



Effective April 1, 2014

Protecting, maintaining and improving the health of all Minnesotans

February 11, 2014

Nichelle Mae Gabbard

RE: MDH File Number: BAC11027

Dear Ms. Gabbard:

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 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. Therefore, the Department is issuing you a reprimand and imposing a civil penalty in the amount of \$697. This action is authorized pursuant to Minnesota Statutes, sections 214.10, and 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, 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 black ink, appearing to read "Darcy Miner", is written over a faint, larger version of the same signature.

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
Nichelle M. Gabbard
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.

FINDINGS OF FACT

1. On February 25, 2011, MDH received information that Nichelle M. Gabbard (Hereinafter "Technician") was providing tattoo services at Tough Love Studios in Minneapolis, Minnesota, without a body art license.
2. On March 15, 2011, a Notice of Illegal Practice was sent to Technician.
3. On May 2, 2011, MDH received a body art license application from Technician.
4. On May 10, 2011, MDH sent a letter advising Technician that her application could not be processed and was considered incomplete as Technician did not include, in her application, a log showing 2,080 hours of tattooing in the past five years. Subdivision 10 of Minnesota Statutes 146B.03, repealed in 2012, required evidence of 2,080 hours of tattooing to allow an individual to be "grandfathered" in.

5. On June 30, 2011, Technician faxed her log of 2,080 hours over to MDH.
6. Technician was issued a full body art technician tattoo license effective July 26, 2011.
7. Based on information from the log Technician faxed over to MDH, Technician provided a total of 63 tattoo procedures from January 2011 to June 2011. Technician performed 19 tattoo services throughout January 2011, 10 tattoo services throughout February 2011, 15 tattoo services throughout March 2011, 15 tattoo services throughout April 2011, 3 tattoo services throughout May 2011, and 1 tattoo service in June 2011.

CONCLUSION

1. Technician did not comply with the requirements under Minnesota Statutes, section 146B.03, subdivision 1. Technician performed body art services between January 1, 2011, and July 25, 2011, but did not obtain licensure until July 26, 2011.

DETERMINATION

1. Technician is hereby reprimanded and assessed a civil penalty in the amount of \$697 which deprives Technician of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.