

Effective: 05/05/08



Protecting, maintaining and improving the health of all Minnesotans

May 1, 2008

Mr. Lance David Zarimba
[REDACTED]

RE: MDH File Number: OTA07030

Dear Mr. Zarimba:

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 \$402. 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 black ink, appearing to read "Darcy Miner", is written over the typed 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
Lance David Zarimba
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. 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
3. 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. Lance David Zarimba (hereinafter "Practitioner") has been licensed as an OT since June 7, 2005. Practitioner's license is currently due to expire on June 30, 2009. At the time of his initial application, Practitioner lived and worked in the State of South Dakota. Practitioner moved to the State of Minnesota in 2007.

2. On his initial application for OT licensure, dated April 5, 2005, Practitioner included page six, entitled "Physical Agent Modalities", which contains 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 printed his name on the upper right hand corner of the page.
3. By renewal application dated April 11, 2007, Practitioner applied for renewal of his OT license and indicated employment with Nova Care in the State of Minnesota, commencing on March 5, 2007. On the application, under "Physical Agent Modalities Statement", Practitioner checked "Superficial Physical Agent Modality", "Ultrasound", and "Electrotherapeutic Devices", in response to the question, "If you have been approved please check the type of modality used in practice." The Physical Agent Modalities Statement also contained 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." Practitioner included with his application a copy of a Certificate of Completion for a "Physical Agent Modality Mentorship" on June 11, 2006. Practitioner also reported 25 contact hours for the mentorship on his continuing education report, dated April 11, 2007.
4. By letter dated May 16, 2007, Credentialing staff acknowledged receipt of Practitioner's renewal application and stated his application could not be processed for the following reason, "You have marked on your renewal application that you are currently using Physical Agent Modalities. However, in checking our records we do not show that you have been approved to use these. Please send a letter of explanation."
5. By undated letter received on June 4, 2007, Practitioner stated he accepted a position with NovaCare in January 2007 and commenced employment on March 5, 2007. Practitioner advised that during his orientation at each of the NovaCare clinics he was shown how to use PAMs and "they had me practice using them so I felt comfortable using them on patients." Practitioner claimed, "I did not know that I had to ask permission first to use PAMs and no one informed me of this prior to my starting my position."
6. By letter dated June 7, 2007, Credentialing staff notified Practitioner of the renewal of his license. The letter also contained the following caveat: "Minnesota Statutes, section 148.6440, subdivision 2, prohibits practitioners from using physical agent modalities (PAMs) prior to obtaining specific authorization separate from the license from the Department. There are specific educational and clinical requirements related to each modality used. Based on information provided in your renewal application, it appears that you may have used a modality prior to approval by the department. We are approving the renewal of your license at this time, but need additional information to determine if a violation has occurred. Your renewal application will be routed to the Investigations and Enforcement Unit for further clarification. The issuance of your license at this time does not affect the

pursuit of this matter until a final determination is reached and any necessary action concluded."

7. By letter dated June 14, 2007, Investigations and Enforcement (I&E) staff requested Practitioner provide an explanation of the types of services he provides for NovaCare, including any PAMs he used and the training he has received. Practitioner was also asked to sign a release form addressed to his employer. Practitioner's response was due by July 16, 2007.
8. By letter dated June 15, 2007, and received on June 20, 2007, Practitioner stated that he was unaware of the requirement to obtain prior approval to practice PAMs. Practitioner claimed he became PAMs certified in "June of 2006" when he received a certificate of completion of PAMs training taken on June 9, 10, and 11, 2006. Practitioner stated that when he was in the process of relocating to the State of Minnesota, he attempted to renew his license early and "asked if there was anything I needed to do to work in Minnesota, since I hadn't worked in the state prior to that time" and was told there was nothing he needed to do. Practitioner commenced his employment with NovaCare in March 2007 and "...used ultrasound, paraffin, hot packs, whirlpools for wound care and debridment [sic], iontophoresis, and Infrared." Practitioner further stated that, "...therapists at each clinic that I have covered at have shown me how to use their equipment, since each clinic is different. They have supervised my use of them as I have worked there." Practitioner further claimed he ceased the use of PAMs when informed by MDH he was not authorized, and submitted documentation in May 2007.
9. By letter dated July 9, 2007, NovaCare advised Practitioner has been employed since March 5, 2007, and has used PAMs. The employer noted Practitioner "...has incorporated the use of modalities from the time of his employment, however, discontinued the provision of them immediately upon notification of the inquiry from your office."
10. By letter dated July 23, 2007, NovaCare advised that during the period Practitioner used PAMs, he received net wages in the amount of \$12,486.11.
11. By letter dated August 8, 2007, MDH notified Practitioner that his request for approval to use PAMs had been reviewed, that he met the criteria, and was thereby approved for PAMs use.
12. On March 18, 2008, NovaCare provided a spreadsheet of the services provided by Practitioner during the period from his date of hire until he received PAMs certification from MDH. During that period of time, 16 percent of Practitioner's time was spent using PAMs.

CONCLUSION

Practitioner did not comply with the requirements under Minnesota Statutes, section 148.6440, subdivision 2, because he used PAMs without first being approved by the MDH as required by state law.

DETERMINATION

1. Practitioner should pay a civil penalty of \$402 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 \$402 civil penalty in monthly installments of up to six months after the effective date of this action. If Practitioner chooses to make monthly installments, he must notify MDH in writing about his intentions, including how many installments he 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.