



Effective July 23, 2014

Protecting, maintaining and improving the health of all Minnesotans

June 12, 2014

Gabriel Munoz

RE: MDH File Number: BAC12051

Dear Mr. Munoz:

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(a). Therefore, the Department is issuing you a reprimand and a civil penalty in the amount of \$2,207. 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:

Gil Acevedo, 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 Gil Acevedo at (651)201-3727. 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: Gil Acevedo, Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Gabriel Munoz
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(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 September 6, 2011, MDH received a phone call with information that The Aloha Monkey (hereinafter "Establishment"), in Burnsville, had an establishment license; however, none of the technicians were licensed.
2. On September 8, 2011, MDH received an anonymous letter with the same complaint of no license technicians at the Establishment.
3. On September 20, 2011, MDH received a body art technician license application from Gabriel Munoz (hereinafter "Technician"). Technician listed the Establishment as his place of employment. Technician listed January 5, 2011 as the start date at the Establishment.
4. Technician was not issued a license as the application was incomplete.
5. On October 3, 2011, MDH sent Technician an email advising his application was considered incomplete and could not be processed as he did not include, in his 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.

4. On May 24, 2012, MDH sent Technician a 2nd Notice letter. The letter advised Technician his application was incomplete and required additional information from him. MDH requested Technician respond back with the required information no later than June 25, 2012.
5. On May 30, 2012, MDH received a letter from Technician. The letter did not include Technician's log of 2,080 hours and was thus considered incomplete.
6. On July 18, 2012, MDH sent Technician an email requesting his log of 2,080 hours.
7. On September 17, 2012, MDH received a temporary body art technician license application from Technician.
8. On September 18, 2012, Technician was issued a temporary body art technician license.
9. On March 4, 2014, MDH sent a Notice of Illegal Practice letter to Technician. The letter requested for Technician's informed consent forms since January 1, 2011. On June 11, 2014, MDH received the informed consent forms by mail.
10. Based on information in the informed consent forms, Technician provided 196 tattoo procedures before he was issued a temporary body art technician license. Technician provided 44 tattoos in 2011. Specifically: 2 in January, 2 in February, 2 in March, 4 in April, 3 in May, 2 in June, 6 in July, 3 in August, 4 in September, 1 in October, 4 in November, and 12 in December. Technician provided 152 tattoos from January 1, 2012 to September 17, 2012. Specifically: 20 in January, 18 in February, 27 in March, 17 in April, 11 in May, 22 in June, 12 in July, 12 in August, and 13 in September.

CONCLUSION

1. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3 (3), because he practiced body art at Aloha Monkey before he was issued a technician's license on September 18, 2012, in violation of Minnesota Statutes, section 146B.03, subdivision 1 (a).

DETERMINATION

1. Technician is hereby reprimanded and assessed a civil penalty in the amount of \$2,207, which deprives Technician of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.

- Technician may pay the \$2,207 civil penalty in monthly installments of up to 20 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.