

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

In the Matter of the Nursing License  
of Michelle R. Muehlbauer, L.P.N.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

License No. 43628-9

The above-entitled matter was set for a prehearing conference before Administrative Law Judge Steve M. Mihalchick of the Minnesota Office of Administrative Hearings at 9:30 a.m. on Monday, February 24, 1997, at the Board of Nursing Office in Minneapolis, 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, Michelle R. Muehlbauer, L.P.N. The record closed on March 3, 1997, upon receipt of a letter by Mr. Weber requesting that a default recommendation be issued.

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 Recommendations 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 ISSUE**

The issue in this contested case proceeding is whether disciplinary action should be taken against the L.P.N. license of the Respondent on the grounds set forth in Minn. Stat. §§ 148.261, 148.265, 152.027, and 152.092 (1996).

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

### **FINDINGS OF FACT**

1. The Notice of and Order for Prehearing Conference and Hearing in this matter was mailed to the Respondent by first-class mail at 209 Fifth Street East, #12, Herman, Minnesota 56248, on November 21, 1996. That address not the correct address maintained for the Respondent according to the records of the Board of Nursing.

2. Upon discovering that a mistake had been made in mailing the first notice, the Second Notice of and Order for Prehearing Conference and Hearing in this matter and a Request for Admissions was served upon the Respondent by first-class mail at 209 Fifth Street East, Apt. 10, Herman, Minnesota 56248, on January 28, 1997. That address was the last known address for the Respondent according to the records of the Board of Nursing.

3. The Second 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. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any prehearing request for a continuance or any other relief. The Respondent did not appear at the prehearing conference scheduled for February 24, 1997, or have an appearance made on her behalf. Respondent has not contacted the Administrative Law Judge between the date of the hearing and the date on which this Report was issued.

5. Requests for admissions were served on Respondent with the Second Notice of and Order for Prehearing Conference and Hearing. The Request for Admissions notice contains the following language:

Failure to answer in writing within the allotted time shall result in the subject matter of the request being deemed admitted for the purpose of this action.

6. No responses were received by the Board of Nursing from the Respondent to the Request for Admissions.

7. Because the Respondent failed to appear at the prehearing conference in this matter, she is in default. Pursuant to Minn. Rules 1400.6000 (1995), the allegations contained in the Second Notice of and Order for Prehearing Conference and Hearing are hereby taken as true and incorporated into these Findings of Fact.

8. Because the Respondent failed to answer the Request for Admissions, the facts contained in the Request are deemed admitted for the purposes of this matter.

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 licensed practical nurses, including the Respondent, under Minn. Stat. §§ 148.261 and 148.262 (1992).

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. Rules 6310.2900, subp. 1 (1995).

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:

\* \* \*

(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) Making a false statement or knowingly providing false information to the board, failing to make reports as required by section 148.263, or failing to cooperate with an investigation of the board as required by section 148.265.

6. Pursuant to Minn. Stat. § 148.265 (1996), “[a] nurse who is the subject of an investigation by or on behalf of the board [of nursing] 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. The Respondent is in default herein under Minn. Rules 1400.6000 (1995) as a result of her failure to appear at the prehearing conference.

8. Under Minn. Rules 1400.6000 (1995), the allegations contained in the Second 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.

9. Under Minn. Rules 1400.6800 (1995), failure to respond to requests for admissions without justifiable excuse renders the subject matter of the request to be deemed as admitted.

10. Under Minn. Rules 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 and the facts deemed to be admitted, the Board of Nursing has met its burden of proof.

12. The Respondent’s conduct as set forth in the Second Notice of and Order for Prehearing Conference and Hearing and incorporated herein pursuant to Finding of Fact No. 4 violates Minn. Stat. §§ 148.261, subd. 1(17) and (21), and 148.265 (1996).

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 the Respondent’s license, or to otherwise discipline her as set forth in Minn. Stat. §148.262 (1996).

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 L.P.N. license of the Respondent, Michelle R. Muehlbauer.

Dated this \_\_\_\_\_ day of March, 1997.

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STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Default.

**NOTICE**

Pursuant to Minn. Stat. § 1462, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.