

Effective 05-13-11



Protecting, maintaining and improving the health of all Minnesotans

April 25, 2011

Mr. Jon Nathaniel Berg

RE: Body Art Technician Licensure Application

Dear Mr. Berg:

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 were disciplined by another jurisdiction for actions substantially equivalent to disciplinary grounds under Chapter 146B, in violation of Minnesota Statutes, section 146B.08, subdivision 3(6). Therefore, the Department is disciplining your right to practice body art. 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, you will be issued a conditional body art technician license. If you wish to appeal the discipline, you must provide a written statement as to which facts are in error and your 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 also be made in writing and 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:

Tom Hiendlmayr, 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 Mr. Hiendlmayr at (651)201-3839. If you have any questions about this matter, please contact Kyle Renell at (651)201-3727.

Sincerely,

A handwritten signature in cursive script that reads "Darcy Miner".

Darcy Miner, Director
Compliance Monitoring Division

Enclosure

cc: Tom Hiendlmayr, Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Jon Nathaniel Berg
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. The types of discipline MDH may impose include refusal to grant licensure or any reasonable lesser action.
2. Pursuant to Minnesota Statutes, section 146B.08, subdivision 3(6), a technician may be disciplined by the Commissioner if the technician has been disciplined by another jurisdiction, if any of the grounds for the discipline are the same or substantially equivalent to those under Chapter 146B.
4. Pursuant to Minnesota Statutes, section 146B.07, subdivision 1a, a technician may perform body piercings on an individual under the age of 18 if the individual's parent or legal guardian is present and a consent form and the required authorization form is signed by the parent or legal guardian in the presence of the technician.

FINDINGS OF FACT

1. Jon Nathaniel Berg (Hereinafter "Technician") submitted an application for licensure as a Body Art Technician-Dual, dated December 10, 2010, and received on December 16, 2010. On the application, Technician claimed an apprenticeship under the supervision of Randy Culver from February 1, 2010, to the date of the application. Because his supervisor was not licensed by MDH at that time of Technician's apprenticeship, by letter dated December 20, 2010, Technician was notified that his apprenticeship was ineligible and he needed to provide documentation of his experience. Technician was also instructed to complete a Verification of Credential form related to his listed Hennepin County license.
2. By application dated December 23, 2010, Technician changed his application from full to licensure as a Temporary Body Art Technician—Dual. On that application, Technician indicated he was to work under the supervision of Randy Culver. The temporary license was not approved because Randy Culver was not licensed by MDH as a body art technician and therefore was ineligible to provide supervision.
3. By Verification of Credential received on January 12, 2011, Hennepin County Human Services and Public Health Department reported that Technician was the subject of multiple citations, copies of which were hand-delivered to MDH staff on January 27,

2011. Review of the documentation revealed Technician was cited on December 27, 2010, for "microdermal implantation" on three clients and "under age piercing without parental consent". According to the release form related to the underage piercing, the client received a nose piercing on May 18, 2010, and presented an identification card with the date of birth of October 3, 1992. It is noted that while microdermal implantation is allowed under state statute, such procedures are prohibited under the Hennepin County ordinance. See, Hennepin County Ordinance 23, sections 2.03A and 8.036.

4. By letter dated January 31, 2011, and received February 2, 2011, and e-mail dated February 1, 2011, Technician provided a spreadsheet of his piercing and tattooing procedures during the period from February 3, 2010, through December 23, 2010, during which time he earned approximately \$14,468 from piercing and \$4,877 from tattooing. In a personal statement dated January 31, 2011, and received on February 2, 2011, Technician stated he was thereby rescinding his application for a temporary license and attested to the truthfulness of the spreadsheet received on February 1, 2011.
5. By e-mail dated February 3, 2011, MDH staff acknowledged receipt of the spreadsheet and Technician was asked to explain why he pierced a minor on May 18, 2010. By letter dated February 4, 2011, and received on February 7, 2011, Technician claimed his piercing of a minor was "simply an oversight" on his part because the identification card presented was in Spanish and he "just didn't catch it." Technician stated "in 2010 I pierced over 250 people, about 1/5 of them were minors and other than this one oversight, my paperwork was entirely in order." Technician further stated he had a court appearance scheduled for February 23, 2011. By e-mail dated February 28, 2011, Technician advised that the matter was still pending, due to a request for additional information from the Golden Valley City Attorney's Office.
6. By e-mail dated March 2, 2011, MDH staff notified Technician that while he had applied for a dual license, he had insufficient documentation of his tattooing experience. MDH staff provided Technician with his options and by e-mail on March 3, 2011, Technician advised he wished to be issued a full piercing license and a temporary tattoo license. Technician was provided with a temporary application by e-mail the same day.
7. On April 19, 2011, the Golden Valley, MN, City Prosecutor advised that the case against Technician was dismissed because it was his first offense. Technician was required to pay \$300 in court costs and Technician provided a copy of the receipt the same day.

CONCLUSION

1. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3(6), because he pierced a minor without parental consent in Hennepin County, MN, the grounds for which are substantially equivalent to Minnesota Statutes, section 146B.07, subdivision 1a.

DETERMINATION

1. Technician shall be issued a Conditional Body Art Technician--Piercing license and a Conditional Temporary Body Art Technician—Tattooist license, with the following conditions:
 - The licenses will be conditional for a period of not less than two years;
 - Technician must neither pierce a minor without parental consent nor tattoo a minor under any circumstances. A determination that Technician has either pierced a minor without parental consent or tattooed a minor may result in the suspension of Technician's right to provide body art services in the State of Minnesota for a period of not less than one year;
 - Technician must abide by all more restrictive ordinances in any local or county jurisdiction in which he works. A determination that Technician has violated a local or county ordinance related to body art may result in the suspension of Technician's right to provide body art services in the State of Minnesota for a period of not less than one year; and
 - After a period of not less than two years, Technician may request the conditional status be removed from his licenses. To do so, Technician must:
 - Submit a written request 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; and
 - Include with his written request a statement from Hennepin County Human Services and Public Health Department that he has had no further incidents, either pending or concluded, related to body art services. In the event Technician changes work locations to an establishment outside Hennepin County, Technician must provide a statement from local or county authorities that he has not been the subject of any further incidents, either pending or concluded, related to body art services.
 - Technician may request that his licenses be combined into a Conditional Temporary Body Art Technician—Dual at the conclusion of his direct supervision period, at no additional fee to Technician. Technician should submit a written request that his two licenses be combined and provide the following:
 - A written and signed statement from his supervisor, attesting that Technician completed at least 200 hours of tattooing under direct supervision; and
 - A log of at least 200 hours of tattooing. The log shall contain the following information:
 - Date of each tattooing activity;
 - Nature of the activity (acceptable activities include client consultation including some sketching, set up and teardown, skin time, and manufacture and repair of bars and machines; and
 - Length of time for each activity.