

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

In the Matter of Timothy H. McIntyre,  
R.N., License No. 157762-6

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for prehearing conference before Administrative Law Judge Allan W. Klein commencing at 8:30 a.m. on September 16, 2004, at the offices of the Minnesota Board of Nursing, Suite 200, 2829 University Avenue S.E., Minneapolis, Minnesota.

Tiernee Murphy, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55103-2131, appeared on behalf of the Minnesota Board of Nursing Review Panel ("Panel"). Timothy H. McIntyre ("Respondent") did not appear at the prehearing. The record closed on September 16, 2004, upon the Respondent's failure to appear.

**NOTICE**

This report is a recommendation, not a final decision. The Board of Nursing will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under 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 Kay Buchanan, Discipline Coordinator, Board of Nursing, 2829 University Ave. S.E., Suite 500, Minneapolis, MN 55414 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. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. 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.

Under 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 or as otherwise provided by law.

### **STATEMENT OF ISSUE**

The issue in this case is whether or not disciplinary action should be taken against the Respondent in accordance with Minn. Stat. § § 148.261, 148.262, and 148.265.

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

### **FINDINGS OF FACT**

1. On August 9, 2004, a Notice of and Order for Prehearing Conference and Hearing in this matter was mailed to the Respondent at two different addresses, one in Minneapolis, the other in Winona. The Notice of and Order for Prehearing Conference and Hearing scheduled the prehearing conference for September 16, 2004.

2. The Notice of and Order for Prehearing Conference and Hearing that was mailed to the Respondent contained the following statement:

3. Respondent's failure to appear at the prehearing conference ... may result in a finding that Respondent is in default, that the allegations contained in this Notice and Order for Prehearing Conference and hearing may be accepted as true, and its proposed action may be upheld.

4. The Respondent did not appear at the September 16, 2004, prehearing conference. Respondent did not contact the Board or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by Respondent in this matter.

5. The allegations set forth in the Notice of and Order for Prehearing Conference, are deemed proved and are hereby incorporated into these Findings by reference.

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

### **CONCLUSIONS**

1. The Minnesota Board of Nursing and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. § § 148.261, 214.10, 214.103 and 14.50.

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter.

3. The Minnesota Board of Nursing has complied with all relevant substantive and procedural requirements of statute and rule.

4. Under Minn. Rule 1400.6000 the Respondent is in default as a result of her failure to appear at the scheduled preheating conference.

5. Under Minn. Rule 1400.6000 when a party defaults, the allegations and the issues set out in the Notice of and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore takes those allegations and issues as true and deemed proved.

6. Based upon the facts set out in the Notice of and Order for Prehearing Conference and Hearing, the Respondent has violated Minn. Stat. § § 148.261, subd. 1(2), (6), (9), (11), (23), and 148.265 and is subject to disciplinary action by the Minnesota Board of Nursing.

7. An order by the Board prescribing disciplinary action against the Respondent is in the public interest.

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

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that disciplinary action be taken against the R.N. License of Timothy H. McIntyre by the Minnesota Board of Nursing.

Dated this 17th Day of September 2004.

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s/ Allan W. Klein  
ALLAN W. KLEIN  
Administrative Law Judge

Reported: Default.