



Effective 3-20-15

February 12, 2015 *Protecting, maintaining and improving the health of all Minnesotans*

Gary Olson  
Smokin Guns Tattoo

RE: MDH File Number: BAC13019

Dear Mr. Olson:

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 aided or abetted technicians in: [1] providing body art services without a license in your establishment, in violation of Minnesota Statutes, section 146B.08, subdivision 3(5), and Minnesota Statutes, section 146B.03, subdivision 1 (a); and [2] providing body art services in your establishment, while under a temporary license, without any proper supervision, in violation of Minnesota Statutes, section 146B.08, subdivisions 3(5), Minnesota Statutes, section 146B.03, subdivisions 1, and Minnesota Statutes, section 146B.03 subdivision 7. Therefore, the Department is issuing you a reprimand and imposing a civil penalty in the amount of \$1,197. 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)201-3839. 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  
Health Regulation Division

Enclosure

cc: Gilbert Acevedo, Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM  
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of  
Smokin Guns Tattoo, Hibbing  
Body Art Establishment**

**AUTHORITY**

1. The Minnesota Department of Health (MDH) has authority to discipline a body art operator 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 operator of any economic advantage gained by the violation and reimburses MDH for costs of the investigation.
3. Pursuant to Minnesota Statutes, section 13.41, disciplinary actions are public data.
4. Pursuant to Minnesota Statutes, section 146B.08, subdivision 3(5), MDH may take disciplinary actions on an operator of an establishment who has aided or abetted another person in violating any provision of this chapter.
5. 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.
6. Pursuant to Minnesota Statutes, section 146B.03, subdivision 7, a temporary license may be issued if a licensed technician agrees to supervise the applicant.
7. 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.

**FINDINGS OF FACT**

1. Smokin Guns Tattoo and Body Piercing (hereinafter "Establishment") located at Minnesota was issued a body art establishment license, under license number 430151, on January 25, 2012. The establishment license expired on

September 30, 2014. Gary Olson (hereinafter "Operator") is the sole owner/operator of the Establishment.

2. Operator also operates Smokin Guns Tattoo in Grand Rapids, Minnesota.
3. On November 19, 2012, MDH received a complaint that there were two technicians, with temporary licenses, at the Establishment providing body art without a supervisor present.
4. The complainant, \_\_\_\_\_), is also one of the two technicians that was working at the Establishment with a temporary license and without proper supervision.
5. On December 14, 2011, \_\_\_\_\_ was issued a temporary body art license.
6. On May 29, 2012, MDH received an email from \_\_\_\_\_ with an application attached to it. The application advised MDH \_\_\_\_\_ changing supervisor. According to the application, \_\_\_\_\_ new supervisor is Operator and her work place is at the Establishment.
7. The other technician working at the Establishment with a temporary license but without proper supervision is \_\_\_\_\_).
8. \_\_\_\_\_ was issued a temporary body art license on April 6, 2012. In the application, \_\_\_\_\_ listed Operator as her supervisor and her work place is at the Smokin Guns in Grand Rapids.
9. On November 8, 2012, MDH received an email from Operator. The email stated, "Regretfully, I hereby give notice that I am closing the Hibbing location, Lic#430151 and removing myself as the supervisor of \_\_\_\_\_ as of today Nov.8, 2012. Yesterday, it has come to my attention that I have misunderstood my role as their supervisor. Upon checking the MN Statutes, signing affidavits for them to receive their license would be to commit perjury."
10. On November 28, 2012, MDH sent \_\_\_\_\_ a letter with questions.
11. On January 18, 2013, MDH received a letter of response from \_\_\_\_\_
12. In the letter of response, \_\_\_\_\_ stated, "I started working at Smokin Guns Tattoo (SGT) as of June 4, 2012. The license application listed Gary Olson as the supervising technician. However, 95% of the time, I worked out of the Hibbing SGT with \_\_\_\_\_ was the "lead artist" of the Hibbing SGT while \_\_\_\_\_ operated the Grand Rapids SGT."
13. Attached to \_\_\_\_\_'s letter of response were informed consent forms from the Establishment. According to the informed consent forms, \_\_\_\_\_ provided 24

body art services in June 2012, 9 body art services in July 2012, 9 body art services in August 2012, and 1 in November 2012.

14. On April 4, 2014, MDH sent a Notice of Illegal Practice letter to Operator.
15. On April 24, 2014, MDH received a letter of response from Operator.
16. In the letter of response, Operator stated, "\_\_\_\_\_ were in the Hibbing location and were not properly supervised as I was not physically present."
17. Operator also stated, "Both \_\_\_\_\_ were trained by me in the Grand Rapids location with me present until I felt assured they were competent in all areas of their duties and in accordance with state law. The purpose of training them was to work in the Hibbing location. I did travel to the Hibbing location on several occasions to check up on their performance, and to provide any support they required."

### **CONCLUSION**

1. Operator failed to comply with the requirements under Minnesota Statutes, section 146B.08 subdivision 3 (5), section 146B.03, subdivisions 1, and section 146B.03, subdivision 7. Operator also allowed \_\_\_\_\_, while under temporary licenses, to provide body art without a supervisor present. Although temporary licenses were issued to \_\_\_\_\_, temporary licenses are only deemed valid if the tattoo procedure is performed in the presence of and under the supervision of a licensed technician. Therefore, Operator aided and abetted \_\_\_\_\_ by allowing them to provide body art in his Establishment without licenses.

### **DETERMINATION**

1. Operator is hereby reprimanded and assessed a civil penalty in the amount of \$1,197, which deprives Operator of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
  - Operator may pay the \$1,197 civil penalty in monthly installments of up to 12 months after the effective date of this action. If Operator 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 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 the Minnesota Department of Revenue, the Minnesota Department of Revenue is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Technician without further notice or proceedings.