
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOLIE SCHONDER,

Plaintiff/Respondent,

v.

DEBORAH THOEN, et ux., et al.,

Defendants,

and

ECHO LUNDEBERG (et ux.),

Defendant/Petitioner.

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BRIEF OF AMICUS CURIAE
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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Trial Lawyers Association Foundation (WSTLA Foundation) is a not-for-profit corporation organized under the laws of Washington, and a supporting organization of the Washington State Trial Lawyers Association (WSTLA). WSTLA Foundation, which operates the amicus curiae program formerly operated by WSTLA, has an interest in the rights of persons seeking legal redress, including the rights of persons pursuing recovery for personal injury claims.

II. INTRODUCTION AND STATEMENT OF THE CASE

This appeal involves a personal injury claim by Jolie Schonder (Schonder) against Echo Lundeberg (Lundeberg), based upon a permanent cosmetic makeup procedure performed upon Schonder involving a color lip tattoo. The legal issues on review concern in limine evidentiary rulings bearing on the affirmative defense of assumption of risk. The underlying facts are drawn from the unpublished Court of Appeals opinion, briefing of the parties, motion in limine record, court instructions to the jury, jury verdict form, and the judgment. See Schonder v. Thoen (C.A. # 24739-2-III), *noted at* 137 Wn.App. 1064 (2007), *review granted*, 162 Wn.2d 1018 (2008); Lundeberg Br. at 1-3; Schonder Br. at 4-7; Lundeberg Pet. for Rev. at 3-7, 10; Schonder Supp. Br. at 5-8; Report of Proceedings (RP) at 16-24 (motion in limine hearing and rulings); Court's Instructions to the

Jury (CP 9-23); Special Verdict Form (CP 24); and Judgment Summary and Judgment on Verdict (CP 25-27).¹

For purposes of this amicus curiae brief, the following facts are relevant: Deborah Thoen (Thoen) engaged Lundeberg to teach her what is described in the briefing as the “art of permanent makeup,” so that Thoen could offer this service to her business clientele. See Lundeberg Pet. for Rev. at 5. The procedure is “akin to tattooing,” and includes application of permanent color pigment to the “lips, eyebrows, etc.” Id. Lundeberg’s instruction included supervising Thoen while Thoen performed permanent cosmetic procedures. However, Thoen was required to provide the subjects for her training. Schonder, an employee of Thoen’s at the time, agreed to be a training subject.

Under Lundeberg’s supervision, Thoen performed a permanent cosmetic procedure on Schonder’s lips, applying a permanent color lip tattoo. Schonder brought this negligence action against Thoen, et ux., and Lundeberg, et ux., and others, contending that the lip tattoo “went out of the lip line and caused scarring as a result.”² Lundeberg Br. at 2. She sought damages for “pain, and unsightly appearance, disfigurement, scarring, and significant infection on her face and lips.” Schonder Br. at 5.

¹ The report of proceedings is 58 pages in length. See RP 2-59. Except for the pages cited above, and RP 51-52, there is nothing in the record relating to the in limine rulings that are the subject of review. At RP 51-52, the trial court limits the questions that may be asked of a witness based upon its in limine rulings.

² The case proceeded to trial only against Lundeberg et ux.

Lundeberg raised the defense of assumption of risk. See Lundeberg Pet. for Rev. at 5.

At trial, Schonder brought a motion in limine to exclude evidence regarding two aspects of Lundeberg's assumption of risk defense: First, to exclude evidence regarding a purported release that absolved Lundeberg from responsibility, allegedly signed by Schonder in advance of the permanent cosmetic procedure. See Lundeberg Pet. for Rev. at 5-7. Second, to exclude testimony by Lundeberg and others regarding what Schonder was told in advance about the risks involved in the procedure, including what may or may not happen even if everything goes well, and the potential impact of unknown factors on the outcome of the procedure. See RP 18, 22-24.

Regarding the preinjury release issue, Lundeberg could not produce the original release she alleged Schonder had signed. Instead, Lundeberg made an offer of proof of testimony that such a preinjury release existed, and that, for reasons beyond the record-keeper's control, the document could not be found. Lundeberg offered to produce at trial an unsigned release form similar to the one Schonder allegedly executed. The trial court was apparently provided with a copy of this unsigned form, and it was subject to discussion during the course of the in limine hearing. See RP 17-22. However, the text of the release form was not made a part of the record of the in limine hearing. See RP 16-24. There is no indication it was otherwise admitted as an exhibit at trial, and it is not in

the record on appeal. Schonder Supp. Br. at 8. The trial court held the preinjury release form and related testimony were inadmissible. See RP 21-22.

At the in limine hearing the trial court likewise denied Lundeberg's offer of proof of testimony, by Lundeberg and others, as to what was explained to Schonder regarding the risks associated with the permanent cosmetic procedure. See RP 22-24. The offer of proof did not state in detail what was allegedly said to Schonder. The explanation to her was generally described as "[t]he same type of explanation that might go to a medical patient before surgery." RP 18. Lundeberg did contend that the explanation provided was in keeping with an "industry standard" governing those who perform permanent cosmetic procedures. See RP 23.

The case proceeded to jury trial on Schonder's claim of negligence against Lundeberg, and the jury returned a verdict in favor of Schonder for \$31,035. See RP 24. The trial court's instructions to the jury did not include an instruction on any form of assumption of risk, and there is no challenge to the instructions on review. See CP 9-23; Lundeberg Br. at 1 (assignments of error); Lundeberg Pet. for Rev. at 3-4 (issues presented on review).

Lundeberg appealed to the Court of Appeals, Division III, and it affirmed by unpublished opinion. See Lundeberg Pet. for Rev. at Appendix (Schonder Slip. Op.). The Court of Appeals held the trial court did not abuse its discretion in excluding the unsigned release form, and

related testimony regarding a similar release Schonder allegedly signed.

The Court of Appeals added:

Even if Ms. Schonder had signed the release/consent form, it could not be used as a defense in a negligence suit. In Washington, negligent conduct cannot be the subject of a preinjury release. *Vodapest v. MacGregor*, 128 Wn.2d 840, 861, 913 P.2d 779 (1996).

Schonder Slip. Op. at 4. The Court of Appeals does not specifically address the second in limine ruling of the trial court, regarding whether the proposed testimony by Lundeberg and others as to what risks were explained to Schonder was admissible in its own right. See RP 21-24.³

Lundeberg petitioned this Court for review, urging that the trial court's in limine rulings denied her the opportunity to present the affirmative defenses of express assumption of risk and implied primary assumption of risk. See Lundeberg Pet. for Rev. at 7, 11. This Court granted review.

III. ISSUES PRESENTED

- 1.) Did the trial court abuse its discretion in not allowing Lundeberg to present evidence in support of the affirmative defense of release/express assumption of risk? Sub-issues include:
 - a.) Is the record sufficient to undertake review of this issue, and, if so, did the trial court abuse its discretion?
 - b.) Should the trial court be affirmed on other grounds because the release would violate public policy in any event?

³ In its briefing before the Court of Appeals Lundeberg argued admissibility of the release form and accompanying testimony as bearing on an express assumption of risk defense, and separately argued that admissibility of testimony regarding the explanation of risks provided Schonder related to the defense of implied primary assumption of risk. See Lundeberg Br. at 4.

- 2.) Did the trial court abuse its discretion in not allowing Lundeberg to present evidence in support of the affirmative defense of implied primary assumption of risk? Sub-issues include:
- a.) Was the offer of proof sufficient on this issue, and, if so, did the trial court abuse its discretion?
 - b.) Should the trial court be affirmed on other grounds because it would violate public policy to apply implied primary assumption of risk under the circumstances?

IV. SUMMARY OF ARGUMENT

Re: Release/Express Assumption of Risk

In the absence of the text of the purported release in the record, it is not possible for the Court to meaningfully review the trial court's in limine ruling regarding the release form and related testimony. It cannot be determined whether the release allegedly signed by Schonder *clearly* absolved Lundeberg for any negligence in performing or supervising the permanent cosmetic procedure, as required by Washington case law. Alternately, the trial court should be affirmed on other grounds because a release absolving Lundeberg for negligence under these circumstances would be unenforceable under the Wagenblast factors for evaluating whether a release violates public policy. Practitioners of permanent cosmetic services should not be allowed to immunize themselves from liability for negligence when the procedure involves the risk of physical harm, including permanent scarring and disfigurement of a person's face.

Re: Implied Primary Assumption of Risk

In the absence of an offer of proof demonstrating a question of fact regarding whether Schonder had a *full subjective understanding* she was waiving any negligence relating to the permanent cosmetic procedure, there is no basis for the Court to conclude the trial court abused its discretion in excluding testimony about the explanation of risks involved in the procedure. Alternately, assuming the offer of proof is deemed sufficient, the defense of implied primary assumption of risk should be disallowed under these circumstances for the same public policy reasons applicable to the release/express assumption of risk defense.

V. ARGUMENT

A. Background Regarding Express Assumption Of Risk And Implied Primary Assumption Of Risk.

In this case Lundeberg claims the trial court abused its discretion in rejecting offers of proof bearing upon the defenses of express assumption of risk and implied primary assumption of risk. Both forms of assumption of risk are based upon consent, and serve as a complete bar to recovery in tort. See Scott v. Pacific West Mt. Resort, 119 Wn.2d 484, 496-97, 834 P.2d 6 (1992).⁴ In Kirk v. WSU, 109 Wn.2d 448, 453, 746 P.2d 285 (1987), the Court explained the nature of these two forms of assumption of risk and their similarities:

⁴ The other two forms of assumption of risk are implied unreasonable assumption of risk and implied reasonable assumption of risk, both of which serve as damage-reducing factors. See generally Kirk, 109 Wn.2d at 454-58.

Express and *implied primary* assumption of risk arise where a plaintiff has consented to relieve the defendant of a duty to the plaintiff regarding specific known risks. Where express assumption of risk occurs, the plaintiff's consent is manifested by an affirmatively demonstrated, and presumably bargained upon, express agreement. Implied primary assumption of risk is similarly based on consent by the plaintiff, but without "the additional ceremonial and evidentiary weight of an express agreement". W. Keeton, D. Dobbs., R. Keeton & D. Owen [*Prosser and Keeton on Torts*], at 496 [(5th ed. 1984)]. The elements of proof are the same for both. The evidence must show the plaintiff (1) had full subjective understanding (2) of the presence and nature of the specific risk, and (3) voluntarily chose to encounter the risk.

(Some citations omitted).

Lundeberg's offer of proof consisted of a purported preinjury release allegedly executed by Schonder. Preinjury releases are a type of express assumption of risk. See Wagenblast v. Odessa School Dist., 110 Wn.2d 845, 856-57, 758 P.2d 968 (1988). In Washington, these releases may exculpate a defendant from negligence in certain circumstances. See Scott, 119 Wn.2d at 490. Preinjury releases are strictly construed and while the word "negligence" need not appear explicitly in the release, the release "must be clear if the exception from liability is to be enforced." Id.; see also Vodopest v. MacGregor, 128 Wn.2d 840, 848, 913 P.2d 779 (1996). In Vodopest, this Court described the law of preinjury releases as follows:

Exculpatory clauses in preinjury releases are strictly construed and must be clear if the exemption from liability is to be enforced. If a release is clear, the general rule in Washington is that exculpatory clauses are enforceable unless (1) they violate public policy, or (2) the negligent act

falls greatly below the standard established by law for protection of others, or (3) they are inconspicuous.

128 Wn.2d at 848 (citations omitted).

In determining whether a preinjury release violates public policy, this Court has identified six general, non-exclusive characteristics that bear on the enforceability of the release. See Wagenblast, 110 Wn.2d at 852-55; Vodopest, 128 Wn.2d at 854-55. The presence of one or more of these characteristics may result in the release violating public policy, see Vodopest at 855; and the more characteristics that apply, the more likely the release is unenforceable, see Wagenblast at 852. These six non-exclusive characteristics are:

- 1) The agreement concerns an endeavor of a type generally thought suitable for public regulation.
- 2) The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public.
- 3) Such party holds itself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards.
- 4) Because of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks the service.
- 5) In exercising a superior bargaining power, the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence.

- 6) The person or property of members of the public seeking such services must be placed under the control of the furnisher of the services, subject to the risk of carelessness on the part of the furnisher, its employees, or agents.

See Wagenblast at 852-55.

There are no Washington cases involving the enforceability of a preinjury release in the context of a negligently performed permanent cosmetic procedure, such as the permanent color lip tattoo involved here.⁵ Nor are there any cases in this context involving the defense of implied primary assumption of risk, including whether the defense may be disallowed on public policy grounds. However, this result should follow from the fact that the elements for both express and implied primary assumption of risk are identical. See Kirk at 453.

B. The In Limine Offer Of Proof As To The Release/Express Assumption Of Risk Does Not Allow For Meaningful Appellate Review; In Any Event, This Defense Should Not Be Allowed Under These Circumstances As It Would Violate Public Policy.

It is difficult to comprehend how this Court can undertake abuse of discretion review of the trial court's in limine ruling bearing on the preinjury release allegedly signed by Schonder. Neither the unexecuted release form referenced in the in limine hearing, nor the text of that form, is in the record on appeal. Absent this information, the Court cannot make the threshold determination of whether the release text is sufficiently clear

⁵ For an overview of the surprisingly mainstream world of permanent cosmetic procedures, including tattooing, see Jessica C. Dixon, The Perils of Body Art: FDA Regulation of Tattoo and Micropigmentation Pigments, 58 Admin. L. Rev. 667 (2006).

to be enforceable, as required by Washington law. See Scott, 119 Wn.2d at 490; Vodopest, 128 Wn.2d at 848. Meaningful review is simply not possible.

The Court of Appeals indicated in dicta that the trial court ruling regarding the release was otherwise correct because “[i]n Washington, negligent conduct cannot be the subject of a preinjury release.” Schonder Slip. Op. at 4 (citation omitted). This is an oversimplification, if not mischaracterization, of Washington law. See §A., supra. Preinjury releases exculpating a defendant for negligence may be enforced in Washington unless 1) they violate public policy, 2) the negligent act falls greatly below the standard established by law for protection of others, or 3) the release is inconspicuous. See Vodopest at 848. Should the Court determine the trial court’s in limine ruling bearing on the release is reviewable, it should affirm the trial court on the grounds that the type of preinjury release allegedly involved here violates public policy under the six Wagenblast factors. See §A., supra at 9-10.⁶

Evaluation of the Wagenblast characteristics is a fact-specific determination, requiring case-by-case analysis. See Wagenblast, 110 Wn.2d at 857; Vodopest at 853. Depending upon the facts and circumstances of the particular case, the presence of one or more factors is sufficient to show that a preinjury release violates public policy. See

⁶ This Court may affirm the lower court on any ground, if the record had been sufficiently developed below to fairly consider the ground. See RAP 2.5(a)(3). The Court of Appeals proffered an alternative ground for affirmance. Schonder Slip. Op. at 4.

Vodopest at 855. Here, the inquiry is essentially limited to the in limine hearing record, which does not contain any information or evidence relating to two of the Wagenblast characteristics, regarding bargaining power and adhesion contracts (factors 4 and 5). Consequently, these characteristics are not addressed any further. The focus is on whether the remaining four characteristics are sufficiently established here to conclude that a release exculpating a practitioner from negligence related to a permanent cosmetic procedure on a person's face violates public policy.

The first characteristic for consideration is whether the activity is one suitable for public regulation. See Wagenblast at 852. It is. The Washington Legislature has regulated electrology and tattooing - practices encompassing permanent cosmetic procedures. See RCW 70.54.320 - .350; WAC 246-145-001 - 040 (implementing regulations).⁷ While these regulations relate largely to minimizing risk of infection, they demonstrate the public interest in regulation, and there is nothing to suggest that such regulation cannot be expanded. This is sufficient to satisfy the first Wagenblast characteristic, as actual public regulation need not exist at all.

⁷ The full texts of these statutes and regulations are reproduced in the Appendix to this brief.

Regulation of permanent cosmetic procedures is generally provided by state governments. See U.S. Food and Drug Administration ("FDA"), Office of Women's Health, Tattoos and Permanent Make-up, available at: <http://www.fda.gov/womens/getthefacts/tattoos.html> (last visited April 21, 2008). Although state licensing is not required, professional organizations offer licensing programs for permanent cosmetic professionals. See About the IMA, available at: www.micropigmentation.net/About%20IMA.htm (last visited: April 21, 2008) (explaining certification by the International Micropigmentation Association); SPCP Certification Information, available at: http://www.spcp.org/certified_permanent_cosmetic_professional_information.htm (last visited: April 21, 2008) (detailing certification by Society of Permanent Cosmetic Professionals).

See Vodopost at 856. Instead, the question is whether the activity is “a type generally thought suitable for public regulation.” Id.

The second characteristic relates to the importance of permanent cosmetic procedures to the public. See Wagenblast at 853. Although the value of permanent cosmetic procedures is not developed in the record, enough is known about the industry to evaluate this criteria and this Court may take judicial notice of the public importance of these procedures. Permanent cosmetic procedures are used to restore natural features after surgery, and by some individuals with medical conditions or disabilities which limit their ability to apply cosmetic enhancements. See U.S. FDA, Tattoos and Permanent Make-up, supra; Dixon, 58 Admin. L. Rev. at 669-70 & n. 15 (detailing medical and cosmetic functions of tattooing). It is not necessary for a large section of society to utilize or participate in an activity for this factor to be met. See Vodopost at 858-59. To those who fall into this group, permanent cosmetic procedures are of profound importance.

The third characteristic present in permanent cosmetic procedures is the willingness of practitioners to perform the service on any person who desires the procedure. See Wagenblast at 854. Each participant will likely have a different motivation for undergoing the procedure, such as post-surgical restoration, disability accommodation, or cultural and societal influences. See U.S. FDA, Tattoos and Permanent Make-up,

supra. However, there does not appear to be any restriction on who may receive permanent cosmetic procedures.

The sixth and final characteristic relates to the vulnerability of individuals who are placed under the control of service providers, and are subject to their potential carelessness. See Wagenblast at 855. This criteria is met when an individual submits to a permanent cosmetic procedure, and entrusts the practitioner with complete control over the outcome. The risk of physical harm and permanent disfigurement of the human face should trigger public policy, and prevent any person from being asked to waive negligence by signing a preinjury release. Given the magnitude of the potential harm, it should make no difference that Schonder was a training subject. Cf. Vodopest at 861 (favoring protecting human subjects in research projects).

Relying upon these characteristics, and in particular the potential for permanent damage to the human face, any release allegedly signed by Schonder should be void as violative of public policy.

C. The In Limine Offer Of Proof Bearing On Implied Primary Assumption Of Risk Is Inadequate Under Governing Law; In Any Event, This Defense Should Not Be Allowed Under The Same Public Policy Analysis Applied to Releases.

Whether the record on appeal is sufficient to undertake abuse of discretion review of the trial court's in limine ruling bearing on the implied primary assumption of risk defense is even more problematic than the ruling regarding express assumption of risk. See §B. supra. Implied primary assumption of risk does not involve a written document. See Kirk

at 453. The offer of proof before the Court fails to show that Schonder had full a subjective understanding that, by agreeing to be a training subject for the permanent cosmetic procedure, she assumed, as an inherent risk, the possibility that the lip tattoo may be performed negligently. See Kirk at 453 (requiring a full subjective understanding of the particular risks as element of implied primary assumption of risk).⁸ If Lundeberg's offer of proof is deficient in this regard, the trial court did not abuse its discretion in disallowing testimony regarding what risks were explained to Schonder.

On the other hand, should the Court conclude the trial court abused its discretion on this in limine ruling bearing upon implied primary assumption of risk, it should affirm on other grounds under RAP 2.5(a)(3). Remand for a new trial based upon the defense of implied primary assumption of risk is unnecessary if allowing this complete defense would violate public policy. The complete bar of implied primary assumption of risk should not be allowed here for the same reasons set forth in §B. supra, regarding the unenforceability of a preinjury release under these circumstances. See Kirk at 453 (finding elements of express and implied primary assumption of risk are identical). Under a Wagenblast-type

⁸ It is assumed for purposes of this argument that, with respect to application of implied primary assumption of risk in this context, Schonder may assume the risk of negligent performance of the permanent cosmetic procedure as one of the inherent risks of the activity. (On this record, this is the only risk that appears relevant to Lundeberg's invocation of implied primary assumption of risk.) However, generally the risk of negligent performance is not an inherent risk of an activity. See Scott, 119 Wn.2d at 497-502; Tincani v. Inland Empire Zoological Soc., 124 Wn.2d 121, 143-45, 875 P.2d 621 (1994).

analysis, a plaintiff should not be barred from recovery for negligence resulting in permanent scarring and disfigurement of the human face.⁹

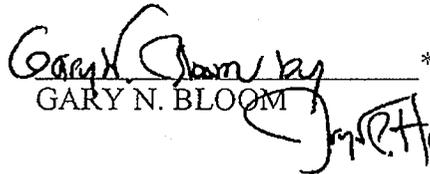
VI. CONCLUSION

The Court should adopt the analysis advanced in this brief and resolve this appeal accordingly.

DATED this 21st day of April, 2008.

**FILED AS ATTACHMENT
TO EMAIL**

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*Brief transmitted for filing by e-mail; signed original retained by counsel.

⁹ Whether or not a plaintiff may be subject to the defenses of either implied unreasonable assumption of risk or implied reasonable assumption of risk under these circumstances is another matter. It need not be addressed here because Lundeberg has not raised these defenses.

APPENDIX

70.54.320

Electrology and tattooing — Findings.

The legislature finds and declares that the practices of electrology and tattooing involve an invasive procedure with the use of needles and instruments which may be dangerous when improperly sterilized presenting a risk of infecting the client with bloodborne pathogens such as HIV and Hepatitis B. It is in the interests of the public health, safety, and welfare to establish requirements for the sterilization procedures in the commercial practices of electrology and tattooing in this state.

[2001 c 194 § 1.]

70.54.330

Electrology and tattooing — Definitions.

The definitions in this section apply throughout RCW 70.54.320, 70.54.340, and 70.54.350 unless the context clearly requires otherwise.

(1) "Electrologist" means a person who practices the business of electrology for a fee.

(2) "Electrology" means the process by which hair is permanently removed through the utilization of solid needle/probe electrode epilation, including thermolysis, being of shortwave, high frequency type, and including electrolysis, being of galvanic type, or a combination of both which is accomplished by a superimposed or sequential blend.

(3) "Tattoo artist" means a person who practices the business of tattooing for a fee.

(4) "Tattooing" means the indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being for cosmetic or figurative purposes.

[2001 c 194 § 2.]

70.54.340

Electrology and tattooing — Rules, sterilization requirements.

The secretary of health shall adopt by rule requirements for the sterilization of needles and instruments by electrologists and tattoo artists in accordance with nationally recognized professional standards. The secretary shall consider the universal precautions for infection control, as recommended by the United States centers for disease control, and guidelines for infection control, as recommended by the national environmental health association and the alliance of professional tattooists, in the adoption of these sterilization requirements.

[2001 c 194 § 3.]

70.54.350

**Electrology and tattooing — Practitioners to comply with rules —
Penalty.**

(1) Any person who practices electrology or tattooing shall comply with the rules adopted by the department of health under RCW 70.54.340.

(2) A violation of this section is a misdemeanor.

[2001 c 194 § 4.]

246-145-001

Purpose and scope.

These rules establish standard universal precautions for preventing the spread of diseases by using sterilization procedures and infection control in the commercial practices of electrology and tattooing.

[Statutory Authority: RCW 70.54.340. 02-11-109, § 246-145-001, filed 5/20/02, effective 6/20/02.]

246-145-010

Definitions.

For the purpose of these rules, the following words and phrases have the following meanings unless the context clearly indicates otherwise.

- (1) "Electrologist" means a person who practices the business of electrology for a fee.
- (2) "Electrology" means the process of permanently removing hair by using solid needle or probe electrode epilation, including:
 - (a) Thermolysis, being of shortwave, high frequency type;
 - (b) Electrolysis, being a galvanic type; or
 - (c) A combination of both which is accomplished by a superimposed or sequential blend.
- (3) "Gloves" means medical grade gloves that are FDA approved.
- (4) "Sterilization" means a process that destroys all forms of microbial life, including highly resistant bacterial spores.
- (5) "Tattoo artist" means a person who practices the business of tattooing for a fee.
- (6) "Tattooing" means the indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being for cosmetic or figurative purposes.

[Statutory Authority: RCW 70.54.340. 02-11-109, § 246-145-010, filed 5/20/02, effective 6/20/02.]

246-145-020

Standard universal precautions for preventing the spread of disease.

(1) Electrologists - The following universal precautions must be used by electrologists in the care of all clients.

(a) Wash hands with soap and water immediately before and after each client contact;

(b) Wash hands and other skin surfaces immediately and thoroughly if contaminated with blood or other body fluids;

(c) Wash hands immediately before fresh, unused gloves are put on and after gloves are removed;

(d) Clean the client's skin by applying an antiseptic or antibacterial solution prior to and following treatment;

(e) Wear fresh, unused gloves with each client to prevent skin and mucous membrane exposure contact with blood or other body fluids of each client;

(f) Wear gloves for touching blood and body fluids, mucous membranes, or nonintact skin of all clients, and for handling items or surfaces soiled with blood or body fluids;

(g) Change gloves after contact with each client;

(h) Immediately remove gloves that are torn or have small pinholes, wash hands and put on fresh, unused gloves;

(i) Take precautions to prevent injuries caused by needles and other sharp instruments or devices during procedures; when cleaning used instruments; during disposal of used needles; and when handling sharp instruments after procedures;

(j) Prevent needlestick injuries by not recapping needles, not bending or breaking needles by hand and by not otherwise manipulating by hand;

(k) Dispose of used disposable needles and other sharp items in puncture-resistant containers;

(l) Inspect hands for small cuts, sores and abrasions; if present, use a Seal-skin product or bandage. If the electrologist has weeping dermatitis or draining sores, the electrologist should avoid contact with clients and equipment until the weeping dermatitis or draining sores are healed;

(m) Regularly clean and disinfect countertops; regularly clean walls when visibly soiled; regularly vacuum and clean carpets and floors; and

(n) Clean and disinfect other frequently touched surfaces including, but not limited to, equipment and lamps between each client.

(2) Tattoo artists - The following universal precautions must be used by tattoo artists in the care of all clients.

(a) Wash hands with soap and water immediately before and after each client contact;

(b) Wash hands and other skin surfaces immediately and thoroughly if contaminated with blood or other body fluids;

(c) Wash hands immediately before fresh, unused gloves are put on and after gloves are removed;

(d) Clean the client's skin by applying an antiseptic or antibacterial solution prior to and following treatment;

(e) Wear fresh, unused gloves with each client to prevent skin and mucous membrane exposure contact with blood or other body fluids of each client;

(f) Wear gloves for touching blood and body fluids, mucous membranes, or nonintact skin of all clients, and for handling items or surfaces soiled with blood or body fluids;

(g) Change gloves after contact with each client;

(h) Immediately remove gloves that are torn or have small pinholes, wash hands and put on fresh, unused gloves;

(i) Take precautions to prevent injuries caused by needles and other sharp instruments or devices during procedures, when cleaning used instruments, during disposal of used needles, and when handling sharp instruments after procedures;

(j) Prevent needlestick injuries by not recapping needles, not bending or breaking needles by hand and by not otherwise manipulating by hand;

(k) Dispose of used disposable needles and other sharp items in puncture-resistant containers;

(l) Inspect hands for small cuts, sores, and abrasions; if present, use a

Scal-skin product or bandage. If a tattoo artist has weeping dermatitis or draining sores, the tattoo artist should avoid contact with clients and equipment until the weeping dermatitis or draining sores are healed;

(m) Regularly clean and disinfect countertops; regularly clean walls when visibly soiled; and regularly vacuum and clean carpets and floors;

(n) Clean and disinfect other frequently touched surfaces such as, clip cords, pigment holders, pigment bottles, pens, equipment and lamps between each client; and

(o) Take other measures to prevent cross contamination as included in national standards per RCW 70.54.340.

[Statutory Authority: RCW 70.54.340. 02-11-109, § 246-145-020, filed 5/20/02, effective 6/20/02.]

246-145-030
Sterile procedures.

(1) Electrologist - To ensure that clients are not exposed to disease through needles or other instruments, electrologists must:

(a) Use single-use, presterilized disposable needles on one client and then dispose of the needle immediately in a puncture-resistant container;

(b) Not use reusable needles;

(c) Use single-use sharp items on only one client and dispose of the items immediately in a puncture-resistant container;

(d) Only reuse cleaned and sterilized sharp items and instruments that are intended for multiple use;

(e) Thoroughly clean and sterilize reusable sharp items and instruments between clients;

(f) Accumulate reusable sharp items and instruments in a holding container by submersion in a solution of a protein-dissolving enzyme detergent and water;

(g) Sterilize reusable items in a steam autoclave or dry-heat sterilizer, which is used, cleaned and maintained according to the manufacturer's instructions;

(h) Resterilize a reusable sterile instrument before using it on a client, if it is contaminated by dropping, by touching an unsterile surface, by a torn package, by the package being punctured, damaged, wet or by some other means;

(i) Immediately dispose of a single-use item in a puncture-resistant container, if it is contaminated by dropping, by touching an unsterile surface, by a torn package, by the package being punctured, damaged, wet or by some other means;

(j) Immediately dispose of an instrument in a puncture-resistant container if the expiration date has passed; and

(k) Monitor sterilizers to determine that all conditions of sterilization are met. This includes:

(i) Assuring that sterilizers have a thermometer and timer to indicate whether adequate heat has been applied to packaged equipment;

(ii) Using or checking chemical indicators on each package to assure the items have been exposed to the sterilization process;

(iii) Sterilizers must be tested by biological spore tests according to the manufacturer's instructions. In the event of a positive biological spore test, the electrologist must take immediate action to ensure all conditions of sterilization are met; and

(iv) Documentation of monitoring must be maintained either in the form of a log reflecting dates and person(s) conducting the testing or copies of reports from an independent testing entity. The documentation must be maintained at least three years.

(2) Tattoo artists - To ensure that clients are not exposed to disease through needles or other instruments, tattoo artists must:

(a) Use single-use, presterilized disposable needles on one client and then dispose of the needle immediately in a puncture-resistant container;

(b) Not use reusable needles;

(c) Use single-use sharp items on only one client and dispose of the items immediately in a puncture-resistant container;

(d) Only reuse cleaned and sterilized sharp items and instruments that are intended for multiple use;

(e) Thoroughly clean and sterilize reusable sharp items and instruments between clients;

(f) Accumulate reusable sharp items and instruments in a holding container by submersion in a solution of a protein-dissolving enzyme detergent and water;

(g) Sterilize reusable items in a steam autoclave or dry-heat sterilizer, which is used, cleaned and maintained according to the manufacturer's instructions;

(h) Resterilize a reusable sterile instrument before using it on a client, if it is contaminated by dropping, by touching an unsterile surface, by a torn package, by the package being punctured, damaged, wet or by some other means;

(i) Immediately dispose of a single-use item in a puncture-resistant container, if it is contaminated by dropping, by touching an unsterile surface, by a torn package, by the package being punctured, damaged, wet or by some other means;

(j) Immediately dispose of an instrument in a puncture-resistant container if the expiration date has passed; and

(k) Monitor sterilizers to determine that all conditions of sterilization are met. This includes:

(i) Assuring that sterilizers have a thermometer and timer to indicate whether adequate heat has been applied to packaged equipment;

(ii) Using or checking chemical indicators on each package to assure the items have been exposed to the sterilization process;

(iii) Sterilizers must be tested by biological spore tests according to the manufacturer's instructions. In the event of a positive biological spore test, the tattoo artist must take immediate action to ensure all conditions of sterilization are met; and

(iv) Documentation of monitoring must be maintained either in the form of a log reflecting dates and person(s) conducting the testing or copies of reports from an independent testing entity. The documentation must be maintained at least three years.

[Statutory Authority: RCW 70.54.340. 02-11-109, § 246-145-030, filed 5/20/02, effective 6/20/02.]

246-145-040

Penalty for not complying with rules.

Any electrologist or tattoo artist out of compliance with the rules in this chapter will be guilty of a misdemeanor.

[Statutory Authority: RCW 70.54.340. 02-11-109, § 246-145-040, filed 5/20/02, effective 6/20/02.]