

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**April 20, 2017**

**Opinion No. 17-31**

**Licensing of “Microneedling” and “Microblading” Skin Procedures**

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**Question 1**

May an aesthetician licensed by the Board of Cosmetology and Barber Examiners perform microblading and/or microneedling in a cosmetology shop?

**Opinion 1**

No.

**Question 1a**

Does the answer to Question 1 depend on whether or not the microblading and/or microneedling affect only the non-living layer of the skin?

**Opinion 1a**

No.

**Question 2**

May an aesthetician licensed by the Board of Cosmetology and Barber Examiners perform microblading and/or microneedling at a medical spa, as defined by Tenn. Code Ann. § 63-1-153?

**Opinion 2**

No.

**Question 2a**

If the answer to Question 2 is yes, must such an aesthetician also hold any other license to perform such services?

**Opinion 2a**

The answer to question 2 is no.

**Question 2b**

Does the answer to Question 2 depend on whether or not the microblading and/or microneedling affect only the non-living layer of the skin?

**Opinion 2b**

Yes, but practically speaking, microneedling and microblading typically affect the living layers of the skin.

**Question 3**

May a person not licensed as an aesthetician by the Board of Cosmetology and Barber Examiners perform microblading or microneedling at a medical spa, as defined by Tenn. Code Ann. § 63-1-153?

**Opinion 3**

A person not licensed by the Board of Cosmetology and Barber Examiners may perform microneedling only if that person satisfies an exemption found in Tenn. Code Ann. § 62-4-109. A person not licensed by the Board of Cosmetology and Barber Examiners may perform microblading only if that person satisfies an exemption found in Tenn. Code Ann. § 62-4-109 and either is a licensed tattoo artist under Tenn. Code Ann. § 62-38-204 or is exempt from tattooing laws and regulations under Tenn. Code Ann. § 62-38-210(b).

**Question 3a**

If the answer to Question 3 is yes, must such a person hold any other license to perform such services?

**Opinion 3a**

See the answer to Question 3.

**Question 3b**

Does the answer to Question 3 depend on whether or not the microblading and/or microneedling affect only the non-living layer of the skin?

**Opinion 3b**

No.

#### **Question 4**

Do the marks created by microblading constitute a tattoo as such term is defined by Tenn. Code Ann. § 62-38-201(13)?

#### **Opinion 4**

Yes.

#### **Question 4a**

If the answer to Question 4 is yes, what license or licenses are required to perform such services?

#### **Opinion 4a**

An individual may perform microblading only if that person satisfies an exemption found in Tenn. Code Ann. § 62-4-109 and is a licensed tattoo artist under Tenn. Code Ann. § 62-38-204 or is exempt from tattooing laws and regulations under Tenn. Code Ann. § 62-38-210(b).

### **ANALYSIS**

This Opinion assumes and is limited to the following definitions of the procedures of “microblading” and “microneedling.” “Microblading” is a semi-permanent makeup procedure that enables a person to recreate lost eyebrows. Microblading is performed by manually depositing pigment into the skin by use of a pen-like instrument, which contains several fine needles organized in a line. When the instrument is pressed against the skin, the needles penetrate the skin and leave behind pigment. “Microneedling” is a skin-rejuvenation procedure that involves the use of a device that contains fine needles, which may be between .25 and 3.0 mm in diameter. The needles are organized on a cylinder, which is rolled over a person’s skin to puncture it and create a controlled skin injury to infuse the skin with preparation materials or collagen. The devices used in both procedures are capable of causing bleeding or rupturing blood vessels. The uppermost layer of skin—or epidermis—does not contain blood or blood vessels. Any device capable of causing bleeding or rupturing blood vessels is therefore capable of affecting the living layers of skin, the dermis, which lies below the epidermis.

#### **I. Microblading and Microneedling are Prohibited by the Board of Cosmetology and Barber Examiners.**

The Tennessee Board of Cosmetology and Barber Examiners (the “Board”) governs the practices of cosmetology and aesthetics, among other things. Tenn. Code Ann. §§ 62-4-103(a), -108 (requiring a license from the Board to “practice, teach or attempt to practice or teach, cosmetology [or] aesthetics.”). The Board has promulgated rules specifying that “[s]kin removal techniques and *practices which affect the living layers of facial skin, known as the dermis, are prohibited.*” Tenn. Comp. R. & Regs. 0440-02-16(2) (emphasis added). And “[i]nvasive procedures that shall not be used include, but are not limited to” “[a]brasion of the skin below the non-living, epidermal layers.” Tenn. Comp. R. & Regs. 0440-02-16(5). Because both

microblading and microneedling procedures generally cause bleeding or rupturing of blood vessels, or otherwise affect the dermis, they are generally “practices which affect the living layers of facial skin, known as the dermis” and are prohibited by the Board. Aestheticians, one of the categories of professionals governed by the Board, therefore may not perform microblading or microneedling, as those procedures affect the living layers of the facial skin, or dermis.

Because microblading and microneedling are prohibited under the Board’s rules, to perform microblading or microneedling, an individual must come within one of the exemptions from the cosmetology laws recognized by Tenn. Code Ann. § 62-4-109.<sup>1</sup> As applicable here, section 109 exempts from Tenn. Code Ann. §§ 62-4-101 through -138 certain individuals, specifically “[p]hysicians and surgeons or trained nurses, trained nurses assistants, aides or similar personnel, acting solely in their professional capacities.” Tenn. Code Ann. § 62-4-109(a)(3). *See also* Tenn. Op. Att’y Gen. No. 12-91 (Sept. 25, 2012) (discussing Tenn. Code Ann. § 62-4-109(a)(3)). If the subsection 109(a)(3) exemption applies to a particular individual, the Board’s laws and rules do not apply to procedures conducted by that individual.

## **II. Microneedling and Microblading May Be Performed at Medical Spas and Physicians’ Offices or Practices.**

The business location at which microblading or microneedling may be performed depends on whether microblading and microneedling are considered “cosmetic medical service[s].” Tennessee Code Ann. § 63-1-153(a)(1) defines “cosmetic medical service” as “any service that uses a . . . mechanical device of any kind that alters or damages, or is capable of altering or damaging, living tissues to improve the patient’s appearance or achieve an enhanced aesthetic result.” As described above, the microblading and microneedling devices can and often do pierce through the epidermal skin layer to cause bleeding or blood-vessel ruptures in the dermal skin layer. They are therefore “*capable* of altering or damaging . . . living tissue” (emphasis added) and are properly considered “cosmetic medical device[s]” under Tenn. Code Ann. § 63-1-153(a)(1).

Procedures involving “cosmetic medical devices” may be performed only in medical spas or “an individual physician’s office or practice owned by a physician.” *See* Tenn. Code Ann. § 63-1-153(a)(4) (defining “medical spa” as “any entity, however named or organized, which offers or performs cosmetic medical services”). Medical spas are required to register with the Department of Health. Tenn. Code Ann. § 63-6-105(a) (clarifying that “the registry shall include any physician-owned practice that advertises or holds itself out as a medical spa or a physician-owned practice that primarily engages in the performance of elective cosmetic medical services”).

## **III. Microblading is Tattooing.**

Marks left by microblading procedures are tattoos. Tennessee Code Ann. § 62-38-201 defines a “tattoo” as “any method of placing design, letters, figures, symbols, cosmetics or any other marks under the skin of a person with ink or color by the aid of needles or instruments.”

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<sup>1</sup> As discussed below, it is the opinion of this Office that marks left in the dermis by a microblading device are “tattoos,” and so if an individual desires to perform microblading, that individual would be subject to Tennessee’s tattooing laws and regulations, unless the individual also satisfies the exemption in Tenn. Code Ann. § 62-38-210(b).

Generally, a tattoo involves the introduction of permanent pigmentation under the dead epidermal layer of skin and into the living dermal layer of skin. *See* 67 A.L.R. 6th 395 (2011); *Stedman's Medical Dictionary* (West 2014). To the extent microblading deposits ink or color under the epidermis and into the dermis, microblading meets the ordinary and statutory definition of “tattoo” and is subject to the laws and regulation applicable to tattooing. Normally, tattooing may be done only at a licensed tattoo studio by a registered tattoo artist, apprentice artist, or temporary artist. Tenn. Code Ann. § 62-38-204.

Tennessee Code Ann. § 62-38-210(b) specifies that the tattoo-regulation scheme in Tenn. Code Ann. §§ 62-38-201 through -212 “does not apply to any physician, surgeon or any person under the supervision of a physician or surgeon who is licensed to practice medicine in this state.” Therefore, “any physician, surgeon or any person under the supervision of a physician or a surgeon who is licensed to practice medicine in this state” may, without registering as a tattoo artist or operating at a licensed tattoo studio, perform microblading that deposits coloration in the dermis (including at, for example, a medical spa or physician’s office). Thus, to perform microblading without being a tattoo artist, apprentice artist, or temporary artist, an individual must satisfy an exemption from the Board’s statutes and rules under Tenn. Code Ann. § 62-4-109(a)(3) *and* satisfy the exemption from the tattooing statutes and rules under Tenn. Code Ann. § 62-38-210(b).

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