

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

In the Matter of Marie C. Gerber,
L.P.N., License No. 50434-4

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for a Prehearing Conference before Administrative Law Judge Richard C. Luis at 1:30 p.m. on October 15, 2004, at the offices of the Minnesota Board of Nursing in Minneapolis. Stephen B. Masten, 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"). Marie C. Gerber ("Licensee," "Respondent") did not appear at the Prehearing Conference. The record closed on October 19, 2004.

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 Rene Cronquist, Assistant Director, Board of Nursing, 2829 University Ave. S.E., Suite 200, 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.

STATEMENT OF ISSUE

Whether disciplinary action should be taken against the Respondent in accordance with Minn. Stat. § § 148.261 and 148.262 for: (1) failure or inability

to perform nursing with reasonable skill and safety; (2) engaging in unprofessional conduct (including failure to conform to minimal standards of acceptable and prevailing nursing practice); (3) actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs or chemicals or as a result of any mental or physical condition; (4) engaging in unethical conduct, including 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; (5) improper management of patient records and making a false statement or knowingly providing false information to the Board; and (6) failing to make a report to the Board or failing to cooperate with an investigation of the Board?

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

FINDINGS OF FACT

1. On September 10, 2004, a Notice of and Order for Prehearing Conference and Hearing was mailed to the Licensee/Respondent at her last known address – 4141 Sunshine Drive N.W., Oak Grove MN 55303. The Notice of and Order for Prehearing Conference and Hearing scheduled a Prehearing Conference for October 15, 2004.

2. The Notice of and Order for Prehearing Conference and Hearing mailed to the Licensee/Respondent contained the following statement, on page 3:

“Respondent’s failure to appear at the prehearing conference, settlement conference or hearing 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.”

3. The Licensee/Respondent did not appear at the October 15, 2004 Prehearing Conference. She did not contact the Board or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by the Licensee/Respondent.

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

Based on the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Board of Nursing have jurisdiction herein pursuant to Minn. Stat. § § 14.50, 148.261, 214.10 and 214.103.
2. The Licensee/Respondent was given timely and proper notice of the Prehearing Conference in this matter.
3. The Board of Nursing has complied with all relevant substantive and procedural requirements of law and rule.
4. Under Minn. Rule 1400.6000, the Licensee/Respondent is in default as a result of her failure to appear at the scheduled Prehearing Conference.
5. Under Minn. Rule 1400.6000, when a party defaults, the allegations and 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 they are deemed proved.
6. Based upon the facts set out in the Notice of and Order for Prehearing Conference and Hearing, the Licensee/Respondent has violated Minn. Stat. § § 148.261, subds. 1(5), 1(6), 1(9), 1(11), 1(16) and 1(23) and 148.265. As a result, she is subject to disciplinary action by the Minnesota Board of Nursing.
7. An Order by the Board imposing disciplinary action against the Licensee/Respondent is in the public interest.

Based on the above Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against the L.P.N. License of Marie C. Gerber.

Dated this 4th day of April, 2011

S/ Richard C. Luis _____
RICHARD C. LUIS
Administrative Law Judge

Reported: Default

NOTICE

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.

If the Board fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this Report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, 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.

R.C.L.