

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF NURSING

In the Matter of the Nursing  
License of Vaughn F. Herhusky,  
R.N. License No. 108626-9

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter was scheduled for a prehearing conference before Administrative Law Judge Steve M. Mihalchick of the Minnesota Office of Administrative Hearings at 2:00 p.m. on August 22, 1996, at the Board of Nursing Office, Suite 108, 2700 University Avenue West, St. Paul, Minnesota. Michael J. Weber, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Review Panel of the Minnesota Board of Nursing ("the Board"). There was no appearance by or on behalf of the Respondent, Vaughn F. Herhusky. The record closed on August 22, 1996, when Respondent failed to appear at the prehearing conference.

This Report is a recommendation, not a final decision. The Board of Nursing will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board 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 Board. Parties should contact Joyce M. Schowalter, Executive Director, Minnesota Board of Nursing, 2700 University Avenue West, Suite 108, St. Paul, Minnesota 55104, telephone number 612/642-0567, to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF ISSUES**

The issue in this contested case proceeding is whether disciplinary action should be taken against the R.N. license of the Respondent on the grounds set forth in Minn. Stat. §§ 148.261, subd. 1(3), for (1994) for being convicted of a felony reasonably related to the practice of nursing; Minn. Stat. § 148.261, subd. 1(8), for being unable to practice nursing with a reasonable degree of skill and safety by reason of illness, use of alcohol or drugs, or mental or physical illness; Minn. Stat. § 148.261, subd. 1(17), for violation of state or federal narcotics laws; and Minn. Stat. §§ 148.261, subd. 1(21), for failing to cooperate with an investigation of the Board.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On January 24, 1996, a Notice of Conference with Board of Nursing Review Panel was mailed to Respondent at the last known address for the Respondent according to the records of the Board of Nursing. Respondent did not attend the conference with the Nursing Review Panel.

2. The Notice of and Order for Prehearing Conference and Hearing in this matter was served upon the Respondent by first-class mail at Five Cayuna Drive, Virginia, Minnesota 55792, on July 3, 1996.

3. The Notice of and Order for Prehearing Conference and Hearing served on the Respondent contained the following informational notice in the paragraph ordering the prehearing conference:

Respondent is urged to attend; failure to do so may prejudice Respondent's rights in this proceeding and any subsequent proceedings related to this matter, may result in the allegations contained herein being taken as true, and may be the basis for disciplinary action against Respondent.

4. There has been no contact between Respondent and the Review Panel regarding this matter. Respondent did not file any Notice of Appearance with the Administrative Law Judge, provide a telephone number to counsel for the Board or to the Administrative Law Judge, or make any prehearing request for a continuance or any other relief. Respondent did not appear at the prehearing conference scheduled for August 22, 1996, or have an appearance made on his behalf.

5. Because Respondent failed to appear at the prehearing conference in this matter, he is in default. Pursuant to Minn. Rule 1400.6000 (1993), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Minnesota Board of Nursing and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 148.261, and 214.10 (1994).

2. The Board of Nursing has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Minnesota Board of Nursing has the authority to take disciplinary action against registered nurses, including the Respondent, under Minn. Stat. §§ 148.261 and 148.262 (1994).

4. The rules of the Board of Nursing require licensees to maintain with the Board a correct mailing address for the purpose of receiving Board communications or notices. Minn. Rule 6310.2900, subp. 1 (1993).

5. Minn. Stat. §148.261, subd. 1 (1994), provides, in pertinent part, as follows:

The board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice professional or practical nursing under sections 148.171 to 148.285, or to otherwise discipline a licensee or applicant as described in section 148.262. The following are grounds for disciplinary action:

\* \* \*

(3) Conviction during the previous five years of a felony or gross misdemeanor reasonably related to the practice of nursing. . . .

\* \* \*

(8) Actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition.

\* \* \*

(17) Violating a rule adopted by the board, an order of the board, or a state or federal law relating to the practice of professional or practical nursing, or a state or federal narcotics or controlled substance law.

\* \* \*

(21) . . . failing to cooperate with an investigation of the board as required by section 148.265.

\* \* \* \*

6. Pursuant to Minn. Stat. § 148.265 (1994), “[a] nurse who is the subject of an investigation by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or other records in the nurse’s possession, as reasonably requested by the board, to assist the board in its investigation and to appear at conferences and hearings scheduled by the board . . . .”

7. Respondent has failed to fully cooperate with the investigation by the Review Panel by failing to participate in the review conference and the prehearing conference.

8. Respondent is in default herein under Minn. Rule 1400.6000 (1993) as a result of his failure to appear at the prehearing conference.

9. Under Minn. Rule 1400.6000 (1995), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing may be taken as true or deemed proved without further evidence when a party fails to appear at the hearing.

10. Under Minn. Rule 1400.7300, subp. 5 (1995), the Board of Nursing has the burden of establishing by a preponderance of the evidence the statutory violations charged.

11. As a result of the Respondent's default, the Board of Nursing has met its burden of proof with respect to the issues of Respondent's conviction of a felony reasonably related to the practice of nursing, inability to practice nursing, violation of narcotics law, and failure to cooperate with an investigation of the Review Panel.

12. Respondent's conduct as set forth in the Notice of and Order for Prehearing Conference and Hearing and incorporated herein pursuant to Finding of Fact No. 5 violates Minn. Stat. § 148.261, subds. 1(3), (8), (17), and (21) (1994).

13. As a result of the statutory violations set forth in Conclusion No. 12, the Board of Nursing has the power to deny, suspend, revoke, or restrict Respondent's license, or to otherwise discipline her as set forth in Minn. Stat. §148.262 (1994).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

**RECOMMENDATION**

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Board of Nursing take disciplinary action against the R.N. license of Respondent, Vaughn F. Herhusky.

Dated this \_\_\_\_ day of September, 1996.

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STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Default.

**NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.