



Effective July 25, 2014

June 20, 2014

Protecting, maintaining and improving the health of all Minnesotans

Ed Kellner

RE: MDH File Number: BAC13078 & BAC13081

Dear Mr. Kellner:

Based on the facts and law in this matter as described in the enclosed Staff Determination, the Minnesota Department of Health (MDH) have 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] provided body art services to a minor, in violation of Minnesota Statutes, section 146B.08, subdivision 3(3), and Minnesota Statutes, section 146B.07, subdivision 2(b). Therefore, MDH is issuing you a reprimand, imposing a civil penalty in the amount of \$1365, and issuing you a conditional technician 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:

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,

A handwritten signature in black ink that reads "Darcy Miner".

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
Ed Kellner
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 that 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 2(b), no technician shall tattoo any individual under the age of 18 regardless of parental or guardian consent.

FINDINGS OF FACT

1. Ed Kellner (hereinafter "Technician") was issued a temporary body art technician license on July 30, 2012. The temporary license expired on July 30, 2013.
2. Technician worked at Inkwell Tattoo (hereinafter "Establishment") in Hibbing, Minnesota from July 2012 to mid-November 2013.
3. MDH received a full body art technician license application from Technician on September 20, 2013. Technician was issued a full license on November 4, 2013.
4. Technician's application was referred to Investigation & Enforcement for possible illegal body art practice from July 31, 2013 to November 3, 2013.

5. On November 5, 2013, MDH sent a Notice of Illegal Practice letter to Technician. On November 25, 2013, MDH received a letter of response from Technician. In the letter, Technician stated he did not provide body art services from July 31, 2013 to November 3, 2013.
6. On November 12, 2013, MDH received a phone call from a complainant who stated Technician had tattooed her 14 year old daughter's hand at the Establishment on October 31, 2013. Complainant was advised to fill out a complaint form.
7. Complainant also stated over the phone that she had made a report with the Hibbing Police Department regarding Technician tattooing her 14 year old daughter. According to Hibbing PD case number 13240850, Technician tattooed the 14 year old juvenile's (hereinafter known as "K.B.B") left hand between the thumb and the index finger. The tattoo was of the letter "A" and approximately 1 cm x 1 cm.
8. On November 14, 2013, MDH received a complaint form regarding Technician tattooing K.B.B. Enclosed with the complaint form is a statement by K.B.B. that Technician gave her a tattoo on her hand at the Establishment on October 31, 2013.
9. On November 22, 2013, an MDH representative made a visit to Hibbing, Minnesota and made contact with the Establishment owner, Andy Vidovic (hereinafter "Operator"). Operator stated he has been ill and the illness has caused him to travel frequently to Rochester Mayo Clinic for treatment. Operator stated he has not been able to oversee the daily operations of the Establishment. Therefore, he gave Technician the keys to the Establishment and Technician was allowed to open and close the shop while Operator was away.
10. Operator stated Technician was providing tattoos at the Establishment during the months of July 2013 to November 2013. When asked for Technician's informed consent forms during that time period, Operator stated Technician had taken them with him when he resigned from the Establishment.
11. On December 12, 2013, MDH sent a letter to Technician regarding the complaint that he tattooed K.B.B. on October 31, 2013. On January 10, 2014, MDH received a letter of response from Technician. In the letter, Technician stated he did not tattoo K.B.B. on October 31, 2013 and did not provide any tattoo services from July 31, 2013 to November 3, 2013.
12. The MDH representative was able to retrieve a copy of the security footage of the Establishment on October 31, 2013 from 4:26 pm to 6:27 pm. The security camera is located above the entrance/exit door of the Establishment. The camera records the lobby area and the two offices that are accessible from the lobby. One office is for the administration and the other office is the procedure area of where body art is performed.
13. A review of the security footage of the Establishment on October 31, 2013 from 4:26pm to 6:27 pm shows:

[a] Technician, K.B.B., another employee of the Establishment and the wife of Operator, Hippolita Ramos (hereinafter "H.R."), and other unidentified people inside the Establishment. They are all seen going in and out of the Establishment, the lobby area, and the procedure area.

[b] At approximately 4:52:30 pm, H.R. enters the procedure area. Technician is already in the room and seated in a chair. At approximately 5:06:45 pm, both Technician and H.R. can be seen getting up from the separate chairs they are seated in. As Technician gets up, he moves a light fixture that is directly above him away. As H.R. leaves the room, she gives Technician a hug. At approximately 5:09:24 pm, Technician leaves the procedure area and into the lobby.

[c] At approximately 5:14:30 pm, K.B.B. enters the procedure area alone. At 5:22:58 pm, Technician enters the procedure area where K.B.B. is waiting. At approximately 5:23:50 pm, Technician is seen sitting on a chair and moves a light fixture closer to where he is. Technician is sitting at the same spot he was at 4:52:30 pm when he was with H.R. At 5:25:28 pm, Technician motions an unidentified girl in the lobby area to shut the door to which she does. At 5:31:37 pm, Technician and K.B.B. comes out of the office. Technician, Technician HR, K.B.B., and 2 other unidentified females can be seen huddling up in the lobby area. It appears K.B.B. is showing everyone her hand. At 5:38:00 pm, K.B.B. gives Technician a hug, stands by the doorway of the office while Technician HR and Technician talk, and eventually leaves the Establishment with Technician HR.

[d] At approximately 5:33:15 pm, Technician is in the procedure area with two unidentified females. Technician is seen unfolding a blue plastic sheet. At 5:37:30 pm, Technician is seen wearing black plastic gloves. Technician stays in the procedure area with the two females for over 25 minutes. At 6:06:38 pm, Technician moves a lamp fixture away from him, shuts it off, and leaves the procedure area to talk with a male who is waiting in the lobby area. At 6:08:50 pm, Technician goes back to the procedure area, sits down, moves the lamp fixture closer to where he is, and turns the lamp back on.

[e] At approximately 5:59:45 pm, a male customer enters the Establishment. At 6:01:30 pm, the customer is filling out paperwork in the lobby area. At 6:06:50 pm, Technician steps out of the procedure area and to the lobby area. Technician makes contact with the customer. Both Technician and customer are seen making hand gestures and appear to be talking about the size and location of the tattoo. At 6:07:20 pm, Technician looks at the paperwork filled out by the customer. At 6:07:55, the customer reaches into his pants pocket and hands over to Technician what appears to be an ID. Technician looks at it and hands it back to the customer. At 6:08:50 pm, Technician ends the conversation and goes back to the procedure area where a female is waiting. At 6:09:02 pm, Technician is seen

sitting in a chair and moving a light fixture closer to where he is. Technician also turned the light fixture on.

14. On January 14, 2014, MDH sent a letter with questions to H.R. On February 3, 2014, MDH received a letter of response from H.R. In the letter, H.R. stated she did observe Technician provide tattoos at the Establishment during the months in which Technician's temporary license had expired. H.R. also stated, in relation to what was seen on the security footage, that:

[a] Technician was tattooing her fingers at 5:06:45 pm.

[b] Technician was tattooing one of the unidentified female at approximately 5:38 pm.

15. On January 14, 2014, MDH sent a letter with questions to Operator. On February 3, 2014, MDH received a letter of response from Operator. In the letter, Operator stated he did observe Technician provide tattoos at the Establishment during the months in which Technician's temporary license had expired.

16. On February 12, 2014, MDH sent a letter with questions to Technician. MDH requested a response from Technician by March 12, 2014.

17. On March 14, 2014, MDH received a letter of response from Technician. In the letter, Technician:

[a] denied providing a tattoo to Technician HR. Technician stated he was "giving my expert advice on how to give a better tattoo" to Technician HR.

[b] stated he was in the procedure area with the K.B.B. for about 10 minutes on the night of October 31, 2013. However, Technician did not provide tattoo services to K.B.B. Instead, Technician was consulting with K.B.B. as she wanted a cover up of the tattoo that was already on her hand. Technician stated K.B.B. "wasn't happy that I was unable to assist her and was talking about laser removal when she left."

[c] stated he did not provide tattoo services to anyone on October 31, 2013. Technician stated he did consult with clients on October 31, 2013 and that he did use body pens to draw on clients; however, he did not perform any tattoos. Technician stated "I was using body pens to draw on April to show her what I was thinking, and used the light so that we could see the area more clearly. I always wear gloves for consultations because that is what I was taught to do."

[d] stated he did make contact with a customer who walked into the Establishment on October 31, 2013 at 6:00 pm. Technician stated he did not provide a tattoo to the male client. Instead, Technician stated he checked the male's ID and looked over his informed consent form. Technician stated "Although the store was open,

I was only there until my co-worker showed up and then I went home. At the time I was trying to make the shop more professional by keeping it open for my co-worker rather than closing and having him to reopen.”

CONCLUSION

Given the preponderance of evidence, MDH finds:

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 July 30, 2013 and before issuance of his full license on November 4, 2013.
2. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3 (3), because he tattooed a minor, in violation of Minnesota Statutes, section 146B.07, subdivision 2 (b).

In reaching this conclusion, MDH acknowledges Technician's statements that he did not provide tattoo services during the time his license lapse and that he did not give K.B.B. a tattoo but relied on the following factors:

[a] K.B.B. stated in a police report that Technician was the one who gave her a tattoo.

[b] Operator and H.R. stated that they observed Technician providing body art services during the time his license was lapsed. Operator's statement is against Operator's interest as it opens the Establishment, therefore the Operator as well, to a charge of aiding and abetting a violation of Minnesota Statute section 146B.03 subdivision 1(a).

[c] H.R. stated she received a tattoo from Technician on October 31, 2013 at the Establishment.

[d] Technician and K.B.B. were alone in the procedure area for 10 minutes. A consultation would reasonably take less than 10 minutes and would not need to take place in the procedure area with the doors shut.

[e] K.B.B. did not appear unhappy as Technician stated. After both Technician and K.B.B. came out of the procedure area, both were standing next to each other and K.B.B. even gave Technician a hug before she left the Establishment. The security footage does not suggest K.B.B. was not happy or was upset with Technician.

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 two years;
 - Technician will not be allowed to supervise temporary body art technicians;
 - 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 for two years and MDH will deny all applications that list Technician as a supervisor during this period.
 - After a period of not less than two 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 \$1365, which deprives Technician of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
 - Technician may pay the \$1365 civil penalty in monthly installments of up to 12 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.