

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 36 BODY ARTISTS AND OPERATORS
PART 4 ENFORCEMENT, COMPLAINTS AND DISCIPLINARY ACTION

16.36.4.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Body Art Practitioners.
[16.36.4.1 NMAC - Rp, 16.36.4.1 NMAC, 02/04/2016]

16.36.4.2 SCOPE: Any person licensed to practice body art tattoo, piercing, scarification and all operators.
[16.36.4.2 NMAC - Rp, 16.36.4.2 NMAC, 02/04/2016]

16.36.4.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5, 61-17B-9, 61-17B-10, 61-17B-11.
[16.36.4.3 NMAC - Rp, 16.36.4.3 NMAC, 02/04/2016]

16.36.4.4 DURATION: Permanent
[16.36.4.4 NMAC - Rp, 16.36.4.4 NMAC, 02/04/2016]

16.36.4.5 EFFECTIVE DATE: February 4, 2016, unless a later date is cited at the end of a section.
[16.36.4.5 NMAC - Rp, 16.36.4.5 NMAC, 02/04/2016]

16.36.4.6 OBJECTIVE: To inform licensees of the complaint procedures, enforcement and disciplinary actions.
[16.36.4.6 NMAC - Rp, 16.36.4.6 NMAC, 02/04/2016]

16.36.4.7 DEFINITIONS: [RESERVED]

16.36.4.8 ENFORCEMENT, COMPLAINTS AND DISCIPLINARY ACTION:

A. A member of the board, its employees or agents may enter and inspect a school, enterprise or establishment at any time during regular business hours for the purpose of determining compliance with the Body Art Safe Practices Act.

B. It shall be unlawful for any artist to perform body piercing or tattoo procedures outside of a licensed body piercing or tattooing establishment.

C. It shall constitute a violation of the Body Art Safe Practices Act when a licensee:
 (1) attempts by means of any threat, force, intimidation or violence to deter, interfere with or prevent any inspector or board designee from performing any official duty of the department or board;
 (2) willfully resists, delays or obstructs an inspector or board designee in the performance of his/her official duty;
 (3) fails to comply with the lawful command of an inspector or board designee in the discharge of his/her official duty; or
 (4) fails to cooperate in investigations, proceedings, and requirements of this code.

D. The board, or its designee, will consider a formal complaint filed against a licensee or an establishment provided the complaint is on the proper form, signed and notarized.

E. When a complaint is received on the proper form, the board, or its designee, will write to the licensee the complaint is against and request a response within 15 days of receipt of such request.

F. The response will be reviewed by a committee designated by the board chairman.

G. If the committee's recommendation is that the complaint be taken before the board, the complaint will be reviewed at the next regularly scheduled board meeting. The board shall:

 (1) take no further action; or
 (2) issue a notice of contemplated action (NCA) under the Uniform Licensing Act; or
 (3) assess an administrative penalty subject to appropriate procedural requirements and safeguards.

H. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Body Art Safe Practices Act.

I. The board may fine, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the act, the Uniform Licensing Act, or these rules.

J. Subject to legally required procedural safeguards, any person who violates any provisions of the act or any rule adopted by the board may incur, in addition to any other penalty provided by law, a civil penalty in an amount of less than one hundred fifty dollars (\$150) for each violation. The board will serve on the licensee official notice of any such fine that the board proposes to assess. Failure to pay a fine, once properly assessed, may result in an additional fine and revocation of license or other disciplinary action. The penalties to be assessed are as follows:

- (1) Failure to comply with operator requirements:
 - (a) first offense: one hundred dollars (\$100);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.
- (2) Failure to comply with sanitation and safety requirements:
 - (a) first offense: one hundred dollars (\$100);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.
- (3) Failure to post required licenses:
 - (a) first offense: fifty dollars (\$50);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.
- (4) Working on an expired or invalid license:
 - (a) first offense: fifty dollars (\$50);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.
- (5) Performing services for compensation in an unlicensed establishment:
 - (a) first offense: one hundred dollars (\$100);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.
- (6) Any violation of the Body Art Safe Practices Act or rules:
 - (a) first offense: one hundred dollars (\$100);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

K. The board may suspend a license immediately without prior notice to the holder of the license if it determines, after inspection, that conditions within a body art establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize a body art establishment. A suspension action taken pursuant to this section is effective when communicated to the operator or body artist. Suspension action taken pursuant to this section shall not continue beyond the time that the conditions causing the suspension cease to exist, as determined by a board inspection at the request of the operator or body artist. A license holder may request an administrative hearing, as provided by Section 5 (61-17B-5 NMSA 197) of the Body Art Safe Practices Act, if the board does not lift an immediate suspension within 10 days.
[16.36.4.8 NMAC - Rp, 16.36.4.8 NMAC, 02/04/2016]

HISTORY OF 16.36.4 NMAC:

History of Repealed Material:

16.36.4 NMAC, Enforcement, Complaints and Disciplinary Action, filed 03/10/10 – Repealed effective, 2-04-2016