

STATE OF SOUTH DAKOTA
BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

IN THE MATTER OF:)	
)	FINDINGS OF FACT AND
DECLARATORY RULING RE: THE)	CONCLUSIONS OF LAW AND
PROCEDURE REFERRED TO AS)	DECLARATORY RULING
<u>MICROBLADING</u>)	

This matter has come before the South Dakota Board of Medical and Osteopathic Examiners (the Board) through a petition by Board Staff, filed pursuant to SDCL 1-26-15 and ARSD ch. 20:78:02, requesting a declaratory ruling as to whether the procedure known as *microblading* should be subject to the provisions of SDCL 36-2-2, 36-4-8, 36-4-8.1, 36-4-9, or 36-4-34.

ISSUE

Board Staff has received complaints concerning the procedure of *microblading* and the use of a scalpel to apply permanent cosmetics. The precise inquiry is, “does *microblading* attempted through the use of a scalpel fall within the practice of medicine”.

FINDINGS OF FACT

1. SDCL 36-4-9 defines the “practice of medicine or osteopathy” as recommending, prescribing, or directing the use of any “drug, medicine, apparatus, or other agency for the cure, relief or palliation of any ailment or disease of the mind or body or the cure or relief of any wound, fracture or bodily injury or deformity.”

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2. No person may engage in, offer, or hold him or herself out as qualified to provide diagnosis or treatment of any human illnesses unless that person possesses a legal and unrevoked license or certificate issued under the laws of South Dakota authorizing such person to practice the healing arts. SDCL 36-2-2.

3. No person may practice medicine or osteopathy in South Dakota without a license issued under SDCL ch. 36-4. SDCL 36-4-11.

4. Surgery constituting the practice of medicine includes the use of a laser or ionizing radiation for the purpose of cutting or otherwise altering human tissue for diagnostic, palliative, or therapeutic purposes SDCL 36-4-8.2.

5. Physicians (SDCL 36-4-8, -8.2, -9), Physician Assistants (SDCL 36-4A-22), Dentists (SDCL 36-6A-31), Podiatrists (SDCL 36-8-1), and Certified Nurse Practitioners and Certified Nurse Midwives (SDCL 36-9A-12,13) are certain licensed professions authorized to perform some degree of surgery. This is not an exclusive listing and other practitioners of the healing arts, as those practitioners are defined in SDCL 36-2-1 and 36-2-2, who are authorized to perform some degree of surgery may be found generally in SDCL Title 36.

6. *Microblading* in its most common form involves the insertion of pigment under the skin in a person's eyebrow area to mimic the natural hairs that would normally grow in that area.

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7. *Microblading* in its most common form is carried out through the use of a manual tool comprised of a series of small or fine needles that insert the pigment under the skin.

8. *Microblading* is not commonly completed through the use of a scalpel.

9. The placement of pigment under the skin prevents the immediate or near term removal of the pigment through normal, every-day, environmental forces or hygiene practices.

10. The pigment inserted through a *microblading* procedure generally lasts for a period of 12 to 18 months.

11. A tattoo and *microblading* have similar characteristics in that both procedures in their most common forms involve the insertion of pigment below the surface of the skin through the use of needles.

12. Tattooing is regulated pursuant to SDCL 9-34-17 which states:

13. Any municipality may regulate the practice of tattooing and body piercing by licensing tattoo artists and practitioners of body piercing, inspecting tattoo and body piercing establishments, and establishing standards for sanitation that are at least as stringent as those adopted by the Department of Health pursuant to § 34-1-17. The term "tattoo" means to make permanent marks or designs on the skin by puncturing it and inserting indelible colors. The term "body piercing" means to place a permanent or temporary foreign object in a person's body

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such as ears, nose, lips, genitals, nipples, or parts thereof for a decorative or other nonmedical purpose by a person not directly under the supervision of a licensed physician as defined by § 36-4-11.

14. The most common method of tattooing involves the use of a motorized tattooing machine or “gun” to insert pigment below the surface of the skin.

15. In completing a tattoo, the pigment is inserted deeper within the layers of the skin than through the *microblading* process.

16. The placement of ink through the tattoo process, within the deeper layers of the skin, almost completely prevents the removal of the pigment through normal, every-day, environmental forces or hygiene practices.

17. A tattoo is considered permanent in that the tattoo design will generally remain visible for the life-span of the individual.

18. *Microblading* is different than tattooing in the depth of the location of the pigment within the layers of the skin, and the permanence of the pigment inserted.

19. Any Finding of Fact more appropriately considered a Conclusion of Law is hereby re-designated as such and incorporated therein below.

CONCLUSIONS OF LAW

1. The South Dakota Board of Medical and Osteopathic Examiners has the authority under SDCL ch. 36-4, SDCL 1-26-15, and ARSD ch. 20:78:02, to issue

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declaratory rulings concerning the applicability of their statutory and regulatory provisions and the practice of medicine in the State of South Dakota.

2. Surgery is the cutting or otherwise altering of human tissue for diagnostic, palliative, or therapeutic purposes. SDCL 36-4-8.2. Surgery is considered the practice of medicine.

3. The use of a scalpel for the purpose of cutting or otherwise altering human tissue for diagnostic, palliative, or therapeutic purposes is considered surgery.

4. *Microblading* performed with a scalpel or blade falls within the provisions of SDCL 36-2-1(6), 36-2-2, 36-4-8, 36-4-8.1, 36-4-9, and 36-4-34, and is the practice of medicine which would require a license authorizing the professional to perform surgery in South Dakota as part of their scope of practice.

5. *Microblading* completed through the use of a manual tool comprised of needles is similar to tattooing, and is not considered by the Board to be the altering of human tissue for diagnostic, palliative, or therapeutic purposes.

6. *Microblading* completed through the use of a manual tool comprised of needles is done with the intent to offer a cosmetic benefit to the individual undergoing the *microblading* process and is not done with the intent to engage in, offer, or hold oneself out as qualified to provide diagnosis or treatment of any human illnesses.


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7. *Microblading* completed through the use of a manual tool comprised of needles is not considered by the Board to be the practice of medicine.

8. Any Conclusion of Law more appropriately considered to be a Finding of Fact is hereby re-designated as such and incorporated therein above.

Dated and signed this 8th day of June, 2017.

BOARD OF MEDICAL & OSTEOPATHIC EXAMINERS



Kevin I. Bjordahl, MD
Vice-President