

Effective 2/9/11



Protecting, maintaining and improving the health of all Minnesotans

January 25, 2011

Mr. Randy Scott McKernan

RE: Body Art Technician Licensure Application

Dear Mr. McKernan:

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 were disciplined by another jurisdiction for actions substantially equivalent to disciplinary grounds under Chapter 146B, in violation of Minnesota Statutes, section 146B.08, subdivision 3(6). Therefore, the Department is disciplining your right to practice body art. This action is authorized pursuant to Minnesota Statutes, sections 214.10, and 146B.08, subdivision 4.


You may either accept the discipline as stated herein or you may appeal. If you accept, you will be issued a conditional body art technician license. If you wish to appeal the discipline, you must provide a written statement as to which facts are in error and your grounds for your appeal. Your written statement must be received within 30 days from the date it 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 also be made in writing and include specific grounds for challenging the Department's decision.

You should 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:

Tom Hiendlmayr, 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 Mr. Hiendlmayr at (651)201-3839. If you have any questions about this matter, please contact Kyle Renell at (651)201-3727.

Sincerely,


Darcy Miner, Director
Compliance Monitoring Division

Enclosure

cc: Tom Hiendlmayr, Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Randy Scott McKernan
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. The types of discipline MDH may impose include refusal to grant licensure or any reasonable lesser action.
2. Pursuant to Minnesota Statutes, section 146B.08, subdivision 3(6), a technician may be disciplined by the Commissioner if the technician has been disciplined by another jurisdiction, if any of the grounds for the discipline are the same or substantially equivalent to those under Chapter 146B.
3. Pursuant to Minnesota Statutes, section 146B.07, subdivision 1a, a technician may perform body piercings on an individual under the age of 18 if the individual's parent or legal guardian is present and a consent form and the required authorization form is signed by the parent or legal guardian in the presence of the technician.

FINDINGS OF FACT

1. Randy Scott McKernan (Hereinafter "Technician") submitted an application for licensure as a body art technician. On the application, dated December 22, 2010, and received on December 27, 2010, Technician stated that he had been convicted in Douglas County, MN, of piercing a minor without parental consent on May 21, 2009. Technician further disclosed the charge was a misdemeanor and his license was suspended for a period of five days.
2. By Verification of Credential received January 5, 2011, the City of Alexandria confirmed that Technician's license had been "suspended for a couple days for piercing or tattooing a minor."
3. In response to an MDH staff request for his explanation of the circumstances leading up to the conviction, Technician stated that he had been aware other body art technicians in his area were piercing minors without parental consent and before either he or his attorney were able to locate the law on the issue, Technician went ahead and pierced a minor without parental consent. Technician advised he was charged with a misdemeanor, fined \$300.00, and suspended for five days.

CONCLUSION

1. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3(6), because he pierced a minor without parental consent in Douglas County, MN, the grounds for which are substantially equivalent to Minnesota Statutes, section 146B.07, subdivision 1a.

DETERMINATION

1. Technician shall be issued a Conditional Body Art Technician license, with the following conditions:
 - The license will be conditional for a period of not less than two years;
 - Technician must neither tattoo a minor nor pierce a minor without parental consent. A determination that Technician has tattooed a minor or pierced a minor without parental consent may result in the suspension of Technician's right to provide body art services in the State of Minnesota for a period of not less than one year; and
 - 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 request 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; and
 - Include with his written request a statement from law enforcement authorities in the area where his establishment is located that he has had no further incidents, either pending or concluded, related to body art services provided to minors.