

**BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
STATE OF MONTANA**

_____)	Docket No. CC-02-0158-SWP
IN THE MATTER OF THE PROPOSED)	Hearings Bureau Case No. 2183-2002
DISCIPLINARY ACTION AGAINST THE)	PROPOSED
LICENSE OF MILTON MEIS, LCSW,)	FINDINGS OF FACT;
License No. 155.)	CONCLUSIONS OF LAW;
_____)	AND ORDER

FINDINGS OF FACT

The hearing in this matter began at 9:00 a.m. on August 6, 2002. The agency was represented by agency legal counsel, Lon Mitchell. The licensee was represented by Joan Cook, attorney at law. At the time of the hearing, the licensee's counsel announced that she was ready to proceed. The agency's legal counsel announced that he was unable to proceed due to the failure of his one witness, Christine Novak, to appear.

The hearing was then recessed for 15 minutes to allow additional time for the witness to arrive, but the witness never appeared. There is no indication in the file that Novak was subpoenaed by any party for the hearing. Furthermore, neither side requested a continuance. At 9:15 a.m., the hearing examiner closed the hearing in this matter due to the agency's inability to proceed with its case because of the absence of Christine Novak.

Because the Department failed to produce any evidence to substantiate any allegation contained in the complaint, it failed to establish that the licensee committed an act of unprofessional conduct.

CONCLUSIONS OF LAW

1. The agency seeks to impose sanctions against the licensee's license. Accordingly, it bears the burden of proof in this matter to demonstrate the existence of the allegations contained in the complaint by a preponderance of the evidence. *Ulrich v. State ex rel. Board of Funeral Service*, 289 Mt. 407, 961 P.2d 126 (1998); § 37-1-311, MCA.

2. By failing to go forward and present evidence, the agency has failed to meet its burden of proof in this matter. Thus, there has been no showing that the licensee violated any provision of Title 37, Chapter 1, Part 3, MCA.

3. If a licensee is found not to have violated a provision of Title 37, Chapter 1, Part 3, MCA, then "the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges." § 37-1-311, MCA.

4. Because the agency has failed to demonstrate that the licensee engaged in conduct that violated Title 37, Chapter 1, Part 3, MCA, dismissal of the charges is required.

PROPOSED ORDER

Based on the foregoing, it is recommended that the charges contained in the complaint in this matter be dismissed.

DATED this 28th day of August, 2002.

DEPARTMENT OF LABOR & INDUSTRY

HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT

GREGORY L. HANCHETT

Hearing Examiner

NOTICE

Section 2-4-621, MCA, provides that the proposed order in this matter, if adverse to a party other than agency itself, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.