

Effective 01/11/12



Protecting, maintaining and improving the health of all Minnesotans

December 9, 2011

Ms. Sandra Kay Kunkel

RE: MDH File Number: OTA12005

Dear Ms. Kunkel:

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 \$292. 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 black ink, appearing to read "Darcy Miner", is written over the "Sincerely," 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
Sandra Kay Kunkel
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 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. Sandra Kay Kunkel (Hereinafter "Practitioner") was issued a limited license, effective from July 1, 2010, through December 31, 2010. Practitioner was issued a full license on December 29, 2010. Practitioner's license is currently due to expire on November 30, 2012. Practitioner has not yet received approval to use PAMs.
2. Practitioner's application for licensure as an OTA was received on June 11, 2010. As part of the application, Practitioner signed and dated a PAMs statement by which she requested that PAMs forms and instructions be sent to her and affirmed the following:
 - a. That she understood that she was required to apply for and receive approval from MDH before she would be allowed to use PAMs in OT practice; and
 - b. That she understood that application for approval of PAMs use is a separate application process which she could begin after receipt of her OTA license.
3. By letter dated June 15, 2010, MDH Credentialing staff acknowledged receipt of Practitioner's application and advised that her application could not be processed because it had been more than four years since she completed her education and examination requirements. Practitioner was advised that to complete her application, she needed to either retake and pass the COTA examination or complete a refresher course, and complete 480 hours of supervised practice. Credentialing staff advised that the first requirement was received with her June 10, 2010, application and that her application for full licensure would be processed once the remaining information was received.
4. Practitioner's application for a limited license while completing 480 hours of supervised practice was received on June 25, 2010. By letter dated July 1, 2010, Practitioner was informed that her limited license had been issued, effective July 1, 2010, and was due to expire on December 31, 2010.
5. By facsimile dated June 30, 2010, Practitioner submitted copies of her certificates of completion for a COTA refresher course completed in June 2010.
6. By letter dated July 19, 2010, and received from Practitioner on November 17, 2010, Practitioner's supervisors advised that Practitioner "...will be supervised by an OTR for all Physical Agent Modality usage at [facility]." Enclosed with the letter was a copy of Practitioner's Certificate of Attendance for a course entitled "Physical Agents and Modalities for Occupational Therapists 2010" and completed during the period from June 25 through 27, 2010.
7. By letter dated December 7, 2010, Practitioner provided a "summary of supervised practice to obtain my license as a certified occupational therapy assistant." Practitioner described the functions of her work activities and stated, "[p]hysical agent modalities were used by me with a supervising therapist to observe that the treatment was applied appropriately, and that there were no adverse effects and that the treatment was appropriate for the patient." Enclosed with the statement was a log of hours to be applied toward Practitioner's 480 hours of supervised practice. Review of the logged hours revealed the following 14.75 hours of PAMs use for which Practitioner had not received the required approval:

DATE	PAMs Used	TIME
07/29/10	E-stim UE	1 hour

07/30/10	E-stim UE	1 hour
08/02/10	E-stim UE	.5 hours
08/03/10	E-stim	.5 hours
08/04/10	E-stim UE	.5 hours
09/01/10	E-stim	.5 hours
09/15/10	E-stim	.5 hours
09/16/10	E-stim	.5 hours
09/23/10	E-stim	.75 hours
09/24/10	E-stim	1 hour
09/27/10	E-stim	1 hour
09/29/10	E-stim	.5 hours
09/30/10	E-stim	1 hour
10/04/10	E-stim	.5 hours
10/05/10	E-stim	.5 hours
10/06/10	Diathermy	.75 hours
10/12/10	E-stim	.5 hours
10/14/10	E-stim	.75 hours
10/18/10	E-stim	.75 hours
10/19/10	E-stim	.5 hours
10/25/10	Ultrasound	.5 hours
11/11/10	E-stim	.75 hours
TOTAL HOURS		14.75 HOURS

8. By e-mail dated December 15, 2010, Credentialing staff notified Practitioner that her application could not be processed without a statement of the number of hours she used PAMs during her limited license period. Practitioner was further reminded that she was prohibited from using PAMs until she applied for and was approved for use of PAMs. By e-mail dated December 15, 2010, Practitioner stated that during her limited license period, she performed a total of 15.5 hours of PAMs treatment. Practitioner stated she was unaware she could not use PAMs and would not use them until further notice from MDH.
9. By letter dated December 29, 2010, Practitioner was issued a full license with an expiration date of November 30, 2012. Practitioner was reminded of the prohibition against PAMs "...prior to obtaining specific authorization separate from the license from the department." Practitioner was also notified that the matter of her possible PAMs use prior to approval had been referred to the Investigations and Enforcement Unit (I&E).
10. By letter dated September 14, 2011, and received on September 21, 2011, Practitioner stated she had completed PAMs training and requested "...permission to use the treatments under the supervision of the Registered Occupational Therapists at the facility at which I am employed." Practitioner further stated she was enclosing copies of documents and noted she had "...previously applied for use of PAMs but apparently my letter of application was not received, so that is why the supervision letter is dated June of 2010. I am re-applying at this time and will await response to begin treatments." The documents Practitioner enclosed were copies of the Certificate of Attendance for the "Physical Agents and Modalities for Occupational Therapist 2010" training she completed during the period from June 25, to 27, 2010; the course syllabus; and the letter

dated July 19, 2010, signed by her supervisors which stated Practitioner was to be supervised by them while using PAMs. The certificate of completion and the letter dated July 19, 2010, were previously received on November 17, 2010.

11. By letter dated October 4, 2011, Credentialing staff notified Practitioner that her PAMs approval could not be processed until she submitted a "...letter evidencing that the clinical objectives have been met, signed by the applicant and a qualified, supervising person." To date, that letter has not been received and Practitioner is not approved to use PAMs.
12. By letter dated October 19, 2011, I&E staff requested Practitioner provide information about her PAMs use and sign a release form addressed to her employer. By letter dated November 2, 2011, Practitioner admitted to PAMs use during the period from November 19, 2010, to December 15, 2010. Practitioner stated that she was unaware of the possible PAMs violation until she received an e-mail from Credentialing staff on December 15, 2010.
13. By letter received on November 23, 2011, Practitioner's employer advised Practitioner commenced her employment on June 12, 2010, that her hourly wage is \$17.00 per hour, and that she continues to be employed.

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 should pay a civil penalty of \$292.00, representing the economic advantage gained by the violation and to reimburse MDH for costs of investigations and proceedings to date.