

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION**

BOARD OF BODY ART PRACTITIONERS

**In Re: Andrew C. Ellis,
Lic. #1120 (expired)**

Docket No.: 2022-B. ART- 003

**FINAL DECISION AND ORDER-
05/10/2023 @ 9:00 AM**

I. ATTENDEES

Shane D. Goulet, Esq., OPLC Hearings Examiner and Presiding Officer
Talia Wilson, OPLC Senior Board Administrator
Teresa Boyer, OPLC Board Administrator
John Brown, Esq., Attorney with the N.H. DOJ, Hearings Counsel
Linda Bartlett, Investigative Paralegal with the N.H. DOJ
John Garrigan, Esq., Chief Administrative Prosecutor OPLC

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 11/12/21, the Office of Professional Licensure and Certification, Division of Enforcement (“Enforcement”) received a complaint alleging that Andrew C. Ellis (“Licensee”/”Respondent”), engaged in the unauthorized practice of body art in 2020 and 2021. Enforcement referred the matter to the Consumer Protection and Antitrust Bureau (“CPAB”) of the New Hampshire Attorney General’s Office, which investigated. After reviewing the matter upon the advice of the Board of Body Art Practitioners on 12/23/22, the Executive Director decided to move forward with an adjudicatory proceeding pursuant to RSA 314-A:9. A Notice of Adjudicative Hearing followed. The adjudicatory hearing was held on 05/10/23 at 9:00 AM. This Final Decision and Order follows.

III. SUMMARY OF THE EVIDENCE:

The Board received the following evidence pursuant to RSA 541-A:33 and Rule 206.03:

a. Exhibits were submitted by Hearing Counsel, numbered as follows:

1. Online Licensing listing for Andrew Ellis
2. Complaint dated November 12, 2021

b. Exhibits were submitted by Respondent, labeled as follows:

- A. None.

c. Testimony was received from:

1. Linda Bartlett, Investigative Paralegal New Hampshire Department of Justice

All exhibits were admitted into evidence as full exhibits after the Presiding Officer determined they were material and relevant. The witness was sworn under oath to her testimony.

IV. PRELIMINARY MATTERS

The Respondent failed to appear for the hearing. The Presiding Officer took administrative notice of the Board's file in this matter. The Board's file shows the Board Administrator mailed the Notice of Hearing to the Respondent by regular and certified mail to the last known address he had provided to the Board, which was found within his licensing profile. Both were returned undeliverable. The Notice of Hearing contains the date, time, and location of the adjudicatory hearing, as well as the items required by RSA 541-A:31, III. It also informs the recipients that the Board's action was initiated based upon a complaint and provides the complainant with the ability to intervene. Hearing Counsel represented that he had two communications with the Respondent in October of 2022. The Respondent was aware of the pending complaint. Hearing Counsel represented that between January 10, 2023, and May 9, 2023, he attempted to contact the Respondent a total of nine (9) times both by phone and via email.¹ Hearing Counsel received no responsive communication.

¹ Two of Hearing Counsel's emails noticed the Respondent of the adjudicative hearing on 05/10/2023.

Based upon the foregoing, the Presiding Officer finds there was compliance with the service requirements under RSA 314-A:10. The Presiding Officer additionally finds that there was “notice reasonably calculated, under all the circumstances, to apprise ... [the Respondent] ... of the pendency of the action and afford ... [him] ... an opportunity to present ... [his] ... objections.” See, i.e., Jones v. Flowers, 547 U.S. 220, 225-26 (2006). The Presiding Officer also finds that Hearing Counsel’s efforts to contact that Respondent demonstrate that “additional reasonable steps” were taken to provide notice to the Respondent. See Id. For these reasons, the Presiding Officer decided to move forward with the hearing in absentia (without the Licensee present), pursuant to Rule 206.25(d). PARTIES AND INTERVENORS HAVE 10 DAYS FROM THE DATE OF THIS ORDER TO FILE ANY WRITTEN OBJECTIONS REGARDING THAT DECISION. RULE 206.26(a).

V. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED

The adjudication went forward. Hearing Counsel held the burden of proof by a preponderance of the evidence with respect to the Issues Presented found at section II(c) of the Notice of Hearing.

(1) Whether or not the Licensee committed a “prohibited act” under RSA 314-A:7(II), when he allegedly practiced without a license on occasion between 01/01/20 and 12/31/21 in violation of RSA 314-A:2, I and Plc 602.04(a).

(2) If The Licensee committed a “prohibited act”, whether and to what extent he should be subjected to one or more of the disciplinary sanctions authorized by RSA 314-A:9 and/or 10, RSA 310-A:1-m, and/or Rules 602.07 and/or 602.08.

Based upon the credible evidence presented at the hearing, the Presiding Officer finds the following facts.

Linda Bartlett, Investigative Paralegal, N.H. DOJ

Ms. Bartlett was sworn in and testified that she is an investigative paralegal at the New Hampshire Attorney General’s Office. Ms. Bartlett testified to reviewing a complaint made against the Respondent

alleging he was tattooing without a license. See Exhibit 2. She represented that after reviewing the complaint she accessed the Office of Professional Licensure and Certifications online licensing portal. The licensing portal represented that Mr. Andrew Ellis (the Respondent) was previously a licensed Body Artist within the State of New Hampshire. See Exhibit 1. Ms. Bartlett stated that the Respondent's license expired December 31, 2019, and he never subsequently renewed or reinstated his license. Ms. Bartlett testified that she was present for during a telephonic interview of the Respondent on October 19, 2022. She recalled that the Respondent represented that he had previously worked at Top Shelf Tattoo on Elm Street in Manchester, N.H. prior to the onset of "Covid 19". She represented that "Top Shelf" was shut down during the Covid State of Emergency beginning in on or about the spring of 2020, along with many other similar establishments. Top Shelf reopened and the Respondent went back to work at the establishment on or about the late summer or fall of 2020. Ms. Bartlett further testified that she was present for a telephonic interview of Mr. Lessard who was the owner of Top Shelf Tattoo on Elm Street in Manchester, N.H. on October 31, 2022. Ms. Bartlett testified that Mr. Lessard confirmed the Respondent worked at his shop. Mr. Lessard represented that he was aware that the Respondent's license had "lapsed" and confirmed he had been working without a license. Mr. Lessard advised the Respondent to "fix" the status of his license which the Respondent never did. As a result, the was Respondent was "let go" from his employ with Top Shelf Tattoo.

VI. DISCUSSION AND FINDINGS OF FACTS/ CONCLUSIONS OF LAW

After reviewing the evidence, drawing all reasonable inferences therefrom, and accounting for the demeanor and credibility of the witness, the Presiding Officer finds, by a preponderance of the evidence, that the Respondent committed a "prohibited act" as defined at RSA 314-A:7 (II) by practicing tattooing without a Body Art license for a period between 01/01/2020 and 12/31/2021 in violation of RSA 314-A:2, I and Plc 602.04 (a).

The Presiding Officer further finds that the Respondent is subject to disciplinary sanctions authorized by RSA 314-A:10, and Rule 602.08.

VII. CONCLUSION AND DECISION:

Pursuant to RSA 314-A:7, II, RSA 314-A:2, I and Rule 602.04(a), the Presiding Officer finds that the Respondent committed a “prohibited act.” The Respondent is hereby **FINED** the amount of FIVE HUNDRED DOLLARS (\$500.00) pursuant to RSA 314-A:10 and Rule 602.08.

DATED: 6/16/2023

_____/s/ Shane D. Goulet, Esq._____
Shane D. Goulet, Esq., Hearings Examiner
Authorized Representative of the Board of Body Art
Practitioners and the OPLC Executive Director
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301