

Eff. 11/17/06



Protecting, maintaining and improving the health of all Minnesotans

November 15, 2006

Sheila Marie Amendola
[Redacted]

RE: MDH File Number: 0600048

Dear Ms. Amendola:

Based on my review of the facts and law in this matter, I have determined that you used Physical Agent Modalities (PAMs) in your Occupational Therapy practice without the legally required Minnesota Department of Health (MDH) authorization, in violation of Minnesota Statutes, section 148.6440. I am assessing you a civil penalty in the amount of \$1,147. The assessment of civil penalties is authorized pursuant to Minnesota Statutes, section 148.6448.

This decision will be made final and effective 30 days from the date it is received by you. During that 30-day period, you have the right to challenge this decision in a contested-case hearing, as provided under Minnesota Statutes, Chapter 14. Requests for a hearing should be made in writing and include specific grounds for challenging the Department's decision. If you wish to request a hearing, please send a written hearing request, within 30 days of your receipt of this letter, to:

Susan Winkelmann, Investigations and Enforcement Manager
Minnesota Department of Health
85 East Seventh Place, Suite 220
PO Box 64882
Saint Paul, MN 55164-0882

You may also deliver your request to 85 East Seventh Place, Suite 220, Saint Paul, MN; or fax it to Ms. Winkelmann at (651) 201-3839. If you have any questions about this matter, please contact Ms. Winkelmann at (651) 201-3722.

Sincerely,

A handwritten signature in black ink, appearing to read "Darcy Miner", is written over the typed name.

Darcy Miner, Director
Compliance Monitoring Division

cc: Tom Hiendlmayr, Director of the Health Occupations Program
Susan Winkelmann, Manager, Investigations and Enforcement Unit

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Sheila Marie Amendola
Occupational Therapy Practitioner**

AUTHORITY

1. The Minnesota Department of Health (MDH) has authority to discipline occupational therapists and occupational therapy assistants for violations of law under Minnesota Statutes, section 214.131, subdivision 2, and Minnesota Statutes, section 148.6448, subdivision 3. The types of discipline MDH may impose include public reprimands and the assessment of civil penalties.
2. Effective June 17, 1996, persons not credentialed by the State of Minnesota are prohibited from using the protected titles, "occupational therapy," "occupational therapist," or "OT" alone or in combination with other words or initials to form an occupational title or to indicate or imply that they are credentialed by the MDH as an occupational therapist (OT) or occupational therapy assistant (OTA). An MDH-issued Registration was required for practitioners to use protected titles until May 12, 2000, when it also became illegal to practice as an OT or OTA in Minnesota without first being licensed. Minnesota Statutes, section 148.6403, subdivision 1. In November 1998, rules promulgated by the state required every OT to also obtain Minnesota Department of Health approval to use physical agent modalities (PAMs) before utilizing them in practice. These same PAM approval requirements were codified into statute with the license requirements on May 12, 2000.
3. On January 8, 2003, MDH staff consulted the OT Practitioner Advisory Council about an appropriate penalty for unlicensed practice. MDH determined the penalty as follows: OT practitioners who practice without a license will be assessed a penalty of ten percent of the practitioner's net income during the violation period. MDH shall also assess the costs of investigation.

FINDINGS OF FACT

1. Sheila Marie Amendola (hereinafter "Practitioner") has been a registered or licensed OT in Minnesota since January 24, 2000.
2. Practitioner attended training for physical agent modalities (PAMs) in March and April 1998. Practitioner did not apply for Minnesota Department of Health approval to use

PAMs until February 10, 2006, and the Department approved Practitioner's application for PAMs use on March 6, 2006.

3. Department records show that Practitioner answered "no" to whether she was using PAMs on her initial application in 2000 and on her renewal in 2002. On the 2000 initial application form was the following notice: "PLEASE NOTE: You are responsible for submitting required documentation and gaining approval from the Commissioner prior to independent practice of each of physical agent modality." In 2004, Practitioner indicated on her renewal application that she was using all three types of PAMs. On the 2004 renewal application form was the following notice: "PLEASE NOTE: You are responsible for submitting required documentation separate from your application and gaining approval from the Commissioner prior to independent practice of each type of physical agent modality."
4. In a letter dated February 4, 2004, from the Department, Practitioner was notified that the Department could not process Practitioner's application because Practitioner had disclosed she was using PAMs without being approved by the Department to do so. Practitioner was asked to explain her PAMs answer. Department records show that on February 24, 2004, Practitioner called and the Department sent her information about PAMs and the approval process. On February 26, 2004, the Department received a revised renewal application from Practitioner on which she removed answers about using PAMs and checked "no" to whether or not Practitioner was using PAMs independently. Practitioner included a post-it note that stated "...I included copies of my PAMs training- and will send another copy with the forms you are sending me..." On March 1, 2004, the Department issued Practitioner's license and did not receive any PAMs documentation or forms from Practitioner.
5. On January 18, 2006, the Department received Practitioner's renewal application and on it, Practitioner again indicated she was using all three types of PAMs. By letter dated January 31, 2006, the Department responded and again explained that Practitioner was not approved to use PAMs and to explain her answer. On February 9, 2006, Ms. Kim Ruberg, Licensing Administrator, in the Department spoke to Practitioner and Practitioner told Ms. Ruberg that Practitioner thought the issue had been resolved in the 2004 renewal. Practitioner stated that she remembered receiving a packet of information from the Department about PAMs in February 2004 and that she assumed she was approved because she received her license in March 2004. In this telephone conversation, Practitioner admitted having used PAMs for the past four years.
6. The Department brought this matter to the Occupational Therapy Practitioner Competency Review Committee (CRC) of the Advisory Council on April 27, 2006. The CRC concluded that using PAMs without the required Department approval was similar

to illegally practicing and recommended that Practitioner be assessed a civil penalty calculated like an illegal practice civil penalty.

7. On July 20, 2006, the Practitioner's employer sent the Department information about Practitioner's income during the period between April 15, 2002 to March 5, 2006 when Practitioner used PAMs illegally. During that time period, Practitioner earned \$9,952 in net income.

CONCLUSION

Practitioner did not comply with the requirements under Minnesota Statutes, section 148.6440, because she used PAMs for four years without first being approved by the Department as required by state law.

DETERMINATION

1. Practitioner should pay a civil penalty of \$1,147 representing the economic advantage gained by the violation and to reimburse MDH for costs of investigations and proceedings to date.
2. Practitioner may pay the \$1,147 civil penalty in monthly installments of up to twelve months after the effective date of this action. If Practitioner chooses to make installments, she must notify MDH in writing about her intentions, including how many installments she intends to make, in what amount, and over which time period. Practitioner must send this information to: Susan Winkelmann, PO Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of this document.
3. Each payment will be made by check payable to "State of Minnesota, Treasurer", and mailed to Susan Winkelmann, PO Box 64882, Saint Paul, MN 55164-0882, or any other address specified by MDH. Each payment is due by the last day of each month; however, Practitioner may prepay at any time.
4. The penalty may be referred to the Minnesota Collection Enterprise (MCE), part of the Minnesota Department of Revenue, or any other source for collection, if Practitioner misses a monthly payment by 14 calendar days after the established deadline. When this Order for a penalty becomes public and MDH refers the matter to MCE, MCE is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Practitioner without further notice or proceedings.