



Protecting, maintaining and improving the health of all Minnesotans

December 4, 2015

David Baker-Zappia
Lenny's After 4 Ever Tattoos

RE: MDH File Number: BAC11037/BAC13037/BAC15050

Dear Mr. Baker-Zappia:

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); [2] provided body art services in an unlicensed establishment, in violation of Minnesota Statutes 146B.08, subdivision 3 (3) and Minnesota Statutes, section 146B.02, subdivision 1; [3] intentionally submitted false or misleading information, in violation of Minnesota Statute 146B.08, subdivision 3 (1); and [4] advertised in a manner that is false or misleading, in violation of Minnesota Statutes 146B.08 subdivision 3 (8). Therefore, the Department is issuing you a reprimand and imposing a civil penalty in the amount of \$2,299. 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 at MDH 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:

Anne Kukowski, Manager 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 Anne Kukowski 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". The signature is fluid and cursive, with a checkmark at the end.

Darcy Miner, Director
Health Regulation Division

Enclosure

cc: Anne Kukowski, Manager of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
David Baker-Zappia
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 (8), MDH may take any of the disciplinary actions on proof that a technician or an operator of an establishment has advertised in a manner that is false or misleading.
4. Pursuant to Minnesota Statutes, section 146B.08, subdivision 3 (1), MDH may take any of the disciplinary actions on proof that technician has intentionally submitted false or misleading information to the commissioner.
5. 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.
6. Pursuant to Minnesota Statutes, section 146B.02, subdivision 1, no person acting individually or jointly with any other person may maintain, own, or operate a body art establishment in the state without an establishment license.
7. Pursuant to Minnesota Statutes, section 146B.01, subdivision 5, "body art establishment" is defined as any structure or venue, whether permanent, temporary, or mobile, where body art is performed.
8. 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.
9. Pursuant to Minnesota Statutes, section 146B.03, subdivision 2 (a), no individual may use the title of "tattooist," "tattoo artist," "tattoo technician," or other letters, words, or titles in connection with that individual's name which in any way represents that the individual

is engaged in the practice of tattooing or authorized to do so, unless the individual is licensed and authorized to perform tattooing.

FINDINGS OF FACT

1. For several years, including 2010, David Baker-Zappia (hereinafter "Technician") operated Dominic's Metal & Gear (hereinafter "Establishment #1") in Duluth, MN. Technician provided body art services in Establishment #1.
2. Effective January 1, 2011, all technicians who provide body art in Minnesota must be licensed by MDH. Effective January 1, 2011, all establishments providing body art in Minnesota must be licensed by MDH.
3. On June 28, 2010, and October 13, 2010, body art license application packets were mailed to Technician.
4. On April 1, 2011, a third body art license application packet was hand delivered by an MDH staff to a worker at Establishment #1.
5. On April 1, 2011, at approximately 2:22pm, Technician left a voicemail for the MDH staff who dropped the application off. The voicemail stated, "Yes, my name is Dave Zappia. You had stopped by my place of business today in Duluth, Minnesota. I did want to call you back and discuss what it is that has delayed us and what it is we can do to obviously fulfill our obligation to the State of Minnesota. I do apologize for you to come and have an introduction in such a way. I am just returning in from out of town for quite a few days here. Feel free to call me back on Monday like your voicemail had mentioned and we can discuss this further. Until that point, I will obviously cease work at this point. Obviously, that was what was mentioned from you to one of my workers and that is what we will do until I hear further from you. Again, this is David Zappia, 218-213-7778."
6. On June 22, 2011, MDH received a body art technician license application from Technician. MDH also received a body art establishment license application from Technician. The body art establishment license application was not for Establishment #1. Instead, the license application was for Dominic's Downtown (hereinafter "Establishment #2") with an address of 620 1st Avenue in Two Harbors, Minnesota.
7. Both body art applications were incomplete as Technician did not submit the required fees of \$110 for the technician license and \$1,100 for the establishment license.
8. On July 29, 2011, MDH sent Technician letters advising him his applications were incomplete and that they would not be processed until payments were received.

9. On September 9, 2011, MDH sent Technician second notice letters advising him his applications were incomplete and that they would not be processed until payments were received. MDH requested a response from Technician no later than October 10, 2011.
10. While waiting for a response from Technician, MDH received information from numerous sources that Technician was providing illegal tattoo services at Establishment #2 and that they were occurring after 5pm.
11. On October 12, 2011, MDH attempted to serve Technician with a cease and desist order; however, Establishment #2 was not open and Technician was not on site.
12. On November 18, 2011, MDH sent Technician final notice letters advising him his applications were incomplete and that if payments were not received by December 19, 2011, his applications would be denied. MDH did not receive a response from Technician.
13. On February 6, 2012, MDH received a complaint that Technician had tattooed the complainant (hereinafter "Client #1") at Technician's home and that she paid \$200 up front.
14. On February 8, 2012, MDH sent a letter with questions to Client #1. The letter came back as "Return to sender," "Not deliverable as addressed," and "Unable to forward."
15. On February 20, 2012, MDH sent Technician a letter advising him his body art technician license application had been denied.
16. On February 22, 2012, MDH sent Technician a letter advising him his body art establishment license application had been denied.
17. On December 5, 2012, MDH received complaints that technician had tattooed the complainant (hereinafter "Client #2") on 3 different occasions from February 2012 through August 2012 and that they occurred at Establishment #2.
18. Enclosed with the complaint forms were 2 DVD's. Client #2 stated, "I am submitting a DVD of unaltered footage that covers my three separate visits between February 2012 and August 2012." Client #2 stated her husband recorded each tattoo procedure for documentary purposes.
19. On May 28, 2013, an internet search shows Technician advertising his body art services on Facebook.
 - a. On August 29, 2011: "To all my supporters, we have relocated to Two Harbors, MN and feel free to call for our schedule any time as our number is being relocated,, 218-213-7778.. great art at our new location!! Cheers, DZ."

- b. On March 2, 2012, a client comments "Hey Dave I came to you guys a while ago and a guy named Josh did my tat and I was wondering if you still have him working? I would like him to draw a set of wings for me and get them on my back." Technician replied back on March 23, 2012: "Call the shop (218) 213-7778."
 - c. On December 11, 2012, Technician commented on Facebook: "Great moments here in Two Harbors, MN !! Amazing Family time with some Super creative Art happening!! Thank you all for hanging in there while I've made so many adjustments to my daily scheduling as well as my continued improvements with my tattooing ability!!"
 - d. On December 20, 2012, a potential clients asked Technician: "Is there still a shop in Duluth or only in two harbors??" Technician replied back on January 15, 2013: "Two Harbors as of now, but we might be looking to open up in Duluth again."
 - e. On April 10, 2013, a potential client asked Technician, "Just wondering if you are still open in Two Harbors?" Technician replied back on the same date at 6:07pm with "(218) 213-7778".
20. On another Facebook site, Technician can be seen advertising his tattoo services.
- a. On July 16, 2011: "NEW LOCATION – 620 1st Ave in Two Harbors (next to Wells Fargo) \$25 off \$100 or more"
 - b. A client commenting, "Just got an awesome tattoo from Dave in Two Harbors!" The comment was placed about 9 months ago from May 28, 2013.
 - c. On May 22, 2012: "Call & Schedule a Tattoo – 620 1st Avenue Two Harbors, MN (218) 213-7778".
21. On May 22, 2015, MDH received a temporary body art technician license from Technician.
22. On June 18, 2015, Technician was issued a temporary body art technician license.
23. On July 9, 2015, MDH sent Technician a Notice of Illegal Practice letter regarding his past unlicensed body art activities. The letter requested the informed consent forms of all body art procedures that occurred from January 1, 2010 to June 17, 2015. The letter also asked why Technician performed body art services without a body art technician license or a body art establishment license.
24. On August 25, 2015, MDH sent a second Notice of Illegal Practice letter to Technician as Technician failed to respond to the first letter.

25. On September 13, 2015, MDH received a letter of response from Technician. In the letter, Technician stated he had no informed consent forms dated after January 1, 2011 as he "was forced to stop my tattooing services in the state on Minnesota. Due to my incomplete application submitted to MDH to obtain my license of a tattooist/body piercer/establishment in Minnesota."
26. On September 22, 2015, MDH sent Technician a letter with further questions. Enclosed with the letter was a copy of the Facebook printout mentioned in Findings of Fact #19.
27. The letter asked Technician about the contradictory statements he gave MDH on September 13, 2015 in which he stated that he did not provide body art compared to the statements given in the Facebook printout pages.
28. On November 5, 2015, MDH received a letter of response from Technician. In the response, Technician responded with:
 - a. "I'll start with apologizing for my last reply and its lack of information. I truly do not have a good recollection of specific information from the time period in question. Again, it was a trying time in my life and with no definite information to review; I obviously hadn't recalled the services that I may have rendered."
 - b. "A roller coaster ride of ups and downs while making the right and wrong decisions with work and personal surviving needs, I applied for work with local businesses. And then not having openings and or available jobs that were suitable for my employment. That in turn led me to work at times while not being in compliance with M.D.H. Not only due to my personal needs of well being, but also due to the needs of my pre-existing clients that expected certain works to be completed. All of which I am ashamed and embarrassed for my actions."
 - c. "Also, as for any specific information of any specific clients during the time period in question, I can't say I was acting in accordance, because I probably was not and I don't truly know. I do know, that I never intended to be so sloppy with in my professional ability to service my desired tattoo clients."

CONCLUSION

Given the preponderance of evidence, MDH finds:

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

2. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivisions 3 (3), because he provided body art in an unlicensed establishment, in violation of Minnesota Statutes, section 146B.02, subdivision 1.
3. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3 (3), because he advertised body art services for his business in Facebook when he was not authorized to offer such services. Therefore, Technician misled the public with false advertisements and is in violation of Minnesota Statutes, section 146B.03, subdivision 2 (a) and section 146B.08, subdivision 3 (8).
4. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3 (1) as he initially stated he did not provide body art after January 1, 2011. When asked to provide an explanation of the comments seen on Facebook pages, Technician changed his statement to say that he may have provided unlicensed body art and is "ashamed and embarrassed for my actions."

DETERMINATION

1. Technician is hereby reprimanded and assessed a civil penalty in the amount of \$2,299, which deprives Technician of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
 - Technician may pay the \$2,299 civil penalty in monthly installments of up to 20 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, Treasure," 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 Practitioner without further notice or proceeding.