



Effective: November 23, 2016

Protecting, maintaining and improving the health of all Minnesotans

July 8, 2015

Michele Lee Nicholls
[REDACTED]

RE: MDH File Number: OTC15001

Dear Ms. Nicholls:

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 provided false or misleading information to MDH in violation of Minnesota Statutes, section 148.6448, subdivision 1(1); that you provided occupational therapy assistant services in an incompetent manner and one that falls below the community standard of care in violation of Minnesota Statutes, section 148.6448, subdivision 1(3); that you engaged in dishonest, unethical or unprofessional conduct in violation of Minnesota Statutes, section 148.6448, subdivision 1(12); and that you engaged in fraudulent billing practices, including violations of federal Medicare, in violation of Minnesota Statutes, section 148.6448, subdivision 1(17). Therefore, MDH is issuing you a conditional licensing and requiring that you successfully complete continuing education in documentation, billing and ethics. Further MDH is reprimanding you and assessing you a civil penalty in the amount of \$350.00. The conditions on your license, including the assessment of a civil penalty, are authorized by 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:

Gilbert Acevedo
Director, 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. Acevedo at (651)201-3839. If you have any questions about this matter, please contact Catherine Dittberner Lloyd at (651)201-3706.

Sincerely,

Darcy Minek, Director
Health Regulation Division

Enclosure

Anne Kukowski, Assistant Director, Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Michele Lee Nicholls
Occupational Therapy Assistant, License Number 201242**

AUTHORITY

1. The Minnesota Department of Health (MDH) has the statutory authority to discipline occupational therapists under Minnesota Statutes, section 214.131, subdivision 2, and section 148.6448, subdivision 3. The types of disciplinary action MDH may impose include a civil penalty that deprives the licensee of any economic advantage gained by the violation, or that reimburses the Department for the costs of the investigation and proceedings or both; and any reasonable lesser action against an individual upon proof that the individual has violated sections 148.6401 to 148.6450. Pursuant to Minnesota Statutes, Section 13.41, disciplinary actions are public data.
2. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(1), MDH may take disciplinary action against an occupational therapy assistant for submitting false or misleading information to the commissioner or advisory council.
3. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(3), MDH may take disciplinary action against an occupational therapy assistant for performing services in an incompetent manner or in a manner that falls below the community standard of care.
4. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(12), MDH may take disciplinary action against an occupational therapy assistant for engaging in dishonest, unethical or unprofessional conduct in connection with the practice of occupational therapy that is likely to deceive, defraud, or harm the public.
5. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1(17), MDH may take disciplinary action against an occupational therapy assistant for engaging in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws, Food and Drug Administration regulations, or state medical assistance laws.

FINDINGS OF FACT

1. On October 6, 2004, Michele Lee Nicholls (hereinafter "Practitioner") was licensed as an occupational therapy assistant in the State of Minnesota by the Department of Health, under license number 201242. Practitioner has renewed her license biennially and has a current license to practice as an occupational therapy assistant.

2. Beginning in 2003 and through May 28, 2014, Practitioner was employed for a rehabilitation agency and provided occupational therapy assistance in a skilled nursing facility (SNF). Practitioner was scheduled to provide occupational therapy to a Medicare patient on May 22, 2014. The patient expressed concerns to nursing staff that she did not receive occupational therapy. An internal audit revealed that Practitioner falsely documented and billed 61 minutes of therapy for the patient. The agency removed the treatment time from the patient's billing record for May 22, 2014. Practitioner was terminated from her employment with the agency.
3. On November 24, 2014, Practitioner responded to MDH's request for information and provided the following explanation of why she was terminated:
 - A. On May 22, 2014, Practitioner was at a home evaluation with another patient that lasted longer than Practitioner anticipated.
 - B. When Practitioner returned to the SNF, the patient was at dinner.
 - C. Practitioner intended to provide treatment to the patient, so she documented in the patient's daily treatment record 61 minutes of occupational therapy.
 - D. Practitioner left a note for a physical therapist stating she planned to see the patient on May 24, 2014.
 - E. Practitioner treated the patient on May 24, 2014 in order to maintain the physician's orders requiring occupational therapy five times per week.
 - F. Practitioner failed to correct the daily treatment record for May 22, 2014.
 - G. Practitioner reported the patient was not harmed.
 - H. Practitioner worked for the skilled nursing agency for eleven years and reported she had never been written up. Practitioner reported she had held various positions with the agency including an occupational therapy assistant, program director and director of operations.
4. MDH staff review of the employer's performance evaluation revealed that in May 2013, Practitioner received counseling from her supervisor and received a written corrective action plan regarding her performance. This was related to Practitioner's failure to meet professional standards regarding attendance and tardiness, quality of documentation of treatment goals and progress, and her lack of visibility to peers and her patients.

CONCLUSION

Practitioner violated Minnesota Statutes, section 148.6448, subdivision 1(1) when she provided misleading information about her past performance as an occupational therapy assistant. Practitioner stated she had never been "written up" by her employer; however, in May 2013, Practitioner was counseled and issued a written corrective action plan related to the practice of occupational therapy. Practitioner violated Minnesota Statutes, section 148.6448, subdivision 1(3), 1(12) and 1(17) and when she falsely documented and billed a Medicare patient for occupational therapy services she did not actually provide. The evidence indicates Practitioner's documentation and billing resulted in fraudulent billing for a Medicare patient and a failure to provide therapy as ordered by the patient's physician. Although Practitioner states the Medicare patient was not harmed, her failure to follow the physician's orders may have resulted in a

reduction in the patient's level of rehabilitation. This results in incompetent occupational therapy practice and falls below the community standards of care.

DETERMINATION

1. Practitioner is reprimanded.
2. Practitioner's occupational therapy assistant license is conditions as follows:
 - a. Within 30 days from the effective date of this Determination, Practitioner should pay a civil penalty of \$350.00, representing the economic advantage gained by the violation and to reimburse MDH for costs of investigation and proceeding to date.
 - b. The penalty payment must be made by check or money order payable to "State of Minnesota Treasurer" and mailed to: Investigation and Enforcement Unit, Health Occupations Program, MDH, PO Box 64882, Saint Paul, MN 55164-0882.
 - c. The penalty may be referred to the Minnesota Department of Revenue (MDOR), or any other source for collection, if the debt is 14 days past the established due date. When this Determination for a penalty becomes public and MDH refers the matter to MDOR, MDOR is authorized by Minnesota Statutes, section 16D.17 to obtain a judgment against Practitioner without further notice or proceeding.
3. Within six months of the effective date of this Determination, Practitioner shall successfully complete the following continuing education (CE) courses, sponsored by the American Occupational Therapy Association, and available in online or CD-ROM format:
 - a. Skilled Nursing Facilities 101: Documentation, Reimbursement, and Ethics in Practice (.3 AOTA CEU).
 - b. Ethics Topic-Organizational Ethics: Occupational Therapy Practice in a Complex Health Environment (.1 AOTA CEU).
 - c. Practitioner is responsible for any costs associated with taking the continuing education course and Practitioner must provide MDH with a copy of the certificate demonstrating successful completion.
 - d. The CE requirements in this Determination are in addition to the CE requirements contained in Minnesota Statutes, section 148.6443 for Practitioner's license renewal.
4. Upon completion of the conditions in paragraph two (2) and three (3) of this Determination, Practitioner may petition MDH, in writing, for an unconditional license. Practitioner must send her request to: Health Occupations Program, Investigation and Enforcement Unit, PO Box 64882, Saint Paul, MN 55164-0882.