

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 233. BODY PIERCING AND TATTOOING**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES FOR REVIEW:

Subchapter 9. License Requirements
310:233-9-2. Artist license [AMENDED]

SUMMARY:

The proposed amendments modify the proof of training and experience required before an applicant is approved to take the license examination. The proposal deletes the requirement for proof of two years' license from another state, and substitutes a requirement for documentation of two years' experience from another state. The proposal allows a licensure candidate to submit proof of completion of training that is substantially equivalent to the requirements for apprentice programs in Oklahoma. The effect of the change is to give candidates credit for experience or training in a state that does not license artists. The Oklahoma State Department of Health developed the foregoing amendments in response to a request for rulemaking filed by a facility operator and artist licensed in Oklahoma. Additionally, the amendments clarify the process for approving an applicant to take the license examination and issuing the permanent artist license.

AUTHORITY:

Oklahoma State Board of Health, Title 63 O.S. Section 1-104; Title 21 O.S. Section 842.3

COMMENT PERIOD:

October 17, 2016 through November 17, 2016. Interested persons may informally discuss the proposed rules with the contact person listed below; or may, through November 17, 2016 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 November 17, 2016, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. 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.

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 before November 17, 2016, 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.health.ok.gov.

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Lynnette Jordan, Service Director, Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-5243, e-mail lynnette@health.ok.gov.

INITIAL RULE IMPACT STATEMENT

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 233. BODY PIERCING AND TATTOOING

1. **DESCRIPTION:**

The proposed amendments modify the proof of training and experience required before an applicant is approved to take the license examination. The proposal deletes the requirement for proof of two years' license from another state, and substitutes a requirement for documentation of two years' experience from another state. The proposal allows a licensure candidate to submit proof of completion of training that is substantially equivalent to the requirements for apprentice programs in Oklahoma. The effect of the change is to give candidates credit for experience or training in a state that does not license artists. The Oklahoma State Department of Health (OSDH) developed the foregoing amendments in response to a request for rulemaking filed by a facility operator and artist licensed in Oklahoma. Additionally, the amendments clarify the process for approving an applicant to take the license examination and issuing the permanent artist license.

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

The classes of persons affected are applicants for artist licensure, and operators of establishments. Under the proposed amendments, applicants for licensure as body piercing or tattoo artists may be given credit for experience or training in states that do not issue licenses to artists. The change may reduce the applicants' costs to obtain a license in Oklahoma by reducing the time required to complete training. Facility operators will be affected by having access to additional qualified artists to appropriately staff their businesses. The OSDH requested in the notice of rulemaking intent information from businesses on cost impacts.

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

Persons benefiting will be applicants from states that do not have regulatory authority over licensing of individual artists. Additionally, facility operators may benefit from having access to additional qualified artists. Oklahoma-licensed artists may benefit by not having to compete against unlicensed individuals who do not comply with Oklahoma law or OAC 310:233. The public may benefit from having access to additional experienced and properly trained artists licensed by the OSDH. The number of complaints received by the OSDH on unlicensed artists rose 50% from 2014 to 2015, increasing from approximately 60 complaints in 2014, to 90 in 2015.

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

Facility operators may benefit economically from an increased supply of qualified and licensed artists to staff their businesses. Individual artists may benefit by being able to work legally as artists in Oklahoma. The level of the economic benefit is not known at this time. The rule involves no fee increases.

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

The cost to the Department to implement the amendments will be approximately \$3,252.32 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules will be implemented and enforced by existing Department personnel and will have no anticipated effect on state revenues. Revenues to be used for implementation are the license fees for artists and facilities. Revenues from license fees may increase if more out-of-state artists request licensure, but the volume of such increase is unknown at this time. The benefit may be a reduction in unlicensed artists working in Oklahoma. No impacts on other agencies are anticipated.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There is no anticipated impact on political subdivisions.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

There is no anticipated adverse effect on small business.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

The proposed changes add flexibility to the application of the rule by allowing for variation in the documentation submitted for proof of experience and training. Variation exists across states and not all states issue artist licenses – some states regulate only establishments, and some local jurisdictions issue licenses and permits. The proposed changes focus on the subject of the request for rulemaking action submitted by a facility operator and artist and do not add requirements or costs.

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

This change will allow each out-of-state artist with acceptable experience and training to obtain an Oklahoma artist license without being required to demonstrate an additional 1,500 hours of training in apprentice status in Oklahoma. This may result in a decreased number of complaints about unlicensed artists practicing outside of licensed establishments.

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

If this change is not made, Oklahoma will continue to have an experience and training requirement placing at a disadvantage those individuals who have worked in states with other types of regulatory frameworks. Some states such as Texas do not require state-issued licenses for individual artists and others such as Florida relatively recently have implemented individual licenses. The rule will treat license applicants with equivalent experience and training equitably, regardless of the state where they lawfully gained that experience and training. This change has the potential to decrease alleged incidents of unlicensed artists practicing in Oklahoma, and increase the numbers of licensed artists.

11. This rule impact statement was prepared on September 19, 2016.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 233. BODY PIERCING AND TATTOOING**

SUBCHAPTER 9. LICENSE REQUIREMENTS

310:233-9-2. Artist license

- (a) The artist must be a minimum of eighteen (18) years of age to be eligible for a license.
- (b) No person shall practice body piercing or tattooing procedures without first obtaining an artist license from the Department.
- (c) The artist license shall be valid from the date of issuance and shall automatically expire one (1) year from the date of issuance unless revoked or suspended by the Department. The artist shall have a current bloodborne pathogen certificate, CPR certificate and current first aid certification for license or renewal of license.
- (d) The application for an artist license shall include:
 - (1) Name;
 - (2) Date of birth;
 - (3) Sex;
 - (4) Residence address;
 - (5) Mailing address;
 - (6) Telephone number;
 - (7) Place(s) and licensed license number of employment as an artist;
 - (8) Proof of training and experience which shall include one of the following:
 - (A) Two (2) years license from another state Documentation of two (2) years' experience acquired in another state in compliance with applicable requirements of that state. Documentation may include copies of licenses, statements from the state's regulatory authority, statements from the facility operator where the applicant worked, membership in an entity for which practice as an artist is a requisite, or government forms such as tax returns filed by the artist showing employment as an artist; or
 - (B) Proof Documentation of a completed approved completion of an Oklahoma apprentice program, that has been accepted by the Department complies with 310:233-9-5, 310:233-9-6 and 310:233-9-7, or documentation from another state showing completion of training that is substantially equivalent to an Oklahoma apprentice program and sponsorship per 310:233-9-5, 310:233-9-6 and 310:233-9-7;
 - (9) Current bloodborne pathogen certification recognized from a nationally accredited program compliant with 310:233-9-2(m); and
 - (10) Current first aid certification compliant with 310:233-9-2(n); and
 - (11) Current CPR certification compliant with 310:233-9-2(o).
- (e) Each artist license shall be conditioned upon continued compliance with the provisions of this section as well as all applicable provisions of OAC 310:233.
- (f) Each artist license shall be posted in a prominent and conspicuous area where it may be readily observed by clients.
- (g) License fees shall be as follows:
 - (1) \$250.00 for an initial license;
 - (2) \$250.00 for a renewal license;

- (3) \$350.00 for late renewal when the license is not renewed within thirty (30) days after expiration; and
- (4) \$50.00 temporary artist license, not to exceed 7 days.
- (h) A person who has acceptable proof of experience or training as stated required in 310:233-9-2(d)(8)(A and B) in performing tattooing may be ~~deemed to have met the Department approved preparedness requirements status as per 310:233-9-2(d)(8)(A and B)~~ approved by the Department to take the test specified in 310:233-9-2(j). A candidate shall have a minimum passing score of 70% on the written examination that will include:
 - (1) Knowledge of Anatomy, Physiology, and Disease;
 - (2) Theory and application of ink;
 - (3) Safety and Aseptic Technique;
 - (4) Professionalism; and
 - (5) Client Consultation Services.
- (i) A candidate who does not meet this score can retest up to two (2) times. A candidate who does not pass the written examination must wait at least seven (7) days before retesting. Any candidate who is unable to attain competency after three attempts shall be required to enroll or re-enroll in an apprentice program. To apply, the candidate shall submit an application that requires the following:
 - (1) Notarized copy of the applicant's certificate of birth;
 - (2) Notarized copy of the applicant's driver's license or other similar photo identification;
 - (3) Notarized copy of his/her credentials and professional resume of satisfactory completion of any programs they have completed for proof of experience; and
 - (4) Proof of experience as required in 310:233-9-2(d)(8)(A and B).
- (j) The Department shall accept the test administered by the Oklahoma Department of Career Technology with results to be evidenced by a completed testing verification provided to the Department by the Oklahoma Department of Career Technology.
- (k) ~~The~~ Within 30 days after receipt of a completed application, the Department shall notify the applicant in writing of its decision to approve or disapprove the applicant to take the examination within 30 days after receipt of a completed application. An applicant who is eligible for the testing process must present a letter of notification from the Department to administer the test given by Oklahoma Department of Career and Technology Education.
- (l) Upon successful completion of the testing process, the applicant is eligible ~~to apply for an Artist~~ issuance of a permanent artist license. In order to apply for request issuance of a license, the candidate applicant must submit the following to the Department:
 - (1) ~~Completed~~ Any changes in the application previously submitted as specified required in 310:233-9-2(i)(1-4)310:233-9-2(d); and
 - (2) Completed Testing Verification Form provided by the Department which includes:
 - (A) Skills evaluation information; and
 - (B) Written certification examination records.
- (m) Bloodborne training certification shall contain at a minimum the following elements:
 - (1) A general explanation of the epidemiology and symptoms of bloodborne diseases;
 - (2) An explanation of the modes of transmission of bloodborne pathogens;
 - (3) An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;

- (4) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;
 - (5) An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;
 - (6) Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;
 - (7) An explanation of the basis for selection of personal protective equipment;
 - (8) Information on the Hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated;
 - (9) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;
 - (10) An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that will be made available;
 - (11) Information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident; and
 - (12) An explanation of the signs and labels and/or color coding required.
- (n) First aid certification shall include instruction in:
- (1) Injury and acute illness as a health problem;
 - (2) Interactions with the local emergency medical services system;
 - (3) Responsibility for maintaining a current list of emergency telephone numbers (police, fire, ambulance, poison control) easily accessible to all employees;
 - (4) Instruction in the principles and performance of bandaging of the head, chest, shoulder, arm, leg, wrist, elbow, foot, ankle, fingers, toes, and knee; and
 - (5) Apprentices shall be provided with adequate instruction on the need for and use of universal precautions that should include:
 - (A) The meaning of universal precautions;
 - (B) Which body fluids are considered potentially infectious, and which are regarded as hazardous;
 - (C) The value of universal precautions for infectious diseases;
 - (D) The necessity for keeping gloves and other protective equipment readily available and the appropriate use of them; and
 - (E) The appropriate tagging and disposal of any sharp item or instrument requiring special disposal measures such as blood soaked material, and the appropriate management of blood spills.
- (o) CPR training certification shall include instruction in:
- (1) Performing a primary survey of each victim including airway, breathing, and circulation assessments;
 - (2) The presence of any bleeding, establishing and maintaining adult airway patency;
 - (3) Performing adult breathing resuscitation; and
 - (4) Performing choking assessments and appropriate first aid intervention.