



Protecting, Maintaining and Improving the Health of All Minnesotans

July 3, 2018

Effective August 13, 2018

Mr. Axel J. Manther



Dear Mr. Manther,

Based on the facts and law in this matter as described in the enclosed Determination, The Minnesota Department of Health (MDH) has determined you violated multiple sections of Minnesota Statute 146B. Therefore, MDH is issuing a reprimand and imposing a civil penalty in the amount of \$382. MDH has the authority for this action pursuant to Minnesota Statute, section 146B.08, subsection 4(5).

This decision is final and effective 30 days from the date you receive it. During that 30-day period, you have the right to challenge this decision in a contested-case hearing, as provided under Minnesota Statutes, Chapter 14. Requests for a hearing shall be in writing and include specific grounds for challenging the Department's decision. If you wish to request a hearing, please send a written hearing request, within 30 days of your receipt of this letter, to:

Catherine Dittberner Lloyd, Manager
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. Lloyd at (651)201-3839. If you have any questions about this matter, please contact Patricia Forsberg at (651)201-3721.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Winkelmann'.

Susan Winkelmann, Assistant Division Director
Health Regulation Division

Enclosure

CC: Catherine Dittberner Lloyd, Manager, Health Occupations Program

HEALTH OCCUPATIONS PROGRAM
HEALTH REGULATION DIVISION

**A Determination in the Matter of
Axel James Manther
Body Art Technician 310961**

Authority:

1. The Minnesota Department of Health (MDH) has authority to discipline body art technicians for violations of law under Minnesota Statute, section 146B.08, subdivision 3.
2. Pursuant to Minnesota Statute, section 146B.08, subdivision 4, the types of discipline MDH may impose includes refusal to grant a license, suspension or revocation of a license, impose a civil penalty, or any reasonable lesser action.
3. Pursuant to Minnesota Statute, section 146B.08, subdivision 3(1), the commissioner may take disciplinary action on proof that technician intentionally submitted false or misleading information.
4. Pursuant to Minnesota Statute, section 146B.08, subdivision 3(9), the commissioner may take disciplinary action on proof that technician engaged in conduct likely to deceive, defraud, or harm the public.

Findings of Fact:

1. Axel James Manther (hereinafter "Technician") obtained his body art technician license on April 14, 2015. His license expires March 31, 2019.
2. Technician works at The Holy Mackerel, located at 196 Forbes Avenue, Saint Paul, Minnesota.
3. On May 2, 2018, MDH received a complaint alleging Technician obtained a \$100 deposit from a client for tattoo services that were not rendered.
4. On January 20, 2018, Client paid \$100 to Technician for future tattoo services. Technician verifies receipt of the deposit.
5. Client provided screen shots of a conversation with Technician, through Facebook Messenger, which showed their communication from January 20, 2018, through March 1, 2018.
6. The screenshots show that an appointment was made on January 25, 2018, for January 30, 2018, at noon. Technician cancelled on January 30, 2018, at 8:58 am due to illness on his part.

7. Client requests dates for an appointment from Technician on April 4, 2018. Client did not receive a response from Technician.
8. On April 23, 2018, Client requested her money back because of their inability to schedule a date for the tattoo to occur and Technician's lack of communication.
 - a. Technician responds on the same date that there are no refunds. He does not attempt to schedule an appointment or remediate the situation.
 - b. Technician states, "Deposits are non-refundable in general not because you [redacted] [sic] to blackmail me would you like me to send you the health department phone number..." He then states, "OK i [sic] just sent the person who runs the health department a message briefing her on our conversation and your blackmail:)"
 - c. MDH did not receive a message regarding this incident from Technician.
9. On May 3, 2018, MDH sent Technician a Notice of Investigation with questions regarding the complaint. Technician's responded with the following:
 - a. Technician allowed Client to pay deposit via PayPal in order to secure an appointment.
 - b. Technician states he attempted to make multiple appointments with Client but she refused to answer any of them. Client's screenshots of the conversation show there were at least forty-four comments between the two of them prior to Client requesting a refund of her deposit.
 - c. Technician states the date Client asked for a refund of her money that, "One day she messages me a date she has available to begin, and when I hadn't responded within a couple hours, she send [sic] another message saying she wants her money back." Client's screenshots of the conversation show that her request for dates was on April 4, 2018, and the request for her deposit back was on April 23, 2018.
 - d. Technician states he should be compensated for the hours of labor he put into Client's design. On January 30, 2018, client asked Technician to see what he had drawn for her tattoo. Technician states, "Because I am adding onto what you allready [sic] have it will be best for me to draw on you with markers."
 - e. Technician stated that Client could still schedule an appointment or obtain a refund, but he has not made contact with her to do either.

Conclusion:

Technician violated Minnesota Statute, section 146B.08, subdivision 3(9), when he engaged in conduct likely to deceive the public. Not only did Technician refuse to work with Client regarding the scheduling of body art services for which payment had been rendered, it appears that he also made false statements alleging a conversation with the Minnesota Department of Health in an effort to dissuade Client from reporting her complaint to MDH. Further, Technician violated Minnesota Statute, section 146B.08, subdivision 3(1), by intentionally providing false information to MDH.

Determination:

Technician is hereby reprimanded and assessed a civil penalty in the amount of \$382.

1. Technician is assessed a civil penalty in the amount of \$382, which deprives Technician of the economic advantage gained by the violations and reimburses MDH \$282 for the costs of the investigation.
 - a. Technician may pay the \$382 civil penalty in up to six monthly installments. If Technician chooses to make installments, he must notify MDH in writing about his intentions. He must include how many installments he intends to make, in what amount, and over what period of time, within 30 days of the effective date of this Determination. Technician must send this information to:

Health Occupations Program
PO Box 64882
Saint Paul, MN 55164-0882

- b. Each payment will be made by check to “State of Minnesota, Treasury,” and mailed to:

Health Occupations Program
Body Art Civil Penalty
PO Box 64882
Saint Paul, MN 55164-0882

- c. 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 Technician misses a monthly payment by 14 calendar days after the established deadline.