

Effective 02/29/12



Protecting, maintaining and improving the health of all Minnesotans

January 27, 2012

Erin Cynthia Commerford

RE: MDH File Number: OTA12007

Dear Ms. Commerford:

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 used physical agent modalities without prior approval, in violation of Minnesota Statutes, section 148.6440, subdivision 2. Therefore, the Department is reprimanding you and assessing you a civil penalty in the amount of \$334. This action is authorized pursuant to Minnesota Statutes, sections 214.131, subdivision 2; and 148.6448, subdivision 3.

This decision will be made final and effective 30 days from the date it is received by you. You may choose to accept the discipline by paying the assessed civil penalty and sending a check, payable to "Treasurer, State of Minnesota" or you may appeal. 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:

Tom Hiendlmayr, Director of the Health Occupations Program
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 Mr. Hiendlmayr at (651)201-3839. If you have any questions about this matter, please contact Kyle Renell at (651)201-3727.

Sincerely,

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

Darcy Miner, Director
Compliance Monitoring Division

Enclosure

cc: Tom Hiendlmayr, Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Erin Cynthia Commerford
Occupational Therapy Assistant**

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. Pursuant to Minnesota Statutes, section 148.6440, subdivision 2, a practitioner must provide documentation of having met the educational and clinical requirements for the use of physical agent modalities (PAMs) and wait until approval is granted, before the use thereof.
3. 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.
4. 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.
5. On April 27, 2006, the MDH brought the issue of unauthorized use of PAMs to the Competency Review Committee (CRC) of the Occupational Therapy Practitioner Advisory Council. The CRC concluded that using PAMs without prior approval of the Commissioner as required by statute was illegal practice and recommended PAMs violations be sanctioned with a disciplinary penalty based on the same calculation as that used for illegal practice, plus costs of the investigation.

FINDINGS OF FACT

1. Erin Cynthia Commerford (Hereinafter "Practitioner") has been credentialed as an occupational therapy assistant from June 1, 1998, to November 28, 1009; from April 21, 1999, to November 30, 2000; from July 13, 2011, to November 30, 2003; from September 25, 2009, to November 24, 2009; from December 14, 2009, to the present. Practitioner's license is currently due to expire on November 30, 2013. Practitioner has not yet received approval to use PAMs.
2. Review of Practitioner's credentialing file revealed Practitioner answered "no" to the PAMs section on her 2009 renewal application, dated September 9, 2009. The following notice was included in the 2009 PAMs section: **"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."** [emphasis in the original] Practitioner included with her 2009 renewal a Continuing Education Report dated September 9, 2009. Practitioner claimed 19.5 credit hours for a course entitled "Physical Agent Modalities for Occupational Therapists presented by Jerline Carey from July 17, 2009, to July 19, 2009.
3. Practitioner's 2011 renewal application was received on October 28, 2011. In response to the Section D-PAM Section, Practitioner answered "yes" to Question 1, which asks "Have you been approved to use physical agent modalities in your practice?" In response to question 2, which asks applicants to check the types of PAMs used in their practice, Practitioner checked the following: superficial physical agent modality, ultrasound, and electrotherapeutic devices. Practitioner also stated her supervisor was the instructor under whom she completed PAMs training.
4. By letter dated November 17, 2011, Practitioner was notified that an investigation was being conducted concerning her use of PAMs prior to approval. In her response received on December 16, 2011, Practitioner advised she was unable to locate any documentation that she received approval to use PAMs. Practitioner stated she used diathermy, e-stims, and paraffin in her practice but had discontinued use of all PAMs after speaking with Credentialing staff. Practitioner stated she mistakenly believed that her completion of a PAMs continuing education course was sufficient if she worked under supervision. Practitioner further stated that she was in the process of applying for PAMs approval.
5. By letter dated January 4, 2012, Practitioner's employer reported Practitioner has been continually employed since September 2009 and provided a list of her supervisors and all PAMs usages by Practitioner.

CONCLUSION

1. Practitioner did not comply with the requirements under Minnesota Statutes, section 148.6440, subdivision 2, because she used PAMs without first being approved by the MDH as required by state law.

DETERMINATION

1. Practitioner is hereby reprimanded.
2. Practitioner should pay a civil penalty of \$334, representing the economic advantage gained by the violation and to reimburse MDH for costs of investigations and proceedings to date.