

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

In the Matter of
Superior Home Care

RULING REGARDING
DEPARTMENT'S SECOND MOTION
TO COMPEL DISCOVERY

The above matter is pending before the undersigned Administrative Law Judge pursuant to a Notice of and Order for Hearing dated April 1, 1997. On September 17, 1997, the Department of Health filed a Second Motion to Compel Discovery. Superior Home Care filed its response in opposition to the Motion on October 6, 1997. The record with respect to the Motion to Compel remained open until October 15, 1997, for submission of a reply brief by the Department.

Susan A. Casey, Assistant Attorney General, Government Services Section, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Department of Health ("the Department"). The owner of Superior Home Care, AnnaMarie Brooks, 4886 West Pike Lake Road, Duluth, Minnesota 55811, appeared on behalf of the Respondent, Superior Home Care, without benefit of counsel.

Based upon all of the files, records, and proceedings herein, IT IS HEREBY ORDERED as follows:

1. The Department's Second Motion to Compel is hereby GRANTED in part and DENIED in part. As described more fully below, the Motion is granted with respect to Interrogatories Nos. 2, 3, 4, 5, and 11, and Document Request No. 2. The Second Motion to Compel is otherwise denied. It is also determined that the imposition of sanctions would not be appropriate.

2. The Respondent shall serve supplemental responses to the requests for admissions, interrogatories, and document requests as required in Paragraph 1 above on counsel for the Department by October 24, 1997.

3. The deadline for the filing of motions for summary disposition by the parties shall be extended to November 7, 1997. Responses in opposition to any such motions shall be filed by November 21, 1997, and reply briefs shall be filed by December 1, 1997.

4. The hearing in this matter shall be continued to January 15, at 9:30 a.m. in the Courtrooms of the Office of Administrative Hearings in Minneapolis, Minnesota.

Dated this _____ day of October, 1997.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

On August 13, 1997, the Administrative Law Judge issued a ruling regarding the Department's first motion to compel. The Judge granted the Department's motion in part and denied it in part. The Respondent was ordered to serve supplemental responses to certain requests for admissions, interrogatories, and document requests by September 2, 1997. The Department has now filed a second motion to compel in which it contends that some of Superior's supplemental responses were inadequate, evasive, or incomplete. In particular, the Department objected to Superior's responses to Requests for Admissions Nos. 9, 10, 14, and 15, Interrogatories Nos. 2-5 and 11, and Document Requests Nos. 1-2. The Department also seeks sanctions for Superior's alleged failure to comply with the Judge's earlier order and an extension of the previously-set deadline for submission of motions for summary disposition until additional supplemental discovery responses are received. Superior submitted more detailed responses to the challenged discovery requests with its brief in opposition to the motion. Superior continues to contend that the discovery seeking information about Ms. Brooks' experience, education, training, or financial status are irrelevant and cannot lead to admissible evidence. This argument was considered and rejected in connection with the Department's first motion to compel, and will not be addressed again in this ruling. Instead, the focus of this ruling will be upon whether the Respondent's responses to the discovery requests at issue, as supplemented on October 6, 1997, are adequate and complete.

As noted in the earlier ruling on the Department's first motion to compel, the rules of the Office of Administrative Hearings state that "[a]ny means of discovery available pursuant to the Rules of Civil Procedure of the District Court of Minnesota is allowed" in contested case proceedings. Minn. R. 1400.6700, subp. 2 (1995). Thus, parties to contested case proceedings may seek discovery using the methods authorized under the Rules of Civil Procedure, such as depositions, written interrogatories, document requests, physical and mental examinations, and requests for admissions. Minn. R. Civ. P. 26.01. However, unlike the procedure applicable in judicial proceedings, the OAH rules governing contested case proceedings place the burden of demonstrating that the requested discovery is proper on the party seeking disclosure rather than on the party resisting discovery. Thus, the party seeking discovery must show in the context of a motion to compel that the discovery is needed for the proper presentation of the party's case, the discovery is not sought for purposes of delay, and the issues or amounts in controversy are of sufficient significance to warrant the discovery. The party resisting discovery may raise any objections that are available under the Minnesota Rules of Civil Procedure, including lack of relevancy and privilege. Minn. R. 1400.6700, subp. 2. Information sought to be discovered is

generally “considered relevant if the information requested has a logical relationship to the resolution of a claim or defense in the contested case proceeding, is calculated to lead to such information, or is sought for purposes of impeachment.” G. Beck, L. Bakken & T. Muck, Minnesota Administrative Procedure, § 8.2 at 156 (1987).

Specific Discovery Requests at Issue in Motion

Requests for Admissions Nos. 9, 10, 14, and 15

Requests for Admissions Nos. 9 and 10 seek admissions that Covenant Home Care applied for a Class A home care license which was denied in April of 1996 and that Covenant withdrew its request for a hearing in September 1996 to submit an amended application for a Class A home care license. Requests for Admissions Nos. 14 and 15 ask for admissions that Mr. Buchanan provided consultant services to Health Personnel for some period between February 1992 and November 1996 for a percentage of Health Personnel’s gross or net profit. The Respondent objected to the relevancy of these requests. In the August 13, 1997, ruling, the Judge ruled that the information sought by these Requests for Admissions was a proper subject of discovery and ordered the Respondent to respond.

The September 2, 1997, response provided by Superior to these interrogatories merely indicated with respect to Requests for Admissions Nos. 9 and 10 that Ms. Brooks had no specific information regarding the Covenant Home Care license matter or Mr. Buchanan’s role with Health Personnel. The Department contends in its second motion to compel that these responses are insufficient because they do not comply with Rule 36.01 of the Minnesota Rules of Civil Procedure. That rule provides that a party answering requests for admission “may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonable inquiry has been made and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.” In its October 6, 1997, submission, the Respondent filed amended responses to Requests for Admissions 9, 10, 14, and 15 which include language comports with Rule 36.01. Accordingly, the Department’s second motion to compel is denied with respect to these responses.

Interrogatory No. 2

In this interrogatory, the Department requested that Ms. Brooks and Superior identify every checking or savings account maintained for personal or business purposes for the years 1993 through 1996 and identify persons with signatory authority for each. The August 13, 1997, Order required the Respondent to respond to this discovery request only with respect to the identification of savings and checking accounts used for Superior Home Care and the identification of all persons who have signatory authority on such accounts. In the September 2, 1997, supplemental response, Superior failed to respond to this interrogatory. In its brief in opposition to the Department’s second motion to compel, Superior indicated that it had not responded to Interrogatory No. 2 due to an oversight. In the October 6, 1997, supplemental responses appended to Superior’s brief, the following response is given:

Superior Home Care does not have a savings or checking account. License Fee and other costs incurred thus far have been made from my personal checking account, # 25479167, at Norwest Bank in Duluth. Mr. Buchanan has had no signatory authority on this, or any account used by myself.

The response provided by Superior is deficient in that it does not identify all persons who have signatory authority on Ms. Brooks' personal checking account. The Department's second motion to compel is granted in this respect, and Superior is ordered to file a supplemental response identifying all individuals who have signatory authority on Account No. 25479167.

Interrogatories Nos. 3 and 4

Interrogatory No. 3 seeks to have Ms. Brooks identify her education and training related to owning and operating a business providing home health and home care services. Interrogatory No. 4 asks Ms. Brooks to describe her employment with any business which as all or part of its operation provided home health or home care services and provide information concerning dates of service, supervisor, nature of duties, and reason for terminating the employment. The Respondent was ordered to respond to these Interrogatories in the Order regarding the Department's first motion to compel. The Department contends that the Respondent's responses to these interrogatories are incomplete and evasive.

It appears that the Respondent's October 6, 1997, supplemental response to Interrogatory No. 3 adequately responds to the inquiry about Ms. Brooks' education. If Ms. Brooks received the diploma under a different name, she is ordered to so indicate to the Department. The response does not provide sufficient information concerning the dates of Ms. Brooks' employment as a Home Health Aide prior to her position with Health Personnel, the name of the employer, and the employer's current or last known address.⁴ The Respondent's answer to Interrogatory No. 4 also appears to be incomplete. The Respondent is directed to provide more detailed information in response to Interrogatory No. 4 concerning the approximate length of her employment during 1988 as a personal care attendant and the nature of her responsibilities.

Interrogatories Nos. 5 and 11

Interrogatory No. 5 interrogatory seeks the identity of each person or entity that has provided consultant services on a contract or retainer basis in each business currently or previously owned or operated by Ms. Brooks and Superior and the nature of the services provided, the terms, and the total amount of compensation provided. Interrogatory No. 11 seeks the identity of the specific services that are currently being provided or will be provided to Superior by Mr. Buchanan, the nature of the services, and the dates that services were provided. The Order issued on August 13, 1997, compelled the Respondent to respond to these interrogatories.

The October 6, 1997, supplemental response to Interrogatory No. 5 improves upon the September 2, 1997, response by providing the name and address of the person who formerly provided management services. The response does not, however,

state the total amount of compensation Ms. Stauber has received or indicate whether any other person has replaced Ms. Stauber now that she no longer manages that property. The second motion to compel thus is granted with respect to Interrogatory No. 5, and the Respondent is ordered to supplement its response.

Although the October 6, 1997, response to Interrogatory No. 11 provides more complete information concerning the services that Mr. Buchanan will provide Superior Home Care than the September 2, 1997, response, it still fails to adequately describe the services that Mr. Buchanan is expected to provide or the manner in which Mr. Buchanan will be compensated. The mere statement that Mr. Buchanan "will provide consultant (expert or professional advice) services in the area of Home Health Care" does little to explain the nature of the services that he is expected to render. Moreover, the statement that Ms. Brooks' "agreement with Gerald Buchanan has not yet identified percentages that he will be paid for his consultant service" does not provide sufficient information concerning the agreement that has been reached. For example, even if the precise percentages have not been agreed upon, a complete response to the interrogatory would require that the Respondent at least indicate whether it has been agreed that Mr. Buchanan will be paid a percentage of Superior's gross or net profits. The Second Motion to Compel thus is granted with respect to Interrogatory No. 11. The Respondent is directed to supplement its response to the extent that it is possible to more fully explain the nature of the specific services that will be provided by Mr. Buchanan and to more fully describe the manner in which Mr. Buchanan will be compensated.

Document Request No. 1

This Document Request asks that Superior produce each and every document that was identified or relied upon in answering the interrogatories. The Department asserted in its second motion to compel that Respondent failed to respond to this interrogatory even though Ms. Brooks clearly relied upon documents in responding to inquiries regarding her earnings in 1993-96. In Respondent's October 6, 1997, supplemental response, the Respondent provided copies of her 1994, 1995, and 1996 W-2's and indicated that she has not been able to locate her 1993 W-2. It appears that the Respondent has adequately responded to this document request.

Document Request No. 2

Document Request No. 2 asks that Superior produce documents such as service agreements, contracts, retainer agreements, and letters of understanding which describe the nature of the relationship between Superior and persons or entities providing services to businesses owned or operated by Superior. In the August 13, 1997, Order, Superior was ordered to respond to this document request. The Department contends in its second motion to compel that the Respondent's response was incomplete because it failed to address the other business Ms. Brooks owns or operates. The October 6, 1997, supplemental response provides a contract for deed for the other business with which Ms. Brooks is involved. Although it appears that the response is now sufficiently complete, the Respondent is directed to indicate whether she has a written agreement with Ms. Stauber or Ms. Stauber's successor that would fall within Document Request No. 2.

Need for Continuance of Motion Deadlines and Hearing

It is appropriate to require that discovery be completed prior to the filing of motion(s) for summary disposition. The Respondent has now been ordered to provide supplemental responses to several interrogatories and document requests by October 24, 1997. Accordingly, the new deadline for submission of motions for summary disposition by the parties shall be extended to November 7, 1997. Responses in opposition to any such motions shall be filed by November 21, 1997, and reply briefs shall be filed by December 1, 1997. The hearing in this matter shall be continued to January 15, at 9:30 a.m. in the Courtrooms of the Office of Administrative Hearings in Minneapolis, Minnesota.

B.L.N.

² It is unclear whether this position is the same position as that referenced in the Respondent's response to Interrogatory No. 4. The Respondent should clarify this when she provides her amended response.