STATE OF MINNESOTA

BEFORE THE MINNESOTA COMMISSIONER OF HEALTH

In the Matter of:
P.J. Stevens, Body Art Technician.

ORDER AND MEMORANDUM

OAH Docket No. 5-0900-32447

BACKGROUND

Administrative Law Judge (ALJ) Jim Mortenson considered the Minnesota Department of Health's Motion for Summary Disposition, which was filed on August 24, 2015 along with a written brief. Audrey Kaiser Manka, Assistant Minnesota Attorney General, represented the Minnesota Department of Health (Department). P.J. Stevens, (Licensee), did not respond to the Department's Motion.

On September 10, 2015, ALJ Mortenson issued his Order Recommending Granting Motion for Summary Disposition. The Department filed exceptions to the recommended order on September 28, 2015. The Licensee did not file anything further.

Based on all of these proceedings and the files and records to date, THE COMMISSIONER ORDERS THE FOLLOWING:

STATEMENT OF ISSUE

Whether the Department is entitled to summary disposition affirming the Department's April 4, 2015 disciplinary action against Licensee. The Department based its disciplinary action on Minn. Stat. §146B.08, subds. 3(3) and 4, because of Licensee's multiple violations of Minn. Stat. §§ 146B.02, subds. 1 and 4; and 146B.07, subd. 2(b).

FINDINGS OF FACT

1. There are no disputed material facts in this case.

2. On March 14, 2011, Licensee submitted an application for a Minnesota body art technician license to the Department.[1]

3. Licensee's application stated he worked for an establishment called "Nighty Nite Tattoo's.[2]

4. The Department never issued a body art establishment license to Licensee or to an establishment called "Nighty Nite Tattoo's or "Nighty Nite Tattoo."[3]

5. The Department issued Licensee a Body Art Technician – Tattooist License on November 29, 2012.[4]

6. On or about November 5, 2013, the Department received a report Licensee was tattooing minors, and also tattooing individuals in private homes.[5]

7. On December 10, 2013, Chee Lee, a body art investigator and licensor for the Department, sent Licensee a letter notifying him the Department received information that he was providing tattoo services to minors and in unlicensed establishments. The letter requested Licensee provide documents, answer questions, and provide information about his body art practice including information regarding the date, type, and location of procedures he performed; the names, ages, and addresses of his clients; and the cost charged for each procedures.[6]

8. Licensee responded to the December 10, 2013, letter from Chee Lee by email received by the Department on December 14, 2013. The Department received a hard copy of that same correspondence on December 18, 2013.[7]

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[1] August 20, 2015 Affidavit of Chee Lee, ¶ 2.
[2] *Id.* at ¶ 4. Throughout the Record, the establishment is referred to either as "Nighty Nite Tattoo" or "Nighty Nite Tattoo's."
[3] *Id*; Affidavit of Erin Smilanich, ¶ 1.
[4] Affidavit of Chee Lee, ¶ 3.
[5] *Id.* at ¶ 5.
[6] *Id.*
[7] *Id.*, Exhibit "D."

9. Licensee, in his written response to the Department's letter, wrote:

> I am a substitute/replacement Licensed Tattooist for professional tattoo shops, I have been making house/home calls for my clients/costumers [sic] for over 20 years now, with the arts being so slow with Nighty Nite Tattoo's and tattoo shop artist replacement or call-in for spot fill-in, I have been making my home calls. Some home calls do consist of some minors other adults, [sic] **The minors have to have parent/custodian signature with parent consent forms signed, with State I.D. numbers of parent (s) and with appearance (or Call with appointment to meet with owner of Ngihty [sic] Nite Tattoo's for the minor to be Tattooed) of parents while the Tattooing procedure Is [sic] taking place.**[8]

10. Licensee, in his response to the Department, also wrote "for the unlicensed establishments, I have been making home calls, and do not see that it is illegal to do so . . ." and:

> I don't do tattooing party it's a one on one visit with the client, usually because they are more comfortable at home for the tattooing procedure, and the younger crown, [sic] and tattoo shops don't know that it is legal for a minor to get service of tattoo's under parents signature/consent in the State of Minnesota, rumor has it that no matter what any one under the age of eighteen can NOT be tattooed **(Technician or Licensed Tattooist)**, and that shop's [sic] are willing to give up the License under the new laws with tattooing here in the State of Minnesota.[9]

11. Licensee also submitted to the Department copies of various forms entitled "Nighty Nite Tattoo Consent to Application of Tattoo, Release and Waiver of All Claims." Some of these forms have the word "minor" hand-written on the top of the form, and some also list a date of birth for the client demonstrating that the client was under the age of 18 when the form was signed.[10]

12. Chee Lee spoke with Licensee by telephone on December 16, 2013. During that call Licensee admitted that in 2013 he provided tattooing services in clients' homes and also provided tattoos to minors.[11]

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[8] *Id.* (emphasis in original).
[9] *Id.* (emphasis in original).
[10] Affidavit of Chee Lee, Exhibits "E-M."
[11] *Id.* at ¶ 8.

13. During that conversation, Licensee told Chee Lee that tattooing minors was permitted in Minnesota as long as the minor has permission from a parent to receive the tattoo.[12]

14. Licensee admitted, both in his conversations with Chee Lee and as part of his written submissions to the Department, that he both (a) performed tattooing in private residences; and (b) provided tattoos to individuals under the age of 18.

15. On April 4, 2015, the Department sent Licensee, by Certified Mail, a document entitled "A Determination in the Matter of PJ Clair Stevens Body Art Technician" which made the following two conclusions:

1. [Licensee] did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3(3), because he practiced body art in unlicensed establishment, in violation of Minnesota Statutes, section 146B.02, subdivision 1; and
2. [Licensee] did not comply with the requirements under Minnesota Statutes, section 146B.08, subdivision 3(3) because he tattooed minors, in violation of Minnesota Statutes, section 146B.07, subdivision 2(b).[13]

16. As a result, the Department issued Licensee a conditional license for a period of not less than two years conditioned on Licensee complying with all requirements of Minnesota Statutes, chapter 146B, prohibiting Licensee from supervising temporary body art technicians, reprimanding Licensee, and assessing a civil penalty of $1,702.00.[14]

17. The Department mailed Licensee a document entitled "A Determination in the Matter of PJ Clair Stevens Body Art Technician" with an accompanying cover letter that advised Licensee that he may either accept the discipline as stated in that document or appeal.[15]

18. Licensee subsequently wrote the Department appealing the imposed discipline.[16]

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[12] *Id.*
[13] Affidavit of Chee Lee, Exhibit "N."
[14] *Id.*
[15] August 18, 2015 Affidavit of Anne Kukowski, Exhibit "B."
[16] *Id.*, Exhibit "C."

19. As a result, on April 28, 2015, the Department filed a Notice and Order for Hearing and Prehearing Conference.

20. Both parties appeared in person at the May 27, 2015 prehearing conference held at the Office of Administrative Hearings.

21. On August 21, 2015, the Department filed a Notice of Motion and Motion for summary disposition, with supporting documents, asserting that there is no genuine issue of material fact and that the Department acted appropriately and under law in taking disciplinary action against Licensee's body art technician license.

22. Licensee never filed a response to the Department's Motion for Summary Disposition.

CONCLUSIONS OF LAW

1. Summary disposition is the administrative equivalent of summary judgment and the same legal standards apply.[17] Summary disposition is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.[18] The purpose of summary judgment is to secure "a just, speedy, and inexpensive determination of the action.[19] A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case.[20]

2. When considering a motion for summary disposition, the Agency's decision maker must view the facts in the light most favorable to the nonmoving party.[21] If reasonable minds

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[17] Minn. R. 1400.5500(K) (2015).
[18] Minn. R. Civ. P. 56.03; Minn. R. 1400.5500(K).
[19] *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).
[20] *Highland Chateau v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *rev. denied* (Minn. Feb. 6, 1985).
[21] *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

could differ as to the import of the evidence, disposition should not be granted as a matter of law.[22] In contrast, when a motion for summary judgment is made and properly supported, an adverse party may not rest upon the mere averments or denial but must instead present specific facts showing there is a genuine issue of fact for trial.[23] If the adverse party does not so respond, then summary judgment, if appropriate, shall be granted in favor of the moving party.[24]

3. The Department has the statutory authority to license body art technicians and establishments in Minnesota under Minn. Stat. §§ 146B.02, 146B.03, and 146B.08.

4. Minnesota Statues, chapter 146B became effective on July 1, 2010.[25]

5. Under chapter 146B, "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, including micropigmentation and cosmetic tattooing.[26] The term "body art" includes tattooing.[27]

6. Beginning January 1, 2011, no person acting individually or jointly with any other person may maintain, own, or operate a body art establishment in Minnesota without an establishment license issued by the Department in accordance with chapter 146B.[28]

7. The term "body art establishment" is defined as any structure or venue, whether permanent, temporary, or mobile, where body art is performed.[29]

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[22] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).
[23] *See* Minn. R. Civ. P. 56.05.
[24] *See id.*
[25] *See* Laws of Minnesota 2010, ch. 317, §§ 1-12.
[26] Minn. Stat. § 146B.01, subd. 30.
[27] Minn. Stat. § 146B.01, subd. 4.
[28] Minn. Stat. § 146B.02, subd. 1.
[29] Minn. Stat. § 146B.01, subd. 5.

8. Except for certain limited circumstances that are not relevant to this case, no person may perform body art procedures at any location other than a licensed body art establishment.[30]

9. There is no genuine issue of material fact that Licensee, by admittedly performing body art in clients' private homes, which were not licensed body art facilities, violated Minn. Stat. § 146B.02, subds. 1 and 4.[31]

10. No licensed body art technician shall tattoo any individual under the age of 18 regardless of parental or guardian consent.[32]

11. There is no genuine issue of material fact that Licensee, by admittedly performing tattoo services on minors, violated Minn. Stat. § 146B.07, subd. 2(b).[33]

12. The Department may take disciplinary action on proof a licensed body art technician violated any provision of chapter 146B.[34]

13. If the Department finds that a licensed body art technician is subject to discipline, the sanctions the Department may impose include imposing a civil penalty not exceeding

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[30] Minn. Stat. § 146B.02, subd. 4.

[31] Under Minn. Stat. § 146B.02, subd. 7, a body art establishment may be located in a private residence if certain requirements under statute are met. That statutory provision does not apply to the present case because the Department never issued an establishment license to Licensee, Nighty Nite Tattoo, or to any of the private homes in which Licensee provided tattooing services.

[32] Minn. Stat. § 146B.07, subd. 2(b). In contrast, a licensed body art technician may perform body piercings on an individual under 18 if a parent or guardian signs a written consent and is present during the procedure. *See* Minn. Stat. § 146B.07, subd. 2(a).

[33] The former Minn. Stat. § 609.2246, subd. 1 provided "No person under the age of 18 may receive a tattoo unless the person provides written parental consent to the tattoo." That statute, which was repealed effective August 31, 2013, is irrelevant to the current matter because the Department was simply enforcing civil laws under its statutory authority and was not prosecuting Licensee for a criminal offense.

[34] Minn. Stat. § 146B.08, subd. 3(3).

$10,000.00 and taking actions again the individual's license up to and including license suspension or revocation.[35]

14. There is no genuine issue of material fact that the Department's April 4, 2014 disciplinary action against Licensee for violating Minn. Stat. §§ 146B.02, subds. 1 and 4, and 146B.07, subd. 2(b), was both authorized by law and reasonable under the circumstances.

15. Summary disposition is appropriate in this case to affirm the disciplinary action that the Department took against Licensee on April 4, 2014.

ORDER

Based on the record, **THE COMMISSIONER HEREBY ORDERS** that:

1. The Minnesota Department of Health's Motion for Summary Disposition is **GRANTED.**

2. The attached Order Recommending Granting Summary Disposition of the Administrative Law Judge dated September 10, 2014, is adopted except as follows:

A. The first sentence of the first paragraph under Undisputed Facts is deleted and replaced with: Licensee applied for a Body Art Technician – Tattooist license on March 12, 2011.

B. Footnote 6 on Page two is deleted and replaced with: Affidavit of Chee Lee, Ex. C.

C. The last sentence of the Memorandum is deleted and replaced with:

> Thus, it is respectfully recommended that the Commissioner grant the motion for summary disposition, find Licensee in violation of Minn. Stat. §§ 146B.02 and .07, and affirm the disciplinary action taken on April 4, 2014.

[35] Minn. Stat. § 146B.08, subd. 4 (1)–(5).

3. The Memorandum below is incorporated into this Order.

Dated: January 6, 2016

Patricia Winget
Adviser to the Commissioner
Minnesota Department of Health

NOTICE

This is the Commissioner's final Order. Under Minn. Stat. §14.63, a party seeking judicial review must file its petition with the Court of Appeals and serve it on the Department either personally or by certified mail within 30 days of receiving this Order.

MEMORANDUM

There are no material issues of material fact here. The Department determined that Licensee performed tattooing services both to minors and in private residences on multiple occasions. Under Minnesota's body art statutes, Minnesota Statutes, chapter 146B, providing tattooing services anywhere except in a licensed body art establishment is contrary to law. In addition, tattooing minors is strictly prohibited regardless of whether a parent or guardian consents. Licensee admitted both violations to the Department verbally and in writing. Licensee failed to respond to the Department's well-documented and legally sound Motion for Summary Disposition. The ALJ determined "Licensee has provided tattoos to at least nine people in their homes, four of whom were minors." Consequently, there are no genuine issues of material fact that Licensee violated the body art statutes, the Department was authorized under chapter 146B to take disciplinary action against him, and the discipline imposed by the Department against the Licensee was reasonable under the circumstances.

The Department's Motion for Summary Disposition is granted.

P.W.

OAH 5-0900-32447

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HEALTH

In the Matter of
P.J. Stevens, Body Art Technician

ORDER RECOMMENDING GRANTING MOTION FOR SUMMARY DISPOSITION

The above matter came before Administrative Law Judge Jim Mortenson pursuant to a Motion for Summary Disposition filed by the Department of Health on August 24, 2015. The motion record closed on September 8, 2015, the deadline for a response.[1]

Audrey Kaiser Manka, Assistant Attorney General, represented the Minnesota Department of Health (Department). P.J. Stevens (Licensee) did not respond to the Motion.

Based on the record, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS RECOMMENDED THAT:

1. The Motion for Summary Disposition be **GRANTED**; and

IT IS ORDERED THAT:

2. The hearing scheduled to begin October 27, 2015, is cancelled, pending the outcome of the Department's determination on the motion.

Dated: September 10, 2015

JIM MORTENSON
Administrative Law Judge

[1] *See* Minn. R. 1400.6600 (2015).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Edward Ehlinger, Commissioner, Department of Health, 625 Robert St. N, PO Box 64975, St. Paul, MN 55164-0975, (651) 201-5810 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a.

Under Minn. Stat. § 14.62, subd. 1 (2014), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Undisputed Facts

Licensee applied for a Body Art Technician - Tattooist license on March 3, 2011.[2] The Department issued Licensee the applied-for license on November 29, 2012.[3] Licensee was granted Body Art Technician - Tattooist license number 310875, which expired March 31, 2014.[4] Licensee maintains a business called "Nighty Night Tattoo's."[5] Licensee does not have a Body Art Establishment license.

On December 10, 2013, the Department began investigating a complaint that Licensee was providing tattoo services to minors in unlicensed establishments.[6] Chee Lee, an inspector for the Department, sent Licensee a letter regarding the investigation and Licensee responded in a letter received by the Department on December 18, 2013.[7]

Licensee admitted to tattooing minors and demonstrated he had the consent of their parents.[8] Licensee denied that he provided tattoos in his home and stated that while

[2] Affidavit (Aff.) of Chee Lee, Ex. A.
[3] *Id.* at Ex. B.
[4] *Id.*
[5] Aff. of Anne Kukowski.
[6] *Id.* at Ex. C.
[7] *Id.* at Ex. D.
[8] *Id.*

he did not provide tattoos in unlicensed establishments, he made "home calls" providing tattoos in homes of clients.[9] Licensee advised Lee that he was licensed to make "home calls."[10]

Licensee has provided tattoos to at least nine people in their homes, four of whom were minors.[11] Licensee advised Lee that "tattoo shops don't know that it is legal for a minor to get service of tattoo's under parents signature/consent in the State Of Minnesota, rumor has it that no matter what any one under the age of eighteen can NOT be tattooed [sic]. . . ."

On April 4, 2014, the Department issued a determination of violations to Licensee.[12] The Department found that Licensee violated Minn. Stat. §§ 146B.02, subd. 1, 08, subd. 3(3) (2014), for providing body art services in unlicensed establishments.[13] The Department also found that Licensee violated Minn. Stat. §§ 146B.07, subd. 2(b), .08, subd. 3(3) (2014) for providing tattoos to minors.[14] As a result, the Department issued a reprimand to Licensee, including a civil penalty of $1,702 and a two-year conditional license.[15] Licensee appealed the determination and requested a hearing.[16]

Procedural History

On April 28, 2015, the Department filed a Notice and Order for Hearing and Prehearing Conference.[17] According to the Notice, the Department initiated this contested case "to determine whether [Licensee] should be subject to disciplinary action pursuant to Minn. Stat. § 146B.08, subd. 3(3), for violations of 146B.02, subd. 1, and 146B.07, subd. 2(b)."[18]

The Department notified the Licensee that a prehearing conference would be held via telephone on May 27, 2015.[19] Licensee requested the prehearing conference be held in person, and the Judge accommodated that request.[20] The prehearing conference was convened at the Office of Administrative Hearings in St. Paul on May 27, 2015. Both parties appeared – the Department via counsel and the Licensee for himself. The First Prehearing Order was issued on May 29, 2015.[21] Included in the First Prehearing Order, among other things, was the due date for dispositive motions – August 28, 2015.[22] Accompanying the Order were resources for the Licensee to use in obtaining

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[9] *Id.*
[10] *Id.*
[11] *Id.* at Exs. E, F, G, H, I, J, K, L, M.
[12] Aff. of Anne Kukowski, Ex. B.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.* at Ex. C.
[17] Notice and Order for Hearing and Prehearing Conference, dated April 24, 2015.
[18] *Id.*
[19] *Id.*.
[20] Scheduling Order, dated May 18, 2015.
[21] First Prehearing Order, dated May 29, 2015.
[22] *Id.*

representation or representing himself. Subsequently, on June 9, 2015, a Protective Order was issued by the Judge.[23]

The Licensee sent correspondence to the Judge dated June 30, July 20, and July 21, 2015. Included in the correspondence were requests for subpoenas for over forty people and unspecified records including, but not limited to: attorneys; judges; police officers; military personnel; and the President of the United States. This Judge responded to Licensee advising that the subpoena requests were denied because the rules regarding subpoena requests had not been followed. The Judge also, again, advised Licensee that he should obtain a lawyer to represent him or find someone to assist him with this proceeding because it was very difficult to understand what Licensee was attempting to communicate.

On August 21, 2015, the Department filed a Notice of Motion and Motion for Summary Disposition asserting there is no dispute of material fact and that the Department's decision to take action against Licensee's body art technician license was proper pursuant to Minn. Stat. § 146B.08, subd. 4 (2014). Licensee did not respond to the motion.

Summary Disposition

Summary disposition is the administrative law equivalent of summary judgment.[24] "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law."[25] The Office of Administrative Hearings has generally followed the summary judgment standards developed in the district courts in considering motions for summary disposition.[26]

The party filing the motion must demonstrate that there are no genuine issues of material fact that would preclude disposition of the case as a matter of law.[27] On a motion for summary judgment, all evidence must be viewed in a light most favorable to the nonmoving party.[28] All doubts and factual inferences must be resolved against the moving party.[29] Summary judgment should not be granted if reasonable minds could draw different conclusions from the evidence.[30]

In order to defeat an otherwise proper motion for summary judgment, the nonmoving party must show the existence of material facts that are genuinely disputed.[31] "[T]here is no genuine issue of material fact for trial when the nonmoving party presents

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[23] Protective Order, dated June 9, 2015.
[24] *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004).
[25] *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).
[26] *See* Minn. R. 1400.6600.
[27] *Theile v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[28] *Deli v. Hasselmo*, 542 N.W.2d 649, 653 (Minn. Ct. App. 1996), *review denied* (Minn. Apr. 16, 1996).
[29] *Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981).
[30] *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).
[31] *Thiele*, 425 N.W.2d 583.

evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions."[32] "A material fact is one which will affect the result or the outcome of the case depending on its resolution."[33]

Analysis

The Department argues that there are three issues in this case: 1) did Licensee operate a body art establishment without a license issued by the Department when he provided body art procedures in clients' homes in violation of Minn. Stat. § 146B.02, subd. 1; 2) did Licensee tattoo individuals under the age of eighteen, in violation of Minn. Stat. § 146B.07, subd. 2(b); and 3) does the Department have authority to impose discipline on Respondent's body art technician license?

The Department argues that there are no material facts in dispute in this case, because the Licensee admitted that he provided tattoos to people, including minors, in their homes. Licensee has not denied this, arguing that the law permits him to tattoo minors with consent of their parents and that there are no laws regulating "residential calls."[34] Licensee did not provide any additional challenge to the motion and alleged facts. There is no genuine dispute of material fact in this case.

Licensee is licensed as a Body Art Technician – Tattooist. Licensee does not hold a license for a body art establishment. Pursuant to Minn. Stat. § 146B.02, subd. 1, no person acting individually or with any other person may maintain, own, or operate a body art establishment without an establishment license. A body art establishment is "any structure or venue, whether permanent, temporary, or mobile, where body art is performed."[35] "No person may perform a body art procedure at any location other than a body art establishment. . . ."[36] "Body art" or "body art procedures" include, among other things, tattooing.[37] Because Licensee performed tattooing in the homes of clients, which are not licensed body art establishments, Licensee violated Minn. Stat. § 146B.02 (2014).

Minnesota law provides that "[n]o technician shall tattoo any individual under the age of 18 regardless of parental or guardian consent."[38] Licensee tattooed minors. Licensee has argued that it is legal to do so. State law is perfectly clear that it is not legal to do so. Licensee's argument appears to be based on a criminal law, Minn. Stat. § 609.2246 (2012), which was repealed in 2013. The repealed law made it a misdemeanor to tattoo a minor without parental consent.[39] Minn. Stat. § 609.2246 is irrelevant to this proceeding because the Department is not charging Licensee with a

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[32] *DLH*, 566 N.W.2d 71.
[33] *Musicland Grp., Inc. v. Ceridian Corp.*, 508 N.W.2d 524, 531 (Minn. Ct. App. 1993), *review denied* (Jan. 27, 1994).
[34] *See e.g.* Letter from Licensee, received by OAH on May 5, 2015.
[35] Minn. Stat. § 146B.01, subd. 5 (2014).
[36] Minn. Stat. § 146B.02, subd. 4.
[37] Minn. Stat. § 146B.01, subd. 4.
[38] Minn. Stat. § 146B.07, subd. 2(b).
[39] Minn. Stat. § 609.2246, *repealed by* 2013 Minn. Laws 43, sec. 32, par. (b), eff. Aug. 1, 2013.

crime. Rather, the Department is enforcing civil licensing laws under its jurisdiction.[40] Thus, because Licensee has tattooed minors he is in violation of Minn. Stat. § 146B.07 (2014).

Pursuant to Minn. Stat. § 146B.08, subd. 3 "[t]he commissioner may take any of the disciplinary actions listed in subdivision 4 on proof that a technician or operator has: . . . (3) violated any provision of this chapter [Minn. Stat. ch. 146B]." Disciplinary actions authorized by statute include: 1) refusal to grant or renew a license; 2) suspension of a license for a period not exceeding one year; 3) revocation of a license; 4) any reasonable lesser action against an individual upon proof that the individual has violated Minn. Stat. chapter 146B (2014); or 5) imposition of, for each violation, a civil penalty not exceeding $10,000 that deprives the licensee of any economic advantage gained by the violation and for the expenses of the Department in relation to the disciplinary action.[41]

Licensee violated two terms of Chapter 146B: Minn. Stat §§ 146B.02 and 146B.07. He provided tattoos in unlicensed establishments – clients' homes. He also tattooed minors. Both of these violations occurred multiple times. The reprimand issued April 4, 2015, consisting of a civil penalty of $1,702 and a two year conditional license, was within the Commissioner's authority. Licensee has made no showing that the discipline was either illegal or unreasonable. Thus, it is respectfully recommended that the Commissioner grant the motion for summary disposition, find Licensee in violation of Minn. Stat. §§ 146B.02, .07, and affirm the disciplinary action taken April 4, 2015.

J. R. M.

[40] Minn. Stat. § 146B.08 (2014).
[41] *Id.* at subd. 4.