

Effective 06-13-08



Protecting, maintaining and improving the health of all Minnesotans

May 27, 2008

Ms. Jessica Ann McDonough


RE: MDH File Number: OTA07026

Dear Ms. McDonough:

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 \$239. This action is authorized pursuant to Minnesota Statutes, sections 214.131, subdivision; 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 cursive script, appearing to read "Darcy Miner", is written over the word "Sincerely,".

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
Jessica Ann McDonough
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 education and clinical requirements for the use of physical agent modalities (PAMs), prior to the use thereof.
3. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(1), intentional submission of false or misleading information to the commissioner or the advisory council is a ground for denial of license or discipline.
4. 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). Pursuant to Minnesota Statutes, section 148.6403, subdivision 1, 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.
5. 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. On April 27, 2006, the MDH brought the issue of illegal use of PAMs to the Competency Review Committee (CRC) of the Advisory Council and the CRC concluded that using PAMs illegally was illegal practice and recommended such violations be issued a disciplinary penalty with a civil penalty calculated the same way based on income and costs of investigation.

FINDINGS OF FACT

1. Jessica Ann McDonough [hereinafter "Practitioner"] was issued a temporary-new graduate occupational therapist license on February 10, 2005. That license expired on April 26, 2005, and her permanent was issued the following day. Practitioner's license is currently due to expire on February 28, 2009.
2. Practitioner's renewal application dated December 21, 2006, was received on December 27, 2006. In the Physical Agent Modalities (PAMs) Statement, in response to Question 2 which asks, "if you have been approved please check the type of modality used in practice" Practitioner checked the following: superficial physical agent modality, ultrasound, and electrotherapeutic devices. The PAMs Statement bore the following caveat: "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 signed and dated the application in the signature box immediately below the PAMs Statement. The signature box also included the following statement: "The information I have provided in this application is true and accurate to the best of my knowledge."
3. By letter dated January 12, 2007, Credentialing staff notified Practitioner that her renewal application could not be processed because she indicated she was currently using PAMs but there was no record she had been approval for their use. Practitioner was requested to provide an explanation.
4. By letter dated February 12, 2007, Credentialing staff again notified Practitioner that her renewal application could not be processed until the requested explanation was received.
5. In an undated letter received on February 12, 2007, Practitioner explained that she "misunderstood the process needed for certification." Practitioner included a copy of the renewal application, dated December 21, 2006, with the following statement checked, "If you do not use physical agent modalities or have not been approved to practice them independently, please check here." The previously-checked physical agent modalities were whited out.
6. By letter dated February 27, 2007, Credentialing staff notified Practitioner of the renewal of her license. That letter contained the following caveat language: "we are approving your renewal at this time, however, please be advised that we are sending your renewal application to our Investigation and Enforcement Unit for an investigation. Please note the issuance of this renewal will not affect that investigation."
7. By letter dated March 21, 2007, Investigations and Enforcement (I&E) staff requested Practitioner provide an explanation of the services she provided and all PAMs she used.

Practitioner was also asked to explain why, if she did not use PAMs, she stated she did use them on her application. Practitioner's response was due by April 23, 2007.

8. By letter dated April 1, 2007, Practitioner explained she attended a "three-day course on PAMs certification" in August 2005. Practitioner claimed she assumed the paperwork would be automatically submitted to MDH at that time. Practitioner further explained that she revised her answer on the second renewal application because she was "terrified" her license would not be renewed on time and she would have to miss work. Practitioner stated, "I was confused and nervous and I thought that by writing that I was not certified would speed the application through the process faster." Practitioner further stated she had "only used PAMs a handful of times." Practitioner also enclosed original documentation related to her PAMs certification; those documents were copied and returned to her on April 4, 2007.
9. By letter dated April 27, 2007, Practitioner's employer advised that Practitioner was employed from February 1, 2005, to April 16, 2007. The employer advised that during the period in which she used PAMs, Practitioner earned net wages in the amount of \$7,226.60.
10. By letter dated May 17, 2007, Practitioner was approved for use of PAMs.
11. By letter dated April 22, 2008, Practitioner's employer advised that during the period she used PAMs, Practitioner actually used PAMs an average of 2.5 percent of her work time.

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.
2. Practitioner intentionally submitted false information to the commissioner, which is a ground for discipline, pursuant to Minnesota Statutes, section 148.6448, subdivision 1(1).

DETERMINATION

1. Practitioner should pay a civil penalty of \$239.00, representing the economic advantage gained by the violation and to reimburse MDH for costs of investigations and proceedings to date.