11-0900-11066-2

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of
Superior Home Care

RULING REGARDING
DEPARTMENT'S 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 July 3, 1997, the Department of Health filed a Motion to Compel Discovery. Superior Home Care filed its response in opposition to the Motion on July 22, 1997. The Department filed a reply brief on July 29, 1997, at which time the record with respect to the Motion to Compel closed.

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 discussions with the parties, IT IS HEREBY ORDERED as follows:

1. Based upon the Administrative Law Judge's review of the briefs filed by the parties with respect to the Department's Motion to Compel, it is determined that oral argument is not necessary to the development of a full and complete record on which a proper decision can be made with respect to the Motion. See Minn. R. 1400.6600 (1995). Accordingly, the Respondent's request for oral argument is hereby DENIED.

2. The Department's Motion to Compel is hereby GRANTED in part and DENIED in part. The Motion is granted with respect to Requests for Admissions Nos. 7-10, 12-15 and 17-19, Interrogatories Nos. 1, 3-6, 8, 11-12, and 16-18, and Document Request No. 2. The Department's Motion to Compel a response to Interrogatory No 2 is granted but limited to an identification of checking or savings accounts used by Superior Home Care and an identification of persons with signatory authority on those accounts. The Motion to Compel is denied with respect to Interrogatory No. 7 and Document Request No. 3.

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

4. The deadline for the filing of motions for summary disposition by the parties shall be extended to October 1, 1997. Responses in opposition to any such motions shall be filed by October 15, 1997, and reply briefs shall be filed by October 22, 1997.

5. The hearing in this matter shall be continued to November 18, 1997, at 9:30 a.m. in the Courtrooms of the Office of Administrative Hearings in Minneapolis, Minnesota.

Dated this _____ day of August, 1997.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

I. Background Information

In the Notice of and Order for Hearing filed in this matter, the Department alleges that its denial of Superior's application for a home care license was proper under Minn. R. 4668.0012, subp. 11(E). That rule requires the denial of a license application if "the commissioner determines that an owner or managerial official [of an applicant], as an owner or managerial official of another licensee, was substantially responsible for the other licensee's failure to substantially comply with Minnesota Statutes, sections 144A.43 to 144A.49 and this chapter [relating to the licensing of home care providers and hospice programs]." The term "managerial official" is defined in the rules to mean "a director, officer, trustee, or employee of a provider, however designated, who has the authority to establish or control business policy." Minn. R. 4668.0003, subp. 20 (1995).

The Department asserts in the Notice of and Order for Hearing that the denial of Superior's license application was proper because Superior's "managerial official, as the managerial official of another licensed home care agency, was substantially responsible for that licensed agency's failure to comply with the requirements of Minn. Stat. §§ 144A.43 to 144A.49 and Minn. R. ch. 4668." Notice of and Order for Hearing at 1. The Department specifically alleges that "Gerald Buchanan, as administrator and manager of the licensed home care agency doing business alternatively as Health Personnel and Silver Lining Assisted Lifestyles was substantially responsible for 51 violations of the home care statute and rules, resulting in that agency's loss of licensure." The Department further asserts that Mr. Buchanan provides "advice, counsel, and administrative service to Superior Home Care on a daily basis," Superior is "operated from the same office as is another of Mr. Buchanan's companies, Covenant Home Care," and Mr. Buchanan "has a financial interest in the manner in which Superior Home Care is operated" because he "receives 'a percentage of the agency's gross and net incomes.'" Id. at 1-2.

On May 1, 1997, the Administrative Law Judge denied the Department's request to continue the hearing in this matter until a ruling was made by the Commissioner in a contested case proceeding pending before Administrative Law Judge Allen E. Giles entitled In the Matter of the Application for License by Covenant Home Care, OAH Docket No. 3-0900-10712-2. As described more fully below, the Covenant Home Care matter involves a challenge to the Department's decision to deny Mr. Buchanan's application for a

home health care license in the name of Covenant Home Care. The May 1, 1997, ruling indicated that the Superior Home Care matter would proceed (via hearing or, if a motion was filed, a Motion for Summary Disposition) on the single issue of whether or not Mr. Buchanan is a "managerial official" of Superior Home Care within the meaning of Minnesota R. 4668.0012, subp. 11(E). If that issue is ultimately decided in favor of Superior Home Care by virtue of a determination that Mr. Buchanan is not a managerial official of Superior Home Care, the Judge will issue a recommendation to the Commissioner of Health that the license application be granted. If, on the other hand, the issue is ultimately decided in favor of the Department, a report will be issued reflecting that determination. The May 1, 1997, ruling further indicated that the Commissioner's decision in the Covenant Home Care matter concerning whether Mr. Buchanan was a managerial official of another licensee (Health Personnel) and was substantially responsible for Health Personnel's failure to substantially comply with the home care statute and rules would be dispositive of the remaining issues in the case.

The contested case proceeding in the Covenant Home Care matter was initiated after Mr. Buchanan appealed the Department's denial of his application for a home care provider license in the name of Covenant Home Care. As in the present case, the denial of the license in the Covenant matter was based on Minn. R. 4668.0012, subp. 11(E) and reflected the Department's conclusion that Mr. Buchanan had been a managerial official of another home care provider, Health Personnel/Silver Lining Assisted Lifestyle, and had been substantially responsible for Health Personnel's failure to comply with the home care statute and rules. The Covenant Home Care case did not involve the further issue raised in the present case concerning the nature of Mr. Buchanan's involvement in the applicant's operations since Mr. Buchanan submitted the license application for Covenant Home Care and identified himself as the person who was legally responsible for Covenant's operations. On June 19, 1997, Judge Giles issued an order in the Covenant Home Care case recommending that (1) the Department's motion for summary disposition be granted; (2) Mr. Buchanan be collaterally estopped from relitigating the issue of his responsibility for Health Personnel's noncompliance with the home care statute and rules; and (3) the decision by the Department to deny Mr. Buchanan's application for a home health care license for Covenant Home Care be affirmed. In arriving at his recommendation, Judge Giles emphasized that the earlier contested case proceeding involving Mr. Buchanan and Health Personnel had resulted in the assessment of penalties and the denial of the provider's application for license renewal and that the Commissioner's final order in the Health Personnel matter included a specific finding that "Gerald Buchanan is the actual individual responsible for the provider's [Health Personnel's] operations." See In the Matter of an Assessment and Denial of Renewal of License Issued to Health Personnel/Silver Lining Assisted Lifestyle, OAH Docket No. 73-0900-8852-2 (Recommendation of Judge Susan M. Williams issued July 28, 1995); Order of Commissioner adopting Judge Williams' Report (June 27, 1996); unpublished Court of Appeals' opinion in C4-96-2056 affirming penalty assessments and nonrenewal of license (March 18, 1997) (see www.finance-commerce.com/court/opinions/032197/96-2056.htm). The Commissioner of Health has not yet issued a final decision in the Covenant Home Care matter.

II. Discussion of Legal Standard and Superior's

General Argument in Opposition to Discovery Requests

The rules of the Office of Administrative Hearings govern the availability of prehearing discovery in contested case proceedings. The OAH rules 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.

Rule 26.02(a) of the Minnesota Rules of Civil Procedure generally provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . ." The rule further provides that "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information appears reasonably calculated to lead to the discovery of admissible evidence." The definition of relevancy in the discovery context has been broadly construed to include any matter "that bears on" an issue in the case or any matter "that reasonably could lead to other matter that could bear on any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Information will be deemed relevant if there is any possible way that it relates to the subject matter of the action, and the definition of "relevancy" for discovery purposes is not limited by the definition of "relevancy" for evidentiary purposes. 2 D. Herr & R. Haydock, Minnesota Practice 9 (2d Ed. 1985), citing Detweiler Brothers v. John Graham & Co., 412 F. Supp. 416, 422 (E.D. Wash. 1976), and County of Ramsey v. S.M.F., 298 N.W.2d 40 (Minn. 1980). In Jeppesen v. Swanson, 243 Minn. 547, 560, 68 N.W.2d 649, 656 (1955), the Minnesota Supreme Court discussed the meaning of "relevancy" in the context of discovery:

> It would seem to us, even though the discovery is not limited to facts which may be admissible, the ultimate goal is to ascertain facts or information which may be used for proof or defense of an action. Such information may be discovered by leads from other discoverable information. The purpose of a discovery rule is to take the surprise out of trials and cases so that all relevant facts and information pertaining to the action may be ascertained in advance of trial. Where it is sought to discover information which can have no possible bearing on the determination of the action on its merits, it can hardly be within the rule. It

> is not intended to supply information for the personal use of a litigant that has no connection with the determination of the issues involved in the action on their merits.

In summary, "matters sought to be discovered in administrative law settings will be 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).

In its response opposing the Department's Motion to Compel, Superior argues as a threshold matter that the discovery requests at issue are irrelevant because the information sought in these requests was not mentioned in the Department's letter of March 20, 1997, as grounds for the Department's decision to deny Superior's application for licensure. Superior contends that the Department is merely on an improper "fishing expedition trolling for additional facts to support its decision." Petitioner's Memorandum in Opposition at 1. Superior asserts that the Department's March 20, 1997, letter merely indicates that the decision to deny the application was "based upon the involvement of Mr. Buchanan, who as a managerial official, was substantially responsible for the failure of Health Personnel/Silver Lining Assisted Lifestyle to comply with home care statutes and rules" and the Department's conclusion that "[Ms. Brooks'] letters of January 15 and March 5, 1997, describe the role of Mr. Buchanan in Superior Home Care to be that of a managerial official." In essence, Superior contends that the scope of this contested case proceeding must be limited to an examination of the same information that the Department had at the time of the denial and a determination of whether the Department was in fact correct when it decided that Ms. Brooks' January 15, 1997, and March 5, 1997, letters described the role of Mr. Buchanan in Superior Home Care to be that of a managerial official and decided that the application had to be denied. Superior thus contends that the Department must rest its case solely on the precise information and allegations upon which it relied in making its original denial of Superior's application and is not entitled to seek additional information to support the license denial through discovery. In response, the Department asserts that Rule 26 permits it to discover relevant information for purposes of impeachment and to discover facts relevant to the Department's position that Mr. Buchanan is a managerial official of Superior as well as facts relevant to Superior's position that Mr. Buchanan is not a managerial official.

It is appropriate to look to the Minnesota Rules of Civil Procedure and applicable case law for guidance regarding the proper scope of discovery. As discussed above, Rule 26.02 of the Minnesota Rules of Civil Procedure permits discovery regarding any unprivileged matter that is "relevant to the subject matter involved in the pending action," including information relating to the "claim or defense of the party seeking discovery or to the claim or defense of any other party." Materials that may be used in impeachment of witnesses may also be discovered as relevant information. See, e.g., Boldt v. Sanders, 261 Minn. 160, 111 N.W.2d 225 (1961). It is well accepted that the discovery methods available under the OAH rules and the Minnesota Rules of Civil Procedure are designed to permit broad discovery in order to ensure that litigants have complete access to the facts prior to trial and thereby avoid surprises at the ultimate

hearing or trial. For example, in Jeppesen, 243 Minn. at 551, 68 N.W.2d at 651, the Minnesota Supreme Court quoted the following passage from Hickman v. Taylor, 329 U.S. 495, 507 (1947), with approval:

> "We agree, of course, that the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise. But discovery, like all matters of procedure, has ultimate and necessary boundaries."

In addition, in Boldt, the Minnesota Supreme Court rejected the defendant's argument that litigants should not be permitted to discover impeachment evidence, noted that the argument, if accepted, would lead to a situation in which parties would be confronted with impeachment evidence for the first time in the courtroom, and discussed the purpose of pre-trial discovery as follows:

> For us to revert to this philosophy would be judicial retrogression undermining the whole purpose of the rules of civil procedure. It would inevitably lead us back to the "poker hand" concept of litigation, rewarding artifice and camouflage. We do not believe the rights of the parties should be determined in such a murky atmosphere. It is essential to the achievement of justice that all of the admissible evidence be brought to light in time for both parties to evaluate it and adequately prepare for trial or settlement with full knowledge of the facts.

261 Minn. at 164, 111 N.W.2d at 227-28.

Administrative Law Judges at the OAH "have traditionally been liberal in granting discovery when the request is not used to oppress the opposing party in cases involving limited issues or amounts." G. Beck, L. Bakken & T. Muck, Minnesota Administrative Procedure, § 7.5.2 at 144 (1987). In the experience of this Administrative Law Judge, both parties to contested case proceedings involving the denial of applications for licensure have been permitted to conduct discovery pertinent to the issues and claims involved in the case and have been allowed to produce evidence at the hearing that is relevant to those issues and claims and is otherwise admissible, even if the information sought to be discovered or introduced into evidence was not known by the agency at the time that the initial decision to deny the application was made. Discovery of potential impeachment evidence has also been permitted. Such an approach is also consistent with the Minnesota Administrative Procedure Act (APA) and the rules of the OAH. Although the APA requires that the Notice of and Order for Hearing state the issues involved in the proceeding, the Act recognizes that later amendment of the issues is permissible. Minn. Stat. § 14.58 (1996). The OAH rules specifically provide that an agency may amend its Notice of and Order for Hearing at any time prior to the

close of the hearing as long as the parties have a reasonable time to prepare to meet any new issues or allegations that are raised. Minn. R. 1400.5600, subp. 5 (1995).

Under these principles, the Administrative Law Judge concludes that the Department may, as a general matter, seek to discover information that is relevant to the subject matter of this contested case proceeding (i.e., relevant to the Department's claim that Mr. Buchanan is a managerial official of Superior, Superior's claim that he is not a managerial official, or potential impeachment of witnesses who will testify at the hearing), even if it the Department did not specifically rely upon such information in its March 20, 1997, letter denying Superior's license application. The Department is not limited to the information that was already provided to it prior to the decision to deny Superior's license application. Accordingly, Superior's general argument that several of the discovery requests are improper simply because the Department's corresponding assertions were not explicitly mentioned in the Department's denial letter is rejected. Of course, as discussed above, before ruling on a motion to compel, there must be a further particularized inquiry under the OAH rules concerning whether the party seeking discovery has borne its burden to show that the specific information sought to be discovered is needed for the proper presentation of the party's case, is not for purposes of delay, and is warranted by the issues or amounts in controversy. These factors will be considered in the discussion below of the specific discovery requests at issue in this matter, along with the relevancy of each specific request. It must be emphasized that information that is deemed relevant at the discovery stage may not necessarily be admissible evidence at the hearing in this matter.

III. Specific Discovery Requests at Issue in Motion

Requests for Admission Nos. 7 and 8

In these requests, the Department asked for an admission that "AnnaMarie Brooks resides at 4886 West Pike Lake Road, Duluth, Minnesota with Gerald Buchanan and their daughter" and that "Covenant Home Care, a business that has provided or currently does provide personal care attendant services, maintains an office at 4886 West Pike Lake Road, Duluth, Minnesota." Superior responded that these requests for admission were "materially irrelevant." The Department contends that this information is discoverable because, if admitted, it would confirm that Ms. Brooks and Mr. Buchanan share a residence at the same address given by both Covenant Home Care (for which Mr. Buchanan sought and was denied a license) and Superior Home Care (for which Mr. Buchanan allegedly provides "consultant services") and thereby would support "a reasonable inference that Covenant Home Care and Superior Home Care are inextricably commingled."

The Notice of and Order for Hearing issued by the Department in this matter alleges as one of the factors relevant to Mr. Buchanan's involvement in Superior Home Care that Superior is operated from the same office as is another of Mr. Buchanan's companies, Covenant Home Care. The Department should be permitted to request that Ms. Brooks and Superior indicate whether this statement is true or false. Although it is a closer question whether the Department should also be permitted to ask for an admission that Ms. Brooks resides at the same address with Mr. Buchanan and their daughter, that point, if true, could potentially be used as impeachment evidence should

Ms. Brooks deny any contact with Mr. Buchanan. The Department has shown that the information sought is needed for the proper presentation of its case, is not for purposes of delay, and is warranted by the issues in controversy, in accordance with Minn. R. 1400.6700, subp. 2 (1995). The Respondent thus has been compelled to respond to these Requests for Admissions.

Requests for Admissions Nos. 9 and 10

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. The Respondent objected to the relevancy of these requests.

The information sought by these Requests for Admissions is a proper subject of discovery since, if true, these fact may, in combination with other evidence, support the Department's position that Covenant and Superior are interrelated and Superior was created to obtain the home care license that was denied to Covenant. The Department has borne its burden under Minn. R. 1400.6700, subp. 2 (1995). Accordingly, a response to these requests has been compelled.

Requests for Admissions Nos. 12 and 13

These requests ask for an admission that Ms. Brooks was employed by Health Personnel, a home care agency established by Mr. Buchanan, before she applied for a license for Superior Home Care and that, for the purposes of her employment by Health Personnel, Ms. Brooks was hired by Mr. Buchanan and/or directly reported to him. In its original response to the Requests for Admissions, the Respondent objected to these requests as irrelevant. The Department contends that the information is discoverable because it would support a reasonable inference that Ms. Brooks lacks the experience necessary to manage Superior and that she and Mr. Buchanan intended that Mr. Buchanan would actually manage Superior because of his previous experience in the home care industry. Superior argues in its response to the Motion to Compel that the implication conveyed by these requests impugn Ms. Brooks' competence. Superior further asserts that the information sought is, in any event, irrelevant because the home care statutes do not list any experience requirements as a prerequisite to obtaining a Class A home care license.

The Administrative Law Judge concludes that the information sought in these Requests for Admission is relevant to the Department's claim that Mr. Buchanan is a managerial official of Superior and to potential impeachment evidence should Ms. Brooks assert that she has extensive prior experience in the home care field. The Department has met the factors set forth in Minn. R. 1400.6700, subp. 2 (1995). Therefore, the Respondent has been compelled to respond to these Requests for Admissions.

Requests for Admissions Nos. 14, 15, 17, 18, and 19

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. Requests 17 through 19 ask for admissions that Ms. Brooks and Mr. Buchanan have an unmemorialized oral agreement under which Mr. Buchanan provides advice, counsel, and administrative services to Superior on a daily basis in return for which Mr. Buchanan receives an unstated percentage of Superior's gross or net incomes, Mr. Buchanan has provided counsel and advice to Ms. Brooks related to the Superior license application, and Mr. Buchanan has received no monetary compensation for any services he has rendered to Superior Home Care. The Respondent objected to these requests as irrelevant.

If true, the information requested in these Requests for Admissions may support a reasonable inference that Mr. Buchanan is a managerial official of Superior in the same manner as he was for Health Personnel. These requests encompass information that is relevant to the Department's claim that Mr. Buchanan is a managerial official of Superior Home Care. The Department has met its burden under Minn. R. 1400.6700, subp. 2. Therefore, the Respondent shall be compelled to submit responses to Requests for Admissions Nos. 14, 15, 17, 18, and 19.

Interrogatory No. 1

Interrogatory No. 1 of the Department's first set of interrogatories asks that Ms. Brooks and Superior Home Care[1] identify each source and amount of income from businesses involving the provision of health care services for the years 1993 through 1996. Superior argues that this request is irrelevant because the home care statute and rules do not list experience as a requirement for licensure. The Department alleged in its Motion to Compel that information relating to the extent of Ms. Brooks' experience managing a home care business is discoverable because it is reasonably calculated to lead to the discovery of admissible evidence regarding her competence to manage a home care business as compared to Mr. Buchanan.

The information sought is relevant to the Department's claim that Mr. Buchanan is a managerial official in Superior and could lead to potential impeachment evidence should Ms. Brooks contend that she has extensive home care experience. The Department has shown that the information requested is needed for the proper presentation of its case, is not for purposes of delay, and is warranted by the issues in controversy. Accordingly, a response by the Respondent to this interrogatory has been compelled.

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. In its response and its memorandum in opposition to the motion, Superior objected to Interrogatory No. 2 as requesting irrelevant information. The Department contends that this information is discoverable because it is reasonably calculated to lead to the discovery of admissible evidence regarding Ms. Brooks' ability to finance a home care business and Mr. Buchanan's authority as signator on her accounts.

Whether Mr. Buchanan has signatory authority on accounts used for Superior is relevant to the Department's claim that Mr. Buchanan is a managerial official of Superior, and discovery on this issue has been compelled. The Respondent thus should identify accounts used for Superior Home Care and identify all persons with signatory authority on such accounts. However, the request that other personal or business checking or savings accounts that may be maintained by Ms. Brooks for purposes not related to Superior Home Care be identified does not appear to be reasonably calculated to lead to the discovery of admissible evidence in this case. The Department apparently plans to ascertain the balances in such accounts and argue, based on those balances, that Ms. Brooks lacks the ability to finance a home care business. Should a license eventually be issued to Superior Home Care, Ms. Brooks may seek a bank or small business loan, liquidate other assets, or seek investors to finance the business. The balances in her checking and savings accounts thus may not reveal the entire amount of the resources available to her. The issues in this matter do not justify such a far-reaching intrusion into Ms. Brooks' finances. The Administrative Law Judge determines that the Department has not borne its burden under Minn. R. 1400.6700, subp. 2, with respect to this portion of Interrogatory No. 2.

Accordingly, the Department's Motion to Compel is granted 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, and denied with respect to the identification of checking and savings accounts that are not used for Superior Home Care and the identification of persons who have signatory authority for those accounts.

Interrogatories Nos. 3 and 4

Interrogatory No. 3 seeks to have Ms. Brooks and Superior identify their education and training related to owning and operating a business providing home health and home care services. Interrogatory No. 4 asks Ms. Brooks and Superior to describe their 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 or duties, and reason for terminating the employment. The Respondent objected to these interrogatories on the grounds that they do not seek relevant information because the home care statute does not specify any educational or experience requirements and asserted that they disparaged the competence of Ms. Brooks to operate a home care agency. The Department contends that responses to these interrogatories should be compelled because the information sought is relevant to Ms. Brooks' competence to manage a home care business as compared to Mr. Buchanan.

The Administrative Law Judge determines that the information sought in these interrogatories may lead to the discovery of potential impeachment evidence and to evidence supporting the Department's claim that Mr. Buchanan is a managerial official for the Respondent by virtue of Ms. Brooks' alleged lack of training and experience. If, in fact, Ms. Brooks lacks training and experience, such evidence, in combination with other evidence, may support the Department's position that Mr. Buchanan is, in fact, a managerial official in the operation. The Department has shown that the information

requested is needed for the proper presentation of its case, is not for purposes of delay, and is warranted by the issues in controversy. The Respondent thus has been ordered to respond to Interrogatories Nos. 3 and 4.

Interrogatory No. 5

This 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. Superior objected to the relevancy of this interrogatory. The Department argues that the information requested in Interrogatory No. 5 is reasonably calculated to lead to the discovery of admissible evidence regarding traditional consultant service relationships and, in comparison, the uniqueness of Mr. Buchanan's role as a purported consultant.

The Department has shown that the information sought in this interrogatory may lead to the discovery of admissible evidence regarding the practices of Ms. Brooks and Superior with respect to consultant service contracts and whether Mr. Buchanan should be viewed as a consultant or a managerial official. The Department has met the requirements of Minn. R. 1400.6700, subp. 2. It thus is appropriate to order the Respondent to respond to Interrogatory No. 5.

Interrogatory No. 6

This interrogatory asks for an explanation of when and why Superior moved its office from Howard Gnesen Road to West Pike Lake Road. Superior objected to this interrogatory as irrelevant. The Department contends that this request is reasonably calculated to lead to the discovery of admissible evidence regarding the relationship between Superior and Mr. Buchanan and Mr. Buchanan's home care agency, Covenant Home Care. The Respondent has been compelled to respond to this interrogatory based upon its relevance to the Department's assertion that Superior is interrelated with Covenant Home Care and Mr. Buchanan and the Department's showing that the requirements of Minn. R. 1400.6700, subp. 2, have been met.

Interrogatory No. 7

Interrogatory No. 7 requests that the Respondent identify each person or entity for which Mr. Buchanan has provided consultant services and state the nature of the service Mr. Buchanan provided and the terms and total amount of compensation he received for each. Superior objected to the relevancy of this interrogatory, arguing that it bears no relevance to the question of whether or not Mr. Buchanan has the authority to establish or control business policy at Superior. The Department asserts that this interrogatory seeks discoverable information because it is reasonably calculated to lead to the discovery of admissible evidence regarding Mr. Buchanan's financial interests in Superior and his purported consultant relationship with Superior.

Interrogatory No. 7 seeks information about other persons or entities for which Mr. Buchanan has provided consultant services. Such information would be within the personal knowledge of Mr. Buchanan, who is not a party to this proceeding. The Administrative Law Judge concludes that the information sought by Interrogatory No. 7

is improper and not reasonably calculated to lead to the discovery of admissible evidence.[2] Accordingly, a response to this interrogatory has not been compelled.

Interrogatory No. 8

This interrogatory asks that Superior and Ms. Brooks identify each person or entity with whom it or she conferred for services, information, or assistance in the development of Superior Home Care. Superior objected to this interrogatory as being irrelevant to the issue of whether or not Mr. Buchanan had the authority to establish or control business policy at Superior. The Department contends that this interrogatory seeks properly discoverable information because it is reasonably calculated to lead to the discovery of admissible evidence regarding the extent of Mr. Buchanan's involvement in the initial concept and creation of Superior.

The Administrative Law Judge finds that this interrogatory is relevant to the subject matter of this case and is reasonably calculated to lead to the discovery of admissible evidence regarding the nature of Mr. Buchanan's involvement in the development of Superior. The Department has made the required showing under Minn. R. 1400.6700, subp. 2, and a response is, therefore, ordered.

Interrogatory No. 11

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. Superior objected to the relevancy of this interrogatory. The Department argues that this request is reasonably calculated to lead to the discovery of admissible evidence regarding Mr. Buchanan's role as a managerial official of Superior.

This request is directly relevant to the primary inquiry in this case, i.e., the nature of Mr. Buchanan's involvement in Superior. A description of the services provided by Mr. Buchanan at the present time as well as the services that are anticipated to be provided in the future is clearly relevant to the subject matter of this action. The information requested in Interrogatory No. 11 is needed for the proper presentation of the Department's case, is not for purposes of delay, and is warranted by the issues in controversy. The Respondent has been ordered to respond.

Interrogatory No. 12

This interrogatory asks that Superior and Ms. Brooks identify all other persons who are providing services or who are anticipated to provide services to Superior on any basis other than as a salaried employee and describe the nature and frequency of the services and the manner in which the provider will be compensated. Superior objected to Interrogatory No. 12 as irrelevant to the issue of whether Mr. Buchanan was a managerial official of Superior. The Department asserts that this request is reasonably calculated to lead to the discovery of admissible evidence regarding the uniqueness of the purported consultant relationship between Mr. Buchanan and Superior and the extent of Mr. Buchanan's financial interest in and control over Superior.

The Administrative Law Judge finds that the information requested in this interrogatory is relevant to the issue of the extent of Mr. Buchanan's involvement in and control of Superior. The Department has shown that the requested discovery meets the requirements of Minn. R. 1400.6700, subp. 2. Thus, a response to Interrogatory No. 12 has been compelled.

Interrogatories Nos. 16 and 17

Interrogatory No. 16 asks that Superior and Ms. Brooks identify and describe in detail any and all correspondence, memoranda, and other written or oral communications which relate to staffing, management, or business operations of Superior Home Care. Interrogatory No. 17 asks that the identity of those who prepared, signed, communicated, and received documents identified in response to Interrogatory No. 16 be provided and that the dates of any such documents be given. Superior objected to the relevancy of these interrogatories. The Department contends that these requests are reasonably calculated to lead to the discovery of admissible evidence regarding the nature and extent of Mr. Buchanan's influence and control over Superior as well as his initial concept for and creation of Superior.

The Administrative Law Judge concludes that Interrogatories Nos. 16 and 17 are relevant to the subject matter of this proceeding and are reasonably calculated to lead to the discovery of admissible evidence regarding Mr. Buchanan's role in Superior. The Department has shown that the requested information is needed for the proper presentation of the Department's case, is not for purposes of delay, and is warranted by the issues in controversy. A response has, therefore, been ordered. If the answers to these interrogatories may be derived from the Respondent's business records and the burden of deriving the answers would be substantially the same for the Department as for Superior, the Respondent may respond by simply specifying the records from which the answer may be ascertained and affording the Department a reasonable opportunity to examine and copy such documents. See Minn. R. Civ. P. 33.03.

Interrogatory No. 18

This interrogatory asks that the business organization and hierarchy of Superior be described in detail, including an identification and description of documents reflecting such organization and hierarchy, an identification of all management personnel for Superior, and a description of the duties and responsibilities of management personnel. Superior objected to Interrogatory No 18 as irrelevant.

Interrogatory No. 18 is relevant to the subject matter of this proceeding and is reasonably calculated to lead to admissible evidence relating to the nature and extent of Mr. Buchanan's role in Superior. The Department has borne its burden under Minn. R. 1400.6700. Accordingly, Superior has been ordered to respond to this interrogatory.

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. Superior objected to this document request on the grounds that it asked for irrelevant information. The Department asserts that the documents encompassed within this request are reasonably calculated to lead to the discovery of admissible evidence regarding the uniqueness of the purported consultant relationship between Mr. Buchanan and Superior.

This request is relevant to the subject matter of this proceeding and is reasonably calculated to lead to admissible evidence regarding Mr. Buchanan's role in Superior Home Care and whether that role is properly characterized as a consultant relationship. The Department has shown that the requested information is needed for the proper presentation of the Department's case, is not for purposes of delay, and is warranted by the issues in controversy. The Respondent thus has been ordered to respond to this document request.

Document Request No. 3

Document Request No. 3 seeks the production of copies of state and federal income tax forms filed by Superior and Ms. Brooks for fiscal years 1993 to 1996. Superior objected to the relevance of this document request. The Department contends that this information is discoverable because it is reasonably calculated to lead to the discovery of admissible evidence regarding Ms. Brooks' ability to finance a home care business and the nature and extent of other professional joint ventures with Mr. Buchanan.

This document request is overly broad and seeks information that is not relevant to the subject matter of this proceeding. As discussed above with respect to Interrogatory No. 2, production of this information will not necessarily provide relevant evidence of Ms. Brooks' ability to finance a home care business since other resources may be available to her. Although the extent of other professional joint ventures between Ms. Brooks and Mr. Buchanan may, indeed, be relevant in this matter, a separate, more narrow request for such information should be posed. This request appears to be an unwarranted intrusion into Ms. Brooks' personal finances. The Department has not shown that the requested information is necessary for the presentation of its case or that the issues warrant such an intrusion.

IV. Need for Continuance of Motion Deadlines and Hearing

Under the First Prehearing Order issued in this matter on May 14, 1997, all discovery in this matter was to be completed by June 25, motions for summary disposition were to be filed by July 9, and the hearing was to be held on August 26. Pursuant to this ruling on the Department's Motion to Compel, the Respondent must file supplemental responses to several discovery requests by September 2, 1997. It is appropriate to require that discovery be completed prior to the filing of motion(s) for summary disposition. Accordingly, the deadline for submission of motions for summary disposition has been extended to October 1, 1997. Responses in opposition to any such motions shall be filed by October 15, 1997, and reply briefs shall be filed by

October 22, 1997. The hearing shall be continued to November 18, 1997, at 9:30 a.m. in the courtrooms of the Office of Administrative Hearings in Minneapolis.

B.L.N.

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[1] The Interrogatories use the terms "you" and "your." The Definitions and Instructions set forth at the beginning of the Interrogatories state that, "[w]herever these interrogatories refer to 'Petitioner,' 'you,' or 'your,' these terms refer to AnnaMarie Brooks, Superior Home Care, and all other persons acting or purporting to act on behalf of AnnaMarie Brooks, Superior Home Care."

[2] The Respondent's responses to Interrogatories Nos. 5, 10, and 11 will identify persons providing consultant services to Ms. Brooks and Superior and the specific services that have been or will be provided by Mr. Buchanan in particular and will thereby provide the Department with related information that is relevant to the subject matter of the pending case.