

BEFORE IOWA BOARD OF NURSING HOME ADMINISTRATORS

IN THE MATTER OF)	NO. 11-002
)	
Tiffany Vogt,)	
)	NOTICE OF HEARING
Respondent.)	AND STATEMENT OF CHARGES

COMES NOW the Iowa Board of Nursing Home Administrators (“Board”) and hereby files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6.

Respondent was issued Iowa nursing home administrator license number 002451 on February 13, 2009. Respondent’s license is current and is set to expire on December 31, 2013. Respondent’s address as reported to the Board is 351 West Maple Drive, Hartley, Iowa 51346.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on **April 18, 2013**, before the Board of Nursing Home Administrators. The hearing shall begin at 11 am, and shall be located in the Lucas State Office Building, Fifth Floor Board Conference Room 526, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 645 IAC 11.12 to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges. Pleadings shall be filed with the Board at the following address: Board of Nursing Home Administrators, 5th Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, 50319.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 645 IAC chapter 11. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 645 IAC 11.18. The hearing may be open to the public or closed to the public at your discretion.

Pre-hearing Conference. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 645 IAC 11.17.

Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: September Lau, Assistant Attorney General, Iowa Attorney General's Office, Hoover State Office Building, 2nd Floor, Des Moines, Iowa 50319.

Communications. You may not contact board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file

with the Board office and serve upon all parties in the case.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 155, and 272C.

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 155, and 272C and 645 IAC chapter 144.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 645 IAC 11.21.

C. SECTIONS OF STATUTES AND RULES INVOLVED

Count I

Respondent is charged pursuant to Iowa Code section 147.55(9) and 645 IAC 144.2(14) with violation of a regulation, rule or law of this state, another state, or the United States which relates to the practice of nursing home administrators.

Count II

Respondent is charged pursuant to Iowa Code section 147.55(3) and 645 IAC 144.2(4) with knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of nursing home administration or engaging in unethical conduct or practice harmful or detrimental to the public.

D. FACTUAL CIRCUMSTANCES

1. Respondent is currently licensed as a Nursing Home Administrator in Iowa. From at least April of 2010 through April of 2011, Respondent served as

administrator for Primghar Rehabilitation and Care Center (“Facility”) in Primghar, Iowa.

2. As Administrator of the Facility, Respondent was responsible for overseeing, disciplining, and terminating lower-level staff. Respondent was also responsible for hiring competent staff.

3. As Administrator of the Facility, Respondent was responsible for compliance with all applicable laws and DIA rules.

4. The Iowa Department of Inspections and Appeals, Health Facilities Division, (“DIA”) performed a complaint investigation at the Facility, which concluded on April 13, 2010. In conjunction with this complaint investigation, a Facility Staff Member (“FSM”) reported to a DIA Surveyor an incident of suspected dependent adult abuse on the part of Respondent.

5. Respondent discovered the identity of FSM.

6. On April 15, 2010, FSM was given six separate written Employee Warning Notices for incidents that occurred from January 3, 2010, through April 14, 2010, and ongoing violations dating back to 2009.

7. On April 16, 2010, FMS was terminated from her employment at the Facility.

8. DIA initiated a subsequent survey that lasted from May 3 to July 1, 2010 (“Second Survey”). This Second Survey indicated that Respondent retaliated against FSM by imposing excessive discipline on her, and terminating her after she reported her concerns about Respondent to DIA.

9. Pursuant to Iowa Code section 135C.46, a facility shall not discriminate or

retaliate in any way against an employee who has initiated or participated in a DIA investigation.

10. Pursuant to Iowa Code section 235 E.2(8), it is unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 5 of that code section, or cooperating with, or assisting the department in evaluating a case of dependent adult abuse.

11. A Third Survey was conducted by DIA from February 22-25, 2011. This Third Survey indicated that the Facility failed to complete timely nurse's aide verification for two nursing assistants, and verification of licensure for one LPN.

12. Pursuant to 481 Iowa Administrative Code 58.1, a qualified nurse is a registered nurse or a licensed practical nurse.

13. Qualifications for nurse's aides and nursing staff are set forth in 481 Iowa Administrative Code 58.11.

14. On February 24, 2011, a DIA surveyor asked Respondent to supply evidence that the Facility had completed required employee qualifications verifications. Respondent submitted verification documents from which the dates had been removed. Respondent initially denied that the documents had been obtained that day—on February 24, 2011. Respondent then admitted that she had altered the documents to remove the dates. The employee files for the LPN and nurse's aides in question did not contain documentation that they were eligible for employment.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules

governing the Board's settlement process are found at 645 IAC chapter 12. If you are interested in pursuing settlement of this matter, please contact September Lau, Assistant Attorney General, at (515) 281-7175.

F. PROBABLE CAUSE FINDING

On this 30th day of January, 2013, the Iowa Board of Nursing Home Administrators found probable cause to file this Notice of Hearing and Statement of Charges.


Chair, Board of Nursing Home Administrators

Copies to:

September Lau
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover Bldg.
Des Moines, IA 50319

Tiffany Vogt