

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case Nos. 14-0875
14-1479

EMPIRE INK,

Respondent.

_____ /

RECOMMENDED ORDER

These cases came before Administrative Law Judge Darren A. Schwartz for final hearing by video teleconference on April 28, 2014, at sites in Tallahassee and West Palm Beach, Florida.

APPEARANCES

For Petitioner: Telsula C. Morgan, Esquire
Department of Health
Suite 5-545
800 Clematis Street
West Palm Beach, Florida 33401

For Respondent: Steve Santacruz, pro se
Empire Ink
22773 State Road 7
Boca Raton, Florida 33428

STATEMENT OF THE ISSUES

Whether Empire Ink committed the violations alleged in the two citations of violation issued on January 31, 2014, and, if so, what penalties should be imposed on Empire Ink.

PRELIMINARY STATEMENT

On January 31, 2014, Petitioner Department of Health ("Department"), issued two citations of violation against Respondent Empire Ink ("Empire Ink"), charging Empire Ink with the following offenses relating to noncompliance with the rules governing body-piercing salons: (1) missing customer records of jewelry description, emergency contact, and receipt of educational information, in violation of sections 381.0075(7) and 381.0075(11)(a)7., Florida Statutes, and Florida Administrative Code Rule 64E-19.007(3); and (2) missing notarized, parental consent forms for minor piercing, in violation of section 381.0075(7), Florida Statutes, and Florida Administrative Code Rule 64E-19.007(3).

Empire Ink timely requested a formal hearing to contest the allegations, and, subsequently, the matter was referred to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing. The final hearing was set for April 28, 2014, by video teleconference, with sites in Tallahassee and West Palm Beach, Florida.^{1/}

At the final hearing, the Department presented the testimony of Siobhan Townsend and Drovika Gosein-Rodriguez, and offered Exhibits 1 through 3 and 5 through 8, all of which were admitted into evidence without objection. Empire Ink presented the testimony of Steve Santacruz, the owner of Empire Ink. Empire

Ink offered Composite Exhibit 1, which was admitted into evidence without objection.

No transcript of the final hearing was ordered. The Department timely filed a Proposed Recommended Order, which was given consideration in the preparation of this Recommended Order. Empire Ink did not file a proposed recommended order.

All citations to Florida Statutes refer to the 2013 version, unless otherwise indicated. All citations to the Florida Administrative Code are to the version in effect at the time of the violations.

FINDINGS OF FACT

1. The Department is the state agency charged with the regulation and inspection of body-piercing salons in the state of Florida pursuant to chapter 381, Florida Statutes.

2. At all times material to this case, Empire Ink was a licensed body-piercing salon located at 22773 State Road 7, Boca Raton, Florida 33428. Steve Santacruz is the owner of Empire Ink.

3. On January 17, 2014, a routine inspection of Empire Ink was conducted by Siobhan Townsend, an Environmental Health Inspector employed by the Department. Ms. Townsend's job duties include the inspection of body-piercing salons.

4. During the inspection, Empire Ink provided Ms. Townsend three customer files. Ms. Townsend reviewed these files, and

noticed the following items missing from the files in violation of the laws governing body-piercing salons: (1) signed customer forms acknowledging receipt of educational information, emergency contact information, and jewelry descriptions; and (2) notarized, parental notification consent forms for minor piercing.

5. At the conclusion of the January 17, 2014, inspection, Ms. Townsend prepared a written report documenting the violations that she had observed. Before leaving the premises, Ms. Townsend discussed her observations with a representative of Empire Ink, and provided Empire Ink a copy of the inspection report. At the final hearing, Mr. Santacruz acknowledged that the items were missing from the files at the location on January 17, 2014, as set forth in the inspection report

6. According to the January 17, 2014, inspection report, the violations were to have been corrected by 8:00 a.m. on January 31, 2014, at which time a follow-up inspection was scheduled to occur. The purpose of the follow-up inspection was to determine whether the violations identified during the January 17, 2014, inspection had been resolved.

7. On January 31, 2014, a follow-up inspection at Empire Ink's facility was conducted. None of the violations observed during the January 17, 2014, inspection had been resolved.

8. At the conclusion of the January 31, 2014, follow-up inspection, Empire Ink was provided with the two citations of violation documenting the aforementioned missing documentation.

9. The Department introduced into evidence a copy of the Department's records concerning previous violations by Empire Ink. Specifically, the evidence shows that on June 18, 2010, Empire Ink was issued a Stop Use Order for, among other things, performing body piercings on 13 minors without obtaining proper written notarized consent of their parents or legal guardians. Furthermore, on June 29, 2010, Empire Ink was issued a citation of violation for performing the body piercings on 13 minors without obtaining proper written notarized consent of their parents or legal guardians. The June 29, 2010, citation of violation imposed a \$1,000.00 fine.

10. Furthermore, on July 5, 2012, the Department conducted a follow-up inspection, observed missing documentation, and issued to Empire Ink another inspection report for missing customer records, including missing emergency contact and educational information, and notarized, parental notification consent forms for minor piercing. Moreover, on September 6, 2013, the Department conducted a routine inspection, observed missing documentation, and issued to Empire Ink another inspection report for missing customer records, including missing notarized, parental consent forms for minor piercing.

11. The evidence demonstrates that the Department made extensive efforts to work with Empire Ink to obtain compliance under the statutes and rules, including providing the facility with sample forms and technical assistance.

CONCLUSIONS OF LAW

12. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

13. A proceeding, such as this one, to suspend, revoke, or impose other discipline upon a professional license is penal in nature. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Accordingly, to impose discipline, the Department has the burden of proving by clear and convincing evidence the allegations set forth in the citations of violation. Dep't of Banking & Fin., Div. of Secs. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 933-34 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294-95 (Fla. 1987).

14. Section 381.0075, Florida Statutes, sets forth the acts for which the Department may impose discipline. This statute provides, in pertinent part:

(7) MINORS.- A person may not perform body piercing on a minor without the written notarized consent of the minor's parent or legal guardian, and an establishment may not perform body piercing on a minor under the age of 16 unless the minor is accompanied by a parent or legal guardian.

(8) PROHIBITED ACTS; PENALTIES; INJUNCTION.-

* * *

(b) Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

1. Failing to maintain the records required by this section or knowingly making false entries in such records.
2. Failing to comply with the requirements regarding minors set forth in subsection (7).

* * *

(11) BODY-PIERCING SALONS; SPECIFIC REQUIREMENTS.-

(a) A body-piercing salon must:

* * *

6. Provide each customer with written instructions on the proper care of the pierced area so as to prevent infection.

7. Maintain a record of each customer's visit for a period of not less than 2 years, including, but not limited to, the customer's name, date of visit, and area pierced and the name of the person performing the piercing.

15. Florida Administrative Code Rule 64E-19.007(3) further provides, in pertinent part:

(3) Customer Records. Records must be maintained in accordance with Section 381.0075(11)(a)7., F.S., and shall include the following:

* * *

(d) The name, telephone number and address of an emergency contact person for the customer;

* * *

(i) A description of the jewelry used in the piercing;

* * *

(k) Copies of the signed statement for receipt of educational information required in subsection 64E-19.007(1), F.A.C., of this chapter;

(l) Copies of the written notarized parental consent statements required by Section 381.0075(7), F.S., for minors. The statements must describe the type of piercings that will be performed on the minor.

16. Florida Administrative Code Rule 64E-19.007(5) further provides:

(5) Records required by this section shall be maintained at each salon for the current licensing period. Records may be stored elsewhere after that time frame, but they must be stored in accordance with this chapter and made available for review by the department upon request of the department.

17. The undersigned has determined, as a matter of ultimate fact, that the Department has met its burden of showing by clear and convincing evidence that Empire Ink violated sections 381.0075(7) and (11)(a)7., Florida Statutes, and Florida Administrative Code Rule 64E-19.007(3), as alleged in the two citations of violation. At the time of the January 17, 2014, and January 31, 2014, inspections, Empire Ink did not have in its

customer files at the salon customer forms acknowledging receipt of educational information, emergency contact information, and jewelry descriptions; and notarized parental consent forms for minor piercing.

18. In the present case, the Department seeks to impose an administrative fine of \$2,000.00 against Empire Ink for the violations.

19. Section 381.0075(9)(b) and (c), Florida Statutes, governs the issuance of administrative fines for a violation of section 381.0075 or the rules adopted under this section, and provides:

(b) The department may impose an administrative fine, not to exceed \$1,000 per violation per day, for the violation of any provision of this section, any rule adopted under this section, or any term or condition of any license issued under this section by the department.

(c) In determining the amount of fine to be levied for a violation, as provided in paragraph (b), the following factors shall be considered:

1. The severity of the violation and the extent to which the provisions of this section, the rules adopted under this section, or any terms or conditions of any license issued under this section were violated.
2. Actions taken by the licensee to correct the violation.
3. Any previous violations by the licensee.

20. The Department proved that Empire Ink's violations are not isolated incidents, but a pattern of misconduct.

21. A reasonable fine in this case, in light of the evidence presented, is \$1,000.00 for each of the two violations, for a total fine of \$2,000.00.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Department of Health, imposing a fine of \$2,000.00, to be paid to the agency clerk within 30 days after the filing of the final order.

DONE AND ENTERED this 15th day of May, 2014, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of May, 2014.

ENDNOTE

^{1/} Case No. 14-0875 involves the charge of missing customer records of jewelry description,, emergency contact, and receipt of educational information. Case No. 14-1479 involves the charge of missing notarized, parental consent forms for minor piercing. At the request of the parties, these cases were consolidated for all purposes. On April 3, 2014, the undersigned issued an Order of Consolidation.

COPIES FURNISHED:

Telsula Christy Morgan, Esquire
Department of Health
Suite 5-545
800 Clematis Street
West Palm Beach, Florida 33401

Steve Santacruz
Empire Ink
22773 State Road 7
Boca Raton, Florida 33428

Jamie Briggs, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399

Jennifer Tschetter, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399

John A. Armstrong, M.D., F.A.C.S.
State Surgeon General
Department of Health
4052 Bald Cypress Way, Bin A00
Tallahassee, Florida 32399

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.