

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

In the Matter of Juliana L. Barth, L.P.N.,
License No. 41882-5

FINDINGS OF FACT,
CONCLUSIONS,
AND RECOMMENDATION

This matter came on for a Prehearing Conference before Administrative Law Judge Beverly Jones Heydinger at 9:30 a.m. on February 18, 2003 at the offices of the Board of Nursing, 2829 University Avenue S.E., Suite 500, Minneapolis, Minnesota. Rosellen M. Condon, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2131, appeared for the Board of Nursing Review Panel. Juliana L. Barth, Licensee, did not appear in person or by counsel, nor has she contacted the administrative law judge to request a continuance of this matter.

NOTICE

This report is a recommendation, not a final decision. The Minnesota Board of Nursing will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61 (2002), the Board shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact the Board at the address above to learn the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

1. Did the Licensee fail to, or did she have the inability to perform nursing with reasonable skill and safety?

2. Did the Licensee engage in unethical conduct, including conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a patient?

3. Did the Licensee improperly manage patient records?

4. Did the Licensee violate a state or federal narcotics or controlled substance law?

5. Did the Licensee practice outside the scope of practice authorized by the Nurse Practice Act?

6. Did the Licensee fail to cooperate with an investigation of the Board?

7. Is the Board justified in taking disciplinary action against the Licensee?

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

FINDINGS OF FACT

1. On January 16, 2003, the Notice of and Order for Prehearing Conference and Hearing in this matter was served by first class mail upon Juliana L. Barth, L.P.N., 1120 Kirby Drive, 115 KSCFSO #71, Duluth, MN 55812, her last known address on file with the Board of Nursing. It notified the Licensee of the Prehearing Conference scheduled for February 18, 2003. The Notice was not returned to the Board.

2. On February 18, 2003, the Licensee failed to appear at the Prehearing Conference, or to notify the Board or the Administrative Law Judge that she was unable to appear.

3. The Notice of and Order for Prehearing Conference and Hearing informed Respondent that if she failed to appear at the Prehearing Conference the allegations against her, set forth in the Notice of and Order for Prehearing Conference and Hearing, could be taken as true, and a default order could be issued. She was informed that such an order could result in disciplinary action, including loss of license.

4. Because the Respondent failed to appear, she is in default.

5. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are 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

1. The Board of Nursing and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 148.261 and 214.103, subd.7 (2002).

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

3. The facts set out in the Notice of and Order for Prehearing conference and Hearing constitute violations of Minn. Stat. § 148.261, subd. 1(5), (11), (16) and (21). The statute provides that disciplinary action may be taken for the following reasons:

* * *

(5) Failure to or inability to perform professional or practical nursing ... with reasonable skill and safety,

(11) Engaging in any unethical conduct, including, but not limited to, conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient. Actual injury need not be established under this clause

(16) Improper management of patient records, including failure to maintain adequate patient records,

(21) Practicing outside the scope of practice authorized by section 148.171, subdivision 5, 10, 11, 13, 14, 15, or 21

4. The Board has failed to allege facts sufficient to find a violation of section 148.261, subdivision 1 (18).

5. By failing to attend the conference with Board staff scheduled for December 20, 2002, the Licensee has failed to cooperate with an investigation of the Board in violation of Minn. Stat. §§ 148.261, subd. 1(23), and 148.265.

6. Licensee's conduct constitutes grounds for the Board to take disciplinary action.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Board take disciplinary action against Juliana L. Barth, L.P.N.

Dated this 5th day of March, 2003.

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (2002), the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Respondent did not appear at the prehearing conference to refute the allegations against her, nor did she contact the Board or the Administrative Law Judge to ask for a continuance of this matter. The facts alleged by the Board are taken as true. Absent any evidence to the contrary, the facts reasonably support the conclusions.

BJH