

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 234. MEDICAL MICROPIGMENTATION**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

310:234-1-2. Definitions [AMENDED]

310:234-11-1. General requirements [AMENDED]

310:234-11-3. Administrative penalties [AMENDED]

SUMMARY:

These changes are related to the provisions provided in HB 3002, which modify the requirements related to denial of a license. It removes consideration of misdemeanors and requires felonies to be substantially related to the practice of medical micropigmentation and pose a reasonable threat to public safety. These rule changes add definitions from the HB 3022 and also modify the administrative penalty sections to match these requirements.

AUTHORITY:

Commissioner of Health, Title 63 O.S. § 1-104; Oklahoma Medical Micropigmentation Regulation Act Title 63 O.S. § 1-1450 *et seq.*

COMMENT PERIOD:

November 15, 2022 through the close of the Department's normal business hours, 5 PM, on December 15, 2022. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through the close of the Department's normal business hours, 5 PM, on December 15, 2022 submit written comment to the contact person identified below, or may, at the hearing, ask to present written or oral views.

PUBLIC HEARING:

Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on December 15, 2022 at the Oklahoma State Department of Health Auditorium, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102 from 9:30 AM to 12:30 PM. The meeting may adjourn earlier if all attendees who signed up to comment have completed giving their comments. The alternate date and time in the event of an office closure due to inclement weather is December 19, 2022 in the Auditorium, from 9:30 AM to 12:30 PM. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice. Validated parking will be provided for the parking lot located at the east corner of Broadway and Robert S. Kerr Avenue, subject to availability.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 15, 2022, to the contact person identified below.

COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from the contact person identified below or via the agency website at www.ok.gov/health.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement is available through the contact person identified below or via the agency website at www.ok.gov/health.

CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, phone (405) 426-8563, e-mail AudreyT@health.ok.gov.

INITIAL RULE IMPACT STATEMENT

(This document may be revised based on comment received during the public comment period.)

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 234. MEDICAL MICORPIGMENTATION**

1. DESCRIPTION:

These rule changes are related to the passage of HB 3002. The changes remove the consideration of misdemeanors and modify felonies to be considered only if they substantially relate to the practice of medical micropigmentation and pose a reasonable threat to public safety.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

Applicants for medical micropigmentation licensing who have a criminal history in their background, will be impacted. There is no cost impact associated.

3. DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:

Medical Micropigmentation applicants will benefit from misdemeanors or felonies unrelated to the practice of medical micropigmentation, not being a sole purpose for denial of licensure. The value will be possible increase of licensed individuals, who may have been previously excluded from licensure.

4. ECONOMIC IMPACT, COST OF COMPLIANCE, AND FEE CHANGES: COST OF COMPLIANCE AND FEE CHANGES:

There is no economic impact and no fee changes to the Department. Cost of compliance will be absorbed, based on current licensing requirement processes.

5. COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:

The cost will be absorbed as part of the current licensing and enforcement processes.

6. IMPACT ON POLITICAL SUBDIVISIONS:

There will be no impact on political subdivisions.

7. ADVERSE EFFECT ON SMALL BUSINESS:

No expected adverse impact on small businesses.

8. EFFORTS TO MINIMIZE COSTS OF THE RULE:

There are no less costly means currently identified.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

No effect on public health and safety is projected.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

There are no detrimental effects on public health and safety.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on September 14, 2022.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 234. MEDICAL MICROPIGMENTATION**

SUBCHAPTER 1. GENERAL PROVISIONS

310:234-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Autoclave bag" means a bag for holding instruments or other items, which are to be put into an autoclave for sterilization.

"Certification" means written approval by the Department for a person to perform medical micropigmentation.

"Committee" means the Consumer Protection Licensing Advisory Council.

"Contaminated waste" means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood and other potentially infectious materials, as defined in the "Bloodborne Pathogens." [29 CFR § 1910.1030]

"Department" means the Oklahoma State Department of Health.

"Equipment" means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with medical micropigmentation procedures.

"Handsink" means a lavatory equipped with hot and cold running water under pressure used solely for washing hands, arms or other portions of the body.

"Hot water" means water that attains and maintains a temperature of 100 °F.

"Instruments used for medical micropigmentation" means handpieces, needles, needle bars and other instruments that may contact a client's body or body fluids during medical micropigmentation.

"Licensing board" means *the Oklahoma State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners and/or the Board of Dentistry.* [63 O.S. Section 1-1451(1)]

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

(A) *To produce a permanent mark visible through the skin;*

(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; and/or*

(C) *For regimentation of areas involving reconstructive surgery or trauma.* [63 O.S. Section 1-1451(2)]

"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.* [63 O.S. Section 1-1451(3)].

"Poses a reasonable threat" means *the nature of criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation.* [63 O.S. Section 1-1451(E)(2)]

"Procedure surface" means any part of equipment designed to contact the client's unclothed body during a medical micropigmentation procedure.

"Sanitize" means a process of reducing the number of microorganisms on cleaned surfaces and equipment to a safe level and has been approved by the Department.

"**Sharps**" means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, scalpel blades and razor blades.

"**Sharps container**" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the International Biohazard Symbol.

"**Single use**" means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, and protective gloves.

"**Skills area evaluation**" means an evaluation given at the end of instruction for a particular skills area that consists of two parts: technique and theory. Mastery of technique shall be demonstrated by performing the skills on the job sheet(s) for that skills area in the presence of an approved evaluator (supervising physician or instructor) with 100% accuracy. A candidate demonstrates mastery of micropigmentation theory by scoring 85% or greater on a written test over the material in that skills area.

"**Sterilization**" means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

"**Substantially relates**" means *the nature of criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.* [63 O.S. 1451(E)(1)]

"**Ultrasonic**" means ultrasonic sound, which is pertaining to acoustic frequencies above the range audible to the human ear, or, above approximately 20,000 cycles per second. There are several types of ultrasonic devices.

"**Written certification examination**" means the state examination taken upon satisfactory completion of all skills area evaluations. An applicant demonstrates written competency by scoring 70% or greater on the written certification examination.

SUBCHAPTER 11. ENFORCEMENT

310:234-11-1. General requirements

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~~ crime that substantially relates to the practice of medical micropigmentation and poses a reasonable threat to public safety;*
- (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.* [63 O.S. Section 1-1454(B)]

310:234-11-3. Administrative penalties

(a) The Department may assess administrative penalties as follows:

- (1) Failure to obtain appropriate certification (i.e. performing Micropigmentation without a certificate), \$5,000.00 per violation;

- (2) Failure to observe procedures to prevent the transmission of a bloodborne pathogen, \$500.00 per violation;
- (3) Failure to maintain instruments used in medical micropigmentation in a sterile condition, \$500.00 per violation;
- (4) Failure to install and maintain appropriate facilities for handwashing, \$500.00 per violation;
- (5) Failure to maintain client records or monthly spore destruction test records, \$500.00 per violation; or
- (6) Demonstrating unprofessional conduct, which includes but is not limited to:
 - (A) Advertising to the public in any manner without the necessary certificate;
 - (B) Habitual intemperance or the habitual use of ~~habit forming~~ habit-forming drugs;
 - (C) ~~Conviction of a felony or of any offense involving moral turpitude;~~
 - (~~D~~) All advertising of business in which statements are made which are grossly untrue or improbable and calculated to mislead the public;
 - (~~E~~)(D) Conviction or confession of a crime involving violation of:
 - (i) The laws of this state, or
 - (ii) ~~State Board of Health rules~~ The Oklahoma Medical Micropigmentation Regulation Act or this Chapter;
 - (~~F~~) (E) Failure to maintain an office record for each patient which accurately reflects the treatment of the patient;
 - (~~G~~) (F) Fraud or misrepresentation in applying for or procuring a micropigmentation certificate;
 - (~~H~~) (G) Cheating on or attempting to subvert the medical micropigmentation certification examination(s);
 - (~~I~~) (H) Conduct likely to deceive, defraud, or harm the public;
 - (~~J~~) (I) Practice or other behavior that demonstrates an incapacity or incompetence to practice medical micropigmentation; or
 - (~~K~~) (J) Has been finally adjudicated and found guilty or entered a plea of guilty or nolo contendere to a felony crime as described Section 310:234-11-1(1) of this Chapter in a criminal prosecution, for any offense reasonably related to the qualifications, functions or duties of a micropigmentationologist for any offense involving moral turpitude, whether or not sentence is imposed, and regardless of the pendency of an appeal, penalty of \$500.00 for each violation above in section 310:234-11-3(6).
- (b) Penalties shall double for repeat offenses.
- (c) Continued non-compliance shall result in administrative action to revoke the certification or to order the person to cease violating the law.
- (d) Each day an offense occurs shall be considered a separate of offense.