

Eff. 05/17/12



Protecting, maintaining and improving the health of all Minnesotans

March 9, 2012

Mary Beth Wulf

RE: MDH File Number: OTA11002

Dear Ms. Wulf:

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 reprimanding you and assessing you a civil penalty in the amount of \$820.00. 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. You may choose to accept the discipline by paying the assessed civil penalty and sending a check, payable to "Treasurer, State of Minnesota" or you may appeal. 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 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
Mary Beth Wulf
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. Mary Beth Wulf (Hereinafter "Practitioner") has been licensed as an occupational therapist since November 24, 2008. Practitioner's license is currently due to expire on June 30, 2012.
2. Practitioner's initial licensure application, dated October 6, 2008, included a Physical Agent Modalities (PAMs) statement on page six. Contained in that statement were the following:
 - A. The following statement: "**Prior to use of physical agent modalities** you must submit to the Commissioner documentation verifying that you have met the educational requirements described in Minnesota Statutes §148.6440, Subds. 3 to 5 **and** you must have been granted approval as provided in subdivision 7." [emphasis in the original]
 - B. Definitions of superficial physical agent modalities, electrical stimulation device, and ultrasound device.
 - C. Two affirmations requiring applicant initials, which were initialed by Practitioner:
 - a) "**I understand that Minnesota laws require that I apply and receive approval from the Commissioner of Health before I am allowed to use Physical Agent Modalities in practice of Occupational Therapy.**" [emphasis in original]
 - b) "**I understand that obtaining approval to use Physical Agent Modalities is a separate application process that I can begin after I receiving my Minnesota License.**" [sic; emphasis in original]
 - D. A "yes/no" statement that the applicant desired to have "Physical Agent Modalities forms and instruction sent, to which Practitioner circled "yes".
3. By application dated April 17, 2010, Practitioner applied for renewal of her license. Practitioner answered "yes" to Question 1 of Section D, which asked, "Have you been approved to use physical agent modalities in your practice?" stated that she used superficial physical agent modality, ultrasound, and electrotherapeutic devices in her practice and indicated she was not employed at the time of her application. By letter dated June 28, 2010, Practitioner was notified that her license had been renewed and advised that her application had been routed to the Investigations and Enforcement Unit (I&E) because information contained in her renewal application indicated that she may have used PAMs prior to approval.
4. Practitioner's application for approval to use PAMs was received by facsimile on June 24, 2010. By letter dated July 19, 2010, Practitioner was notified that she had been approved to use PAMs.
5. By letter dated July 9, 2010, Practitioner provided her employment information and explained that she encountered computer-related issues during the renewal process. Practitioner stated that she started her employment on February 4, 2009, and used PAMs in her practice. Practitioner explained that because she is a certified hand therapist, she thought she met the PAMs requirements.
6. By letter received on January 24, 2011, Practitioner's employer confirmed her employment and stated that during the period from February 6, 2009, to March 10, 2010, Practitioner earned net wages in the amount of \$4,185.50.

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 is hereby reprimanded.
2. Practitioner should pay a civil penalty of \$810.00, representing the economic advantage gained by the violation and to reimburse MDH for costs of investigations and proceedings to date.