



# DUTY OF CARE STATEMENT



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Duty of care is an important prerequisite in negligence cases, as the duty of care must exist and must have been breached for negligence to occur. As a result, breach of the duty of care, if resulting in an injury, may subject a tattooist to legal liability.

By virtue of their education and competencies, tattooists hold themselves out to the public as having specialised knowledge, training and skills. As such, society has expectations of tattooists to meet specific professional standards when providing their services.

Professional practice guidelines, such as those outlined in this document, offer information and direction to assist tattooists in making informed decisions regarding their accountabilities in specific practice situations. These guidelines support professional judgment and permit flexible decision-making in practice. This document is intended to be used as a guide and does not provide all the answers or foresee every possible situation.

Duty of care' is a legal term used to describe the obligation imposed on individuals requiring that they exercise a reasonable standard of care while providing services. In order for a duty of care to arise there must be a sufficient relationship between a tattooist and client. For example, a tattooist-client relationship is established the moment a tattooist engages in the application of a tattoo with a client. Once this relationship is established, the tattooist is held to a standard of care that is established through training, experience and education.



## INTRODUCTION

In practice, a Duty of Care means that all tattooists and studio staff, collectively and individually, have a responsibility to take reasonable steps to ensure clients are:

- Safe
- Consenting
- Unharmed
- Protected from abuse
- Informed of any potential side effects and risks
- Receive a standard of care and treatment that is evidence based
- Receive a quality of care and treatment that complies with the profession's specific and generic standards of practice.

The Australian Tattooists Guild has identified the following criteria for registered/licensed tattooists to consider in regards to their obligations to provide care in an emergency situation:

- The significance of the risk to the person/client if the tattooist does not assist
- Whether the tattooists intervention is directly relevant to preventing harm
- Whether the tattooists care will probably prevent harm
- Receive a standard of care and treatment that is evidence based
- Whether the benefit of the tattooists' intervention outweighs harms the tattooist might incur and does not present more than an acceptable risk to the tattooist.

The provision of professional tattooists care does not, however, include working in situations where a tattooist health is at risk because an employer has not provided adequate protective resources. Refusals to work should be handled by an employer in accordance with the Australian Tattooists Guild ("ATG"). Employers should explore the reasons for an employee's refusal to work and respond appropriately to legitimate concerns. The ATG may help its members identify factors which contribute to safe work environments and advocate for change if shortcomings in safety persist.



## RECORDS OF SERVICES

Every tattooist shall retain a record of the name, address and age of every customer and date tattooed (and any other information required by the Commissioner) and shall report any information as the commissioner shall determine.

## HEALTH EMERGENCY

From time to time clients may experience adverse reactions to the tattoo process. A health emergency is considered to be in effect as soon as the tattooist recognizes that the client is displaying symptoms beyond the client's control that adversely effect the tattoo procedure. While there is an expectation that registered/licensed tattooists will provide clients with safe, competent and ethical care, (including during an emergency) and absorb a certain amount of risk in doing so, there is not an expectation that registered/licensed tattooists will place themselves at unnecessary risk during a health emergency. There are situations in which it may be acceptable for a registered/licensed tattooist to withdraw or refuse care. 'Unreasonable burden' is a concept raised in relation to the duty to provide care and withdrawing from providing or refusing to provide care. An unreasonable burden may exist when a tattooist's ability to provide safe care and meet professional standards of practice is compromised by unreasonable expectations, lack of resources, or ongoing threats to personal well-being.

## AFTERCARE

After the procedure has been completed, every tattooist shall provide his/her customer with written instructions on the proper care of the tattooed skin.

Tattoos are a fresh wound, and as such are susceptible to infection. Tattooists should be able to recognise symptoms and recommend that the client seek professional healthcare advice as soon as possible.



## COMPLETION OF WORK

Once care of a client has been accepted and work has commenced, all tattooists have an ethical responsibility to continue to provide care for the length of the tattoo. Tattooists must maintain their fitness to practice. If they are aware that they do not have the necessary physical, mental or emotional capacity to practice safely and competently, they should postpone provisions of service until an agreed upon time, or withdraw from the provision of service after consulting with their employer or, if they are self-employed, arranging that someone else attend to their clients.

## ASSIGNMENTS IN RELATION TO COMPETENCE

Tattooists are not obligated to provide services beyond their level of competence. However, rather than refusing an assignment related to perceived lack of competence, a tattooist should negotiate the work assignment with her/his employer, based on the tattooists individual scope of practice and competencies. It is worth remembering that every tattooist has basic entry-level (basic standard cross-contamination) competencies that are to be applied in any practice setting.

Tattooists have an obligation to inform clients when they are asked to deliver care/services beyond their level of competence or personal scope of the tattooing practice. It is important for tattooists to recognise when they have passed the limits of their knowledge, skills and/or judgment, and to know when and where to request assistance or additional education or training. The refusal of an assignment in an unfamiliar practice setting is justified when the risk of harm to a client is greater by accepting the assignment than by refusing.



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## TATTOOIST'S ACCOUNTABILITIES

In order to fulfill their duty to provide care/services, tattooists have a right to receive accurate and complete information from their employer. They must also be supported in meeting their own health needs. Employers have a reciprocal duty to protect and support tattooists as well as to provide necessary and sufficient protective equipment and supplies that will "maximally minimize risk" to tattooists and other studio employees.

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