



Effective May 5, 2014

April 4, 2014

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

David Zappia  
Tatts by Zapp  
235 ½ East Chestnut Street  
Stillwater, MN 55082

RE: MDH File Number: BAC13058 & BAC14008

Dear Mr. 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 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); [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 (a), and Minnesota Statutes, section 146B.03 subdivision 7; [3] failing to obtain from the client a signed and dated informed consent form before providing body art, in violation of Minnesota Statutes, section 146B.08, subdivision 3(5), and Minnesota Statutes, section 146B.07 subdivision 3; [4] failing to have client provide the necessary documents to establish proof of age, in violation of Minnesota Statutes, section 146B.08 subdivision 3(5), and Minnesota Statutes, section 146B.07 subdivision 1. MDH has also determined that, as the operator of a body art establishment, you: [1] failed to maintain proper records for each body art procedure, in violation of Minnesota Statutes, section 146B.08 subdivision 3(3) and Minnesota Statutes, section 146B.07 subdivision 4; and [2] failed to perform spore tests once a month for each sterilizer used to ensure proper functioning, in violation of Minnesota Statutes, section 146B.08 subdivision 3 (3) and Minnesota Statutes, section 146B.06, subdivision 2 (h). Therefore, the Department is issuing you a reprimand, imposing a civil penalty in the amount of \$3,074, and issuing you a conditional establishment license. This action is authorized pursuant to Minnesota Statutes, section 146B.08, subdivision 4.

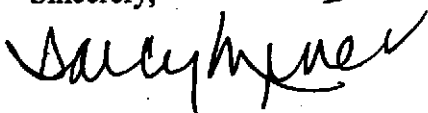
You may either accept the discipline as stated herein or you may appeal. If you accept, please pay the assessed civil penalty by check made payable to "Treasurer, State of Minnesota." If you wish to appeal the discipline, you must provide a written statement as to which facts are in error and the grounds 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,



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  
Tatts by Zapp, Stillwater  
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 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.
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, the technician shall obtain from the client a signed and dated informed consent form before a body art procedure occurs.
8. Pursuant to Minnesota Statutes, section 146B.07, subdivision 1(a), a technician shall require proof of age before performing any body art procedure on a client. Proof of age must be established by one of the following: [1] valid driver's license or identification card issued by state of Minnesota or another state that includes a photograph and date of

birth; [2] valid military identification card issued by United States Department of Defense; [3] valid passport; [4] resident alien card; [5] tribal identification card.

9. 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.
10. Pursuant to Minnesota Statutes, section 146B.07, subdivision 4, for each client, the establishment operator shall maintain proper records for each procedure. The records must be kept for three years and must be available for inspection. The record must include the date of procedure, information on the required picture identification showing the name, age, and current address, and the name and license number of the technician performing the procedure.
11. Pursuant to Minnesota Statutes, section 146B.06, subdivision 2 (h), at least once a month, but not to exceed 30 days between tests, a spore test must be conducted on each sterilizer used to ensure proper functioning.

#### FINDINGS OF FACT

1. Tatts by Zapp (hereinafter "Establishment") located at 235 ½ East Chestnut Street, Stillwater, Minnesota is licensed as a body art establishment, under license number 430086, effective December 31, 2010. David A. Zappia is the sole owner/operator (hereinafter "Operator") of the Establishment.
2. The Operator lives in New York and does not oversee everyday operations at the Establishment.
3. On August 2, 2013, MDH received information that Edward Nowiak (hereinafter "Technician EN") was providing tattoo services at the Establishment with an expired temporary body art license. MDH received further information that Rodger Booth (hereinafter "Technician RB") was providing tattoo services at the Establishment with a temporary body art license however with no supervisor present.
4. Technician EN was issued a temporary license effective December 31, 2010, with an expiration date of December 31, 2011. Technician EN's temporary license was renewed on January 25, 2012 with an expiration date of January 25, 2013. Both temporary license applications listed William Mizejewski (hereinafter "Technician WM") as his supervisor.
5. Technician RB was issued a temporary license effective October 3, 2012 with an expiration date of October 3, 2013. The temporary license application listed Jesse Barkyoubm (hereinafter "Technician JB") listed as his supervisor.
6. On August 8, 2013, commencing at 3:30 pm, MDH representatives entered the Establishment to conduct an inspection.

7. MDH representatives made contact with Technician EN and Technician RB inside the Establishment. Technician EN stated he has been providing body art at the Establishment for the past five and a half years including the months in which his temporary body art technician license was expired. Technician RB stated he has been providing body art at the Establishment without any supervisor present for the past few months.
8. It was later discovered that Technician JB left the Establishment sometime around March 19, 2013 and Technician WM left the Establishment sometime around February 2012.
9. MDH sent Notice of Illegal Practice letters to both Technician EN and Technician RB on September 24, 2013, November 21, 2013, and December 30, 2013 requesting informed consent forms for the past three years. MDH did not receive a response from either Technician.
10. On February 14, 2014, MDH representative entered the Establishment for an inspection as well as to collect the informed consent forms for all body art procedures that occurred at the Establishment for the past three years.
11. Technician EN advised he is the new manager of the Establishment. When asked for the informed consent forms for the establishment for the past three years, Technician EN handed MDH representative a white plastic garbage bag filled with paperwork. It was later discovered that the paperwork was EN's informed consent forms from 2007 through 2009 but did not include informed consent forms from the past three years for all employees from the Establishment.
12. When asked for spore test results, Technician EN stated he did not know exactly where the results were but knew tests for the Establishment has been done monthly. MDH representatives told Technician EN they would be back sometime next week and to find the spore test results. Technician EN was also advised to perform a spore test that day.
13. On February 18, 2014, MDH representatives entered the Establishment to collect the spore test results and the informed consent forms. Technician EN handed MDH representatives a second white plastic garbage bag filled with paperwork. It was later discovered the plastic bag contained informed consent forms from January 2011 to October 2012 and that they all belonged to Technician EN. Informed consent forms from the past three years for all employees from the Establishment were not included.
14. Technician EN stated he could not get the spore test results as they were all locked in a cabinet and he did not have the key to open it. The Establishment agreed to a voluntary closure. MDH representatives advised Technician EN they would be back the next day to collect the remaining paperwork. When asked, Technician EN stated he did not do a spore test over the weekend. Technician EN was advised to perform a spore test that day.
15. On February 19, 2014, MDH representatives entered the Establishment to collect the spore test results and informed consent forms. Technician EN stated he only had spore

test results from August 2011 to July 2013. Technician EN stated no spore test has been performed for the Establishment since July 2013. When asked, Technician EN stated he did not do a spore test preceding day. The Establishment agreed to remain closed until further notice.

16. A Cease and Desist Order was issued for the Establishment, effective February 27, 2014.
17. On February 28, the Establishment emailed MDH results for a spore test performed on February 26, 2014.
18. On March 7, 2014, all the informed consent forms for the Establishment from January 2011 to February 2014 were submitted to MDH.
19. Based on the informed consent forms, Technician EN provided body art with an expired license during the month of January 2012 and from February 2013 to July 2013. Technician EN also provided body art without a supervisor present from February 2012 to January 2013.
20. Based on the informed consent forms, Technician RB provided body art without a supervisor present from March 2013 to July 2013.
21. A review of the informed consent forms collected shows many forms were missing procedure dates and the technician's name and license number.
22. One informed consent form collected had a photocopy of an individual with an identification card from Maplewood Middle School during the school year of 2008-2009. Attached with the identification card is a form in Spanish that appears to be a birth certificate. The date on the informed consent form shows the body art procedure occurred on May 6, 2013.

### 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 allowed Technician EN to provide body art at his Establishment with an expired temporary license. Operator also allowed Technician EN and Technician RB, while under temporary licenses, to provide body art without supervisors present. Although temporary licenses were issued to Technician EN and Technician RB, 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 Technician EN and Technician RB by allowing them to provide body art in his Establishment without licenses.

2. Operator failed to comply with the requirements under Minnesota Statutes, section 146B.08 subdivision 3 (5), section 146B.07, subdivision 3 and subdivision 4. A review of the informed consent forms collected from the Establishment shows many forms were without date of procedure and/or technician name and license number. Operator aided and abetted technicians in allowing the practice of not completing and/or having the required forms before performing body art procedures go on and not giving them proper training.
3. Operator failed to comply with the requirements under Minnesota Statutes, section 146B.08 subdivision 3 (5), and section 146B.07 subdivision 1 (a). One informed consent form had a photocopy of a middle school identification with a certificate in Spanish. Operator aided and abetted technician in allowing him to provide body art in the establishment without having a client provide required documents to show proof of age.
4. Operator did not have the Informed Consent forms available when the Establishment was inspected. MDH representatives gave the Establishment several opportunities to provide the informed consent forms. It took three weeks for Operator to produce all the informed consent forms for the Establishment.
5. Operator did not comply with the requirements under Minnesota Statutes, section 146B.06 subdivision 2 (h). Aside from the February 2014 spore test; the last spore test performed for the Establishment was in July of 2013.

#### **DETERMINATION**

1. Establishment will be issued a conditional body art establishment license, with the following conditions:
  - Establishment will comply with all requirements of Minnesota Statutes, Chapter 146B;
  - The establishment license will be conditional for a period of not less than three years;
  - The Establishment will perform a spore test once every 30 days as required by Minnesota Statutes, section 146B.06, subdivision 2 (h). The Establishment will send the spore test results to MDH within 3 working days of receiving the test result. The spore test result will be email to [chee.lee@state.mn.us](mailto:chee.lee@state.mn.us). Upon receipt of the test result, Investigator Chee Lee will email back to the Establishment a receipt of the spore test. This process will continue for a year starting with March 2014 and ending with March 2015. The spore test results will be kept in a folder that is stored in a locked cabinet file, among other required documents, for three years.
  - The completed consent forms contain private data, including medical information, documentation of a proof of age, signatures, and driver license data (name, address, and date of birth). During two separate inspections, the manager of the Establishment handed an MDH representative white plastic garbage bags containing informed consent forms. MDH is requiring the Establishment to

establish and maintain an organized and secured filing system such as a cabinet that has a locking mechanism to ensure confidentiality. Before obtaining approval to reopen your establishment at the conclusion of the MDH inspection, you will be required to demonstrate for the MDH inspector:

- If records are stored on-site, Operator must demonstrate how records are stored, which includes a method of securing and locking the records;
  - If records are stored in an off-site and secure location, Operator must be able to access an electronic copy of the records for inspection by MDH.
  - After a period of not less than two years, Operator may request the conditional status be removed from his license. To do so, Operator 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. Operator is hereby reprimanded and assessed a civil penalty in the amount of \$3,074, which deprives Operator of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
- Operator may pay the \$3,074 civil penalty in monthly installments of up to 18 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 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.