



Effective May 5, 2014

April 4, 2014

Protecting, maintaining and improving the health of all Minnesotans

Rodger Booth

RE: MDH File Number: BAC13062

Dear Mr. Booth:

Based on the facts and law in this matter as described in the enclosed Staff Determination, the Minnesota Department of Health (MDH) has determined that you: [1] provided body art services, while under a temporary license, without any proper supervision, in violation of Minnesota Statutes, section 146B.08, subdivisions 3(3), Minnesota Statutes, section 146B.03, subdivisions 1 (a) and Minnesota Statutes, section 146B.03 subdivision 7; [2] failed to obtain from the client a signed and dated informed consent form, in violation of Minnesota Statutes, section 146B.08, subdivision 3(3), and Minnesota Statutes, section 146B.07 subdivision 3; [3] provided body art services without establishing proof of age, in violation of Minnesota Statutes, section 146B.08, subdivisions 3 (3) and Minnesota Statutes, section 146B.07 subdivision 1. Therefore, the Department is issuing you a reprimand, imposing a civil penalty in the amount of \$868, and issuing you a conditional license. This action is authorized pursuant to Minnesota Statutes, section 146B.08, subdivision 4.

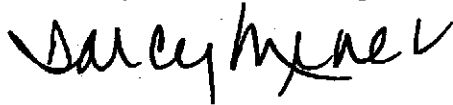
You may either accept the discipline as stated herein or you may appeal. If you accept, please pay the assessed civil penalty by check made payable to "Treasurer, State of Minnesota." If you wish to appeal the discipline, you must provide a written statement as to which facts are in error and the grounds for your appeal. Your written statement must be received within 30 days from the date this letter is received by you. During that 30-day period, you also have the right to challenge this decision in a contested-case hearing, as provided under Minnesota Statutes, Chapter 14. Requests for a hearing should be made in writing and must include specific grounds for challenging the Department's decision.

You must provide a written statement of your decision to either accept or appeal the discipline outlined in the enclosed Determination, within 30 days of your receipt of this letter, to:

Anne Kukowski, Acting Director of the Health Occupations Program
Minnesota Department of Health
PO Box 64882
Saint Paul, MN 55164-0882

You may also deliver your request to 85 East Seventh Place, Suite 220, Saint Paul, MN; or fax it to Anne Kukowski at (651)201-3839. If you have any questions about this matter, please contact Chee Lee at (651)201-3728.

Sincerely,

A handwritten signature in cursive script, appearing to read "Darcy Miner".

Darcy Miner, Director
Compliance Monitoring Division

Enclosure

cc: Anne Kukowski, Acting Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Rodger Booth
Body Art Technician**

AUTHORITY

1. The Minnesota Department of Health (MDH) has authority to discipline body art technicians for violations of law under Minnesota Statutes, section 214.131, subdivision 2; and Minnesota Statutes, section 146B.08, subdivision 3. Pursuant to Minnesota Statutes, section 146B.08, subdivision 4, the types of discipline MDH may impose include refusal to grant a license or any reasonable lesser action.
2. Pursuant to Minnesota Statutes, section 146B.08, subdivision 4(5), MDH may also impose a civil penalty, for each violation, not exceeding \$10,000, that deprives the licensee of any economic advantage gained by the violation and reimburses MDH for costs of the investigation.
3. Pursuant to Minnesota Statutes, section 146B.08, subdivision 3(3), a violation of any provision in the body art statute is a ground for disciplinary action.
4. Pursuant to Minnesota Statutes, section 146B.03, subdivision 1, effective January 1, 2011, no individual may perform tattooing unless the individual holds a valid technician license issued by MDH.
5. Pursuant to Minnesota Statutes, section 146B.03, subdivision 7, a temporary license may be issued if a licensed technician agrees to supervise the applicant.
6. Pursuant to Minnesota Statutes, section 146B.01, subdivision 28, "supervision" means the physical presence of a technician licensed under this chapter while a body art is being performed.
7. Pursuant to Minnesota Statutes, section 146B.07, subdivision 3, a technician shall obtain from the client a signed and dated informed consent form before performing a body art procedure.
8. Pursuant to Minnesota Statutes, section 146B.07, subdivision 1(a), a technician shall require proof of age before performing any body art procedure on a client. Proof of age must be established by one of the following: [1] valid driver's license or identification card issued by state of Minnesota or another state that includes a photograph and date of birth; [2] valid military identification card issued by United States Department of Defense; [3] valid passport; [4] resident alien card; [5] tribal identification card.

FINDINGS OF FACT

1. Rodger Booth (Hereinafter "Technician"), was issued a temporary body art technician-tattoo license, effective October 3, 2012. The temporary technician's license expired on October 03, 2013.
2. In the temporary body art technician license application, Technician listed Jesse Barkyoub (hereinafter known as "Technician JB") as his supervisor.
3. On August 2, 2013, MDH received information that Technician was providing tattoo services at Tatts by Zapp (hereinafter known as "Establishment") in Stillwater, Minnesota, without a supervisor present. It was later discovered that Technician JB left the Establishment sometime in March 2013.
4. On August 8, 2013, commencing at 3:30pm, MDH representatives inspected Tatts By Zapp, MDH License No. 430086 (hereinafter "Establishment"), located at 235 ½ East Chestnut St, Stillwater, MN, 55082.
5. MDH representatives made contact with Technician inside the Establishment. Technician stated he has been providing body art at the Establishment without a supervisor present for the past few months.
6. Technician was allowed to provide body art services again on August 27, 2013 as another licensed Technician agreed to supervise him. Technician's temporary license was renewed on October 17, 2013 with an expiration date of October 17, 2014.
7. On September 24, 2013, MDH sent a letter to Technician requesting informed consent forms for all body art services he provided since January 1, 2011. MDH requested a response no later than October 24, 2013. MDH did not receive a response from Technician.
8. On November 21, 2013, MDH sent a second letter to Technician requesting informed consent forms for all body art services he provided since January 1, 2011. MDH requested a response no later than December 23, 2013. MDH did not receive a response from Technician.
9. On December 30, 2013, MDH sent a final notice to Technician requesting informed consent forms for all body art services he provided since January 1, 2011. MDH requested a response no later than January 30, 2014. MDH did not receive a response from Technician.
10. On February 14, 2014, an MDH representative attempted to serve Technician with a Determination Letter for not cooperating in an investigation. Technician was not present. An MDH representative attempted to collect Technician's informed consent forms but was unable to do so.

11. On March 7, 2014, the Technician's informed consent forms were dropped off at MDH's main office.
12. In an email to an MDH representative on March 12, 2014, Technician stated Technician JB left the week of March 19, 2013. In an email to MDH representative on March 16, 2014, Technician stated he started tattooing without a supervisor present after Technician JB left the establishment.
13. Based on information from the informed consent forms, Technician provided 156 body art services at the Establishment without a supervisor present from March of 2013 to July of 2013.
14. Based on information from the informed consent forms, Technician provided 14 tattoos from March 23 to March 31, 2013, 26 tattoos in April 2013, 38 tattoos in May 2013, 41 tattoos in June 2013, and 37 tattoos in July 2013.
15. MDH did not receive any informed consent forms from Technician for August 2013. When asked, Technician stated he did not provide any body art services because the Establishment closed on August 8, 2013 and did not reopen until August 27, 2013. Technician was not allowed to tattoo again until he found a licensed artist willing to supervise him, which occurred on August 27, 2013. Therefore, Technician stated he did not tattoo for the month of August 2013.
16. Review of the Technician's informed consent forms show that some were incomplete as they did not have the date of the procedure on the form.
17. Technician performed a body art procedure on May 6, 2013 without collecting proof of age. Attached to the informed consent form is a photocopy of a 2008-2009 Maplewood Middle School identification card and a document that appears to be a birth certificate in Spanish.

CONCLUSION

1. Technician failed to comply with the requirements under Minnesota Statutes, section 146B.03, subdivisions 1, and section 146B.03, subdivision 7. A temporary license was issued to the Technician; however, a temporary license is only deemed valid if the tattoo procedure is performed in the presence of and under the supervision of a licensed technician. Technician provided tattoo services from March 2013 to July 2013 outside the physical presence of his supervisor on record.
2. Technician failed to comply with the requirements under Minnesota Statutes, section 146B.07, subdivision 3. Technician provided body art services to clients even though the informed consent forms were incomplete as it did not have the date of procedure on it.

3. Technician failed to comply with the requirements under Minnesota Statutes, section 146B.07, subdivision 1(a). Technician provided body art services on May 6, 2013, even though proof of age was not established on the client.

DETERMINATION

1. Technician will be issued a conditional body art technician license, with the following conditions:
 - Technician will comply with all requirements of Minnesota Statutes, Chapter 146B;
 - The license will be conditional for a period of not less than five years and will transfer over should Technician apply for full licensure;
 - Technician will not be allowed to supervise temporary body art technicians should Technician apply and is issued a full body art technician license;
 - A supervisor is expected to be knowledgeable about safe body art procedures and the state statutes that govern the practice of body art. MDH has determined that Technician violated provisions of body art chapter and that Technician demonstrated a careless disregard for the health, welfare, or safety of a client. Therefore, Technician may not supervise temporary technicians and MDH will deny all applicants that list Technician as a supervisor for five years.
 - After a period of not less than five years, Technician may request the conditional status be removed from his license. To do so, Technician must:
 - Submit a written response for removal of the condition to the Director of the Health Occupations Program, Minnesota Department of Health, PO Box 64882, Saint Paul, MN 55164-0882;
2. Technician is hereby reprimanded and assessed a civil penalty in the amount of \$868, which deprives Technician of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
 - Technician may pay the \$738 (after \$130 credit) civil penalty in monthly installments of up to 18 months after the effective date of this action. If Technician chooses to make installments, he must notify MDH in writing about his intentions, including how many installments he intends to make, in what amount, and over which time period. Technician must send this information to: Health Occupations Program, PO Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of this document.
 - Each payment will be made by check to "State of Minnesota, Treasurer," and mailed to Health Occupations Program, PO Box 64882, Saint Paul, MN 55164-0882, or any other address specified by MDH. Each payment is due by the last day of each month; however, technician may prepay at any time.
 - The penalty may be referred to the Minnesota Collection Enterprise (MCE), part of the Minnesota Department of Revenue, or any other source for collection, if Technician misses a monthly payment by 14 calendar days after the established deadline. When this Order for a penalty becomes public and MDH refers the

matter to MCE, MCE is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Technician without further notice or proceedings.

3. Technician was sent a Letter of Determination on February 7, 2014 via mail. The Determination was set forth to suspend Technician's license if he did not cooperate with the ongoing investigation and pay a fine of \$120 for current cost of investigation. Technician has since cooperated with the investigation and has produced the informed consent forms that were requested of him. Technician has also paid the fine of \$120 (actually received \$130 from Technician). The \$130 received from Technician will be added as credit to the civil penalty of \$868 from this determination which leaves a total of \$738.