

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

s/Jim Mortenson

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

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.*

Accompanying the Order were resources for the Licensee to use in obtaining 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

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.

“[T]here is no genuine issue of material fact for trial when the nonmoving party presents 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

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.

irrelevant to this proceeding because the Department is not charging Licensee with a 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.