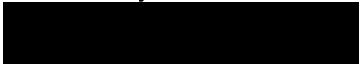


Effective 05-26 10



May 7, 2010

Protecting, maintaining and improving the health of all Minnesotans

Mr. Bradley James Kettersmith


RE: MDH File Number: OTA07025

Dear Mr. Kettersmith:

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 assessing you a civil penalty in the amount of \$269. 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. 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 dark ink, appearing to read "Darcy Miner", is written over a horizontal line.

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
Bradley James Kettersmith
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. 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 illegal use of PAMs to the Competency Review Committee (CRC) of the Occupational Therapy Practitioner Advisory Council. The CRC concluded that using PAMs illegally was illegal practice and recommended PAMs violations be issued a disciplinary penalty based on the same calculation as that used for illegal practice, plus costs of the investigation.

FINDINGS OF FACT

1. Bradley James Ketttersmith (Hereinafter "Practitioner") has been either registered or licensed as an occupational therapist (OT) from April 28, 1999, to May 29, 1999, and since June 4, 1999. Practitioner received approval to use PAMs on April 13, 2007. Practitioner's license is currently due to expire on February 28, 2011.
2. In 2007, Practitioner's renewal application was received on January 16, 2007. On the Physical Agent Modalities (PAMs) statement, Practitioner checked that he was using the following modalities in his practice: superficial physical agent modality, ultrasound, and electrotherapeutic devices.
3. By letter dated February 5, 2007, Credentialing staff notified Practitioner that his application could not be processed. Practitioner was provided with the following explanation and instructions:

"You have marked on your renewal application that you are currently using Physical Agent Modalities. However, in checking our records we do not show that you have been approved to use them. Please send in the letter you received from MDH approving you to use PAMs. Or please send in writing a letter of explanation."
4. On February 27, 2007, Practitioner hand delivered his continuing education (CE) report dated the same day. On the CE report Practitioner claimed 19 contact hours for "PAMs for OT's" taken during the period from March 11, 2005, to March 13, 2005. Practitioner also enclosed a letter dated February 27, 2007, in which he stated he began using PAMs infrequently after completion of the 2005 course. Practitioner further stated that he believed he sent in the course information after he completed the course.
5. By letter dated March 21, 2007, Investigations and Enforcement Unit (I&E) staff requested Practitioner provide information about his use of PAMs. In his response, received on April 18, 2007, Practitioner stated he did not use PAMs until after he completed the March 2005 course and claimed it was an oversight that he did not submit the required documentation. Practitioner explained that he did not actually use PAMs until 2006, at which time he treated four different patients with ultrasound and e-stim.
6. By letter dated June 4, 2007, Practitioner's employer stated that Practitioner has been employed since November 12, 2004. The employer further advised that Practitioner used PAMs on the following dates: August 1, 2006; August 10, 2006; January 24, 2007; January 25, 2007; January 30, 2007; and February 1, 2007. The employer provided Practitioner's net wage information as follows: \$1,073.75 during the period from July 27, 2006, to August 9, 2006; \$1,093.32 during the period from August 10, 2006, to August 23, 2006; \$1,343.34 during the period from January 11, 2007, to January 24, 2007; \$1,362.82 during the period from January 25, 2007, to February 7, 2007.

CONCLUSION

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

DETERMINATION

1. Practitioner should pay a civil penalty of \$269.00, representing the economic advantage gained by the violation and to reimburse MDH for costs of investigations and proceedings to date.