



Effective 10-17-14

Protecting, maintaining and improving the health of all Minnesotans

September 8, 2014

Patricia Scherven

RE: MDH File Number: BAC12009 & BAC12019

Dear Ms. Scherven:

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). Therefore, MDH is issuing you a reprimand and imposing a civil penalty in the amount of \$738. 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, appearing to read "Darcy Miner", is written over a horizontal line.

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
Patricia Scherven
Body Art Technician**

AUTHORITY

1. The Minnesota Department of Health (MDH) has authority to discipline a body art operator 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, for each violation, not exceeding \$10,000 that deprives the operator 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 body art, including permanent makeup, unless the individual holds a valid technician license issued by MDH.

FINDINGS OF FACT

1. Patricia Scherven (hereinafter "Operator") owns Skin Therapease (hereinafter "Establishment") in Wayzata. Operator provides permanent makeup services at the Establishment.
2. On December 21, 2010, MDH received a body art technician application from Operator.
3. On January 1, 2011, MDH sent an email to Operator. The email advised Operator her body art technician application was incomplete and could not be processed. The email further advised, for the application to be considered complete, Operator needed to submit:
 - a log showing 2,080 hours of tattooing in the past five years also referred to as verification of experience. Subdivision 10 of Minnesota Statutes 146B.03, repealed in 2012, required evidence of 2,080 hours of tattooing to allow an individual to be "grandfathered" in.
 - a copy of Operator's driver license.
 - a response to questions #11 through #14 from the body art technician application.

- verification of credentials related to body art.
4. On January 5, 2011, Operator faxed several documents, including a photocopy of her driver's license, to MDH. Operator, however, did not submit her log of 2,080 hours of tattooing from the past five years.
 5. On February 3, 2011, MDH sent an email to Operator. The email reminded Operator her body art technician application was incomplete and that her technician license will not be issued until MDH receives her verification of experience.
 6. On May 11, 2011, MDH sent Operator a second notice by mail. The letter reminded Operator that her body art technician application was still incomplete and for MDH to process it she would need to submit her verification of experience by June 10, 2011.
 7. On June 7, 2011, Operator faxed several documents, including her verification of experience, to MDH.
 8. On July 29, 2011, MDH received an email with information that Operator was providing permanent makeup services without a body art technician's license.
 9. On August 10, 2011, MDH received an official complaint that Operator was providing permanent makeup services without a body art technician's license.
 10. On September 13, 2011, MDH received a letter from the Minnesota Board of Cosmetology verifying Operator's credentials.
 11. On October 3, 2011, MDH sent an email to Operator. The email acknowledged receiving a letter from the Minnesota Board of Cosmetology regarding Operator's credentials; however, the application was still incomplete. To process the application, Operator needed to respond to questions #11 through #14 from the body art technician application.
 12. On October 3, 2011, Operator faxed to MDH her responses to questions #11 through #14.
 13. On October 6, 2011, Operator was issued a full body art technician license.
 14. On June 24, 2014, MDH sent a Notice of Illegal Practice letter to Operator. The letter requested all Operators informed consent forms from January 1, 2011 to October, 2011. MDH requested a written response from Operator no later than July 24, 2014.
 15. On July 22, 2014, MDH received a written response from Operator. In the written response, Operator included her credentials, however, did not include the informed consent forms MDH had requested.
 16. On July 25, 2014, MDH sent a final Notice of Illegal Practice letter to Operator. The letter requested all Operators informed consent forms from January 1, 2011 to October 5, 2011. MDH requested a written response from Operator no later than August 25, 2014.

17. On August 25, 2014, MDH received a written response along with the informed consent forms by mail.
18. A review of the informed consent forms shows Operator provided a total of 10 permanent makeup procedures at the Establishment from January 2011 to July 2011.
Operator performed 2 permanent makeup services in January 2011, 1 permanent makeup service in March 2011, 1 permanent makeup services in April 2011, 2 permanent makeup services in May 2011, 1 permanent makeup service in June 2011, and 3 permanent makeup services in July 2011.
19. A review of the informed consent forms shows Operator charged a total of \$5,665 from the 10 permanent makeup procedures she provided from January 2011 to July 2011.

CONCLUSION

1. Operator did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivisions 3(3), because she practiced body art before she was issued a technician's license, in violation of Minnesota Statutes, section 146B.03, subdivision 1(a).

DETERMINATION

1. Operator is hereby reprimanded and assessed a civil penalty in the amount of \$738, which deprives Operator of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
 - Operator may pay the \$738 civil penalty in monthly installments of up to 7 months after the effective date of this action. If Operator chooses to make installments, she must notify MDH in writing about her intentions, including how many installments she intends to make, in what amount, and over which time period. Operator 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.