



Protecting, maintaining and improving the health of all Minnesotans

December 23, 2016

Effective July 10, 2017

Damien Friesz



RE: MDH File Number: BAC17003

Dear Mr. Friesz:

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] maintained, owned, or operated a body art establishment body art without a valid body art establishment license, in violation of Minnesota Statutes, section 146B.08, subdivision 3 (3) and Minnesota Statutes, section 146B.02, subdivision 1; [2] performed body art procedures at a location without a valid body art establishment license, in violation of Minnesota Statutes, section 146B.08, subdivision 3 (3) and Minnesota Statutes, section 146B.02, subdivision 4; [3] provided body art services without a valid body art technician license, in violation of Minnesota Statutes, section 146B.08, subdivision 3 (3), and Minnesota Statutes, section 146B.03, subdivision 1 (a); [4] failed, within 30 days, to provide information in response to a written request made by MDH, in violation of Minnesota Statutes 146B.08, subdivision 3 (2); and [5] advertised in a manner that is false or misleading, in violation of Minnesota Statutes, section 146B.08, subdivision 3 (8). Therefore, MDH is issuing you a reprimand and imposing a civil penalty in the amount of \$1408. 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 "State of Minnesota, Treasurer." 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.

Damien Friesz
December 23, 2016
Page 2

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 fax your request 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 "S. Winkelmann", with a stylized flourish at the end.

Susan Winkelmann, Assistant 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
Damien Friesz
Body Art Technician**

AUTHORITY

1. Pursuant to Minnesota Statutes, section 146B.02, subdivision 1, effective January 1, 2011, no person may maintain, own, or operate a body art establishment without an establishment license issued by the Minnesota Department of Health (MDH).
2. Pursuant to Minnesota Statutes, section 146B.02, subdivision 4, no person may perform a body art procedure at any location other than at a licensed body art establishment.
3. Pursuant to Minnesota Statutes, section 146B.03, subdivision 1 (a), effective January 1, 2011, no individual may perform tattooing unless the individual holds a valid technician license issued by MDH.
4. Pursuant to Minnesota Statutes, section 146B.08, subdivision 3 (2), MDH may take disciplinary action on proof that a technician has failed, within 30 days, to provide information in response to a written request.
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.08, subdivision 3 (8), MDH may take disciplinary action on proof that a technician advertised in a manner that is false or misleading.
7. 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.
8. Pursuant to Minnesota Statutes, section 146B.08, subdivision 4 (5), MDH may also impose, for each violation, 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.
9. Pursuant to Minnesota Statutes, section 13.41, disciplinary actions are public data.

FINDINGS OF FACT

1. On June 13, 2014, Damien Friesz (hereinafter "Technician") was issued a full body art technician license. Technician's license, #311102, expired on March 31, 2016.
2. On June 30, 2014, Front Street Tattoo (hereinafter "Establishment #1") in Mankato was issued a body art establishment license. The Establishment's license, #410285, expired on September 30, 2016.
3. Technician owns and operates Establishment.
4. Printed on the body art establishment certificate, license #410285 is issued to Technician for the address of 634 South Front Street in Mankato. Located on the bottom portion of the body art establishment license certificate states "This license is not transferable and must be prominently displayed in a public area of the establishment."
5. On January 15, 2016, MDH sent Technician a license renewal letter. The letter reminded Technician his body art technician license was set to expire and to renew by a certain date to avoid late fee penalties. Enclosed with the letter was a body art technician renewal application.
6. MDH did not receive a body art technician license renewal application from Technician.
7. On April 1, 2016, MDH sent Technician a letter advising him not to provide any further body art procedures as his body art license had expired.
8. On July 7, 2016, MDH sent Technician a license renewal letter. Enclosed with the letter was a body art establishment license renewal application. The letter was addressed to 634 South Front Street. The letter came back from the post office as "Moved left no address," "Unable to forward," and "Return to sender."
9. Online check, via social media, shows Technician had closed Establishment #1 and opened a new body art shop at 606 North Riverfront Drive in Mankato. Technician named the new establishment "Ye Old Town Tattoo Shoppe" (hereinafter "Establishment #2").
10. On October 21, 2015, Technician posted the following on Establishment #1's social media page: "Front Street Tattoo is no more. Ye Olde Town tattoo Shoppe should be operational November 1st in Old Town Mankato on Riverfront. Please start making appointments and spreading the news. Thanks D."

FINDINGS OF FACT (CONTINUED)

11. Further online investigation shows Technician had started a new social media page for Establishment #2. Technician can be seen advertising his body art services that will occur at Establishment #2 once it became operational. Examples include:
 - a. On November 19, 2015, Technician posted “The new shop is coming along well. Stations are mostly done. Paint is mostly done. Décor and such is coming next. I hope to be open by the 1st. So start making consultations and appointments for the beginning December.”
 - b. On December 18, 2015, Technician posted “The shop will be open first of the year. So if you’re interested, start making those appointments. The books are open starting now. Thanks D.”
 - c. On January 2, 2016, technician posted “Now taking consults for appointments in February and March. Space is limited. So get in it. Thanks D.”
12. Technician did not disclose to MDH that he had closed Establishment #1 and opened Establishment #2. MDH did not receive a body art establishment license application for Establishment #2.
13. On July 26, 2016, MDH resent the letter mentioned on Findings of Fact #8 to Technician; however, this time it was sent to the address on North Riverfront Dr. The letter came back from the post office as “Return to sender,” “Not deliverable as addressed,” and “Unable to forward.”
14. An online check, via social media, showed Technician had yet moved again. The new location is at 625 South Front Street in Mankato. Technician switched the establishment name back to Front Street Tattoo (hereinafter “Establishment #3).
15. Technician did not disclose to MDH that he had yet relocated again. MDH did not receive a body art establishment license application for Establishment #3.
16. On September 26, 2016, MDH sent Technician a Notice of Investigation letter for illegal practice. The letter was sent to 625 S. Front Street. The letter later came back from the post office as “Return to sender,” “Attempted – not known,” and “Unable to forward.”
17. On September 26, 2016, at 2:43pm, MDH emailed the same letter mentioned in Findings of Fact #14 to Technician. On the same day at 3:55pm, MDH representative missed a call from a number in which MDH has on file as belonging to Technician. A call back to Technician was unsuccessful.
18. MDH did not receive a response from Technician.
19. On October 27, 2016, MDH resent the letter mentioned on Findings of Fact #14; however, this time it was sent to the address Technician placed in his technician

application as his home/ mailing address. MDH requested a written response by November 28, 2016. Unlike previous attempts, this letter did not come back from the post office as undeliverable.

20. MDH did not receive a written response from Technician.
21. Online check of the Establishment #3's social media page has Technician advertising body art services. Technician also posted pictures of tattoos he provided. All these are done so even after Technician's body art technician and establishment licenses had expired. Examples include:
 - a. "Located in historic downtown Mankato. Facebook is the easiest way to get a hold of us or email frontstreettattoo@yahoo.com. Hourly rate of \$150."
 - b. On November 12, 2016, a client left the following review: "So happy with our tattoos! Was wonderful with being flexible and helpful and made us super comfortable! Would definitely recommend!!"
 - c. On November 4, 2016, Technician posted: "Our trip got delayed a bit so we are open for appointment today through Tuesday, message us to set something up!"
 - d. On October 9, 2016, Technician posted: "We've got a little traveling coming up so if you want to make appointments for October and November let us know asap so we can get you on the books. Thank you. Carry on."
 - e. On September 22, 2016, Technician posted a picture of a tattoo with the following comments: "Finished up this Yager piece."
 - f. On August 23, 2016, Technician posted a picture of a tattoo located on the client's upper right chest area with the comments: "Good clean fun."
 - g. From August 3- 5, 2016, Technician repeatedly posted: "PRIVATE STUDIO OPENING SOON! We're back on Front Street! Star Wars kept us little busy lately but we have a new space lined up and will be ready to get back in the chair soon! Message me to make an appointment."

CONCLUSION

1. Technician did not comply with the requirements under Minnesota Statutes, section 146B.02, subdivision 1, and section 146B.08, subdivision 3 (3), as he maintained, owned, or operated a body art establishment without a valid body art establishment license.
2. Technician did not comply with the requirements under Minnesota Statutes, section 146B.02, subdivision 4, and section 146B.08, subdivision 3 (3), as he performed body art procedures at a location without a valid body art establishment license.
3. Technician did not comply with the requirements under Minnesota Statutes, section 146B.03, subdivision 1 (a), and section 146B.08, subdivision 3 (3), as he provided body art services without a valid body art technician license.

4. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3 (2), as he failed, within 30 days, to provide information in response to a written request made by MDH.
5. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3 (8), as he advertised in a manner that is false or misleading.

DETERMINATION

1. Technician is hereby reprimanded and assessed a civil penalty in the amount of \$1408, which deprives Technician of the economic advantage gained by the violation and reimburses MDH for costs of the investigation. MDH will not renew any body art licenses Technician submits until the civil penalty is paid off and Technician cooperates in the investigation. If Technician continues to violate body art statutes 146B, MDH may initiate new investigations which may lead to more penalties.
 - Technician may pay the \$1408 civil penalty in monthly installments of up to 14 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 Practitioner misses a monthly payment by 14 calendar days after the established deadline.