



Effective May 5, 2014

April 4, 2014

Protecting, maintaining and improving the health of all Minnesotans

Ed Nowiak

RE: MDH File Number: BAC13061

Dear Mr. Nowiak:

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, while under a temporary license, without any proper supervision, in violation of Minnesota Statutes, section 146B.08, subdivisions 3(3), Minnesota Statutes, section 146B.03, subdivisions 1 (a), and Minnesota Statutes, section 146B.03 subdivision 7; [3] failed to obtain from the client a signed and dated informed consent form, in violation of Minnesota Statutes, section 146B.08, subdivision 3(3), and Minnesota Statutes, section 146B.07 subdivision 3. Therefore, the Department is issuing you a reprimand, imposing a civil penalty in the amount of \$2,592, and issuing you a conditional technician license. 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:

Anne Kukowski, Acting 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 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 cursive script, appearing to read "Darcy Miner".

Darcy Miner, Director
Compliance Monitoring Division

Enclosure

cc: Anne Kukowski, Acting Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Edward Nowiak
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. 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 licensee 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 tattooing unless the individual holds a valid technician license issued by MDH.
5. Pursuant to Minnesota Statutes, section 146B.03, subdivision 7, a temporary license may be issued if a licensed technician agrees to supervise the applicant.
6. 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.
7. Pursuant to Minnesota Statutes, section 146B.07, subdivision 3, a technician shall obtain from the client a signed and dated informed consent form before performing a body art procedure.

FINDINGS OF FACT

1. On August 2, 2013, MDH received information that Edward Nowiak (Hereinafter "Technician") was providing tattoo services at Tatts by Zapp (hereinafter known as "Establishment") in Stillwater, Minnesota, with an expired temporary body art license.

2. Technician submitted a temporary body art technician license application on December 16, 2010 and was issued a temporary body art technician license effective December 31, 2010 with an expiration date of December 31, 2011. Technician submitted a renewal application on January 19, 2012. Technician's temporary body art technician license was renewed on January 25, 2012 with an expiration date of January 25, 2013. Both applications have William Mizejewski (hereinafter known as "Technician WM") as Technician's supervisor.
3. Technician WM left the Establishment in February 2012.
4. On August 8, 2013, commencing at 3:30 pm, MDH representatives entered to inspect Tatts By Zapp, MDH License No. 430086 (hereinafter "Establishment"), located at 235 ½ East Chestnut St, Stillwater, MN, 55082.
5. MDH representatives made contact with Technician inside the Establishment. Technician stated he has been providing body art at the Establishment for the past five and a half years including the months after his temporary body art technician license expired.
6. Technician was issued a full body art technician tattoo license effective August 27, 2013.
7. On September 24, 2013, MDH sent a letter to Technician requesting informed consent forms for all body art services he provided since January 1, 2011. MDH requested a response no later than October 24, 2013. MDH did not receive a response from Technician.
8. On November 21, 2013, MDH sent a second letter to Technician requesting informed consent forms for all body art services he provided since January 1, 2011. MDH requested a response no later than December 23, 2013. MDH did not receive a response from Technician.
9. On December 30, 2013, MDH sent a final notice to Technician requesting informed consent forms for all body art services he provided since January 1, 2011. MDH requested for a response no later than January 30, 2014. MDH did not receive a response from Technician.
10. On February 14, 2014, an MDH representative served Technician with a Determination Letter for not cooperating with an investigation.
11. On February 14, 2014, Technician verbally stated to MDH representative that he provided body art without a supervisor present when Technician WM left the Establishment.
12. On February 18, 2014, Technician handed MDH representatives informed consent forms from January 2011 to October 2012.

13. On March 7, 2014, the remaining informed consent forms for the Establishment, including Technician's, were all dropped off at MDH's main office.
14. Based on information from the informed consent forms, Technician provided body art services at the Establishment from January 1, 2012 to January 24, 2012 with an expired license as it had expired on December 31, 2011 and was not renewed until January 25, 2012. Based on the informed consent forms, Technician provided 16 body art services from January 1, 2012 to January 24, 2012.
15. Based on information that Technician WM left the establishment in February 2012 and from the informed consent forms, Technician provided a minimum of 11 tattoos in the month of February 2012, 39 tattoos in March 2012, 13 tattoos in April 2012, 48 tattoos in May 2012, 33 tattoos in June 2012, 27 tattoos in July 2012, 44 tattoos in August 2012, 20 tattoos in September 2012, 21 tattoos in October 2012, 1 tattoo in November 2012, and 32 tattoos in December 2012 without a supervisor present.
16. Based on information that Technician's temporary license expired on January 25, 2013 and from the informed consent forms, Technician provided a minimum of 18 tattoos in the month of January 2013, 18 tattoos in February 2013, 45 tattoos in March 2013, 40 tattoos in April 2013, 44 tattoos in May 2013, 24 tattoos in June 2013, and 35 in July 2013 with an expired temporary license. Although 3 tattoos occurred while Technician's temporary license was still valid, no supervisor was present, making his license invalid during those procedures.
17. MDH did not receive any informed consent forms from Technician for August 2013. When asked, Technician stated he did not provide any body art services for August because the Establishment closed on August 8, 2013 and remained closed until he was issued a full license on August 27, 2013.
18. Review of the Technician's informed consent forms show that some were incomplete as they did not have the date of the procedure on the form.

CONCLUSION

1. Technician failed to comply with the requirements under Minnesota Statutes, section 146B.03, subdivisions 1, and section 146B.03, subdivision 7. A temporary license was issued to the Technician; however, a temporary license is only deemed valid if the tattoo procedure is performed in the presence of and under the supervision of a licensed technician. Technician provided tattoo services from February 2012 to January 25, 2013 outside the physical presence of his supervisor on record.
2. Technician failed to comply with the requirements under Minnesota Statutes, section 146B.03, subdivision 1. Technician's first temporary license expired on December 31, 2011, however, he continued to perform body art services between January 1, 2012, and

January 24, 2012, and was not renewed until January 25, 2012. Technician's second temporary license expired on January 25, 2013, however he continued to perform body art services between January 26, 2013 and July 2013, and did not get full licensure until August 27, 2013.

3. Technician failed to comply with the requirements under Minnesota Statutes, section 146B.07, subdivision 3. Technician collected informed consent forms from clients, but the forms lacked the date of procedure and were therefore incomplete.

DETERMINATION

1. Technician will be issued a conditional body art technician license, with the following conditions:
 - Technician will comply with all requirements of Minnesota Statutes, Chapter 146B;
 - The license will be conditional for a period of not less than five years;
 - Technician will not be allowed to supervise temporary body art technicians;
 - A supervisor is expected to be knowledgeable about safe body art procedures and the state statutes that govern the practice of body art. MDH has determined that Technician violated provisions of body art chapter and that Technician demonstrated a careless disregard for the health, welfare, or safety of a client. Therefore, Technician may not supervise temporary technicians and MDH will deny all applicants that list Technician as a supervisor for five years.
 - After a period of not less than five years, Technician may request the conditional status be removed from his license. To do so, Technician must:
 - Submit a written response 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;
2. Technician is hereby reprimanded and assessed a civil penalty in the amount of \$2,592, which deprives Technician of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
 - Technician may pay the \$2,464 (after \$128 credit) civil penalty in monthly installments of up to 18 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, 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.
3. Technician was served with a Letter of Determination on February 14, 2014. The Determination was set forth to suspend Technician's license if he did not cooperate with the ongoing investigation and pay a fine of \$128 for current cost of investigation. Technician has since cooperated with the investigation and has produced the informed consent forms that were requested of him. Technician has also paid the fine of \$128. The \$128 received from Technician will be added as credit to the civil penalty of \$2,592 from this determination which leaves a total of \$2,464.