized to practice medical micropigmentation;

2. Investigating or causing to have investigated and taking appropriate actions, if needed, on complaints received or on the Department's own initiative against persons accused of violating the provisions of the Oklahoma Medical Micropigmentation Regulation Act; and

3. Contracting with state agencies or private entities to obtain services necessary to implement the provisions of the Oklahoma Medical Micropigmentation Regulation Act at a rate set by the State Board of Health.

C. The State Board of Health shall promulgate rules to implement the provisions of the Oklahoma Medical Micropigmentation Regulation Act. The rules shall include, but not be limited to, training requirements and the establishment of criteria for the certification of persons authorized to perform medical micropigmentation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1453 of Title 63, unless there is created a duplication in numbering, to read as follows:

A. Except for a physician licensed by the State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners, or a dentist licensed by the Board of Dentistry, any person seeking authority to perform medical micropigmentation in this state shall first be certified by the State Department of Health.

B. The State Commissioner of Health shall not issue a certificate to perform medical micropigmentation to a person who has:

1. Been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor involving moral turpitude in any federal, state, territory, or District of Columbia court;

2. Been determined to have engaged in unprofessional conduct as defined by the rules promulgated by the State Board of Health;

3. Made a materially false or fraudulent statement in an application or other document relating to certification pursuant to the provisions of the Oklahoma Medical Micropigmentation Regulation Act; or

4. Had a health-related license, certificate, or permit suspended, revoked or not renewed or had any other disciplinary action taken, or had an application for a health-related license, certificate, or permit refused by a federal, state, territory, or District of Columbia regulatory authority for intentionally falsifying information.

C. In order to qualify for certification an applicant shall:

1. Have received a high school diploma or its equivalent;

2. Be at least twenty-one (21) years of age; and

3. Submit a completed application to the Department in such form as required by the Department which shall include a notarized copy of:

a. the certificate of birth of the applicant,

b. the applicant's driver license or other similar form of identification,

c. other professional credentials, if applicable, and

d. proof, in such form as the Department determines appropriate, of the satisfactory completion of a program of training and testing approved by the Department as specified in Section 5 of this act.

D. Upon meeting the requirements of the Oklahoma Medical Micropigmentation Regulation Act and rules promulgated pursuant

thereto, the State Commissioner of Health shall issue a certificate to perform medical micropigmentation to the applicant.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1454 of Title 63, unless there is created a duplication in numbering, to read as follows:

A. The State Board of Health, in cooperation with the Medical Micropigmentation Advisory Committee and the Oklahoma Department of Career and Technology Education, shall adopt a curriculum of required courses and establish by rule the types of courses to be offered. The complete program of instruction approved by the State Board of Health in theory and clinical training shall consist of at least four hundred fifty (450) hours and not more than two thousand (2,000) hours.

B. 1. In order to provide the State Department of Health confirmation of each applicant's competency, written theory and clinical tests shall be administered by the Oklahoma Department of Career and Technology Education.

2. Applicants otherwise qualified to practice medical micropigmentation as determined by the State Department of Health pursuant to this act may be certified to perform medical micropigmentation without completing the program of instruction specified by this section if the applicant obtains a passing score for both the written theory and clinical tests. The State Board of Health shall promulgate rules to implement the provisions of this paragraph.

3. The State Board of Health shall set, by rule, a minimum passing score for both written theory and clinical tests.

C. The provisions of this section shall not be construed to authorize training for the giving of any type of local injections including intraoral injections.

1. The only individuals authorized to administer local injections, intraoral injections, or sedating agents are those

individuals who are licensed by the Oklahoma Board of Nursing, the State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners, or the Board of Dentistry.

2. Individuals who are licensed by the Oklahoma Board of Nursing may become qualified to give intraoral injections upon completion of a course of study on the administration of local anesthesia offered by the Oklahoma College of Dentistry.

D. Within one hundred fifty (150) days after the effective date of this act, the Oklahoma Department of Career and Technology Education shall provide training and testing programs required by this section for anyone qualified to apply for a certificate pursuant to the provisions of Section 4 of this act. The training and testing programs shall meet the standards established pursuant to the provisions of this section.

E. After the initial training program offered pursuant to subsection D of this section, the Oklahoma Department of Career and Technology Education shall provide a complete curriculum for the training and testing of applicants for certification as deemed needed by the Oklahoma Department of Career and Technology Education.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1455 of Title 63, unless there is created a duplication in numbering, to read as follows:

A. Not more than thirty (30) days after the effective date of this act, the State Commissioner of Health shall establish the Medical Micropigmentation Advisory Committee to assist in the establishment of criteria for certification, training and testing; promulgation of rules necessary to regulate the performance of medical micropigmentation; and the periodic evaluation of the application and enforcement of the laws and rules regulating medical micropigmentation.

B. The Medical Micropigmentation Advisory Committee shall perform such other duties within its scope of authority as the State Board of Health determines necessary to implement the provisions of the Oklahoma Medical Micropigmentation Regulation Act.

C. The Medical Micropigmentation Advisory Committee shall be appointed by the State Commissioner of Health and shall consist of seven (7) members as follows:

1. Three persons, one who is a physician licensed by the State Board of Medical Licensure and Supervision, one who is a physician licensed by the State Board of Osteopathic Examiners, and one who is a dentist licensed by the Board of Dentistry;

2. Three persons, each of whom hold current certificates issued by the State Board of Health pursuant to the provisions of the Oklahoma Medical Micropigmentation Regulation Act. Provided, for the initial appointments of these three members, a temporary certificate shall be acceptable for qualification to serve. After the time allowed for temporary certificates expires, as provided in Section 9 of this act, no person shall be allowed to serve on the advisory committee whose temporary certificate has expired and who does not hold a current certificate issued pursuant to the Oklahoma Medical Micropigmentation Regulation Act; and

3. One person who is a member of the public and not licensed to practice by the Oklahoma Board of Nursing, the State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners, or the Board of Dentistry.

D. Each member shall serve at the pleasure of the State Commissioner of Health.

E. Members of the Medical Micropigmentation Advisory Committee shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties pursuant to the provisions of the State Travel Reimbursement Act.

F. The Medical Micropigmentation Advisory Committee shall organize and meet at such time and place as it deems necessary to perform its duties. The State Department of Health shall provide meeting space and staffing as necessary to assist the advisory committee in implementing its duties pursuant to the Oklahoma Medical Micropigmentation Regulation Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1456 of Title 63, unless there is created a duplication in numbering, to read as follows:

A. Certificates to perform medical micropigmentation shall be valid for one (1) year from the date of issuance.

B. Until July 1, 2002, fees for certification to perform medical micropigmentation as promulgated by the State Board of Health shall not exceed:

Application for Certification	$1,000.00
Annual Renewal of Certification	$ 500.00
Reinstatement of Certification	$ 750.00
Replacement of Certificate	$ 250.00

C. On or before March 1, 2002, the State Board of Health shall make recommendations to the Legislature as to the proper and necessary fees for the regulation of the performance of medical micropigmentation pursuant to the Oklahoma Medical Micropigmentation Regulation Act.

D. All fees collected pursuant to the provisions of this section shall be deposited in the Public Health Special Fund and shall be used in implementing the provisions of the Oklahoma Medical Micropigmentation Regulation Act. Excess funds shall be available to the State Department of Health for expenditures pursuant to Section 1-107 of Title 63 of the Oklahoma Statutes.

E. Every person holding a current certificate to perform medical micropigmentation shall display the certificate in a

conspicuous place in the area where medical micropigmentation is being performed.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1457 of Title 63, unless there is created a duplication in numbering, to read as follows:

A. If a person, after proper notice and hearing as provided in the Administrative Procedures Act, is found to have violated one or more provisions of the Oklahoma Medical Micropigmentation Regulation Act, the State Department of Health may impose one or more of the following penalties:

1. Suspend or revoke a certificate;

2. Seek injunctive relief;

3. Reprimand the certificate holder;

4. Place a certificate holder on probation for a specified period of time;

5. Deny renewal of a certificate;

6. Require a special quality review of the certificate holder, subject to such procedures as the Department deems appropriate;

7. Require the person or entity to pay all costs incurred by the Department as a result of hearings conducted regarding actions of the subject of the hearing including, but not limited to, investigation costs, hearing officer costs, renting of special facilities costs, and court reporter costs; or

8. In addition to any criminal penalty imposed pursuant to the Oklahoma Medical Micropigmentation Regulation Act, assess an administrative penalty not to exceed Ten Thousand Dollars ($10,000.00).

B. In addition to the penalties provided for in subsection A of this section, the Department may request the district attorney to bring an action in the district court for the prosecution of any person for a violation of any provision of the Oklahoma Medical

Micropigmentation Regulation Act, or order issued or rules promulgated pursuant thereto.

C. Upon application in writing and upon good cause, the Department may reinstate a certificate which has been revoked or suspended or may modify the certificate when reinstated. A person whose certificate has been revoked or suspended may not reapply for reinstatement during the time period set by the Department which shall not exceed five (5) years.

D. 1. Administrative penalties assessed by the provisions of the Oklahoma Medical Micropigmentation Regulation Act shall be imposed and enforced pursuant to the Administrative Procedures Act and may be enforced in district court as authorized by the Administrative Procedures Act.

2. All monies, excluding costs, collected from administrative penalties authorized in this section, shall be deposited pursuant to Section 1-1701.1B of Title 63 of the Oklahoma Statutes.

E. Any person convicted of violating the provisions of the Oklahoma Medical Micropigmentation Regulation Act or orders issued or rules promulgated pursuant thereto shall be guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed ninety (90) days, a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment. Each day upon which such violation occurs shall constitute a separate violation.

F. The provisions of this section shall apply to:

1. Any person certified to perform medical micropigmentation pursuant to the Oklahoma Medical Micropigmentation Regulation Act and who is alleged to be in violation of the Oklahoma Medical Micropigmentation Regulation Act or rule or order issued pursuant thereto; and

2. Any person who does not hold a certificate or is not authorized to practice medical micropigmentation pursuant to the

Oklahoma Medical Micropigmentation Regulation Act and is practicing or holding himself or herself as authorized to practice medical micropigmentation.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1458 of Title 63, unless there is created a duplication in numbering, to read as follows:

A. Not more than thirty (30) days after the effective date of this act, the State Board of Health shall promulgate emergency rules to provide procedures by which persons seeking authority to perform medical micropigmentation may receive a temporary certificate.

B. A temporary certificate shall authorize the holder to perform medical micropigmentation in accordance with the provisions of the Oklahoma Medical Micropigmentation Regulation Act.

C. Temporary certificates shall only be issued until September 1, 2001.

D. In order to qualify to receive a temporary certificate to perform medical micropigmentation a person shall:

1. Submit in such form as the State Department of Health shall require, a completed application which shall include a notarized copy of:

a. the certificate of birth of the applicant,

b. the applicant's driver license or other similar form of identification,

c. other professional credentials, if applicable, and

d. a statement from the physician licensed by the State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners, or a dentist licensed by the Board of Dentistry under whose supervision the applicant will be performing medical micropigmentation;

2. Be at least twenty-one (21) years of age;

3. Pay a temporary certificate fee in the amount of One Thousand Dollars ($1,000.00); and

4. Comply with the emergency rules promulgated pursuant to the provisions of this section.

E. A person who has been issued a temporary certificate pursuant to this section and who wishes to continue to practice medical micropigmentation shall, prior to the termination of the temporary permit, show competency in a written theory test and a clinical test provided by the Oklahoma Department of Career and Technology Education pursuant to Section 5 of this act.

F. A temporary certificate issued pursuant to the provisions of this section shall be for a period not to exceed twelve (12) months from the effective date of this act. Such temporary certificate shall not be extended or renewed for any reason.

SECTION 10. AMENDATORY 21 O.S. 1991, Section 841, is amended to read as follows:

Section 841. It shall be unlawful for any person to tattoo or offer to tattoo any person. As used ~~herein~~ in this section, to "tattoo" means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, so as to produce a permanent indelible mark or figure visible on the skin. Medical micropigmentation, performed pursuant to the provisions of the Oklahoma Medical Micropigmentation Regulation Act, shall not be construed to be tattooing.

Provided, however, that the provisions hereof shall not apply to any act of a licensed practitioner of the healing arts performed in the course of his practice.

SECTION 11. AMENDATORY 21 O.S. 1991, Section 842, is amended to read as follows:

Section 842. Any person violating the provisions of ~~21 O.S. 1961 §~~ Section 841~~,~~ of this title shall be guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by imprisonment in the

county jail not to exceed ninety (90) days or payment of a fine of not more than Five Hundred Dollars ($500.00) or by both such fine and imprisonment.

SECTION 12. RECODIFICATION Section 1, Chapter 142, O.S.L. 2000 (21 O.S. Supp. 2000, Section 841.5), as last amended by Section 2 of this act, shall be recodified as Section 1-1451 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 13. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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