



Effective June 1, 2015

*Protecting, maintaining and improving the health of all Minnesotans*

December 9, 2014

Kathy Davis

RE: MDH File Number: BAC11011 & BAC13068

Dear Ms. Davis:

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] designated yourself as a body art technician by advertising your services of permanent makeup without a body art technician license, in violation of Minnesota Statutes, section 146B.08, subdivision 3 (3), and Minnesota Statutes, section 146B.03, subdivision 2 (a); [2] advertised in a manner that is false or misleading, in violation of Minnesota Statutes, section 146B.08, subdivision 3 (8); [3] 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); [4] provided body art services in an unlicensed establishment, in violation of Minnesota Statutes, section 146B.08, subdivision 3 (3), and Minnesota Statutes, section 146B.02 subdivision 1. Therefore, MDH is issuing you a reprimand and imposing a civil penalty in the amount of \$2,259. This 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

**HEALTH OCCUPATIONS PROGRAM  
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of  
Kathy Davis  
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 (9), 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 (3), a violation of any provision in the body art statute is a ground for disciplinary action.
5. 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.
6. 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.
7. Pursuant to Minnesota Statutes, section 146B.01, subdivision 30, tattooing is defined as any method of placing indelible ink or other pigments into or under the skin or mucosa with needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. Tattooing includes micropigmentation and cosmetic tattooing.
8. 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. On January 21, 2011, MDH received a complaint that Kathy Davis (hereinafter "Technician") was providing unlicensed cosmetic tattooing at her beauty salons. Attached to the complaint form is a business card with the name "Kathy's Permanent Makeup Cosmetics" and an address of 1420 East College Drive in Marshall.
2. Technician owns several beauty salons in Minnesota. Two salons, Professionails & Wax and K Nails & Hair are in Marshall, MN. Professionails & Wax is located at 1420 East College Drive and K Nails and Wax is located at 1240 Floyd Wild Drive. A third salon, Nail Spa & Wax, is located at 1060 Hwy 15 South Suite#90 in Hutchinson, MN.
3. On October 7, 2013, MDH received another complaint of Technician providing unlicensed cosmetic tattooing at her beauty salons.
4. On November 8, 2013, MDH sent a Notice of Illegal Practice letter to Technician. MDH requested a written response from Technician no later than December 9, 2013. MDH did not receive a written response from Technician by December 9, 2013.
5. On December 19, 2013 at approximately 3:42pm, an MDH representative made contact with Technician by phone. Technician acknowledged receiving the letter but has not responded to it yet. Technician stated she has not had the opportunity to change the business card so it does not reflect advertisement of her cosmetic tattooing services. Technician stated once her business card has been changed, she will write a response to MDH and include the requested informed consent forms.
6. On January 2, 2014, MDH received a written response from Technician. Enclosed with the response were copies of the informed consent forms and a business card that no longer advertises cosmetic tattooing.
7. In the response, Technician stated, "I stopped doing permanent makeup services in my salon, removed the business cards for the service and supplies the date I received your letter."
8. In the response, Technician stated, "I apologize for not knowing the new law in effect January 1, 2011. I have ceased all permanent makeup services and will continue to do so until I receive a tattooing license in the state of Minnesota."
9. On March 27, 2014, MDH received information that Technician was advertising cosmetic tattooing services and included a copy of the coupon. The coupon appeared to be from a newspaper and was for K Nails & Hair. Above the business name were services K Nails & Hair offered. "Permanent Makeup" is next to eyelash extension and below nails, hair, waxing, and facial.
10. On March 28, 2014, an MDH representative made contact with Technician at Professionails & Wax in Marshall.

11. Technician stated she has not performed any cosmetic tattooing since being notified a license was required and that she mailed all the informed consent forms she had to MDH.
12. When asked about the coupon, Technician stated she was applying for a temporary body art technician license in May of 2014 and therefore advertising for future purposes.
13. Technician was told to cease advertising cosmetic tattooing services as she was not licensed and Technician stated it was a mistake and she will make the necessary changes on her business cards.
14. On April 2, 2014, MDH sent a letter with questions to Technician. MDH requested a written response no later than May 2, 2014.
15. On May 5, 2014, MDH received a written response from Technician. In the response, Technician stated, "I ordered the business card in bulk with permanent make up printed on them even though the service is no longer offered. I have not have time to order new business cards without the inclusion of permanent make up so when I submitted my business card to the newspaper to run the ad they took all the information off the business card including permanent make up despite the ad itself offering nothing of the service. I did not intend to include permanent makeup in the ad as I do not intend to offer the service. It was a mistake on my end to not double check the ad before it ran. The new ad in the paper does not include permanent makeup."
16. On October 15, 2014, a check of Professionails & Wax website, <http://www.professionailandwax.com>, shows advertisement services for permanent makeup that includes for eyeliner, eyebrow, lip liner, and lip.
17. On October 15, 2014, a query into MDH database shows Technician does not have a body art technician license or a body art establishment license for any of the salons she owns.
18. On November 26, 2014, MDH received a temporary body art technician license application from Technician. On December 2, 2014, Technician was issued a temporary body art technician license.
19. A review of the informed consent forms Technician provided on January 2, 2014, shows she provided 2 unlicensed cosmetic tattooing procedures in March 2011, 1 in May 2011, 2 in November 2012, 2 in November 2012, and 1 in January 2013.

## CONCLUSION

1. Technician 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).
2. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivisions 3 (3), because she practiced body art in an unlicensed establishment, in violation of Minnesota Statutes, section 146B.02, subdivision 1.
1. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3 (3), because she advertised her permanent makeup services for her business in local newspapers when she 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 (9).

## DETERMINATION

1. Technician is hereby reprimanded and assessed a civil penalty in the amount of \$2,259, which deprives Technician of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
  - Technician may pay the \$2,259 civil penalty in monthly installments of up to 24 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 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.