

**Department of Health  
Medical Quality Assurance Commission**

# **Interpretive Statement**

Revised – 10/18/11

<b>Title:</b>	Practice of Medicine and Body Art – Other severing or penetrating of human tissue	Number: MD2009-01
<b>References:</b>	RCW 18.71.011(3)	
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<b>Approved By:</b>	Michelle Terry, MD (signature on file)	

### **Description of the Issue**

Does scarification, branding, tongue splitting, insertion of body hooks, and body art implants in the practice of body art also constitute the practice of medicine?

### **Background Information**

A complaint dated April 28, 2008 requests that the Medical Quality Assurance Commission (Commission) determine whether tattooing, piercing, scarification, branding, tongue splitting, insertion of body hooks, and body art implants constitute the practice of medicine pursuant to Chapter 18.71 RCW. Although the complaint identifies several businesses that engage in these activities in Washington State, the essence of the complaint is a request for an advisory opinion. Accordingly, the Commission chooses to respond to the complaint by issuing interpretive statements pursuant to RCW 34.05.230.

RCW 18.71.011(3) states, in relevant part:

**RCW 18.71.011 Definition of practice of medicine — Engaging in practice of chiropractic prohibited, when.**

A person is practicing medicine if he does one or more of the following:

...

(3) Severs or penetrates the tissues of human beings;

... .

Therefore, in general, a person is practicing medicine if s/he severs or penetrates the tissues of a human being. This is consistent both with the plain language of RCW 18.71.011 and with a liberal construction of the definition to protect public health. *Creelman v. State Bd. of Registration for Architects*, 73 Wn.2d 298, 300, 438 P.2d 215 (1968).

The Legislature, by adopting more specific statutes granting authority to some groups to sever or penetrate human tissue, may carve such practices out of the definition of the practice of medicine<sup>1</sup>. Therefore, other health care providers may also be authorized to sever or penetrate the tissue of human beings, just as they also may be authorized to “diagnose, cure, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality.” See RCW 18.71.011(1). For example, osteopathic physicians are authorized to use “any and all methods in the treatment of disease, injuries, deformities, and all other physical and mental conditions in and of human beings, including the use of osteopathic manipulative therapy.” See RCW 18.57.001.

The state of Washington has enacted some state-level regulation of tattooing facilities and practices, including standards for sterilization and infection control; however, prior to the 2009 Legislative session, no such legislation had been adopted relating to other forms of body art, even though many of the same health concerns applied.

Senate Bill 5391<sup>2</sup>, a bill regulating tattooing and body piercing, was signed into law on May 7, 2009 with an effective date of July 26, 2009. In enacting this law, the Legislature has carved out what it defines as “body piercing”, “tattooing” and “Body Art” from what would otherwise constitute the practice of medicine. The new law defines “Body Art” in relevant part as “the practice of invasive cosmetic adornment including the use of branding and scarification... [and also] includes the intentional production of scars upon the body.” Chapter 412, Laws of 2009, Section 2. All other examples of severing or penetrating the tissues of a human being remains within the definition of the practice of medicine without separate, specific legislative direction otherwise.

### **Analytical Outline**

The various forms of body art referred to in the complaint involve differing procedures to sever or penetrate human tissue. They also raise distinct health risks. These risks are best addressed in separate interpretive statements. Clarification of the practice of medicine in the context of body art is divided into two parts<sup>3</sup>:

- Piercing; and
- Other severing or penetrating of human tissue, including scarification, branding, tongue splitting, insertion of body hooks, and body art implants.

These interpretive statements advise the public of the Commission’s current opinions and concerns regarding these practices.

### **Definitions of Extreme Body Art Procedures**

▪ **Scarification** means altering skin texture by cutting the skin and controlling the body’s healing process in order to produce wounds, which result in permanently raised wheals or bumps known as keloids.

▪ **Branding** means inducing a pattern of scar tissue by use of a thermal material (usually

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<sup>1</sup> “It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act and thus conflict with it, the special act will be considered as an exception to, or qualification of, the general statute, whether it was passed before or after such general enactment.” *Id.*; See *State v. Conte*, 159 Wn.2d 797, 803, 154 P.3d 194 (2007), *cert. denied*, --- U.S. ---, 128 S.Ct. 512, 169 L.Ed.2d 342 (2007).

<sup>2</sup> Chapter 412, Laws of 2009.

<sup>3</sup> The Commission has decided not to address Tattooing by interpretive statement.

metal) to the skin, making a serious burn, which eventually becomes a scar.

- **Tongue splitting** means splitting the front portion of tongue in two with a scalpel, string, or burning tool.

- **Insertion of body hooks** means the insertion of hooks driven through skin or fastened to existing piercings to enable the suspension of a person for minutes to hours.

- **Body art implant** means an object or other inert material that is implanted under the skin between the fascia and epidermal layers. There are two forms of implants: *subdermal* implants are completely covered by skin; and *transdermal* implants begin under skin but then protrude outside.

### **Public Protection Issues**<sup>4</sup>

The extreme body art procedures defined in this statement raise wide-ranging public health, safety and welfare issues: medical complications; infection and infectious disease transmission; bio-hazardous waste disposal; obtaining accurate medical history and informed consent; and procedures performed on minors. Issues include, but are not limited to, the examples below.

Medical Complications. Different extreme body art procedures incur different complications. Branding is complicated because skin spreads as it heals and requires compensation. Complex brands do not work well on human flesh. Branding requires proper training and experience. Scarification is not a precise art. To scar, the cut must penetrate the second layer of skin. Scarification involves risk that certain physiological structures may be unintentionally cut. There are many variables: skin type, depth of incision, and wound treatment. Cutting or burning too deeply can cause serious problems. Proper healing requires the same level of health care oversight as treatment for traumatic cuts and burns. Implants raise risks of anesthesia complications, damage to blood vessels, and adverse immune system reactions. The tongue is a very complicated and vital body organ and is a major site for bacteria. Oral infections are particularly dangerous due to the potential for cardiac complications and proximity to the brain.

Infection and Infectious Disease Transmission. Whenever the skin barrier is severed or penetrated there are increased risks for serious infection unless procedures are performed in medically sterile and professional environments. Localized infection from improper sterilization or aftercare can lead to illness, deformity, and unintended scarring. The two most common bacterial infections are Staphylococcus (skin bacteria that can cause death if it enters the blood stream) and Pseudomonas (bacteria that thrives in warm, moist areas causing irritation and more serious infection, if not treated properly), and the more serious and fast spreading staph infection – MRSA – can easily be contracted through a body art portal causing permanent injury or death. Further, serious viral infections can incur, including Hepatitis B, Hepatitis C, and HIV/AIDS. Diseases such as tetanus and tuberculosis can also be contracted through open or slow healing wounds.

Bio-hazardous Waste Disposal. Bio-hazardous waste, also called infectious waste or biomedical waste, is any waste containing infectious materials or potentially infectious substances such as blood. Of special concern are sharp wastes such as needles or blades that can cause injury during handling. Infectious wastes must either be incinerated or treated prior to final disposal. The appropriate handling and processing of bio-hazardous waste is essential.

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<sup>4</sup> The Commission recognizes that scarification and branding, as defined by the Legislature in Chapter 412, Laws of 2009, has been carved out of the definition of the practice of medicine. Nevertheless, the below health concerns remain valid.

Obtaining Accurate Medical History and Informed Consent. Body art practitioners must be skilled at obtaining and knowledgeable about preexisting health conditions (e.g., diabetes, hemophilia, allergies) that may increase health risks associated with receiving a body art procedure. The taking of patient histories and vital signs are fundamental aspects of health care practice. Informed consent is the process by which fully informed patients participate in choices about their health care, including body art procedures. It is generally accepted that complete informed consent includes a discussion of the following elements: the nature of the decision or procedure; reasonable alternatives to the proposed intervention; the relevant risks, benefits, and uncertainties related to each alternative; assessment of patient understanding; the acceptance of the intervention by the patient; and instructions for after-care and treatment of complications.

Procedures Performed On Minors. RCW 26.28.085 makes tattooing of minors under age 18 a misdemeanor, excluding medical procedures performed by licensed physicians. The extreme body art procedures defined in this statement are more permanent and irreversible than tattooing. The same rationale for prohibiting the tattooing of minors also applies to extreme body art procedures.

Pain Management. The Joint Commission on Accreditation of Healthcare Organizations' (JCAHO) guidelines on pain management state, "Patients have the right to appropriate assessment and management of pain."

Maintain Records of Items Inserted and Composition. Body art practitioners should document and maintain records identifying the items used to penetrate human tissue when performing extreme body art procedures, including the composition of the items, in the event that allergies occur, or items are implanted or break and are retained in the body during the procedure.

### **Conclusion**

As the Legislature has recognized by the current legislative definitions of the practice of medicine and body art, the public health, safety and welfare dictates that extreme body art practices that fall outside of the definition of body art in Chapter 412, Laws of 2009, (i.e. tongue splitting, insertion of body hooks, and body art implants) be recognized as the practice of medicine pursuant to RCW 18.71.011(3) and should only be performed by licensed and trained medical professionals within their scope of practice.