

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of the Appeal)
of Anna Doung-Thi Phuong-Hang)
from the Hearings Officer's Order) ORDER
Affirming Denial of Application) 95-221
for an Care Home License)

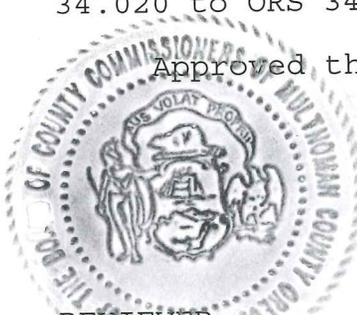
The Board of County Commissioners has reviewed the record, Hearings Officer's Order, exceptions and rebuttal regarding the appeal of Anna Doung-Thi Phuong-Hang from a determination of the Hearings Officer that the Manager of the Multnomah County Adult Care Program properly denied Anna Doung-Thi Phuong-Hang's application for a license because the license application contained "fraudulent, untrue, incomplete or misleading information" within the meaning of MCAR 890-080-120(b).

The Board accepts the Hearings Officer's Order, attached hereto as Exhibit A. (The second sentence in the "findings of fact and conclusions of law" contains a typographical error, which is noted in the attachment. The citation to 'MCAR 890-020-200' should read 'MCAR 890-040-200.' The Board accepts the Order as corrected.) The Board has also reviewed the applicant's exceptions to the Hearing's Officer's Order, attached as Exhibit B, and the Adult Care Program's rebuttal to the applicant's exceptions, attached as Exhibit C. The Board finds that the Adult Care Program's submittal fully responds to the applicant's exceptions, and that there are no grounds for rejecting or modifying the Hearing's Officer's order.

It is hereby Ordered that the decision of the Hearings Officer on the Appeal of Anna Doung-Thi Phuong-Hang is accepted.

Review of this Final Order may be taken solely and exclusively by writ of review in the manner set forth in ORS 34.020 to ORS 34.100.

Approved this 12th day of October, 1995.



MULTNOMAH COUNTY, OREGON

By Beverly Stein
Beverly Stein
Multnomah County Chair

REVIEWED:
PETER KASTING, SPECIAL COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Peter Kasting
Peter Kasting



CITY OF

PORTLAND, OREGON

 HEARINGS OFFICE

1120 S.W. 5th Avenue, Room 1017
 Portland, Oregon 97204-1960
 Elizabeth A. Normand, Land Use Hearings Officer
 (503) 823-7719
 William W. Shatzer, Code Hearings Officer
 (503) 823-7307
 FAX (503) 823-4347

HEARINGS OFFICER'S DETERMINATION AND ORDER

APPEAL OF ANNA DOUNG-THI PHUONG-HANG

HEARING NO. 153025

DATE OF HEARING: August 25, 1995

APPEARANCES:

Ms. Mary Fassell for Multnomah County

Ms. Anna Doung-Thi Phuong-Hang

HEARINGS OFFICER: Mr. William W. Shatzer

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

On or about February 23, 1995, the appellant Anna Doung-Thi Phuong-Hang submitted an application for an Adult Care Home License to the Manager of the Multnomah County Adult Care Program. In connection with that application, applicant submitted, or caused to be submitted to the Adult Care Program Manager a physician's statement as required by MCAR 890-020-200 which purported to be the statement of a Dr. Cristin J. Babcock. The County subsequently determined that the statement was not prepared by Dr. Babcock and denied the appellant's license application under the provisions of MCAR 890-080-120 (b) which allow the Manager to deny a license application whenever "the application and/or other statements to the Department contain(s) fraudulent, untrue, incomplete or misleading information." Ms. Anna Doung-Thi Phuong-Hang has appealed that denial.

There is no dispute that the purported statement of Dr. Babcock is a bogus document. That, without more, would be sufficient under the applicable Multnomah County Administrative Rules to support the County's license application denial. MCAR 890-080-120(b) allows a license denial for any "untrue" statement, regardless of whether the untruthfulness was the result of simple error, gross negligence, or intentional misstatement by the applicant. In addition, because the purported physician's statement is bogus, the appellant's license application lacks the physician's statement required by MCAR 890-020-200 and, as the license application is thus incomplete, the license application may be properly denied on that ground as well.

However, in addition to establishing that the purported physician's statement was bogus, the County has established by clear and convincing evidence that the statement was not only false but was falsely prepared and submitted by the appellant herself. The County has further demonstrated, by clear and convincing

evidence, that the appellant has personally prepared and submitted to the County other bogus documents on several occasions. Accordingly, the purported physician's statement by Dr. Babcock was not only "untrue" but was "fraudulent" as well.

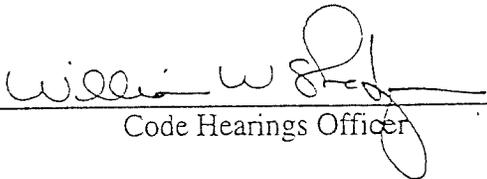
I have no reasonable explanation of the appellant's motivation in preparing and submitting these fraudulent documents. There seems no reason why Ms. Anna Doung-Thi Phuong-Hang could not have obtained a valid physician's statement from Dr. Babcock or from some other physician. Appellant would seem to have little to gain by forging and submitting this statement. Nonetheless, the physician's statement was clearly fraudulently prepared and submitted by her and that is clearly sufficient grounds to deny her application.

ORDER AND DETERMINATION:

1. The determination of the Manager of the Multnomah County Adult Care Program dated July 11, 1995, denying the Adult Care Home License application of the appellant Anna Doung-Thi Phuong-Hang is SUSTAINED.
2. This order and determination has been mailed to the parties on September 1, 1995 and shall become final on September 21, 1995, unless written exceptions are file with the Board of County Commissioners prior to such date.

Dated:

September 1, 1995



 Code Hearings Officer

WWS:db

RECEIVED

SEP 14 1995

HANA'S SENIOR CARE HOMES

2843 SW Plum Ct. CITY ATTORNEYS OFFICE
Portland, OR 97219
Tel. (503) 244-9640

RECEIVED

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HEARINGS OFFICE

Board of County Commissioners
1120 SW 5th Room 1017
Portland, OR 97204

September 4, 1995

Dear Sirs:

As I understood in the matter of law, there is a case only when there is a motive. I had a hearing on August 25th, 1995 with Mr. William W. Shatzer and Ms. Mary Fassell regarding a denial of my license for my application of an existing Adult Foster Care Home that I purchased from Joni Wright at the asking price of \$54,000.00. I have been running that home for 8 months. My credentials were good. My qualifications were good to handle the business.

First, the hearing held on August 25th 1995 was not a fair hearing for me. I haven't had a chance to bring with me living witnesses who have known me in person, and who have known the problems that I have encountered, and who could testify what kind of person I am. I was not aware that the hearing was going to be like a trial. I couldn't be the defendant, an appellant, and a cross-examiner at the same time. I couldn't understand how Mr. Shatzer defined a case and determined it. There was no impartiality. I was accused of giving fraudulent information about my physicians' statements and other personal references and documents in order to obtain my license. I objected to the accusations because I had no motive of forging either my physicians' statements and signature or other documents to obtain my license, to destroy my self-image and to jeopardize my business goal.

Second, all accusations were based upon documents prepared by Kim, a person whom I hired to be in charge of my paper work and bookkeeping. That person with health problems for some reasons couldn't be located. She was the only witness who was willing to clear my name if she still had a chance to survive her cancer. My only mistake was to be too trusting. If I were what I was accused of, I should be able to demonstrate the ability to be at the same time a defendant, an appellant, and a cross-examiner. Unfortunately, I have failed because my brain has not known such performance. As a matter of fact, I couldn't be at the same time a person who forged either my physicians' statement or other documents and prepared another document to defend myself.

BOARD OF
COUNTY COMMISSIONERS
1120 SW 5TH
PORTLAND, OREGON
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I love my business and my work. I devote my life to them. I am faced with a very delicate situation in that I am not able to prove that Kim fraudulently prepared documents in my name. I became aware that she was doing things to hurt me when I found out that she had forged my signature and withdrew \$4,500.00 from my Visa account in March, 1995. I decided not to press charges because she was too ill in April, 1995. She could barely walk. I had decided to let go of the money she took from me. I simply thought that her punishment would be her physical and mental pains that she had to endure from her cancer until she died.

I am asking the Board of County Commissioners to give me a chance to prove to you that I am not a person who of bad character or bad conduct. I am a person who always lives up to my moral standards and my principles. I have never compromised my principles with money, power or control. I have never betrayed anybody in order to protect myself. Regarding the problems discovered in my application for my license, I would like to have the opportunity to correct them in person as soon as I have a chance to.

Thank you very much for your consideration to my appeal. I am looking forward to receive an exception for my situation.

Truly yours,



Anna Duong-Thi Phuong-Hang
Hana's Senior Care Homes

cc: David Oleson
Board of County Commissioners

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BEFORE THE BOARD OF COUNTY COMMISSIONERS

MULTNOMAH COUNTY

In the Matter of the Adult
Home Care License Application

of

ANNA DUONG-THI PHUONG-HANG.

City Hearings Office
No. 153025

REBUTTAL TO APPELLANT'S
EXCEPTIONS

Following a hearing, Hearings Officer Shatzer upheld the determination of the Manager of Multnomah County Adult Care Home Program, Department of Aging Services, denying appellant's application for a license. The Hearings Officer sustained the Manager's findings that the license application contained "fraudulent, untrue, incomplete or missing information," in violation of MCAR 890-080-120(b). He also held that the application was properly denied because it was incomplete, and that the County established by clear and convincing evidence that the applicant herself prepared the fraudulent physician's statement. MCAR 890-020-200. (Copy of September 11, 1995 order attached.) Appellant has written to request a hearing. (Letter of September 4, 1995, attached.) We treat this letter as the filing of written exceptions under MCAR 890-090-410.

REBUTTAL TO EXCEPTIONS

Essentially, applicant raises three exceptions in her letter. They are summarized as follows:

1. The hearing was unfair and not impartial.
2. Appellant's only possible witness, who allegedly prepared

1 - REBUTTAL TO APPELLANT'S EXCEPTIONS

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1 the fraudulent documents, could not be located.

2 3. Appellant had no motive to prepare fraudulent documents.

3 The exceptions are answered in turn.

4 1. Fairness of hearing.

5 Appellant contends that the hearing was unfair because she had
6 no opportunity to present witnesses to defend her character. In
7 fact, appellant could have introduced witnesses at the hearing and
8 simply failed to do so. The letter notifying her of the denial of
9 her license was sent July 11, 1995. The hearing was set for
10 August 25, 1995. She had six weeks to locate witnesses, and did
11 not do so. Appellant also attended an administrative conference on
12 July 28, 1995, and did not produce witnesses on this occasion
13 either.

14 More importantly, testimony of character witnesses could not
15 have changed the outcome. As the Hearings Officer indicates,
16 denial of appellant's application was based on the submission of
17 fraudulent documents. Although this finding reflects on a
18 provider's character, producing character witnesses could not
19 disprove the documents are fraudulent.

20 The record demonstrates that not only the physician's
21 statement upon which the Hearings Officer based his holding, but
22 all but one of the documents in the application, were prepared by
23 applicant herself and presented as if written by others. The
24 Hearings Officer found that the physician's statement allegedly
25 submitted by Dr. Babcock was submitted and signed by appellant.
26 The record contains a signed statement from Dr. Babcock that she

2 - REBUTTAL TO APPELLANT'S EXCEPTIONS

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1 did not fill out the form or sign it. (Exhibit 4)

2 Also in the record is a sworn statement from applicant's own
3 brother, a physician, that the character reference and medical
4 statement he allegedly submitted and signed were not completed or
5 signed by him, and in fact were completed and signed in his
6 sister's handwriting, except for the signature on the reference
7 form. (Exhibit 6)

8 Testimony on the record from a handwriting analyst hired to
9 evaluate appellant's application establishes that all of the
10 documents applicant submitted were written and signed by the same
11 author. Comparing those documents with a May 24, 1995 letter from
12 applicant to Carole Isaman of the Adult Care Home Program, the
13 expert concludes that the applicant herself wrote all these
14 documents.

15 Applicant had the opportunity to submit character witnesses
16 and did not do so. Production of character witnesses could not
17 have changed the findings underlying the denial. The denial of
18 applicant's license was based on her submission of fraudulent and
19 untrue documents and an incomplete application. Applicant does not
20 refute these findings.

21 Applicant also questions the impartiality of the hearing and
22 the Hearings Officer. The Adult Care Home purposely hires an
23 independent Hearings Officer to handle license appeals, and has
24 promulgated rules to establish fairness and consistency in the
25 hearing process. The fact that the Hearings Officer held against
26 appellant does not establish an unfair process.

3 - REBUTTAL TO APPELLANT'S EXCEPTIONS

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1 2. Availability of applicant's only witness.

2 Applicant contends that the fraudulent documents she submitted
3 were prepared by a Kim Lee, a woman who worked for applicant at one
4 time. Applicant contends that Ms. Lee was trying to hurt her by
5 falsifying the application. Indeed the record contains a letter
6 allegedly written by Ms. Lee admitting and apologizing for her
7 conduct. (Exhibit 5) Testimony of the County's handwriting
8 expert indicates the letter was in fact written by appellant.
9 Nonetheless, appellant asserts that her case was compromised
10 because Ms. Lee "for some reasons couldn't be located."

11 In fact, testimony at hearing by Melinda Maxwell, an Adult
12 Care Home Program employee, indicates that she attempted to locate
13 Ms. Lee through the information submitted in Ms. Lee's letter of
14 reference for applicant. She contacted the phone number given by
15 Ms. Lee. It had been changed to another local number. The woman
16 who answered that number indicated she did not know Ms. Lee, and
17 that the number on the reference form was her own earlier listing.
18 Ms. Maxwell contacted Ms. Lee's stated employer, St. Vincent's
19 Hospital. There was no Kim Lee employed at St. Vincent's. Because
20 Ms. Lee's letter of reference indicated she was a nurse, Ms.
21 Maxwell contacted the State Board of Nursing to see if Ms. Lee was
22 licensed. She was not. Finally, her testimony indicates Ms.
23 Maxwell attempted to verify the Post Office Box number in
24 Somerville, New Jersey, which Ms. Lee gave as the return address
25 for the July 4, 1995 letter of apology to appellant, which
26 appellant claims explains the fraudulent documents. Ms. Maxwell

4 - REBUTTAL TO APPELLANT'S EXCEPTIONS

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1 was informed that there was no post office box number corresponding
2 to the one on the letter of apology. In summary, not only the
3 availability, but the actual existence of "Ms. Lee," is
4 questionable.

5 Even if appellant had been able to produce Ms. Lee at hearing,
6 and even if Ms. Lee admitted to falsifying applicant's application
7 documents, the outcome could have been no different. The applicant
8 is responsible for submitting a truthful, non-fraudulent, complete
9 application. She failed to do so.

10 3. Motive to prepare fraudulent documents.

11 Appellant's primary exception is that the Hearings Officer
12 failed to establish that she had any motivation to falsify her
13 license application. This exception is irrelevant. There is no
14 obligation to establish a prospective adult care home operator's
15 motive in violating the applicable administrative rules. The
16 Hearings Officer, as fact finder, is required only to determine if
17 the agency's action is based on evidence in the record. In this
18 case, he repeatedly found the agency's action supported by "clear
19 and convincing evidence." No more is necessary.

20 CONCLUSION

21 The Board of County Commissioners, through MCAR 890-090-450,
22 is not required to conduct a hearing or schedule oral arguments.
23 It may accept the Hearings Officer's order after review of the
24 record and the written exceptions. MCC 8.90-090(J). There is a
25 compelling record that supports the Hearings Officer's
26 determination. Department of Aging Services requests that the

5 - REBUTTAL TO APPELLANT'S EXCEPTIONS

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1 Board affirm the Hearings Officer's Order on the record.

2 DATED this 26 day of September, 1995.

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Respectfully submitted,

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Katie Gaetjens
Katie Gaetjens, OSB #88210
Assistant County Counsel
Of Attorneys for Multnomah County

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