

Effective 05-28-10.



May 7, 2010 *Protecting, maintaining and improving the health of all Minnesotans*

Ms. Rebecca May Olson
[REDACTED]

RE: MDH File Number: OTA07027

Dear Ms. Olson:

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 (PAMs) without first being approved by MDH, in violation of Minnesota Statutes, section 148.6440, subdivision 2. Therefore, the Department is assessing a disciplinary civil penalty in the amount of \$696.00. This action is authorized pursuant to Minnesota Statutes, sections 214.121, 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 cursive script, appearing to read "Darcy Miner", is written over the printed name.

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
Rebecca May Olson
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. Rebecca May Olson (Hereinafter "Practitioner") has been either registered or licensed as an occupational therapist since December 17, 1998.
2. In the Physical Agent Modalities (PAMs) Statement portion of her renewal application, dated January 22, 2007, Practitioner placed a check mark next to the three types of PAMs (superficial physical agent modality, ultrasound, and electrotherapeutic devices).
3. By letter dated January 30, 2007, Credentialing staff notified Practitioner that her renewal application had been received but could not be processed because she indicated on her renewal application that she had been approved to use PAMs. Practitioner was asked to either provide her letter of approval to use PAMs or send a letter of explanation.
4. On February 27, 2007, Credentialing staff received a copy of the January 30th letter and a re-executed PAMs Statement on which the following was noted:
 - A. Practitioner checked the box for Question 1 which asks, "if you do not use physical agent modalities or have not been approved (*) to practice them independently, please check here." The asterisk referred to the following statement:

"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."
 - B. Practitioner placed a slash through the check marks next to the three types of PAMs (superficial physical agent modality, ultrasound, and electrotherapeutic devices).
 - C. Practitioner signed her name and wrote the date "2/20/07".
5. By letter dated February 28, 2007, Practitioner was notified of the renewal of her license. Practitioner was also informed that her application had been referred to the Investigations and Enforcement Unit (I&E) for investigation.
6. By letter dated March 21, 2007, I&E staff requested Practitioner provide a written explanation about the types of services she provides and why she indicated she used PAMs if she did not use them in her practice. Practitioner's response was due by April 23, 2007.

7. By second notice dated May 1, 2007, Practitioner was notified that her response to the April 23rd letter had not been received. Practitioner was provided with a copy of the April 23rd letter and asked to respond by June 1, 2007.
8. On May 8, 2007, Practitioner telephonically contacted I&E staff and claimed she had never received the April 23rd letter. Practitioner advised that she completed the PAMs training in 2005. The possible penalties were explained to Practitioner and I&E staff suggested Practitioner apply for approval to use PAMs and that she was prohibited from using PAMs until she received approval.
9. By letter dated May 18, 2007, Practitioner explained that "up until February '07" she believed she was "certified" to use PAMs. Practitioner stated that she received "full PAMs training" in 1998 in another state and provided a copy of her certificate of continuing education. Practitioner advised that when she renewed her license in 2005 her PAMs statement was returned to her and she was informed that she was not "certified". Practitioner stated she immediately resubmitted a corrected PAMs statement and within the same week submitted the certificate of continuing education and course agenda. Practitioner stated she believed that with the receipt of her renewed license that she was "officially PAM certified" and continued to use PAMs. Practitioner also stated that during her 2007 renewal she was again notified that she was not PAMs approved and was informed that her paperwork had never been received. Practitioner noted that because her license was close to expiring, she again crossed out and re-signed the PAMs statement and discontinued the use of PAMs. Practitioner enclosed copies of her certificate of attendance for the PAMs course and certificates of completion for ongoing PAMs education.
10. By letter dated July 6, 2007, Practitioner's employer advised that she had been employed since June 3, 1996, and confirmed Practitioner had used PAMs during the period from December 21, 2004, to February 2, 2007. The employer provided Practitioner's net wages as follows: \$47,828.43 in 2004, \$50,714.75 in 2005, \$49,536.13 in 2006, and \$12,880.97 in 2007 through the March 7th pay period. The employer further advised that review of their billing records determined that during the period from December 21, 2004, to February 2, 2007, Practitioner used PAMs on one patient in 2004, on 12 or 13 patients in 2005 and 2006, and on one patient in 2007.
11. By letter dated July 25, 2007, I&E staff clarified the PAMs approval process and referred Practitioner to the MDH website for complete information on the application process for PAMs approval.
12. Practitioner received approval to use PAMs on December 11, 2008.

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 \$696.00, representing the economic advantage gained by the violation and to reimburse MDH for costs of investigations and proceedings to date.
2. Practitioner may pay the \$696.00 civil penalty in monthly installments of up to four months after the effective date of this action. If Practitioner chooses to make installments, she must notify MDH in writing about her intentions, including how many installments she intends to make, in what amount, and over which time period. Practitioner must send this information to: Kyle Renell, PO Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of this document.
3. Each payment will be made by check payable to "State of Minnesota, Treasurer", and mailed to Kyle Renell, PO Box 64882, Saint Paul, MN 55164-0882, or any other address specified by MDH. Each payment is due by the last day of each month; however, Practitioner may prepay at any time.
4. The penalty may be referred to the Minnesota Collection Enterprise (MCE), part of the Minnesota Department of Revenue, or any other source for collection, if Practitioner misses a monthly payment by 14 calendar days after the established deadline. When this Order for a penalty becomes public and MDH refers the matter to MCE, MCE is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Practitioner without further notice or proceedings.