Eff. 8/21/07

MINNESOTA MDH DEPARTMENT OF HEALTH

Protecting, maintaining and improving the health of all Minnesotans

August 17, 2007

Ms. Davonne Lee Andersh
[redacted]

RE: MDH File Number: OTC07016

Dear Ms. Andersh:

Based on the facts and law in this matter as described in the enclosed Staff Determination, the Minnesota Department of Health (MDH) has determined that you did not cooperate with an MDH investigation, in violation of Minnesota Statutes, section 148.6448, subdivision 1(10). Therefore, MDH is suspending your occupational therapy assistant license until you cooperate with the investigation and comply with the requirements of the Health Professionals Services Program. This action is authorized under Minnesota Statutes, section 148.6448, subdivision 3(4).

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
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 Kyle Renell at (651)201-3727.

Sincerely,

Darcy Miner, Director
Compliance Monitoring Division

Enclosure

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
Davonne Lee Andersh
Occupational Therapy Assistant

AUTHORITY

1. The Minnesota Department of Health (MDH) has the authority to discipline Occupational Therapy Assistants for violations of Minnesota Statutes, section 148.6448. Pursuant to Minnesota Statutes, section 148.6448, subdivision 3, the types of discipline MDH may impose include suspension of licensure.

2. Pursuant to Minnesota Statutes, section 148.6448, subdivision 2, the commissioner, or the advisory council when authorized by the commissioner, may initiate an investigation upon receiving a complaint or other oral or written information that alleges or implies that a person has violated section 148.6401 to 148.6450.

3. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(10), failure to cooperate with the commissioner or advisory council in an investigation conducted according to subdivision 2.

4. Effective August 1, 2006, Occupational Therapy Practitioners became eligible to participate in the Health Professionals Services Program (HPSP). A memo was sent to all occupational therapy practitioners on December 18, 2006, notifying them of their eligibility to participate in the HPSP program.

FINDINGS OF FACT

1. Davonne Lee Andersh (hereinafter "Practitioner") has been licensed as an occupational therapy assistant (OTA) since May 27, 2004. Her license is currently due to expire on November 30, 2007. Review of Practitioner initial licensure application, dated March 26, 2004, revealed Practitioner answered "yes" to Question 24C, which asked whether she "performed services as an occupational therapist or occupational therapy assistant in an incompetent manner or in a manner that falls below the community standard of care." Practitioner then answered Question 24D with a question mark. Question 24D asked whether she "failed to satisfactorily perform occupational therapy services during a period of provisional licensing." Practitioner included with her application a handwritten statement in which she disclosed that in her first COTA position after graduation, her employer suggested she return to school and that she work in a different field because her work was "under their standards." Practitioner stated she did take additional classes and is working as a nursing assistant. Practitioner further stated she planned to take additional

OTA classes and noted, "I do not have any COTA job lined up as of now, but if an opportunity should arise that I think I would be capable of, I would like to try it. That is why I would like to be licensed." It should be noted that Practitioner's OTA license was inadvertently issued without any inquiry into the above disclosure.

2. On December 21, 2006, Practitioner telephonically contacted MDH staff. Without identifying herself, Practitioner provided her telephone number, disclosed she was an OTA working as a nursing assistant, and inquired about the Health Professionals Services Program (HPSP). Practitioner stated she called HPSP and was told she needed to disclose her diagnosis, but she was uncomfortable doing that. Practitioner then disclosed she was seeing a counselor, involved in a lawsuit, and taking medication.

3. A check of the State of Minnesota White Pages conducted on January 24, 2007, revealed Practitioner is employed as a "Human Services Technician" by the Veterans Home Board in Fergus Falls, MN.

4. By letter dated January 25, 2007, Investigations and Enforcement (I&E) staff notified Practitioner an investigation was being conducted concerning the disclosures she made on December 21, 2006, asked her to answer several questions regarding the disclosures and sign a release authorization. Practitioner's response was due by February 28, 2007.

5. On February 1, 2007, at 07:01 p.m., Practitioner left a voice mail message for I&E staff in which she acknowledged receipt of the January 25th letter and expressed confusion about the letter because she was working as a nurse's aide and not an OTA. I&E staff returned Practitioner's call on February 2, 2007, and explained the investigation was being conducted because the disclosures she made on December 21st raised some concern as to her safety to practice. When Practitioner stated she was not employed as an OTA, I&E staff explained that because she was licensed as an OTA, MDH was required to determine whether she was safe to practice. Practitioner stated she did not want her employer contacted, and I&E staff explained there would be a routine contact with her employer, with no mention of the nature of the investigation.

6. On February 28, 2007, Practitioner telephonically advised she wished to place her license in an "inactive" status because her response was due the following day. I&E staff told Practitioner it was her choice whether or not to cooperate with the MDH investigation, but that if she did not cooperate, there would be consequences, including possibly loss of her license. Practitioner stated she had a "good job, a good salary, and a good reputation" and did not need the OTA license. Practitioner stated she did not want her employer to know about the investigation. I&E staff explained that Practitioner's employer would not be told about the nature of the investigation, but the employer would be contacted. I&E staff again explained that the investigation was being conducted as a result of her disclosures and that MDH needed to determine whether she was safe to practice. Practitioner was asked whether she needed additional time in which to prepare her response, and Practitioner agreed two weeks would be sufficient time.

7. On March 14, 2007, Practitioner contacted I&E staff and stated Credentialing staff told her that her OTA license could not be placed in an "inactive" status. Practitioner stated she did not want her employer to know about the investigation because she really liked her job. I&E staff explained MDH needed to determine whether she was safe to practice because she holds a license issued by the department. Practitioner was told it was her choice whether or not to cooperate, but that if she did not cooperate, disciplinary action may be taken to suspend her license. Practitioner was also told that if she did sign the release authorization, one of the questions her employer would be asked was whether she was the subject of any complaints. Practitioner stated she did not have any complaints against her. I&E staff explained that MDH needed to verify that with her employer and needed to have a signed release from her in order to contact the employer. Practitioner stated she would "think it over". Practitioner was given until the end of the month in which to respond and Practitioner stated she understood.

8. By letter dated March 26, 2007, I&E staff notified Practitioner no response to the January 25th letter had been received. Practitioner was provided with a copy of the letter and asked to respond by April 25, 2007.

9. On March 29, 2007, Practitioner called twice and stated she had finished writing her response but could not locate the release form. I&E staff instructed Practitioner to write out a release to her current employer, but noted that if the employer did not accept the handwritten release, Practitioner would be asked to execute a release form drafted by MDH staff. Practitioner stated she understood, but noted that her response was due the following day. Because Practitioner stated she would be able to mail her response within the next couple days, a new deadline was not set. Practitioner also stated she has never been the subject of a complaint and described herself as "one of the best employees" who regularly shares information she learns at OT continuing education.

10. In a response received April 2, 2007, Practitioner provided responses to all questions asked. Practitioner enclosed with her response a handwritten release authorization addressed to her employer.

11. In a response received on April 16, 2007, Practitioner's employer verified Practitioner's employment as a "Human Service Technician (CNA)" and noted "no formal complaints" had been received concerning Practitioner.

12. By letter dated April 20, 2007, I&E staff directed Practitioner to contact HPSP to determine whether she was eligible to participate in their program.

13. On May 2, 2007, Practitioner telephonically inquired as to why she was being referred to HPSP, since she is "only working as a nurse's aide". I&E staff explained that because she is licensed, she could get a job at any time as an OTA and MDH needs to know that she is safe to practice. Practitioner asked whether there would be any impact on her nursing assistant registration, and I&E staff explained it was her choice whether or not to contact HPSP, but that if she did not contact HPSP, it would be construed as a failure to cooperate, her license would be suspended, and when effective, a copy of the

Determination would be forwarded to the Nursing Assistant Registry. Practitioner stated that "was ridiculous" and asked for, and was provided with, the telephone number for the Nursing Assistant Registry.

14. On May 7, 2007, Practitioner contacted I&E staff and advised she was unsure whether she wanted to go through the HPSP process. I&E staff explained the referral to HPSP process and noted that after the initial evaluation it may be determined that she would not need monitoring. Practitioner stated she did not want to through HPSP monitoring because it would entail quarterly evaluations through her employer. Practitioner noted she called the Nursing Assistant Registry and was told that she would only lose her nursing assistant credential if there was a finding of maltreatment. After I&E staff explained the HPSP process, Practitioner stated she would call HPSP back and try it "once" but that she would not go further if it was going to be a long-term process.

15. By Fax Transmission dated May 9, 2007, HPSP staff notified I&E staff that Practitioner had contacted HPSP and that I&E staff would be contacted once Practitioner had signed a Participation Agreement.

16. On July 24, 2007, Practitioner telephonically contacted I&E supervisory staff and explained she was employed as a nursing assistant, but was keeping up her OTA license. Practitioner referred to a new law which "if you're emotionally screwed up, the State would look into it" and noted that she had seen a counselor. Practitioner admitted she had alcohol issues and that she had been requested to have an alcohol assessment and confirmed she was working with HPSP. Practitioner stated she did not want to undergo the assessment because she was responsible for the cost and could not afford it. Practitioner advised that HPSP staff told her that if she did not cooperate, they would notify MDH. Practitioner repeatedly stated she wanted to "stop" her license. I&E supervisory staff explained there was no statutory mechanism which would enable her to "stop" her license and that the only way that could happen would be for MDH to revoke her license. The I&E supervisory staff explained that if there is a history of either mental health or alcohol issues, MDH must determine whether the practitioner is safe to practice as long as the practitioner holds a current license. Practitioner expressed frustration that she was not allowed to just end her license. I&E supervisory staff explained that if there is discipline against a practitioner, it is posted on the MDH website. Practitioner asked if it would affect her nursing assistant license and was told I&E supervisory staff did not know and could not predict the future. Practitioner was asked to put her concerns in writing to MDH so there would be a record of her intentions. Practitioner stated she would not do that, that I&E supervisory staff should make a note of their conversation.

17. By letter dated July 24, 2007, HPSP staff advised I&E staff that Practitioner had been discharged from their program for failure to cooperate. HPSP staff stated that Practitioner failed to return a release authorization related to a chemical dependency assessment as requested and did not have her assessor contact HPSP staff, which was also requested.

18. In a letter received August 2, 2007, Practitioner claimed she contacted HPSP for more information after she received the HPSP brochure mailed by MDH, and that she was then

"badgered" by HPSP. Practitioner stated she refused to sign a release until she knew the outcome of an evaluation and noted she "basically cannot afford to do this" since "they expect me to pay for everything." Practitioner concluded by stating, "They have put extra stress into my life by harassing me. I am a stable person. I am one of the better workers where I work (I was also in the Army)" and asked MDH staff to "consider this letter."

19. On August 9, 2007, Practitioner left a voice mail message for I&E supervisory staff, in which she asked what was going to happen to her "nurse's aide license". Practitioner asked to be called back. Practitioner also left a second message for I&E staff, in which she asked for a call back. I&E staff returned Practitioner's call, at which time she asked about "the complaint" which had been filed against her. Practitioner explained she was COTA licensed but working as a nurse's assistant and went through an assessment but could not afford to pay for the HPSP program. Practitioner stated she did not understand why "this was happening" to her. I&E staff explained that no complaint had been filed against her, that the investigation was the result of disclosures she made and that MDH needed to determine whether she was safe to practice, since she is licensed by MDH. Practitioner wanted to know what will happen to her nurse's assistant registration, and I&E staff explained that no one in the Health Occupations Program could tell her that since it was a matter between the Practitioner and the Nurse's Assistant Registry. Practitioner was provided with the telephone numbers for the registry.

CONCLUSION

1. The commissioner initiated an investigation, pursuant to Minnesota Statutes, section 148.6448, subdivision 2, upon receiving oral information from Practitioner which implied Practitioner had violated section 148.6401 to 148.6450.

2 Practitioner failed to cooperate with the commissioner in an investigation, pursuant to Minnesota Statutes, section 148.6448, subdivision 1(10), which is a ground for discipline.

DETERMINATION

1. Practitioner's OTA license is suspended until such time as Practitioner successfully completes the HPSP program and is deemed safe to practice.