

Effective October 19, 2015

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ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HEALTH

In the Matter of the Application for
Licensure of Kristen Kiecker

SETTLEMENT AGREEMENT

1. **PARTIES.** This Settlement Agreement, hereinafter "Agreement" is entered into by and between the Minnesota Department of Health, Health Regulation Division, (hereinafter "Department") and Kristen Kiecker (hereinafter "Practitioner"); as follows:

2. **STATEMENT OF FACTS AND LAW.** The following constitutes a summary of the facts agreed to by all parties.

- A. The Department has statutory authority to discipline body art technicians under Minnesota Statute Section 146B. The types of disciplinary action the Department may impose include public reprimands, suspension, revocation, refuse to grant or renew licensure, revocation or suspension of the right to supervise trainees, the assessment of civil penalties not to exceed \$10,000 for each separate violation, or any other action reasonably justified by the individual case.
- B. This stipulation is public data pursuant to the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes Chapter 13. All other data comprising the record shall not be considered a part of this Stipulation and shall maintain the data classifications to which they are entitled under MGDPA.
- C. On May 29, 2015, the Department denied Practitioner's application for a body art technician license on the grounds that she submitted false or misleading information to the commissioner. The Department also assessed Practitioner a \$475 civil penalty for investigation costs. Specifically, in her application for a body art technician license-tattooist, Practitioner submitted to the commissioner a log memorializing 200 hours of supervised practice. In the log, Practitioner claimed she performed two different body art procedures on the same date and at the time. Practitioner denied these allegations and requested a contested case hearing.

3. **PURPOSE AND SCOPE OF THE STIPULATION AND SETTLEMENT AGREEMENT.** The purpose of this Agreement is to resolve the disputed matter concerning the Department's decision to deny Practitioner a body art license and assess her a \$475 civil penalty. By entering into this Agreement, Practitioner and the Department are settling a disputed matter. The Agreement is as follows:

- A. In exchange for the promises and agreements contained herein, Practitioner agrees that she shall dismiss her request for a hearing. The above-entitled matter shall be dismissed and the hearing shall be cancelled.
- B. The Department shall waive the \$475 civil penalty assessed to Practitioner and the Department further waives the Department's costs related to the investigation and proceedings in this matter.
- C. The Practitioner agrees that she shall be reprimanded for submitting false or misleading information to the commissioner. Practitioner waives the right to request a contested case proceeding regarding the reprimand.
- D. The Department will accept the hours Practitioner submitted and issue her a full body art technician license.

4. **RIGHT TO COUNSEL.** Practitioner has been advised of her right to be represented by counsel in connection with this Agreement and in these proceedings generally. Practitioner has chosen to represent herself.

5. **WAIVER OF PROCEEDINGS.** In connection with this matter, Practitioner agrees to withdraw her request for a contested case hearing concerning the Department's decision to deny her application for licensure and issue her a \$475 civil penalty. Practitioner also agrees to waive all further hearings, reviews, procedures, and proceedings before the Commissioner to which she may be entitled under the Minnesota and/or United States Constitutions, statutes, or rules, and waives the right to any judicial review or appeal under the Administrative Procedures Act, by writ of certiorari, under Minn. Stat. 480A.06 regarding the facts and dispute raised in this Agreement.

6. **OTHER REMEDIES RESERVED.** Nothing in this Agreement shall waive the Department's right to enforce this Agreement or take any action authorized by law, should Practitioner fail to maintain compliance with this Agreement. This Agreement shall not in any way or manner limit or affect the authority of the Commissioner to proceed against Practitioner by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or omission of Practitioner justifying enforcement that is not the subject of this Agreement.

7. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between Practitioner and the Department, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.

8. **VENUE.** Disputes regarding the meaning of this Agreement or actions to enforce this Agreement shall be venued in Ramsey County District Court, Saint Paul; Minnesota.

9. **OTHER APPLICABLE LAWS AND PERMITS.** All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all

applicable local, State and Federal laws and regulations, including laws and regulations related to occupational safety and health.

10. **SUCCESSORS.** All rights inure to, and obligations bind, successors, heirs and assignees of all parties involved.

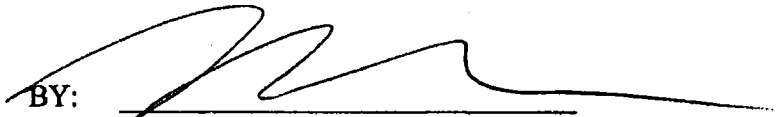
11. **AMENDMENTS.** This Agreement may only be amended by written and signed agreement between the parties.

12. **ACKNOWLEDGMENT.** Practitioner, hereby acknowledges that she has read, understands, and agrees to this Agreement and has freely and voluntarily signed it.


13. **EFFECTIVE DATE.** This Agreement shall be effective upon the date it is signed by all of the parties.

IT IS HEREBY AGREED:

Dated 10/14/15, 2015.

BY: 
Kristen Kiecker
Practitioner/Applicant

Dated 10/19, 2015.

BY: 
DARCY MINER
Division Director
Health Regulation Division
Minnesota Department of Health
85 East 7th Place
P.O. Box 64900
St. Paul, MN 55164-0900



Effective 9-28-14

August 20, 2014 *Protecting, maintaining and improving the health of all Minnesotans*

Kris Kiecker

RE: MDH File Number: BAC14026

Dear Ms. Kiecker:

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] designated yourself as a body art technician by advertising your services of permanent makeup without a body art technician license, in violation of Minnesota Statutes, section 146B.08, subdivision 3(3), and Minnesota Statutes, section 146B.03, subdivision 2(a); and [2] 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 \$255. 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 "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:

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

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Kristen Kiecker
Body Art Technician**

AUTHORITY

1. The Minnesota Department of Health (MDH) has authority to discipline a body art technician 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, for each violation, not exceeding \$10,000 that deprives the operator 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(8), the commissioner may take disciplinary action on proof that a technician advertised in a manner that is false or misleading.
4. 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.
5. Pursuant to Minnesota Statutes, section 146B.03, subdivision 2(a), no individual may use the title of "tattooist," "tattoo artist," "tattoo technician," "body art practitioner," "body art technician," or other letters, words, or titles in connection with that individual's name which in any way represents that the individual is engaged in the practice of tattooing or authorized to do so, unless the individual is licensed and authorized to perform tattooing.
6. Pursuant to Minnesota Statutes, section 146B.01, subdivision 30, "Tattooing" is defined as any method of placing indelible ink or other pigments into or under the skin or mucosa with needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. Tattooing also includes micropigmentation and cosmetic tattooing.

FINDINGS OF FACT

1. On May 12, 2014, MDH received an email with information that Kris Kiecker (hereinafter "Technician") was advertising her services for permanent makeup as well as providing permanent makeup without a body art technician license. On May 16, 2014, MDH received a complaint form regarding Technician's unlicensed practice.

2. A review of Facebook page, <https://www.facebook.com/krishiggins.kiecker>, on May 12, 2014, shows Technician made several posts about permanent makeup. Posts made by Technician on her Facebook page includes:
 - A. On May 7, 2014, "Guyliner, who needs an appointment? Thinning hairlines and balding crowns? I can fix that too! You could have hair growing with just 3 treatments of dry needling/dermal rolling! Tosh.O swears by it!"
 - a. On May 7, 2014 at 5:58pm, D.E. commented on Technician's post, "I've been thinking of having a touch up. Is it expensive?" to which Technician replied back at 10:40pm with "D.E., it depends on how old and what kind of shape the last procedure is, it will be reasonable!"
 - B. On May 6, 2014, "Had a great day tattooing eyebrows...here's a before and immediately after, the color softens and fades to about 40% lighter and will have more of a powdered brow look when it heals, I'll post pix of the healed version in a couple weeks!"
 - a. On May 7, 2014 at 3:07pm, M.H. commented on Technician's post, "Jen! Great symmetry Kris".
 - b. On May 7, 2014 at 9:06pm, A.F. commented on Technician's post, "Are you into eyebrows and lining the eyes what about the individual eyelashes".
 - c. On May 7, 2014 at 10:35pm, Technician replied back to A.F. with "Yes A.F., but no on the eyelashes".
 - d. On May 8, 2014 at 4:55am, K.M. commented on Technician's post, "nice work!"
 - C. On April 23, 2014, "I'm crashing this event! Permanent Make up By kris Kiecker will also be in on the "Hoopla"! I will answer questions and offer specials for attendees! Stop in, it will be great FUN! 210 Bush Street Red Wing—3rd Floor 5-8 P.M. See YOU there!"
3. On May 13, 2014, Technician was issued a temporary body art technician license.
4. On May 13, 2014, MDH sent a Notice of Illegal Practice letter to Technician.
5. On June 2, 2014, MDH received a written response from Technician. In the response, Technician stated she did not provide any tattoo services in Minnesota and that "marketing done in anticipation of lic."
6. On June 20, 2014 MDH sent Technician a letter with questions. MDH requested a written response no later than July 21, 2014. On July 14, 2014, MDH received a letter of response from Technician.

- A. When asked to explain the post found in Technician's Facebook page on May 6, 2014, Technician stated "I watched Steve Walz at Paradigm Tattoo in Rochester & helped w setup, paperwork, clean up etc".
 - B. When asked to explain the post found in Technician's Facebook page on April 23, 2014, Technician stated "I attended & set up a table where I handed out coupons & brochures in a salon to market my new business, tattooing was not done at this event".
7. On July 15, 2014, MDH sent Technician a letter with questions. MDH requested a written response no later than August 14, 2014. On July 30, 2014, MDH received a letter of response from Technician.
- A. When asked to explain the post found in Technician's Facebook page on May 7, 2014 with D.E., Technician stated "I was marketing & observing & helping at the shop while I waited for my temp lic."
 - B. When asked to explain why Technician was advertising permanent makeup services without a body art technician license, Technician stated "I have been "drumming up" business for a very long time to get people to come in for a procedure when I got license".

CONCLUSION

1. Technician did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3(3), because she advertised her permanent makeup services before she was issued a technician's license, in violation of Minnesota Statutes, section 146B.03, subdivision 2(a).
2. Technician did not comply with the requirements under Minnesota Statutes, section 146B, subdivision 3(8), because she advertised her permanent makeup services and handed out coupons for her business when she was not authorized to offer such services yet. Therefore, Technician misled the public with false advertisements.

DETERMINATION

1. Operator is hereby reprimanded and assessed a civil penalty in the amount of \$255, which deprives Operator of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
 - Operator may pay the \$255 civil penalty in monthly installments of up to 2 months after the effective date of this action. If Operator chooses to make installments, she must notify MDH in writing about her intentions, including how many installments she intends to make, in what amount, and over which time period. Operator 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.