Effective 12-06-08.
OTA 09003

MINNESOTA
MDH
DEPARTMENT OF HEALTH

Protecting, maintaining and improving the health of all Minnesotans

November 14, 2008

Deanna Joy Caudillo
[redacted]

RE: Your Occupational Therapy Practitioner Applications

Dear Ms. Caudillo:

Based on my review of the recommendation by Department Staff, I have determined that you have failed to meet the requirements to obtain a license as an Occupational Therapist. I am therefore denying your applications received September 22 & September 23, 2008. This action is authorized pursuant to Minnesota Statutes, section 148.6448 subdivision 3 (1), which authorizes disciplinary action based on a practitioner's discipline for conduct in the practice of occupational therapy, in this or another jurisdiction, as described in Minnesota Statutes, section 148.6448, subdivision 1 (9).

You have the right to challenge this decision in a contested-case hearing as provided under Minnesota Statutes, Chapter 14. Requests for a hearing must be made in writing and include specific grounds for challenging the Department's decision. If you wish to request a hearing, please send, deliver, or fax a written hearing request, within 30 days of the date of this letter, to:

Thomas R. Hiendlmayr, Director
Health Occupations Program
Minnesota Department of Health
P.O. Box 64882
St. Paul, Minnesota 55164-0882
Fax: (651) 201-3839

If you have any questions about this matter, please contact Kyle Renell at (651) 201-3727.

Sincerely,

Darcy Miner

Darcy Miner, Director
Compliance Monitoring Division

cc: Tom Hiendlmayr, Director, Health Occupations Program
Kyle Renell, Staff Attorney, Health Occupations Program

HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH

A Determination In the Matter of
Deanna Joy Caudillo
Occupational Therapy Practitioner Applicant

AUTHORITY

1. The Minnesota Department of Health (MDH) has the authority to discipline Occupational Therapists 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 refusal to grant licensure.

2. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(1), Minnesota Statutes, section 148.6448, subdivision 1(1), the intentional submission of false or misleading information is a ground for discipline.

3. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(3), performance of occupational therapy services which falls below the community standard of care is a ground for discipline.

4. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(9), discipline for conduct in the practice of an occupation by the State of Minnesota or another jurisdiction, if any of the grounds for discipline are the same or substantially equivalent to those in section 148.6401 to 148.6450, is a ground for discipline.

5. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(10), failure to cooperate with investigations of the commissioner is a ground for discipline.

6. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(12), engaging in dishonest, unethical, or unprofessional conduct in connection with the practice of occupational therapy that is likely to deceive, defraud, or harm the public is a ground for discipline.

7. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(13), a demonstration of a willful or careless disregard for the health, welfare, or safety of a client is a ground for discipline.

8. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(17), engaging in abusive or fraudulent billing practices is a ground for discipline.

FINDINGS OF FACT

1. Practitioner's application for permanent OT licensure, dated 08/28/08, was received on 09/22/08. Practitioner made the following disclosures:

   A. She has been employed as a "behavior therapist" by "Lazarus Project" in Minnetonka, MN, since August 2007. All prior occupational therapy employment was in the State of California. Practitioner specifically stated she was not employed in Minnesota because she is not licensed as either an occupational therapist or an occupational therapy assistant and noted her title is "behavior therapist".

   B. Practitioner indicated previous occupational therapy credentials as follows:

      i. California: "OTR/L" **expired**, issued 02/28/03 and expired 08/31/03 (emphasis added). Practitioner's credential was verified through information received from the CA Board of Occupational Therapy, which advised Practitioner's license was actually **revoked** on 04/28/05. Additional details below.

      ii. New Mexico: "OTR/L" expired issued 05/97 and expired 10/01/99. Practitioner's credential was verified through a fax received from the NM Regulation and Licensing Department, which stated she was licensed as an occupational therapist from 11/07/97 to 10/01/99, with no derogatory information noted.

   C. Regarding Question 13, which asks about action taken against the applicant or their right "to practice occupational therapy in this, or another state or jurisdiction, either through revocation, suspension, restriction, limitations, conditions, reprimand or any other means"?

      i. Practitioner answered "no" to Question 13A, which asks about actions in process.

      ii. Practitioner answered "yes" to Question 13B, which asks about past actions. Practitioner included the following: "I was accused of committing fraud. My license to practice occupational therapy was revoked in California."

   D. Practitioner answered "no" to Questions 14A and 14B, which ask whether action either is or has ever been taken against the Practitioner by the National Board for Certification in Occupational Therapy (NBCOT).

   E. Practitioner answered "yes" to Question 18, which asks "have you had an order related to the practice of occupational therapy entered against you in State or Federal court; included a conciliation court judgment or disciplinary order. Practitioner also provided the case number and the address of the Office of Administrative Hearings.

   F. In response to Question 20H, which asks about discipline in the practice of an occupation, "...if any of the grounds for discipline are the same or substantially equivalent to those in Minnesota Statutes §§148.6401 to 148.6450", Practitioner initially answered "yes", then changed her answer to "no" and added "final answer after reviewing statutes."

G. Practitioner enclosed the following documentation with her application:

i. Two letters of support addressed to "To Whom It May Concern" and dated February 2003.

a. The first letter was written by an individual who identified herself as a parent of one of Practitioner's juvenile clients. The parent stated Practitioner arrived at each session "as scheduled", provided the parent with information about the IEP process, introduced the parent to an attorney who "handled my IEP needs", and provided "exceptionally informative" and detailed reports. The parent claimed Practitioner was "getting the shaft for the involvement that she has had in my daughters' case" [sic] and Practitioner "has been very honest when it comes to my daughters needs and refused to alter reports to fit the needs of the district versus the needs of the child."

b. The second letter was written by a special education teacher who stated Practitioner provided services to several of her students. The teacher stated her students were always excited when they were to receive services from Practitioner. The teacher also stated Practitioner demonstrated flexibility; always arrives on time, sometimes early; updated the teacher on student progress; attended every IEP conference; informed her teams when she is going to be late; listened to parents' input about student progress; and was willing to teach the teacher about OT services.

ii. In Practitioner's letter of explanation to MDH Credentialing staff, dated September 19, 2008, she stated, "it is my intention to answer in full detail the questions within the application marked as question (13) and (18)."

a. Regarding Question 13B: Practitioner stated she was notified by a parent that her services were no longer desired without any explanation. Her supervisor advised she was under investigation by the school district, which Practitioner claimed was in "retaliation" for statements Practitioner made in an IEP meeting. Practitioner stated she began gathering letters of support from parents and teachers. Practitioner claimed that at no time was she consulted regarding client progress, asked for updated treatment reports, or given a chance for closure with clients and families. Practitioner stated she gave a statement to an investigator in October 2003. Practitioner complained that when the hearing was scheduled, she was not told who would be there, what evidence was to be presented, or whether formal representation was recommended. Practitioner stated she went to the hearing alone because she did not have the financial resources for legal counsel, answered questions, and listened to the testimony. Practitioner stated she chose not to renew her NBCOT certification in March 2005 because she did not know the outcome of the hearing, which she deemed "an inappropriate decision". Practitioner advised that in April 2005 her license was "suspended" and made eligible for review in three years. Practitioner claimed she was "never given an opportunity to meet with the school district personnel who were responsible for the allegations." Practitioner further explained she began to work for the school district in May 2000, assumed a full caseload and was instructed she would "only be required to write quarterly progress notes and reports for the IEP meetings which took place annually." Practitioner stated that by January 2002 she knew the school personnel and did not always sign in, but would often just pick up a visitor's badge and proceed to the classroom of the student. Practitioner claimed she "now recognize[s] that a distinct paper trail is important to document my whereabouts, lest allegations surface to contradict the facts of my treatment schedule. I was never instructed by my supervisors or any other person within the school district to sign the students in and out with the teacher or other adult in the classroom. I provided services either within the classroom setting or somewhere else on school grounds. I always informed the teacher where we were going if we left the classroom in case an emergency arose and we had to be located." "At the time these allegations surfaced I took immediate steps to ensure that there was significant paperwork to corroborate my treatment sessions with the students. I believed that the teachers and other personnel knew my level of commitment to each and every student that I served. At the time I was more concerned about the quality and depth of my treatment sessions with the students than I was about sign in sheets and a highly visible paper trail." Regarding the need for proper recordkeeping, the Practitioner stated, "I have learned a hard lesson about paper work and documentation. For as much as I don't like it I know it is a necessary part of my job. I realize that without it I cannot document the progress that I see but others may not. I recognize that we live in a world that mandates insurance companies take a long look at what they are paying for and if they do not see the numbers they want they will stop funding."

b. Regarding Question 18: Practitioner described the administrative hearing and stated she did not have representation because she could not afford it. Practitioner also stated that during the hearing she "listened attentively but without a legal background I was not able to defend myself appropriately". Practitioner advised she received the determination in April 2005 by which her license was to be "...suspended and would be up for renewal consideration in 3 years. I accepted the decision because I had no money to fight these accusations that were laid upon me. I regret not being able to have lawyer to represent me in the hearing but after seeing the costs of the attorney fees that were incurred I had no way of coming up with almost ten thousand dollars to defend myself."

2. On September 22, 2008, a Verification of Credential was received from the California Board of Occupational Therapy (CBOT). According to the information provided, Practitioner's license was issued on February 28, 2003, and revoked effective April 28, 2005. The Board enclosed copies of its Decision and the Decision of the California Office of Administrative Hearings, which included the following information:

A. Practitioner was employed as an independent occupational therapy contractor in a school setting from July 2000 to February 2003.

B. Practitioner failed to provide occupational therapy services to two students, but billed for the therapy sessions not provided.

C. Practitioner's employer initiated an investigation when parents complained. The employer agreed to reimburse the school district $1,700, filed a complaint with the CBOT, and expressed concern about Practitioner's billing practices.

D. A CBOT audit determined Practitioner "failed to provide therapy to at least two students and falsely submitted billing statements"; that during 2002 Practitioner billed "for at least five sessions in September, six sessions in October, four sessions in November, and four sessions in December 2002, when she did not provide the therapy."

E. One parent testified Practitioner failed to provide occupational therapy to her son during the months of September through December 2002. The mother stated her son has Downs Syndrome and needed occupational therapy twice a week, pursuant to his Individualized Education Plan. The mother claimed Practitioner told her she would provide the therapy at school and was later told by her son's teacher that her son was not receiving therapy at school. The child's teacher testified that Practitioner failed to come to the classroom during the months of September through December 2002 and claimed that Practitioner told her that she was providing therapy at children's homes.

G. Practitioner's employer questioned Practitioner's truthfulness and noted that some clients were "regional center babies at high risk for development delays". The employer stated Practitioner would "fail to keep appointments, cancel at the last minute, or show up several hours late." The employer noted receipt of complaints about Practitioner "failing to keep appointments and showing up late" and the employer had "many talks" with Practitioner about her "unprofessional behavior".

H. The employer alleged Practitioner's recordkeeping fell below "the standard of care for occupational therapists." Specifically, Practitioner "failed to take notes of the client's progress", "...failed to memorialize the dates of the therapy sessions", "kept no record of her billing sheets", and "had no documentation to support her billing". It was noted that the dates Practitioner "claimed she provided therapy often did not coincide with the visitor sign-in sheets at the school's main office." In addition, Practitioner sometimes claimed a child was absent on a particular day and she made up a session on another day, but a check of school attendance sheets determined the child was never absent on the claimed days.

I. Practitioner neither testified nor presented any evidence on her own behalf during the hearing.

J. A comparison of statements Practitioner made to her employer, the auditor, the teacher, and parents showed inconsistencies. The Administrative Law Judge noted Practitioner "...appeared to have woven an intricate web of lies to many people.

She told the teachers that the therapy was provided at home. She told the parents that the therapy was provided at school. [She told the employer] the children were absent on the days she went to [the school]". "She told the auditor that she made up the therapy on different days" and that "...she couldn't understand why the mother didn't remember seeing her at her home." Practitioner told the auditor "the teacher was flaky because she did not remember seeing [Practitioner] in the classroom."

K. The Administrative Law Judge determined: Practitioner "...engaged in the unethical, unprofessional and fraudulent practice of billing for therapy sessions which were not provided. These acts are substantially related to the qualifications, functions, and duties of an occupational therapist." Further, that Practitioner "fabricated an elaborate scheme to hide her lies. She defrauded multiple people and vulnerable children." In addition, Practitioner "intentionally failed to provide essential occupational therapy for at least two children with special needs" and "deprived these children of desperately needed services in a very critical period of their development." The Administrative Law Judge concluded, "The public interest cannot be protected if [Practitioner] maintains her license."

3. Practitioner's application for temporary OT licensure, dated September 22, 2008, was received on September 23, 2008. Regarding the submission of her full license application, Practitioner stated she "mailed this information in separately." Practitioner stated she was not practicing as an occupational therapist "at this time" because she was not licensed in the State of Minnesota. Practitioner enclosed a copy of her NBCOT certification, which indicated she was initially certified on September 20, 1997, and valid through March 31, 2011.

4. A NBCOT Certification of Verification, dated September 16, 2008, and received on September 25, 2008, confirmed the information provided by Practitioner with her temporary application. On October 8, 2008, NBCOT staff advised Practitioner has been served with a notice of investigation and her response is due by the end of the month. NBCOT staff also confirmed Practitioner's receipt of an OT degree from Boston University and noted that a NBCOT suspension would be a permanent action.

5. On October 15, 2008, CBOT staff advised that OT licensure was effective in California in January 2003 and Practitioner was one of thousands who applied during the initial period. CBOT staff noted all of Practitioner's bad acts occurred in 2002 and were the basis of her revocation. It was noted that Practitioner may apply for reinstatement after three years, but it is not a "given" that she will be re-licensed. Practitioner will be required to petition for reinstatement and appear before CBOT and explain what she has done to remediate the situation.

ISSUES

1. **Whether Practitioner correctly answered Question 20H, regarding disciplinary action related to disciplinary grounds same or substantially equivalent to those in Minnesota Statutes §§148.6401 to 148.6450.** Practitioner initially answered Question 20H "yes", but changed her answered to "no" and stated "no" was her "final answer after

reviewing statutes." According to the decision of the CBOT Administrative Law Judge (ALJ), there was cause to discipline Practitioner on three separate grounds.

The ALJ first cited "unprofessional conduct" pursuant to California Business and Professions Code section 2570.28(a). California law defines unprofessional conduct as including, among other things: "(1) incompetence or gross negligence in carrying out usual occupational therapy functions"; and (2) "repeated similar negligent acts in carrying out usual occupational therapy functions". The California law is substantially similar to Minnesota Statutes, section 148.6448, subdivision 1(3), which requires a practitioner to perform occupational therapy services in a competent manner which does not fall below the community standard of care. The California law is also substantially similar to Minnesota Statutes, section 148.6448, subdivision 1(12), which cites as a ground for discipline a practitioner who engages "in dishonest, unethical, or unprofessional conduct in connection with the practice of occupational therapy that is likely to deceive, defraud, or harm the public."

The ALJ also cited "committing fraudulent acts substantially related to the qualifications functions and duties of an occupational therapist" pursuant to California Business and Professions Code section 2570.28(h), as a cause for discipline. Again, the California law is substantially similar to Minnesota Statutes, section 148.6448, subdivision 1(12), which cites as a ground for discipline a practitioner who engages "in dishonest, unethical, or unprofessional conduct in connection with the practice of occupational therapy that is likely to deceive, defraud, or harm the public."

Finally, the ALJ cited "making grossly incorrect entries in a patient record or any other record", pursuant to California Business and Professions Code section 2570.28. The Minnesota statute related to occupational therapy practice contains no equivalent prohibition. However, recordkeeping and billing violations have been considered violations of Minnesota Statutes, section 148.6448, subdivisions 1(3) and (12), outlined above.

Therefore, Practitioner should have answered Question 20(H) in the affirmative because she was disciplined by the State of California for conduct in the practice of occupational therapy which is substantially equivalent to that found in Minnesota Statutes, sections 148.6401 to 148.6450.

2. **Whether Practitioner's conduct would have been a violation of Minnesota Statutes, section 148.6401 to 148.6450, thereby barring her from occupational therapy practice in the State of Minnesota.** According to the information received from the CBOT, an audit conducted by her employer determined Practitioner billed for 19 occupational therapy sessions during the period from September 2002 to December 2002, for which she did not provide any services. Furthermore, Practitioner provided contradictory information to different parties involved in the misconduct, including parents, teachers, her employer, and the auditor. Practitioner's conduct constitutes violations of the following:

1. Minnesota Statutes, section 148.6448, subdivision 1(1), the intentional submission of false or misleading information is a ground for discipline. When questioned about her billing practices during the CBOT investigation, Practitioner provided conflicting versions. Furthermore, on her application for permanent licensure in Minnesota, in answer to Question 11 regarding credentials issued by other jurisdictions, Practitioner stated her status of her California license to be "expired" as of August 31, 2003, when in fact her license was revoked on April 28, 2005. Furthermore, the original expiration date was scheduled for August 31, 2005.

2. Minnesota Statutes, section 148.6448, subdivision 1(3), which requires an occupational therapist to perform in a competent manner which does not fall below the community standard of care. According to the NBCOT Code of Conduct, which is cited by members of the MDH OTP Advisory Council Competency Review Committee as a measure of the community standard of care, practitioners are required to maintain "...high standards of integrity and professional conduct and accept responsibility for their actions." Principle 3 of the NBCOT Code further requires practitioners to "act in an accurate, truthful, and complete manner in all activities relating to their education, professional work, and research." Principle 4 of the NBCOT Code requires practitioners to comply with the laws, regulations, and standards governing professional practice in the jurisdictions where they provide services. Practitioner failed to act in an accurate and truthful manner when she failed to provide occupational therapy services for which she submitted billing. Practitioner also failed to act in an accurate and truthful manner when she provided inconsistent statements to parents, teachers, her employer, an auditor, and on her MDH application for permanent licensure.

3. Minnesota Statutes, section 148.6448, subdivision 1(7), cites as a ground for discipline for conduct in the practice of an occupation by the state of Minnesota or another jurisdiction, if any of the grounds for discipline are the same or substantially equivalent to those in section 148.6401 to 148.6450. As noted previously, Practitioner was determined by the CBOT to have violated multiple sections of the California Business and Professions Code section 2570.28. Comparison of the California Business and Professions Code section 2570.28 and Minnesota Statutes, sections 6401 to 6450 determined that Practitioner was disciplined for conduct in the practice of occupational therapy in the State of California which is substantially equivalent to Minnesota law. Specifically, Practitioner's conduct in the State of California was unprofessional; fell below the community standard of care, and fraudulent and substantially equivalent to Minnesota Statutes, section 6448, subdivisions 1(3) and (12).

4. Minnesota Statutes, section 148.6448, subdivision 1(10), requires practitioners to cooperate with investigations of the commissioner. Practitioner was investigated by the CBOT for conduct related to occupational therapy. As noted by the ALJ, Practitioner chose not to testify in her own behalf, wove "an intricate web of lies to many people", and "fabricated an elaborate scheme to hide her lies".

5. Minnesota Statutes, section 148.6448, subdivision 1(12), cites as a ground for discipline a practitioner's engaging in dishonest, unethical, or unprofessional conduct in connection with the practice of occupational therapy that is likely to deceive, defraud, or harm the public. The CBOT audit determined Practitioner failed to provide therapy to at least two students and falsely submitted billing statements to her employer for the two students. The audit concluded there were at least 19 sessions billed for but not provided. The ALJ found that when she was questioned by her employer, Practitioner made "numerous excuses for not providing occupational therapy to many clients". The employer noted some of the clients at issue were "regional center babies who were at high risk for development delays" and stated Practitioner "would fail to keep appointments, cancel at the last minute, or show up several hours late". The employer categorized Practitioner's conduct as "unprofessional". The employer also presented "unrebutted" testimony that Practitioner's recordkeeping "fell below the standard of care for occupational therapists". It was determined Practitioner "...failed to take notes of the client's progress", "failed to memorialize the dates of the therapy sessions", "kept no record of her billing sheets", "had no documentation to support her billing", claimed she provided therapy on dates which often did not coincide with the visitor sign-in sheets at the school's main office, "claimed that the child was absent on a particular day, and that she made up the session on a later date" when it was later determined the child was never on those dates. The ALJ noted that Practitioner "defrauded multiple people and vulnerable children", "intentionally failed to provide essential occupational therapy for at least two children with special needs", and "deprived these children of desperately needed services at a very critical period of their development."

6. Minnesota Statutes, section 148.6448, subdivision 1(13), cites as a ground for discipline a demonstration of a willful or careless disregard for the health, welfare, or safety of a client. As previously noted, Practitioner was determined to have falsely submitted billing statements for at least two students for whom she did not provide services. As noted by the ALJ, Practitioner "defrauded multiple people and vulnerable children", "intentionally failed to provide essential occupational therapy for at least two children with special needs", and "deprived these children of desperately needed services at a very critical period of their development." Practitioner thereby showed disregard for the welfare of her clients, who were special needs children.

7. Minnesota Statutes, section 148.6448, subdivision 1(17), cites as a ground for discipline engaging in abusive or fraudulent billing practices. The CBOT audit determined Practitioner failed to provide therapy to at least two students and falsely submitted billing statements to her employer for the two students. The audit concluded there were at least 19 sessions billed for but not provided.

CONCLUSION

1. Practitioner incorrectly answered Question 20H on her permanent licensure application.

2. Practitioner's California occupational therapy license was revoked for conduct which, if committed in the State of Minnesota, would be grounds for disciplinary action.

3. Pursuant to Minnesota Statutes, section 148.6488, subdivision 3, refusal to grant a license is an action the commissioner may take where grounds for discipline have been determined.

DETERMINATION

1. Practitioner's application for OT licensure should not be granted.