

**TRUE AND EXACT
COPY OF ORIGINAL**

**BEFORE THE MINNESOTA
BOARD OF MEDICAL PRACTICE**

In the Matter of
the Registration of
Abdi E. Hersy, R.C.P.
Date of Birth: 2/20/1961
Registration Number: 3,045

**FINDINGS OF FACT,
CONCLUSIONS, AND
FINAL ORDER**

The above-entitled matter came on for a telephone prehearing before the Honorable Eric L. Lipman, Administrative Law Judge ("ALJ"), on September 26, 2008. The prehearing was held pursuant to a Notice and Order for Prehearing Conference and Hearing ("Notice") issued by the Complaint Review Committee ("Committee") of the Minnesota Board of Medical Practice ("Board") on August 27, 2008.

On October 3, 2008, the ALJ issued Findings of Fact, Conclusions, and Recommendation.

The Board met to consider the matter on March 7, 2009, at University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. The following members of the Board were present: Alfred V. Anderson, D.C., M.D.; Keith Berge, M.D.; Robert Brown, Ph.D.; Jack Geller, Ph.D.; Rebecca Hafner-Fogarty, M.D., MBA; Brad Johnson, M.D.; James Langland, M.D.; Tammy McGee; and Gregory Snyder, M.D. Tiernee Murphy, Assistant Attorney General, appeared and presented oral argument on behalf of the Committee. Nathan W. Hart, Assistant Attorney General, was present as legal adviser to the Board. Ernest W. Lampe, II, M.D., and James L. Mona, D.O., were members of the Committee that initially reviewed this matter and, therefore, they did not participate in deliberations and did not vote in the matter. Abdi E. Hersy, R.C.P. ("Respondent"), did not appear.

Based on the testimony, records, and arguments in this matter, the Board makes the following:

FINDINGS OF FACT

1. On August 27, 2008, the Committee sent the Notice in this matter to Respondent. The Notice scheduled a prehearing conference to take place on September 26, 2008, at the Office of Administrative Hearings.

2. The Notice contained the following provision:

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

3. On September 26, 2008, Respondent did not personally appear at the prehearing conference in this matter or have an appearance made on his behalf. Respondent did not contact the ALJ prior to the prehearing conference to request a different date or time.

4. In the Findings of Fact, Conclusions of Law, and Recommendation of October 3, 2008, the ALJ stated:

a. The allegations contained in the Notice of and Order for Hearing are deemed proven.

b. Respondent is in default as a result of his failure, without the Administrative Law Judge's prior consent, to appear at the scheduled prehearing conference.

c. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the Notice of and Order for Hearing may be taken as true or deemed proved without further evidence.

5. The Board deems the following allegations proven:
- a. Respondent was registered by the Board as a respiratory care practitioner in the State of Minnesota on November 13, 2004.
 - b. Respondent was employed by a Twin Cities hospital as a respiratory care practitioner from February 6, 2006, until his termination from employment on December 12, 2006.
 - c. Respondent's address of record with the Board is 5424 Brewer Lane, Inver Grove Heights, Minnesota 55076.
 - d. In or about October 2007, the Board received information from a third party that Respondent was residing at 12320 105th Avenue, #2, Edmonton, Alberta T5N 0Y4, Canada. On October 18, 2007, Respondent was served at this address with a Notice of Conference that contained allegations substantially similar to those described below. Shortly thereafter, Respondent called Board staff and stated he had moved to Canada.

Patient #1

- e. On July 12, 2006, patient #1 was admitted to the hospital for cervical spine surgery. On July 13, 2006, Respondent engaged in the following conduct:
 - 1) Respondent entered patient #1's private room, closed the door, and pulled the curtain around the bed. Respondent told patient #1 she was pretty and beautiful.
 - 2) Respondent stated to patient #1 that he could hear wheezing in her chest and that she needed a nebulizer treatment. Respondent told patient #1 it would be easier and he could give her a better massage if he could get under her gown. Respondent told patient #1 he needed to deeply massage her breasts in order for it to work.

3) Respondent massaged patient #1's breasts while administering a nebulizer treatment.

4) Respondent placed his stethoscope on patient #1's chest, then cupped her breast with his hand, and said to patient #1, "You're big breasted."

5) Respondent was rubbing, squeezing, and cupping patient #1's breasts back and forth and up and down. Respondent tried to touch patient #1's buttocks under her gown.

Patient #2

f. On November 21, 2006, patient #2 was admitted to the hospital with complaints of increasingly frequent episodes of fluid retention. On November 22 and 23, 2006, Respondent engaged in the following conduct:

1) Respondent entered patient #2's private room, closed the door, pulled the curtain around the bed, and initiated a nebulizer treatment.

2) Respondent reached under patient #2's gown, began to touch her breasts, and told her, "I'm loosening the phlegm in your lungs."

3) Respondent continued to massage patient #2's breasts underneath her gown and moved her gown to expose her breasts.

4) Respondent began softly moaning, as he continued to massage patient #2's breasts, remarked that she had beautiful breasts, and stated that, if she were with him, he would "spoil her."

5) Respondent then extended one of his hands to patient #2's abdomen, moved toward her vagina, and inserted one of his fingertips into her labia. Patient #2 told Respondent to stop the treatment and Respondent left the room.

6) On November 23, 2006, Respondent again entered patient #2's room, bent down toward her face, and told her "you're so beautiful" and he "wanted to have sex" with her. Respondent was touching patient #2's breasts as he was saying these things.

g. On or about November 27, 2006, Respondent's employer initiated an internal investigation of the complaint regarding Respondent's conduct with patient #2. On December 12, 2006, Respondent was terminated from his employment with the hospital.

h. On or about February 22, 2007, Respondent was charged in Washington County District Court, Stillwater, Minnesota, with six counts of criminal sexual conduct with patients #1 and #2, pursuant to Minn. Stat. §§ 609.345, 609.2325, and 609.3451. Respondent left a voice mail message for a police officer that stated he had moved out of the country. Respondent's trial is pending. It is believed that Respondent moved to Canada in about January 2007.

Patient #3

i. In April 2007, the Board received notification of a similar incident involving Respondent and patient #3. Patient #3 was hospitalized in June 2006 and reported that Respondent entered her private room, closed the door, pulled the curtain around the bed, reached under her gown, and began massaging her breasts and shoulders.

j. Respondent failed to notify the Board of a change of address, as follows:

1) In January 2007, when police were investigating the allegations regarding patient #2, they learned that Respondent was not residing at 5424 Brewer Lane, Inver Grove Heights, Minnesota 55076, his address of record with the Board.

2) Respondent failed to notify the Board of his new address. As noted above, the Board learned of Respondent's new address from a third party.

CONCLUSIONS

Based on the foregoing Findings of Fact, the Board makes the following conclusions of law:

1. Any of the foregoing Findings of Fact that are more appropriately considered conclusions of law are hereby adopted as such.

2. The Board and the ALJ have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 147.141, 147C.30, 214.10, subd. 2, and 214.103, subd. 7 (2008).

3. The Board has authority to take disciplinary action under Minn. Stat. § 147.091.

4. The Committee gave proper notice of the prehearing conference and hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rules.

5. Under Minn. R. 1400.6000, Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

6. Under Minn. R. 1400.6000, when a party defaults, the allegations and the issues set out in the Notice may be taken as true and deemed proved. The ALJ therefore deems the allegations to be true.

7. Minnesota Statutes sections 147C.30 and 147.091, subd. 1 (2008), provide that the Board may discipline the registration of a respiratory care practitioner who has been convicted within the previous five years of a felony reasonably related to the practice of medicine or osteopathy, who has engaged in unethical conduct, or who has engaged in unprofessional conduct.

8. Respondent has violated Minn. Stat. § 147.091, subs. 1(g), (k), (t), and 2(e) (2008), and the Board has grounds to take disciplinary action against his registration.

ORDER

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following order:

The Board **REVOKES** Respondent's registration to practice as a respiratory care practitioner.

MINNESOTA BOARD OF
MEDICAL PRACTICE

Dated: 12 March 2009

Rebecca Hafner-Fogarty MD MBA
REBECCA HAFNER-FOGARTY, M.D., MBA
President

AG: #2402721-v1

AFFIDAVIT OF SERVICE BY U.S. MAIL

**Re: In the Matter of the Registration of Abdi E. Hersy, R.C.P.
Registration No. 3,045**

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

TAMMIE L. REEVES, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on March 12, 2009, s/he caused to be served the FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER, by depositing the same in the United States mail at said city and state, true and correct copy(ies) thereof, properly enveloped with prepaid first-class postage, and addressed to:

(U.S. MAIL)

ABDI E HERSHEY RCP
12320 105TH AVE APT 2
EDMONTON AB T5N 0Y4
CANADA

(HAND-DELIVERED)

Tiernee Murphy
Assistant Attorney General
Office of the Attorney General
445 Minnesota Street, Suite 1400
St. Paul, MN 55101

Tammie L. Reeves

TAMMIE L. REEVES

Subscribed and sworn to before me on
March 12, 2009.

Deborah A. Bastyr

NOTARY PUBLIC

AG: #2405070-v1

