

Effective 01/17/2013



Protecting, maintaining and improving the health of all Minnesotans

December 21, 2012

David G. Waytz
Fredrikson & Byron, PA
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425

RE: Your Client: Denise Anne Kragh and MDH File Number: BAC12106

Dear Mr. Waytz:


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 your client, Denise Anne Kragh used an injectable anesthetic, in violation of Minnesota Statutes, sections 146B.08, subdivision 3(3), and 146B.07, subdivision 1a(f). Therefore, the Department is publicly reprimanding your client and assessed a civil penalty in the amount of \$326.00. This action is authorized pursuant to Minnesota Statutes, sections 214.10, and 146B.08, subdivision 4.

Your client may either accept the discipline as stated herein or you may appeal. If she accepts, the Determination will be made effective immediately upon notification from you of her acceptance. Further, please instruct your client to remit payment of the civil penalty within 30 days. If your client wishes 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:

Anne Kukowski, Assistant Manager 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 Ms. Kukowski at (651)201-3839. If you have any questions about this matter, please contact Catherine Dittberner Lloyd at (651)201-3706.

Sincerely,

Darcy Miner, Director
Compliance Monitoring Division

Enclosure

cc: Anne Kukowski, Assistant Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Denise Anne Kragh
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 but are not limited to suspension of licensure for a period not exceeding one year, revocation of licensure, or any reasonable lesser action against an individual upon proof that the individual has violated this chapter. In addition, MDH may impose a civil penalty not exceeding \$10,000 that reimburses MDH for costs of investigation.
2. Pursuant to Minnesota Statutes, section 146B.08, subdivision 3(3), a technician must not violate any provision of the body art statute.
3. Pursuant to Minnesota Statutes, section 146B.07, subdivision 2(f), no technician shall administer anesthetic injections or other medications.

FINDINGS OF FACT

1. Denise Anne Kragh (Hereinafter "Technician") has been licensed as a body art technician—tattooist since March 8, 2011. Her license is currently due to expire on March 31, 2013.
2. On April 9, 2012, MDH received information from Technician's employer that Technician had been terminated from her position as a "medical aesthetician" after Technician, with neither permission nor knowledge of her employer, injected Lidocaine into clients' eyelids as part of her permanent cosmetic procedures.
3. On May 11, 2012, MDH received from Technician's employer a copy of a letter dated May 4, 2012, from the employer to Technician. According to the letter, the employer was concerned about claims Technician made during a May 2nd telephone call to the employer regarding the employer's staff and the circumstances surrounding Technician's termination. The employer stated that at no time was the Technician given permission to use injectable medications for any procedure. It was noted when she was terminated, the Technician claimed to have injected lidocaine on only two occasions, once in January 2012 and the second immediately prior to her termination. It was further noted that

Technician had claimed during the May 2nd telephone call to the employer that she had administered injectable lidocaine over a period of two years and that she had been trained at the direction of the employer, which the employer denied.

4. By letter dated June 12, 2012, in response to a request from MDH staff, Technician's counsel provided the following information:
 - Technician admitted to using injectable anesthetics, but denied using them during permanent cosmetic procedures;
 - Technician administered injectable anesthetics approximately ten to 12 times during the previous four years; and
 - Technician "...never injected anesthetics as a body art technician, cosmetologist, or while providing permanent cosmetic pigment implantation services".

5. By letter dated July 15, 2012, in response to a request from MDH for additional information, the employer provided the following:
 - In her position as a "medical aesthetician" Technician performed "permanent cosmetics, chemical peels, microdermabrasion, skin analysis and consultation, BBL laser technician, waxing, skin care products consultation";
 - Technician's use of injectable lidocaine was discovered on January 17, 2012, when Technician informed her nurse supervisor that she "...was injecting lidocaine into a patient's eyelids prior to providing permanent makeup eyeliner";
 - A review of permanent cosmetics patient charts revealed one patient chart in which Technician documented "injected numbing". It was noted that Technician did not note the substance she injected;
 - Injectable anesthetic was approved for use only by nurse and physician staff and for skin tag removal only;
 - On January 17, 2012, Technician told her nurse supervisor that an "...RN friend showed me how to inject. You pull the skin over and inject" and said she would no longer perform injections;
 - The client at issue suffered eyelid swelling which subsided; and
 - No informed consent form was completed for the injectable lidocaine.

6. On October 10, 2012, the employer provided a copy of treatment notes for a permanent cosmetic client. Review of the notes revealed the following entries:
 - On January 17, 2012, Technician noted that during an eyeliner procedure "...pain was extreme. Injection numbing used - this helped"; and
 - On March 7, 2012, Technician noted that "injection numbing" was used during an "eyeliner reduction".

7. By letter dated December 20, 2012, Technician's legal counsel advised the following:
 - Technician denied she violated any law;
 - Technician refuted the employer's statement that she had injected Lidocaine with neither permission nor knowledge of the employer and claimed the employer was "well aware" of her use of injectable Lidocaine;
 - Technician refuted the description of the telephone conversation between her and the employer on May 2, 2012;

- Technician refuted the employer's claim that she injected Lidocaine prior to performing permanent makeup eyeliner and stated she only injected Lidocaine for skin tags and during tattoo removal. Technician further refuted the employer's claim that she told her supervisor she had been trained by an RN. Technician stated that she was properly trained by the employer's staff, only injected anesthetics while under supervision, and was expected to perform procedures that required injectable anesthetics;
- Technician did not have the opportunity to review the chart notes and stated she "only injected anesthetics while acting as a qualified and experienced individual working under the supervision of doctors and medical personnel"; and
- Technician stated she "takes safety very seriously".

CONCLUSION

1. Technician did not comply with the requirements under Minnesota Statutes, sections 146B.08, subdivision 3(3), and 146B.07, subdivision 2(f), because on two documented occasions, Technician violated the body art statute by administering anesthetic injections.

DETERMINATION

1. Technician is hereby publicly reprimanded.
2. Within 12 months from the effective date of this Determination, Technician must:
 - A. Provide proof of successful completion of at least six hours of coursework provided by one of the following: Alliance of Professional Tattooists, Association of Professional Piercers, or Compliance Solutions International; and
 - B. Pay a civil penalty in the amount of \$326 to reimburse MDH for the costs of investigation.
3. Technician's body art technician—tattoo license is subject to suspension in the event of a future substantiated report of Technician's use of an injectable anesthetic.