

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Application of All Heart Service, Inc. for an Initial Registration as a Supplemental Nursing Services Agency

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge LauraSue Schlatter for a hearing on November 19, 2015 at the Office of Administrative Hearings. The record closed on that date.

Lindsay K. Strauss, Assistant Attorney General, appeared on behalf of the Minnesota Department of Health (Department). Erik Kaardal appeared on behalf of All Heart Service, Inc. (Respondent).

STATEMENT OF THE ISSUES

1. May additional reasons for the denial, not articulated in the denial notification, be added to the Notice and Order for Hearing and Prehearing Conference (Notice and Order for Hearing)?
2. Did the Department have the legal authority to deny Respondent's registration?
3. Did the Department violate Respondent's right to procedural due process?
4. Is the Department equitably estopped from denying Respondent's registration?
5. Should the Department's Exhibit 11, which contains medical data regarding a person who is not a party to this proceeding, be sealed and unavailable to the public?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Registration Process

1. Supplemental nursing services agencies (SNSA) provide temporary employees, such as nurses and nursing assistants, to health care facilities.¹ SNSAs must register with the Department.² An SNSA must meet certain minimum criteria as a condition of registration.³

2. The SNSA registration form is available on the Department's website.⁴

3. In order to register, the SNSA must submit the registration form, along with the required fee, to the Department.⁵ Upon receipt, the Department cashes the check, reviews the submitted application for completeness, and conducts background studies on the SNSA's controlling individuals.⁶ If the Department has questions about the application, staff contacts the SNSA for additional information or clarification.⁷

4. The Department has 60 days after it determines that an application is complete to grant or deny registration.⁸ If the Department grants registration to an SNSA, it sends a confirmation letter, issues a registration certificate, and assigns a Health Facility Identification Number (HFIN).⁹ The SNSA uses the HFIN to conduct background studies on its employees.¹⁰

5. The Department has a directory of registered SNSAs on its website.¹¹ Health care facilities check this directory to determine whether an SNSA is registered with the Department.¹²

Respondent's Application for Registration

6. On September 19, 2014, Respondent purchased Soul Care, LLC for \$10.¹³ Soul Care had previously been a registered SNSA, but the Department had revoked its registration.¹⁴

¹ Minn. Stat. § 144A.70, subd. 6 (2014).

² *Id.*, subd. 1 (2014).

³ Minn. Stat. § 144A.72, subd. 1 (2014).

⁴ Registration for Supplemental Nursing Services Agency, <http://www.health.state.mn.us/divs/fpc/profinfo/lic/fpc931.pdf>

⁵ Testimony (Test.) of Mary Absolon.

⁶ Test. of Mary Henderson; Test. of Mayumi Reuvers.

⁷ Test. of M. Henderson.

⁸ *Id.*; see also Minn. Stat. § 116J.70, subd. 2, 15.991, subd. 1(1), 15.992 (2014)

⁹ Test. of M. Henderson; Test. of M. Reuvers; see also Exhibit (Ex.) 108.

¹⁰ Test. of William Oberly; Test. of M. Reuvers.

¹¹ Test. of M. Henderson; see also Directory of Registered Supplemental Nursing Services Agencies (SNSAs), <http://www.health.state.mn.us/divs/fpc/profinfo/aalist.htm>.

¹² Test. of M. Henderson.

¹³ Ex. 104; Test. of M. Reuvers.

¹⁴ Test. of Stella French; Ex. 109.

7. Richard Steven Ahl is Respondent's owner and operator.¹⁵

8. On November 20, 2014, Respondent's office manager, William Oberly, submitted a registration form and the registration fee to the Department.¹⁶ The Department cashed Respondent's check.¹⁷

9. The Department did not send Respondent an HFIN.¹⁸ Respondent therefore relied on the background studies from Soul Care when sending employees to health care facilities.¹⁹

10. On November 25, 2014, Mayumi Reuvers, a program representative with the Department, emailed Mr. Ahl.²⁰ Ms. Reuvers indicated that the Department had received Respondent's registration form, but that she needed Respondent's business filing with the Secretary of State and a copy of the IRS letter assigning Respondent's employee identification number "to complete this process."²¹

11. On December 3, 2014, Tom Paul from the Villa at Osseo, an assisted living facility, left Ms. Reuvers a voicemail.²² Mr. Paul stated that although Respondent had purchased Soul Care, he could not find Respondent on the Department's list of registered SNSAs.²³ He asked Ms. Reuvers to return his call "and give [him] some information or an update on where [Respondent] might be in the registry process."²⁴

12. On December 4, 2014, Ms. Reuvers informed Mr. Paul that Respondent's registration had not yet been issued.²⁵

13. On the same day, Ms. Reuvers called Respondent. Ms. Reuvers spoke with Alakhi McLain, who had answered the phone.²⁶ Ms. Reuvers was concerned because Ms. McLain had previously been a 25 percent owner of Soul Care. Soul Care's license had been revoked, and an owner whose registration has been revoked is not allowed to operate an SNSA for five years following the revocation.²⁷

14. Ms. McLain informed Ms. Reuvers that she was coordinating sending staff to health-care facilities.²⁸ Ms. McLain immediately corrected herself and stated that

¹⁵ Ex. 1.

¹⁶ Exs. 1, 102.

¹⁷ Ex. 102; Test. of W. Oberly.

¹⁸ Test. of W. Oberly.

¹⁹ *Id.*

²⁰ Ex. 2.

²¹ *Id.*

²² Ex. 4.

²³ Ex. 2.

²⁴ *Id.*

²⁵ Ex. 114.

²⁶ *Id.*; Test. of M. Reuvers.

²⁷ Ex. 114; Test. of M. Reuvers; see also Minn. Stat. § 144A.72, subd. 5 (2014).

²⁸ Ex. 114; Test. of M. Reuvers.

Respondent was only sending staff to assisted-living facilities.²⁹ Ms. Reuvers asked Ms. McLain when Respondent had started sending staff to assisted living facilities, and Ms. McLain placed her on hold.³⁰ After a few minutes, Ms. McLain stated that Respondent was not yet sending staff to facilities because Respondent was waiting for the SNSA registration.³¹

15. On December 8, 2014, Mr. Ahl emailed Ms. Reuvers the information she had requested. In the email, he stated: "Please let me know if anything further is needed to complete our registration."³²

16. Ms. Reuvers responded on December 12, 2014, stating: "Thank you for the attachments. . . . We understand that 'All Heart Service' was previously called 'Soul Care.' Please send the legal documents such as Purchase Agreement or Bill of Sale to my attention."³³

17. Mr. Ahl submitted the Bill of Sale to Ms. Reuvers on February 11, 2015.³⁴

18. On February 24, 2015, the Department learned that Respondent, without being registered as an SNSA, had sent a nursing assistant to The Villa at Osseo.³⁵

19. On March 23, 2015, the Department learned that Respondent, without being registered as an SNSA, had sent an LPN to Heritage House Assisted Living multiple times.³⁶ In addition, Respondent had failed to conduct a background study on the LPN, who had previously been disqualified from providing direct care to vulnerable adults.³⁷

20. On April 9, 2015, the Department sent Respondent a "Notice of Intent to Refuse to Grant Supplemental Nursing Services Agency Initial Certificate of Registration" based on its operation as an SNSA without being registered.³⁸ The notice stated that "[u]nless the decision to refuse to grant the SNSA Certificate of Registration is challenged as provided above, the application is denied, effective on the 16th day after you received this letter."³⁹ Respondent requested a contested case hearing.⁴⁰

21. On May 20, 2015, the Department filed a Notice and Order for Hearing and Prehearing Conference with the Office of Administrative Hearings.⁴¹ In the Notice

²⁹ Ex. 114.

³⁰ *Id.*

³¹ *Id.*

³² Ex. 2.

³³ *Id.*

³⁴ Ex. 3.

³⁵ Test. of Christine Bodick-Nord; Exs. 6, 7.

³⁶ Test. of Deborah Neuberger; Ex. 13, Attachment (Att.) C.

³⁷ Ex. 13, Att. C, at MDH 80; see also Minn. Stat. § 245C.14, subd. 1 (2014).

³⁸ Ex. 13.

³⁹ *Id.*

⁴⁰ Ex. 14.

⁴¹ Notice and Order for Hearing and Prehearing Conference (May 18, 2015).

and Order for Hearing and Prehearing Conference, the Department listed three reasons for its decision: (1) sending a nursing assistant to The Villa at Osseo and an LPN to Heritage House without being registered; (2) sending an LPN who had previously been disqualified to Heritage House; (3) failing to conduct a background study before sending the LPN to Heritage House.⁴²

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Health (Commissioner) have jurisdiction over this matter under Minn. Stat. §§ 14.50, 144.99, subd. 10, .991, subd. 5 (2014); Minn. R. 4717.7050, subp. 2 (2015).

2. The Department of Health gave proper and timely notice of the Prehearing Conference in this matter.

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. Respondent timely appealed the Department's denial of his SNSA registration.

5. Respondent bears the burden of proving that the Department should have granted its application for SNSA registration.⁴³

6. "Supplemental nursing services agency' means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nurses, nursing assistants, nurse aides, and orderlies."⁴⁴

7. "A person who operates a supplemental nursing services agency shall register the agency with the commissioner."⁴⁵ "Person' includes an individual, firm, corporation, partnership or association."⁴⁶

⁴² *Id.*

⁴³ Minn. R. 1400.7300, subp. 5 (2015).

⁴⁴ Minn. Stat. § 144A.70, subd. 6. This statutory language was recently changed and now provides: "Supplemental nursing services agency' means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nurses, nursing assistants, nurse aides, orderlies, and other licensed health professionals." Minn. Stat. § 144A.70, subd. 6 (Supp. 2015). This alteration does not change the analysis in this contested case.

⁴⁵ Minn. Stat. § 144A.71, subd. 1 (2014). This statutory language was recently changed and now provides: "A person who operates a supplemental nursing services agency shall register *annually* with the commissioner." Minn. Stat. § 144A.71, subd. 1 (Supp. 2015) (emphasis added). This alteration does not change the analysis in this contested case.

⁴⁶ Minn. Stat. § 144A.70, subd. 5 (2014).

8. “A registration issued by the commissioner according to this section is effective for a period of one year from the date of its issuance unless the registration is revoked or suspended under section 144A.72, subdivision 2, or unless the supplemental nursing services agency is sold or ownership or management is transferred.”⁴⁷

9. “When a supplemental nursing services agency is sold or ownership or management is transferred, the registration of the agency must be voided and the new owner or operator may apply for a new registration.”⁴⁸

10. “The commissioner shall not issue or renew a registration to a supplemental nursing services agency if a controlling person includes any individual or entity who was a controlling person of a supplemental nursing services agency whose registration was not renewed or was revoked as described in paragraph (a) for five years following the effective date of nonrenewal or revocation.”⁴⁹

11. The Notice and Order for Hearing may be amended “[a]t any time prior to the start of the evidentiary hearing,” as long as the parties have a reasonable time to prepare for any newly added issues or allegations.⁵⁰

12. The Department properly included in the Notice and Order for Hearing Respondent’s failure to conduct a background study on the LPN sent to Heritage House, and his previous disqualification, as bases for the Department’s denial of Respondent’s registration application.

13. The commissioner is charged with establishing forms and procedures for processing each “registration application.”⁵¹ “If a controlling person has been notified by the commissioner of health that the supplemental nursing services agency will not receive an initial registration . . . the controlling person . . . may request and receive a hearing on the denial.”⁵²

14. The statute’s discussion of a “registration application” and references to denial of the application demonstrate that Respondent was not automatically registered upon submission of a completed registration form and check.

15. The Department did not violate Respondent’s right to procedural due process when it refused to grant the SNSA registration application.

16. The elements of equitable estoppel are: (1) the government made a misrepresentation of material fact; (2) the government knew the representation was false; (3) the government intended that its representation be acted upon; (4) the other party did not know the facts; and (5) the other party relied upon the government’s

⁴⁷ Minn. Stat. § 144A.71, subd. 3 (2014).

⁴⁸ *Id.*

⁴⁹ Minn. Stat. § 144A.72, subd. 5(b).

⁵⁰ Minn. R. 1400.5600, subp. 5 (2015).

⁵¹ Minn. Stat. § 144A.70, subd. 2 (2014).

⁵² Minn. Stat. § 144A.72, subd. 4(b) (2014).

misrepresentation to its detriment.⁵³ “[T]he most important element of an equitable estoppel case against the government is wrongful government conduct.”⁵⁴

17. The Department did not engage in wrongful conduct and is not equitably estopped from denying Respondent’s SNSA registration.

18. The Department properly denied Respondent’s SNSA registration.

19. An Administrative Law Judge may seal all or part of the hearing record when it contains not public information.⁵⁵

20. Subject to limited exceptions which are not applicable in this case, medical data is not public.⁵⁶

Based on these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION AND ORDER

1. The Administrative Law Judge recommends that the Commissioner **AFFIRM** the denial of Respondent’s SNSA registration.

2. The Administrative Law Judge **ORDERS** that Exhibit 11 be **SEALED**.

Dated: December 21, 2015

s/LauraSue Schlatter
LAURASUE SCHLATTER
Administrative Law Judge

Reported: Digitally Recorded

⁵³ *Prairie Island Indian Cmty. V. Minn. Dep’t of Pub. Safety*, 658 N.W.2d 876, 890 (Minn. Ct. App. 2003).

⁵⁴ *Id.*

⁵⁵ Minn. Stat. § 14.60, subd. 2 (2014).

⁵⁶ Minn. Stat. § 13.384, subd. 3 (2014).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendations. Under Minn. Stat. § 14.61 (2014), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Edward Ehlinger, Commissioner, Minnesota Department of Health, 85 East Seventh Place, P.O. Box 64975, St. Paul, MN 55164, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014). The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1 (2014), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The facts of this case are largely undisputed. In September 2014, Respondent purchased Soul Care for \$10.⁵⁷ Soul Care had previously been registered as an SNSA, but the Department had revoked its registration.⁵⁸ On November 20, 2014, Respondent sent a registration form, and a check, to the Department.⁵⁹ The Department cashed the check and sought additional information from Respondent.⁶⁰ Mr. Ahl provided the information and asked if anything else was needed “to complete registration.”⁶¹ Ms. Reuvers stated that the Department needed the Bill of Sale, which Mr. Ahl provided two months later.⁶² Shortly thereafter, and within the 60 days provided to the Department for granting or denying registration, the Department learned that Respondent was sending individuals, including one who was disqualified, to assisted-

⁵⁷ Ex. 3.

⁵⁸ Test. of Stella French; Ex. 109.

⁵⁹ Ex. 1.

⁶⁰ Exs. 2, 102; Test. of W. Oberly.

⁶¹ Ex. 2.

⁶² Exs. 2, 3.

living facilities without being registered.⁶³ The Department therefore denied Respondent's registration, and Respondent requested this contested-case hearing.⁶⁴

Additional Reasons for Denial

The Notice and Order for Hearing provides three bases for the denial: (1) sending a nursing assistant to The Villa at Osseo and an LPN to Heritage House without being registered; (2) sending an LPN who had previously been disqualified to Heritage House; (3) failing to conduct a background study before sending the LPN to Heritage House.⁶⁵ Respondent argues that the Administrative Law Judge should not consider the disqualification and failure to conduct a background study⁶⁶ as bases for denial because they were not articulated as such in the denial notification.

A Notice and Order for Hearing is analagous to a district court complaint, which is defined as "[t]he initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief."⁶⁷ Therefore, the Notice and Order for Hearing, not the original denial notification, provides the "basis for" the Department's action.

In addition, the Notice and Order for Hearing may be amended "[a]t any time prior to the start of the evidentiary hearing," as long as the parties have a reasonable time to prepare for any newly added issues or allegations.⁶⁸ If the Notice and Order for Hearing can be amended to add new issues, there is no reasonable basis for concluding that the Notice and Order for Hearing cannot add issues absent from the initial denial notification. Such an interpretation lacks common sense: essentially the Respondent's argument appears to be that the Department could *amend* the Notice and Order for Hearing to add the disqualification and background study bases, but could not put them in the original Notice and Order for Hearing.

Respondent argues that this is a "refusal to register" case, which limits the Department's denial to "the reasons at the time."⁶⁹ Respondent concedes that the Department may add additional allegations in a revocation proceeding, but contends that the Department does not have "that latitude" in a refusal to register case.⁷⁰ Respondent provides no legal support for this contention, and the Administrative Law Judge is aware of none.

Moreover, it is unclear how Respondent has been prejudiced. Although the denial notification did not explicitly mention the disqualification or background study

⁶³ Exs. 6, 7, 13.

⁶⁴ Exs. 13, 14.

⁶⁵ Notice and Order for Hearing.

⁶⁶ Respondent does not dispute the fact that the LPN was disqualified or that Respondent failed to conduct a background study.

⁶⁷ *Black's Law Dictionary* (10th ed. 2014).

⁶⁸ Minn. R. 1400.5600, subp. 5.

⁶⁹ Evidentiary Hearing (November 19, 2015).

⁷⁰ *Id.*

issues, they were referenced in the attachments.⁷¹ Respondent even concedes that this “is not a notice issue.”⁷² Therefore, lacking a legal basis to exclude these additional issues and absent a showing of prejudice, the Administrative Law Judge will consider these additional reasons for denial.

Department’s Legal Authority to Deny Registration

Respondent argues that the Department lacked legal authority to deny its completed registration. Respondent contends that it was “automatically registered” after it submitted the completed registration form and its fee. The statute belies this assertion.

SNSAs must be registered with the Department, and the commissioner is charged with establishing forms and procedures for processing each “registration application.”⁷³ The legislature’s use of the term “application” supports a conclusion that registration is not automatic. Merriam-Webster defines application as a “request, petition” or “a form used in making a request.”⁷⁴ Therefore, under the plain language of the statute, SNSAs “request” registration from the Department. There is no indication in the statute that registration is automatic.

Moreover, the statute contemplates the Department’s denial of an initial registration: “If a controlling person has been notified by the commissioner of health that the supplemental nursing services agency will not receive an initial registration . . . the controlling person . . . may request and receive a hearing on the denial.”⁷⁵

Nonetheless, Respondent contends that the registration form clearly indicates that applicants are automatically registered. Specifically, Respondent points to the following language in the registration form: (1) “The undersigned hereby registers to operate a Supplemental Nursing Services Agency subject to Minnesota Statutes, Chapters 144.057, 144A.70-74.” (2) “All Heart Service, a SNSA registered with the Minnesota Department of Health, declares” This argument is similarly misplaced. Respondent fails to acknowledge other language in the form indicating that registration is not automatic.

The registration form also states, in relevant part: ⁷⁶

- (1) Please answer all questions completely and accurately to avoid unnecessary delay.
- (2) ALL DATA ON THIS REGISTRATION FORM SHALL BE CLASSIFIED PUBLIC INFORMATION UPON ISSUANCE OF A REGISTRATION CERTIFICATE.

⁷¹ Ex. 13, Att. C., at 80.

⁷² Evidentiary Hearing (November 19, 2015).

⁷³ Minn. Stat. § 144A.70, subd. 2.

⁷⁴ *Merriam-Webster Dictionary*, available at <http://beta.merriam-webster.com/dictionary/application>.

⁷⁵ Minn. Stat. § 144A.72, subd. 4(b).

⁷⁶ Ex. 1 (emphases in original).

- (3) Please note that you must submit a background study using NETStudy through the Minnesota Department of Human Services for all controlling persons before a registration certificate may be issued.
- (4) **You cannot be issued a registration certificate and may not operate as a supplemental nursing services agency unless acceptable evidence of compliance with workers' compensation coverage provisions is provided.**
- (5) State law requires that the Commissioner of Health shall withhold the registration for the operation of a supplemental nursing services agency until the applicant presents acceptable evidence of compliance with workers' compensation coverage provisions.

Certainly, the registration form could more clearly state that an SNSA is not registered until a registration certificate has been issued, but, when considered as a whole, the form does not indicate that registration is automatic.

The evidence also contradicts Respondent's contention that it reasonably believed it was automatically registered. On December 8, 2014, in an e-mail to Ms. Reuvers, Mr. Ahl stated: "Please let me know if anything further is needed to *complete our registration.*"⁷⁷ Ms. Reuvers responded with a request for the Bill of Sale between Soul Care and Respondent so that she could determine whether Soul Care owners were involved in Respondent's operation; because any such involvement would have been a statutory violation.⁷⁸ Nonetheless, Mr. Ahl failed to respond until two months later.⁷⁹ In addition, on December 4, 2014, Ms. McLain told Ms. Reuvers that Respondent was not yet sending employees to health care facilities because Respondent was waiting for its SNSA certification.⁸⁰

Mr. Oberly testified that the Department did not provide Respondent with an HFIN, which is required to conduct background studies.⁸¹ This should have been a signal to Respondent that it was not registered with the Department. The Department maintains a list of registered SNSAs on its website. Respondent could have checked this list to determine whether its registration was complete.

Respondent argues that the Department's decision to cash its check indicates automatic registration. But Ms. Henderson testified that the Department cashes registration checks immediately upon receipt.⁸² Also, Minnesota law requires agencies to "deposit receipts totaling \$1,000 or more in the state treasury daily."⁸³ By cashing the check, the Department did not effectuate the Respondent's SNSA registration.

⁷⁷ Ex. 2 (emphasis added).

⁷⁸ *Id.*; see Minn. Stat. § 144A.72, subd. 5.

⁷⁹ Ex. 3.

⁸⁰ Ex. 114; Test. of M. Reuvers.

⁸¹ Test. of W. Oberly.

⁸² Test. of M. Henderson.

⁸³ Minn. Stat. § 16A.275 (2014).

In sum, Respondent was not automatically registered upon submission of its completed application form and check. It therefore violated Minn. Stat. § 144A.70, subd. 1, when it sent employees to health care facilities before being registered as an SNSA. In addition, Respondent failed to conduct a background study on the LPN sent to Heritage House in violation of Minn. Stat. § 144.057, subd. 1. In fact, the LPN had previously been disqualified from direct contact with vulnerable adults under Minn. Stat. § 245C.14, subd. 1. Respondent has failed to meet its burden of demonstrating that the Department lacked authority to deny its SNSA registration.

Due Process

Respondent next argues that the Department violated Respondent's right to procedural due process by changing its interpretation of the law without notice. Respondent contends that, according to the registration form, the Department interpreted the law to mean that applicants were automatically registered upon submission of a completed form and a check. Now, however, the Department is insisting that an SNSA is not registered until the Department issues a registration certification. Respondent believes this change in legal position violated Respondent's due process rights.

As noted above, however, the Department's registration form does not indicate that Respondent was automatically registered. The form is consistent with the Department's current position: SNSA registration is not complete until the Department issues a registration certification. Therefore, even assuming such a change in legal interpretation would have implicated Respondent's due process rights,⁸⁴ there was no such change here. The Department did not violate Respondent's right to due process.

Equitable Estoppel

Lastly, Respondent argues that the Department should be equitably estopped from denying its application for registration. Equitable estoppel is not freely applied against the government.⁸⁵ The elements of estoppel are: (1) the government made a misrepresentation of material fact; (2) the government knew the representation was false; (3) the government intended that its representation be acted upon; (4) the other party did not know the facts; and (5) the other party relied upon the government's misrepresentation to its detriment.⁸⁶ "But the most important element of an equitable estoppel case against the government is wrongful government conduct."⁸⁷ The Minnesota Court of Appeals has interpreted "wrongful conduct" to mean affirmative

⁸⁴ "Procedural due process protections restrain government action which deprives individuals of 'liberty' or 'property' interests within the meaning of the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 7 of the Minnesota Constitution." *Humenansky v. Minn. Bd. of Med. Examiners*, 525 N.W.2d 559, 565 (Minn. Ct. App. 1994), *review denied* (Minn. Feb. 14, 1995).

⁸⁵ *Prairie Island*, 658 N.W.2d at 890.

⁸⁶ *Id.*

⁸⁷ *Id.*

misconduct.⁸⁸ Wrongful government conduct is not present where the government's conduct is "simple inadvertence, mistake, or imperfect conduct."⁸⁹

Respondent contends that the Department misrepresented its interpretation of the law by implying, in the registration form, that registration was automatic. First, as discussed at length above, the form did not indicate that registration was automatic. Moreover, in his opening statement, regarding estoppel, Respondent's attorney stated: "Are we saying the Department and the agency are liars? No."⁹⁰ Mr. Oberly likewise testified that he did not believe the Department was lying, but rather was confused.⁹¹ In order to establish equitable estoppel, however, Respondent would have to assert that the Department lied.

Here, there has been no showing of affirmative misconduct by the Department. Even if the Department had been mistaken in its representations, there is no evidence to show that its conduct was wrongful. Accordingly, the Department should not be estopped from denying Respondent's registration.

Private Data in Evidence

Finally, the Administrative Law Judge notes that the Department requested that Exhibit 11 be sealed pursuant to Minn. Stat. § 14.60, subd. 2 (2014) because it is a health record concerning an individual who was not a party to this proceeding. Medical data on individuals is protected by Minn. Stat. § 13.384 (2014). This exhibit was offered to demonstrate that a particular disqualified individual employed by the Respondent was serving patients in a facility on a particular date. There was testimony during the evidentiary hearing demonstrating that the disqualified individual was providing services while employed by the Respondent at the facility on the date in question. The Administrative Law Judge finds that the interests of the patient's privacy in this matter outweigh any interest the public might have in seeing this particular exhibit. Therefore, Exhibit 11 is sealed.

L. S.

⁸⁸ *Id.*

⁸⁹ *Id.* (quotation omitted).

⁹⁰ Evidentiary Hearing (November 19, 2015).

⁹¹ Test. of W. Oberly.