



effective
12/20/01

Protecting, maintaining and improving the health of all Minnesotans

November 20, 2001

Ms. Elisabeth Marie Kelliher
[REDACTED]

RE: MDH File Number OTC-99064

Dear Ms. Kelliher:

Based on my review of the recommendation by Department staff, a copy of which is attached, I have determined to grant you conditional licensure as an Occupational Therapist. To remove the condition, you must complete the NBCOT Plan of Action and request NBCOT notify Department staff of your completion. This decision is based on my conclusion that you have: performed services of an occupational therapist in an incompetent manner or in a manner that fell below the community standard of care, pursuant to Minnesota Statutes, Section 148.6448, Subd.1(3); and that you were disciplined for conduct in the practice of an occupation by a national professional association, and the grounds for discipline were the same or substantially equivalent to those in Sections 148.6401 to 148.6450, pursuant to Minnesota Statutes, Section 148.6448, Subd.1(9).

If you agree with this decision, please sign, date, and return the enclosed document; a return envelope is also enclosed for your convenience. A copy of the signed document will be sent to you by return mail. However, you do have the right to challenge this decision in a contested-case hearing, pursuant to 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, deliver, or fax a written request, within 30 days of receipt of this letter, to:

Susan Winkelmann, Investigations and Enforcement Manager
Minnesota Department of Health
121 East Seventh Place, Suite 400
PO Box 64975
Saint Paul, MN 55164-0975
Fax: 651/282-5628

If you have any questions about this matter, please contact Kyle Renell at 651/282-5625.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Giese".

David J. Giese, Director
Health Policy and Systems Compliance Division

HEALTH OCCUPATIONS PROGRAM
STAFF RECOMMENDATION
RE: In the Matter of Elisabeth Marie Kelliher

Health Occupations Program
DEC 20 2001
Minnesota Department of Health

AUTHORITY

1. The Minnesota Department Of Health (MDH) has authority to discipline occupational therapists for violations of law under Minnesota Statutes, Section 148.6448. The type of discipline MDH may impose includes refusal to grant or renew licensure, approval of licensure with conditions, or any reasonable lesser action including, but not limited to, reprimand or restriction on licensure.
2. A determination that a licensee has performed services of an occupational therapist or occupational therapy assistant in an incompetent manner or in a manner that falls below the community standard of care is grounds for denial of licensure or discipline, pursuant to Minnesota Statutes, Section 148.6448, Subd.1(3).
3. A determination that a licensee has been disciplined for conduct in the practice of an occupation by the State of Minnesota, another jurisdiction, or a national professional association, if any of the grounds for discipline are the same or substantially equivalent to those in Sections 148.6401 to 148.6450, is grounds for denial of licensure or discipline, pursuant to Minnesota Statutes, Section 148.6448, Subd.1(9).

FINDINGS OF FACT

1. On September 10, 1996, Ms. Kelliher's application for registration as an Occupational Therapist was approved.
2. By letter dated April 15, 1998, MDH staff provided Ms. Kelliher with a renewal application and informed her that she needed to submit a completed renewal application by May 31, 1998, to maintain her registration
3. By letter dated July 9, 1998, MDH staff informed Ms. Kelliher that her registration had expired on June 30, 1998.
4. On July 24, 1998, MDH staff received Ms. Kelliher's renewal application and payment. Her license was renewed the same day.
5. By letter dated July 24, 1998, MDH staff notified Ms. Kelliher that the renewal of her registration had been approved.
6. By letter dated September 30, 1998, MDH staff notified Ms. Kelliher of the determination that she had used a protected title in violation of Minnesota Rules

Part 4666.0020, Subpart 26 and Minnesota Rules Part 4666.0030. Ms. Kelliher was assessed a fine in the amount of \$35.27.

7. On April 20, 1999, a complaint was telephonically received, alleging that Ms. Kelliher had engaged in billing fraud. The complainant further alleged that approximately 40 clients had been affected by Ms. Kelliher's failure to obtain physician orders and complete charting.
8. By letter dated May 12, 1999, the complainant reiterated the allegations outlined on April 20th and stated that Ms. Kelliher had submitted Medical Assistance billing without a current physician's order, plan of care, or daily/weekly documentation, which was in violation of Minnesota Medical Assistance rules. The complainant also noted that Ms. Kelliher had received training on standards of conduct, including billing practices.
9. By letter dated July 27, 1999, the Minnesota Department of Human Services (DHS) issued Ms. Kelliher's former employer a Notice of Agency Action related to documentation problems in rehabilitation services provided by Ms. Kelliher. Ms. Kelliher's former employer was ordered to pay \$93,912.89 that was considered an overpayment of Minnesota Health Care Program funds. By letter dated August 30, 1999, the amount was reduced to \$77,922.75.
10. By letter dated September 10, 1999, the National Board for Certification in Occupational Therapy, Inc. (NBCOT), notified Ms. Kelliher that she was the subject of a complaint investigation being conducted by the NBCOT Disciplinary Action Committee [hereinafter "The Committee"] and related to Ms. Kelliher's billing for services provided without a physician's order and with no daily or weekly documentation. Ms. Kelliher was asked to respond to the allegations by October 11, 1999.
11. By letter dated May 18, 2000, NBCOT informed Ms. Kelliher that the Committee had reached a preliminary determination. The Committee determined that Ms. Kelliher's actions violated the NBCOT Grounds for Discipline; specifically, unethical behavior and "otherwise violating the prevailing standards of the profession relating to the safe, proficient, and/or competent practice of occupational therapy". The Committee further determined that the appropriate sanction would be probation for one-year, during which time Ms. Kelliher would be subject to fulfillment of a Plan of Action. According to the NBCOT Plan of Action, Ms. Kelliher must be directly supervised by an experienced occupational therapist. Meetings between Ms. Kelliher and the supervisory occupational therapist will be on a weekly basis throughout the one-year probationary period and include chart and billing form audits, discussion of documentation and billing issues or discrepancies, discussion of Ms. Kelliher's schedule, and discussion related to professional ethics.

12. On June 16, 2000, Ms. Kelliher agreed to the conditions outlined in the May 18, 2000, NBCOT letter.
13. By letter dated June 30, 2000, MDH staff informed Ms. Kelliher that her license as an occupational therapist had expired on June 29, 2000, and that she could neither practice as, nor use the title of, occupational therapist.
14. By letter dated June 27, 2001, Ms. Kelliher submitted an application for "relicensure" as an occupational therapist. Ms. Kelliher acknowledged that she had been the subject of a NBCOT investigation and stated that she had been working outside the occupational therapy field.
15. By letter dated July 5, 2001, MDH staff requested Ms. Kelliher provide additional information related to prohibited acts.
16. By letter dated July 16, 2001, MDH staff informed Ms. Kelliher that her response to the July 5, 2001, had not yet been received.
17. By letter dated July 26, 2001, NBCOT provided MDH with a copy of its investigative file and advised that Ms. Kelliher would begin to address the requirements in the NBCOT Plan of Action once she is licensed. Review of the NBCOT investigation revealed the following:
 - a. Ms. Kelliher was employed as an occupational therapist from 1995 to November, 1998. Ms. Kelliher was terminated after an audit determined that Ms. Kelliher had failed to complete required documentation on many clients.
 - b. Ms. Kelliher had received training in documentation policies and procedures. During regular visits with her supervisor, Ms. Kelliher failed to express concern about her charting.
 - c. Ms. Kelliher admitted to falling behind in her documentation, but denied that it had been done intentionally or deceitfully.
 - d. By letter dated December 13, 2000, NBCOT instructed Ms. Kelliher to submit the resume of her proposed supervisor for approval by the Committee.
18. By letter dated August 13, 2001, MDH staff informed Ms. Kelliher that her response to the July 5th request still had not been received. Ms. Kelliher was asked to submit her response by September 12, 2001.
19. By letter dated September 7, 2001, Ms. Kelliher disclosed that she had "performed services as an occupational therapist... in an incompetent manner or in a manner that falls below the community standard of care", that she had violated Minnesota Statutes §§148.6401 to 148.6450, and that she had been disciplined for conduct protected by Minnesota Statutes §§148.6401 to 148.6450. Ms. Kelliher further disclosed that she had been the subject of a NBCOT

investigation, which determined that unethical behavior had occurred. Ms. Kelliher also noted that she had received one year of therapy from a psychologist.

CONCLUSION

1. Ms. Kelliher performed services of an occupational therapist in an incompetent manner or in a manner that fell below the community standard of care, which is grounds for denial of licensure or discipline, pursuant to Minnesota Statutes, Section 148.6448, Subd.1(3).
2. Ms. Kelliher was disciplined for conduct in the practice of an occupation by a national professional association, and the grounds for discipline were the same or substantially equivalent to those in Sections 148.6401 to 148.6450, which is grounds for denial of licensure or discipline, pursuant to Minnesota Statutes, Section 148.6448, Subd.1(9).

STAFF RECOMMENDATION

Ms. Kelliher should be granted licensure, conditioned upon the completion of the NBCOT Plan of Action.

I do not contest the authority, findings of fact, conclusion, and staff recommendation as stated above.

Elisabeth Marie Kelliher
Elisabeth Marie Kelliher

Dec. 17, 2001
Date