

ENROLLED HOUSE
BILL NO. 1964

By: Lindley of the House

and

Morgan and Pruitt of the
Senate

An Act relating to public health and safety; making legislative findings; amending 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), which relates to medical micropigmentation; modifying and adding definitions; modifying the individuals who may apply or perform micropigmentation; providing for legislative findings; creating the Oklahoma Medical Micropigmentation Regulation Act; giving the State Department of Health authority over certification and limited enforcement in certain circumstances; giving other boards regulatory authority over enforcement in certain circumstances; stating enforcement authority; providing for promulgation of rules by the State Board of Health and certain licensing Boards; providing for contents; prohibiting certain acts; providing requirements for certificates to perform medical micropigmentation; providing exemption; requiring the State Board of Career and Technology Education to provide certain training and testing programs; setting time periods; providing for content and standards; establishing an advisory committee; providing membership and duties; providing for travel reimbursement; setting fees; providing for penalties; providing for jurisdictional areas; providing procedures for certain investigations; authorizing administrative penalties; making certain acts unlawful; applying penalties to specified persons; providing for reinstatement; providing for deposit and expenditure of penalties collected; providing for procedures under Administrative Procedures Act; providing penalties; amending 21 O.S. 1991, Sections 841 and 842, which relate to penalties for tattooing; adding to exemptions; clarifying references; providing for codification; providing for recodification; and declaring an 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, and 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 appropriate entities 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.~~ As used in the Oklahoma Medical Micropigmentation is defined as Regulation Act:

1. "Licensing board" means the Oklahoma State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners and/or the Board of Dentistry;

2. "Medical micropigmentation" means a medical procedure in which any color or pigment is applied with a needle or electronic means to produce machine:

a. to produce a permanent mark visible through the skin,
~~(1)~~

b. 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

c. for repigmentation of areas involving reconstructive surgery, or trauma, or repigmentation of the areola; provided, however, medical.

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. Medical micropigmentation is shall not be construed to be included in the definition of tattooing.

~~B. Medical micropigmentation is restricted to application by:~~

~~1. A registered nurse licensed 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, while under the supervision of a Medical Doctor (MD) 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;~~

~~2. A licensed or unlicensed 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 while under the direct supervision of a Medical Doctor (MD) 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.~~

~~3. A Medical Doctor (MD) licensed by the State Board of Medical Licensure and Supervision, a Doctor of Osteopathy (DO) licensed by the State Board of Osteopathic Examiners or a Dentist (DDS) licensed by the 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 as provided in Section 841 of Title 21 of the Oklahoma Statutes; and~~

3. "Physician" means a person licensed to practice:

- a. allopathic medicine and surgery by the Oklahoma State Board of Medical Licensure and Supervision pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act,
- b. osteopathic medicine by the State Board of Osteopathic Examiners pursuant to the Oklahoma Osteopathic Medicine Act, or
- c. dentistry by the Board of Dentistry pursuant to the State Dental Act.

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. Until May 1, 2002, medical micropigmentation may only be performed in a physician's office by:

1. A physician as defined by the Oklahoma Medical Micropigmentation Regulation Act;

2. A person licensed to practice registered nursing by the Oklahoma Board of Nursing while working under supervision of a physician. The level of supervision shall be determined by the licensing board of the physician in whose office medical micropigmentation is being performed; and

3. Any person while working under supervision of a physician. The level of supervision shall be determined by the licensing board of the physician in whose office medical micropigmentation is being performed.

B. On and after May 1, 2002, medical micropigmentation may only be performed in a physician's office by:

1. A physician as defined by the Oklahoma Medical Micropigmentation Regulation Act;

2. A person licensed to practice registered nursing by the Oklahoma Board of Nursing who holds a current certificate issued by the State Commissioner of Health pursuant to the provisions of the Oklahoma Medical Micropigmentation Regulation Act while working under supervision of a physician. The level of supervision shall be determined by the licensing board of the physician in whose office medical micropigmentation is being performed; and

3. A 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 working under supervision of a physician. The level of supervision shall be determined by the licensing board of the physician in whose office medical micropigmentation is being performed.

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

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

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

B. By November 1, 2001, the State Board of Health shall have promulgated rules to implement the provisions of the Oklahoma Medical Micropigmentation Regulation Act. The rules shall include rules of practice for medical micropigmentation training requirements and the establishment of criteria for the certification of persons authorized to perform medical micropigmentation.

C. The Oklahoma State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners and the Board of Dentistry may each promulgate rules relating to the performance of micropigmentation in physician offices by those physicians subject to their licensing authority. Such rules shall comply with the Oklahoma Medical Micropigmentation Regulation Act.

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. On and after May 1, 2002, except for a physician, any person intending 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 or renew 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. Have submitted 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 6 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 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 later than November 1, 2001, 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 the Oklahoma Medical Micropigmentation Regulation Act may be certified to perform medical micropigmentation without taking or completing the program of instruction specified by this section if the applicant obtains a passing score for both the written theory and clinical tests. Not later than January 1, 2002, 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. By January 1, 2002, 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 5 of this act. The training and testing programs shall meet the standards established pursuant to the provisions of this section.

D. After the initial training program offered pursuant to subsection C 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 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. 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:

1. The establishment of criteria for certification, training and testing;

2. The promulgation of rules for the practice of medical micropigmentation; and

3. 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, the Commissioner shall appoint persons who have been engaged in the performance of medical micropigmentation for at least one (1) year prior to the effective date of this act and who are currently performing medical micropigmentation pursuant to subsection A of Section 3 of this act. Such initial members shall be required to obtain a certificate to practice medical micropigmentation by May 1, 2002, in order to continue membership on the Committee; 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. 1. The Medical Micropigmentation Advisory Committee shall organize and meet at such time and place as it deems necessary to perform its duties.

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

B. Until July 1, 2003, 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

C. On or before January 1, 2003, 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 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. Upon receipt of a complaint by a licensing board relating to a violation of the Oklahoma Medical Micropigmentation Regulation Act or any rules promulgated thereto, the licensing board shall cause an investigation to be made. If during the investigation, the licensing board determines that the alleged violation of the Oklahoma Medical Micropigmentation Regulation Act or any rules promulgated thereto may have been committed by any person other than a physician or any other person subject to the licensing board's regulatory authority, the licensing board shall immediately notify the Oklahoma State Department of Health.

B. 1. Upon receipt of a complaint by the Department or upon receipt of notice pursuant to subsection A of this section relating to an alleged violation of the Oklahoma Medical Micropigmentation Regulation Act or rules promulgated thereto which involve the practice of micropigmentation in the office of a physician, the Department shall:

- a. notify the appropriate licensing board of the complaint and request a joint inspection, or
- b. refer the complaint to the appropriate licensing board for investigation.

2. The licensing boards shall give priority to investigations of complaints for which the Department has requested a joint inspection.

C. 1. If a person other than a physician, 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:

- a. suspend or revoke a certificate,

- b. seek injunctive relief,
- c. reprimand the certificate holder,
- d. place a certificate holder on probation for a specified period of time,
- e. deny renewal of a certificate,
- f. require a special quality review of the certificate holder, subject to such procedures as the Department by rule deems appropriate,
- g. require the person or entity to pay all costs incurred 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
- h. 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).

2. Any physician alleged to have violated the Oklahoma Medical Micropigmentation Regulation Act or rules promulgated by the licensing board thereto shall be subject to penalties established pursuant to law by the licensing board which has authority to regulate the physician.

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 Department under 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 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~~ of this section 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.

Passed the House of Representatives the 18th day of May, 2001.

Presiding Officer of the House of
Representatives

Passed the Senate the 23rd day of May, 2001.

Presiding Officer of the Senate