



Effective 08/31/14

July 21, 2014

Protecting, maintaining and improving the health of all Minnesotans

Nicholas J. Hams

RE: MDH File Number: BAC14013

Dear Mr. Hams:

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 without a license, in violation of Minnesota Statutes, section 146B.08, subdivision 3(3), and Minnesota Statutes, section 146B.03, subdivision 1 (a); and [2] failed to obtain from the client a signed and dated informed consent form before performing a body art procedure, in violation of Minnesota Statutes, section 146B.08, subdivisions 3(3), and Minnesota Statutes, section 146B.07, subdivision 3. Therefore, MDH is issuing you a reprimand and imposing a civil penalty in the amount of \$231. This action is authorized pursuant to Minnesota Statutes, sections 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:

Gilbert Acevedo, 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 Gilbert Acevedo at (651)201-3727. If you have any questions about this matter, please contact Chee Lee at (651)201-3728.

Sincerely,

Darcy Miner, Director
Compliance Monitoring Division

Enclosure

cc: Gilbert Acevedo, Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Nicholas J. Hams
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 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 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(a), no individual may perform tattooing unless the individual holds a valid technician license issued by MDH.
5. Pursuant to Minnesota Statutes, section 146B.07, subdivision 3, before performing a body art procedure, the technician shall obtain from the client a signed and dated informed consent form. The form must disclose: (1) that a tattoo is considered permanent and may only be removed with a surgical procedure and that any effective removal may leave scarring; or (2) that body piercing may leave scarring.

FINDINGS OF FACTS

1. Nicholas Hams (hereinafter "Technician") was issued a temporary body art technician license on January 28, 2013. The temporary license expired on January 28, 2014.
2. Technician worked at Good Clean Fun Ink (hereinafter "Establishment") in Otsego, Minnesota from March 2013 to March 2014.
3. On December 31, 2013, MDH sent a letter to Technician. The letter advised Technician his temporary license was going to expire on January 28, 2014 and that if he wanted to continue to practice body art afterwards he would have to renew it.
4. On January 28, 2014, MDH sent a letter to Technician. The letter advised Technician he failed to renew his body art license and to cease all body art activities immediately.

5. On January 30, 2014, MDH received a full body art technician license application from Technician. Technician was issued a full body art license on February 27, 2014.
6. Technician's application was referred to Investigation & Enforcement Unit for possible illegal body art practice from January 29, 2014 to February 26, 2014.
7. On February 24, 2014, MDH representatives made a visit to the Establishment. Technician was the only employee on site with a client waiting in the lobby area to get a body art procedure done.
8. Technician stated to MDH representatives he believed his license was valid as he had submitted his application. Technician was advised he could not provide any body art services as his application had not been processed yet and to shut down the Establishment immediately.
9. On March 26, 2014, MDH sent a Notice of Illegal Practice letter to Technician. MDH requested Technician's informed consent forms from January 29, 2014 to February 26, 2014. MDH requested Technician submit a written response and the forms by April 28, 2014. MDH did not receive a response from Technician by April 28, 2014.
10. On May 1, 2014, MDH sent a 2nd Notice of Illegal Practice letter to Technician. MDH requested Technician respond by June 2, 2014.
11. On May 22, 2014, MDH received a letter of response from Technician. In the letter, Technician stated he did provide tattoos from January 29, 2014 through February 26, 2014; however, he did not have the informed consent forms. Technician stated in the letter, "Between Jan 29th and Feb 26th I did some tattooing, it was slow and I do not remember the exact number of clientele visited me, but the ones who did were return clientele of mine, who did not fill out new release forms, that is why there aren't any forms during that time".

CONCLUSION

1. Technician did not comply with the requirements under Minnesota Statutes, section 146B.03, subdivision 1, because he continued to practice body art after the expiration of his temporary license on January 29, 2014 and before issuance of his full license on February 27, 2014.
2. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3 (3), because he failed to obtain from the client a signed and dated informed consent form before a body art procedure, in violation of Minnesota Statutes, section 146B.07, subdivision 3.

DETERMINATION

1. Technician is hereby reprimanded and assessed a civil penalty in the amount of \$231, which deprives Technician of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
 - Technician may pay the \$231 civil penalty in monthly installments of up to 2 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.