

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

ADVISORY BOARD OF BODY ART PRACTITIONERS

**In Re: Isaac Campbell
Applicant for Body Art License**

Docket No.: 23-BODY ART -006

NOTICE OF DECISION DATED 12/15/2023

Enclosed please find a copy of the Board's Order dated 12/15/2023 relative to:

HEARING FINAL DECISION AND ORDER

MOTIONS/PETITIONS FOR RECONSIDERATION OR REHEARING:

Pursuant to N.H. Code Admin. R. Plc 206.29(a) ("Rules") and RSA 310:14, II, motions/petitions for reconsideration or rehearing shall be filed within 30 calendar days after service of a final adjudicative order. Pursuant to Rule 206.29(b), the Motion/Petition shall: 1) clearly identify points of law or fact that the movant asserts the Board and/or Presiding Officer has overlooked or misapprehended; 2) contain such argument in support of the motion as the movant desires to present; and 3) be served by the movant on all other participants in accordance with Rule 206.11. Pursuant to Rule 206.29, no answer to a motion/petition for reconsideration or rehearing shall be required, but any answer or objection filed shall be delivered to the Presiding Officer's Office within 5 working days following receipt of service of the motion/petition for reconsideration. Pursuant to RSA 541:5, upon the filing of such motion/petition for rehearing or reconsideration, the Board or Presiding Officer shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the Board or Presiding Officer may prescribe.

RIGHT TO APPEAL:

Pursuant to RSA 310:14, III, appeals from a decision on a rehearing and/or motion for reconsideration shall be by appeal to the New Hampshire Supreme Court pursuant to RSA 541. Pursuant to RSA 541:6, within 30 days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the New Hampshire Supreme Court. Pursuant to RSA 310:14, III, no sanction shall be stayed by the Board during an appeal.

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**In Re: Isaac Campbell
Applicant for Body Art License**

Docket No.: 23-BODY ART -006

**FINAL ORDER
AND DECISION - 11/27/23**

I. ATTENDEES:

Administrative Staff and Counsel:

Thomas Pappas, OPLC Hearings Clerk
Teresa Boyer, OPLC Board Administrator
Brenda Golden-Hallisey, OPLC Board Counsel

Presiding Officer:

Nikolas K. Frye, OPLC Hearings Examiner

Parties:

Isaac Campbell, Applicant
Melissa Burleigh, Attorney for Applicant

II. CASE SUMMARY/PROCEDURAL HISTORY:

The OPLC Executive Director, through OPLC licensing, received an Application for a Body Art License from Isaac Campbell, (“Applicant”). Advisory Board Counsel reviewed the application on 10/4/23 and recommended holding a hearing to seek clarification on whether the Applicant practiced without a license. The OPLC Hearings Examiner, acting on behalf of the OPLC Executive Director, then initiated an adjudicative proceeding in this matter. The Board held a final adjudicative hearing on 11/27/23

at 10:00 am est. Pursuant to RSA 310:11, III(b) and Standing Orders 2022-1 and 2023-1, Nikolas K. Frye, Esq., OPLC Hearings Examiner was appointed by the Executive Director as presiding officer.

III. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The Applicant appeared for a hearing because he appeared to have potentially engaged in unlicensed practice. The issues before the Board were:

- (1) Whether the Applicant can demonstrate, by a preponderance of the evidence, that he has not engaged in an activity that violates any of the provisions of RSA 314-A or Plc 600 as required by Plc Rule 601.09(f)(5) (*see* RSA 314-A:2, I *and* RSA 314-A:3), where the chronology of his apprenticeships and license application appear to indicate one or more periods of time in which he practiced without a license.
- (2) Whether the Applicant can demonstrate, by a preponderance of the evidence, that he meets the requirements for a waiver of any or all of 601.04(b)(5)(a). and Rule 601.06 et seq.
- (3) Whether the Applicant can demonstrate, by a preponderance of the evidence, that he is otherwise qualified for licensure pursuant to other law.

NOH at II(c)(1).

Pursuant to Plc Rule 206.24(e), the Applicant had the burden of proving his case by a preponderance of the evidence. The Applicant was sworn in and testified on his own behalf. Additionally, the Board considered his application and accompanying documents, Exhibits 1 and 2 (pictures of text messages between the Licensee and her supervisor), Exhibit 3 (a printout of HB) 507-RB FN and took administrative notice of the Licensee's licensing profile and the General Court website.

The Applicant began his testimony by providing a narrative account of his efforts to apprentice under a supervising tattoo artist in accordance with Board statute and rules between March of 2021 and May of 2023. The Applicant accounted for periods where he was working in other industries when he could not find a supervisor (*see i.e.* Exh. 1). The Licensee admitted that he performed tattooing on himself, his sister, and a couple of friends after his apprentice license expired in May of 2023 while working under Bill Quindley. He stated, however, that most of his accumulated hours there were observation and

working on fake skin. According to the Applicant, he performed tattooing on himself, his sister, and a few friends because he believed HB 507-RB FN was in effect and applied to his situation (*see* Exh. 3). He stated he has no legal training or experience, did not see the portion of the bill that said the Bill would become effective in January of 2024, did not know that the Bill did not pass (he learned that the day of the 11/27/23 hearing when Board Counsel checked the General Court website), and had not sought the advice of counsel. He further clarified that, in accordance with HB 507-RB FN, he told all individuals he practiced on that he was unlicensed. Additionally, he noted that when he learned he was engaging in unlicensed practiced, he ceased doing so immediately. He apologized and said he was acting in good faith when performing the few tattoos he did without an apprentice license.

The Applicant's licensing profile showed that he held apprentice licenses between April 2021 and December 2021 and March 2022 and May 2023.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

After reviewing all the evidence and accounting for the demeanor and credibility of the witness, the Presiding Officer finds the following facts:

1. The Applicant previously held New Hampshire Body Art Apprentice license #3528 from approximately April of 2021 through December of 2021;
2. The Applicant previously held New Hampshire Body Art Apprentice license #3672 from approximately March of 2022 through May of 2023;
3. Between March of 2021 and May of 2023 the Applicant did not practice tattooing without a license;
4. Starting in June of 2023 the Applicant began working at Saints and Sinners Fine Tattoos under owner William Quindley;
5. The Applicant did not seek another apprentice license before starting at Saints and Sinners Fine Tattoos because he believed HB 507-RB FN had passed;
6. The Applicant does not have legal training or experience and did not seek the advice of counsel before relying on HB 507-RB FN;

7. The Applicant did not notice that HB 507-RB FN had an effective date of January 1, 2024;
8. The Applicant did not know until the day of his 11/27/23 hearing that HB 507-RB FN did not pass the legislature;
9. The Applicant only performed tattooing on himself, his sister, and a few friends while working at Saints and Sinners Fine Tattoos;
10. The Applicant told his sister and few friends that he was unlicensed to practice in an effort to comply with HB 507-RB FN;
11. The vast majority of work the Applicant has conducted at Saints and Sinners Fine Tattoos is observation and working on fake skin;
12. Once the Applicant learned that he should not be performing tattooing without a license he immediately ceased doing so;
13. The Application file contains a 09/30/23 written statement from William Quindly stating that the Applicant is his apprentice and has completed all of his hours and is ready to have his practitioner license.

Based upon the evidence presented and the findings of facts made herein, the Presiding Officer renders the following legal opinions (in normal font) and conclusions of law (in bold):

1. The Licensee meets the statutory requirements for licensure as an apprentice contained in RSA 314-A:3, but not the rule-based requirement of Plc Rule 601.09(f)(5).

“An apprentice license shall be issued if an applicant is unable to comply with any of the provisions of RSA 314-A:2. A person shall remain an apprentice for at least one year and until the supervising licensee attests that the apprentice is qualified to become licensed.” RSA 314-A:3. Here, the Applicant is unable to comply with the provision of RSA 314-A:2, III(c). Further, his supervising licensee attests that his is qualified to become licensed. Nonetheless, “[h]as engaged in an activity that violates any of the provisions of RSA 314-A or Plc 600”, Plc Rule 601.09(f)(5), by practicing without a license. *See* RSA 314-A:2, I *and* RSA 314-A:3.

2. Plc Rule 601.09(f)(5) is waivable under Plc 603.01(b).

The Presiding Officer looks to the Advisory Board's substantive waiver provision for the missing rule requirement to see if it applies.

(b) The executive director shall approve a request for waiver if:

- (1) The executive director concludes that authorizing deviation from strict compliance with the rule from which waiver is sought does not contradict the intent of the rule;
- (2) The alternative proposed by the applicant or licensee ensures that the objective or intent of the rule from which waiver is sought will be accomplished; and
- (3) The alternative proposed by the applicant or licensee does not violate any statutory provision.

Plc Rule 603.01(b).

The intent of ensuring that Applicants have not violated any provisions of RSA 314-A or Plc 600s is to ensure that they are of good professional character. Here, the Applicant, without holding a body art license, practiced tattooing on himself, his sister, and a few friends while working at a tattoo parlor because he believed in good faith that he was complying with the law. Moreover, he rectified the situation as soon as he discovered he could not practice without a license. Therefore, the objective or intent of the rule from which waiver is sought is still accomplished and does not violate any statutory provision for licensure. Plc Rule 601.09(f)(5) is waived with respect to the Applicant's unintentional act of practicing without a license.

- 3. Following the substantive waivers as described in the legal opinion under conclusion of law #2 above, the Applicant meets the requirements for licensure as a body art practitioner and therefore his application should be granted.**

IV. CONCLUSION AND DECISION:

Pursuant to RSA 314-A:3, the Presiding Officer hereby grants Isaac Campbell's application for licensure as a body art practitioner.

DATED: 12/15/2023

_____/s/ Nikolas K. Frye, Esq.
Nikolas K. Frye, Esq., Presiding Officer
Authorized Representative of the Mental
Health Practice Board -
New Hampshire Office of
Professional Licensure & Certification

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