

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

In the Matter of the Application of
Harley J. McLain for Renewal of the
Registration of Kirpal Nurses (a/k/a
Kirpal Nurses, LLC, and/or Kirpal
Nurses Holding Co.), d/b/a Kind Hearts
as a Supplemental Nursing Services
Agency

PREHEARING ORDER

A prehearing conference was held on September 11, 2009, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN. Jocelyn F. Olson, Assistant Attorney General, appeared on behalf of the Department of Health (Department). Mary Absolon from the Department was also present. Harley J. McLain appeared on behalf of himself and Kirpal Nurses (Respondent). Robert Balch, a friend of Mr. McLain's, also attended.

Mr. McLain has attempted to retain counsel to represent him in this proceeding and was previously granted a continuance to allow more time to do so, but had not retained one at the time of the prehearing.

The issue presented in this proceeding is whether the business operated by Mr. McLain meets the statutory definition of a Supplemental Nursing Services Agency. Mr. McLain also contends that, if the definition excludes his business, the statute is unconstitutional. There was also some discussion that there is a dispute over whether Mr. McLain is operating the business or whether his nephew has taken it over. The parties agreed to continue to discuss that issue, but at the present time, it is not included in the Notice and Order for Prehearing Conference as a basis for the Department's denial of the Respondent's license.

A schedule was set for the Department to bring a Motion for Summary Disposition. A contested case hearing will be scheduled at a later date if the matter is not resolved by the motion.

IT IS HEREBY ORDERED:

1. The Department shall file a Motion for Summary Disposition by **November 13, 2009**.
2. The Respondent shall file his response to the Motion by **December 17, 2009**.

3. The Department may file a reply by **January 8, 2010**.

Dated: September 14, 2009

s/Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge