STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2011B042**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

PATRICIA LEWTHWAITE,

Complainant,

vs.

REGENTS OF THE UNIVERSITY OF COLORADO, UNIVERSITY OF COLORADO DENVER,

Respondent.

Administrative Law Judge (ALJ) Denise DeForest held a hearing in this matter on April 1, 2011, at the State Personnel Board, 633 - 17th Street, Courtroom 6, Denver, Colorado. The record was closed by the ALJ at the conclusion of the evidentiary hearing. Special Assistant Attorneys General Christopher Puckett and Katherine Goodwin represented Respondent. Respondent's advisory witness was Tom Brewster, Executive Director of Respondent's Addiction Research and Treatment Services (ARTS) and Complainant's Appointing Authority. Complainant appeared and represented herself.

MATTER APPEALED

Complainant, Patricia Lewthwaite (Complainant) appeals her disciplinary temporary pay reduction imposed by the ARTS at the University of Colorado Denver (Respondent). Complainant seeks reversal of the disciplinary action and a finding that the discipline constituted a violation of the State Employee Protection Act, C.R.S. §24-50.5-101, *et seq.*

For the reasons set forth below, Respondent's disciplinary action is **affirmed.**

JUDICIAL NOTICE

Judicial notice was taken of the content of the filings, and the dates of the filings, in State Personnel Board case 2011B010.

ISSUES

1. Whether Complainant committed the acts for which she was disciplined;

2. Whether Respondent's action was arbitrary, capricious or contrary to rule or law;

3. Whether Respondent's actions violated the State Employee Protection Act; and

4. Whether the discipline imposed was within the reasonable range of alternatives available to the appointing authority.

FINDINGS OF FACT

Introduction and Background:

1. Complainant is a certified Addiction Counselor III employed by ARTS. Complainant has been employed by Respondent since 2004.

2. ARTS includes several different types of addiction treatment programs, including a program known as The Haven. Complainant serves as an addiction counselor for patients associated with The Haven program.

Events Related to the Prior Board Appeal – 2011B010:

3. The Board's file for 2011B0010 includes the following pleadings, motions and orders:

a. On July 26, 2010, Complainant faxed an appeal to the State Personnel Director, Division of Human Resources (DHR). DHR referred the filing to the Board on July 27, 2010. Complainant's appeal was of a disciplinary action dated July 12, 2010. The appeal did not include a copy of the disciplinary letter.

b. The Board sent out a Request For Additional Information to obtain a copy of the July 12, 2010 disciplinary letter. On August 2, 2010, Complainant faxed a copy of the disciplinary letter to the Board. The issue raised in the disciplinary letter had to do with advice Complainant allegedly provided concerning how a therapy patient should raise a grievance against The Haven program. The letter referenced a Rule 6-10 meeting which had been held on June 28, 2010.

c. On August 5, 2010, the Board received a fax from DHR of eight pages. These eight pages had been faxed to DHR on August 2, 2010. The eight pages included three pages of group notes from women's issues counseling sessions held by Complainant on March 11, March 25, and April 15, 2010. The group notes had not been redacted and included the full name of patient T.G. as the client as well as the therapy notes created by Complainant.

d. The eight pages also included two memos. One memo was from Complainant's supervisor, Herbert Brown, and referenced a discussion that Mr. Brown and Complainant had about patient T.G. on April 6, 2010. The second memo was from ARTS chief operating officer and Haven Director, Julie Krow, concerning a statement attributed to patient T.G. about Complainant's advice to her. Both memos contained T.G.'s name without redaction.

e. The eight pages also included a signed "Peer I and The Haven Client Appeal Process" form that appears to have been signed by patient T.G.

f. The eight pages also included two pages which were part of Complainant's appeal, including the third page of the disciplinary letter from Mr. Brewster and the second page of Complainant's explanation of why she was appealing. Most of the eight pages had hand written notations on the bottom of the page noting that the page was an exhibit, such as, "Exhibit 6. This is an attempt to retaliate against me by Julie Krow," written at the bottom of the page with the memo from Ms. Krow.

g. By order dated August 11, 2010, the Board set the appeal for a commencement and an evidentiary hearing.

h. By fax received on August 25, 2010, and filed on August 27, 2010, the Board received Respondent's Motion To Strike. The Motion To Strike asked the Board to remove the eight-page filing because it constituted protected health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

i. On August 30, 2010, the Board received a fax from Complainant which included a one-page document signed by patient T.G. and utilizing T.G.'s full name. The page stated:

> I, [T.G.] hereby authorize, Patricia A. Lewthwaite to use group notes and individual session notes, regarding the grievance that I filed against the Haven. This is for the specific purpose of Ms. Lewthwaite grievance against UC Denver/ARTS/the Haven and Peer I and OTC. I have given Ms. Lewthwaite verbal release of information as well.

The one-page document was signed by patient T.G. and by Complainant, and was dated May 10, 2010.

j. On September 17, 2010, Respondent filed an Unopposed Motion To Dismiss. The motion represented that Complainant did not object to the dismissal of the appeal, and that Respondent had rescinded the disciplinary

action on September 15, 2010. The appeal was dismissed by the Board on September 24, 2010.

The August 9, 2010 meeting with Complainant:

4. Respondent learned that information pertaining to patient T.G.'s therapy had been filed with the Board shortly after the therapy notes were filed in Board case 2011B010.

5. Complainant's second-level supervisor, Kenneth Gaipa, learned that there had been a release of the therapy notes shortly before August 9, 2010. Mr. Gaipa met with Complainant's direct supervisor, Herbert Brown, about the need to meet with Complainant concerning her release of therapy records.

6. Mr. Brown checked patient T.G.'s facility file to determine if there was an applicable release on file. Mr. Brown did not locate any written release which would permit the filing of T.G.'s therapy notes with the State Personnel Director or with the Board.

7. Mr. Gaipa and Mr. Brown met with Complainant in her office during the afternoon of August 9, 2010. Mr. Brown contacted Complainant about needing to meet with her, and the two of them waited for Mr. Gaipa to join them in Complainant's office. Mr. Brown did not tell Complainant the specific topic of the meeting while they were waiting for Mr. Gaipa.

8. When Mr. Gaipa arrived, he closed the door to the office and took a seat in front of Complainant's desk next to the office door. Mr. Gaipa did not block the doorway, but sat in the only chair that was available, and the chair was located next to the office door. Mr. Brown sat off to the side of Complainant's desk. Complainant sat behind her desk.

9. Mr. Gaipa asked Complainant if she had a release for the information filed with the Board. Complainant's response was that she didn't think a release was necessary because Mr. Brewster had already disclosed the information. Complainant also said that she had thought about getting a co-worker to get a release, but that she was off-communication with T.G. Mr. Brown asked Complainant why she didn't ask him to obtain the release for her, and Complainant told Mr. Brown that she didn't trust him.

10. Complainant's reference to being off-communication meant that Mr. Brown had changed individual therapy client assignments so that T.G. had one-on-one contact with a counselor other than Complainant.

11. Complainant also told Mr. Gaipa and Mr. Brown that she had a verbal release from T.G. that provided her permission to use whatever she needed. When Mr. Gaipa asked her how she had obtained that, Complainant replied that she had received permission through the grapevine. Mr. Gaipa told Complainant that a verbal release would not be sufficient to release T.G.'s therapy record.

12. Complainant then told Mr. Gaipa and Mr. Brown that she did not want to discuss the matter any longer. The meeting lasted less than ten minutes.

13. Neither Mr. Gaipa nor Mr. Brown raised his voice during the meeting with Complainant, or positioned himself so as to prevent Complainant from leaving the room if she had chosen to do so.

14. Complainant did not suggest or state during this meeting that she had possession of a written release of any type from patient T.G.

15. On the afternoon on August 10, 2010, Complainant sent an email to Richard Benson, Senior Human Resources Consultant, complaining about the conduct of the meeting and asking if the procedure used fit the Board's protocol for such a meeting. Complainant acknowledged in the email that Mr. Gaipa had asked her if she had a release from T.G., and that she had told Mr. Gaipa that she had a verbal release from T.G. based upon information that she had received through the grapevine. Complainant argued that she had been badgered during the meeting, and that the surprise nature of the meeting had not permitted her to bring legal counsel or a recording device. Mr. Benson replied by telling Complainant that the meeting concerned her performance, and that the meeting was not a Rule 6-10 meeting. Additionally, he told Complainant that, if there had been an unauthorized release of information, steps would have to be taken to report and correct the violation of federal regulations.

16. As of August 10, 2010, Complainant did not have a written release from patient T.G. that would have granted her permission to release T.G.'s therapy records with personally identifying information on the records.

17. In August 2010, Complainant involved patient T.G. in creating a back-dated release form for use in her appeal to the Board in 2011B010.

Rule 6-10 Meeting:

18. By letter dated August 24, 2010, Complainant was informed by her appointing authority, Mr. Brewster, that he had scheduled a Rule 6-10 meeting for September 8, 2010, to discuss "the unauthorized release of private patient information."

19. Respondent learned on or about August 30, 2010, that Complainant had filed a signed release form from T.G. with the Board. Shortly thereafter, Mr. Brewster issued Complainant a reminder memo of the Rule 6-10 meeting, and informed Complainant that the topic of the meeting would be "the unauthorized release of private patient information, the purported release that you provided, and the circumstances surrounding the creation and submission of the purported release."

20. On September 8, 2010, Complainant met with Mr. Brewster and Mr. Brewster's representative, Mr. Benson. Complainant did not bring a representative with her

to the meeting.

21. During the Rule 6-10 meeting, Complainant told Mr. Brewster that she had not used a standard University release form because she did not believe one would be appropriate under the circumstances, and had instead used a "personal release." Complainant also told Mr. Brewster that the patient had given her the release because the patient was concerned that Complainant was going to get in trouble and wanted to help her.

22. Complainant described her August 9, 2010 meeting with Mr. Brown and Mr. Gaipa as a meeting in which she was terrorized and held against her will. Complainant objected to Mr. Brewster repeating his question if she had not answered the question he asked, and she accused Mr. Brewster during the meeting of being disrespectful to her.

Privacy Requirements:

23. The program in which T.G. participated and Complainant worked is an addiction treatment program subject to the health care record privacy requirements of several state and federal statutes, including HIPAA, addressing the confidentiality of medical records. State and federal law also protect records of the identity of any patient that is maintained in connection with any program of substance abuse treatment. The federal law applies to centers receiving federal assistance. ARTS receives federal funding as is subject to these privacy limitations.

24. As a result of these restrictions, Respondent uses a standard release form that is designed to meet the confidentiality provisions of HIPAA and the federal regulations pertaining the alcohol and drug abuse patient records.

25. Federal regulations pertaining to alcohol and drug abuse patient records require that nine elements be present in any release form, and prohibit the release of covered information if the release is not substantially in compliance with any of the nine required elements.

26. The nine required elements of a release form are:

(1) The specific name or general designation of the program or person permitted to make the disclosure;

(2) The name or title of the individual or the name of the organization to which disclosure is to be made;

(3) The name of the patient;

(4) The purpose of the disclosure;

(5) How much and what kind of information is to be disclosed;

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under the applicable federal regulation; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign by the applicable federal regulation in lieu of the patient;

(7) The date on which the consent is signed;

(8) A statement that the consent is subject to revocation at any time except to the extent that the program or person that is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer; and

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

27. The release form filed by Complainant on or about August 30, 2010, did not meet the requirements under the applicable federal regulations for a release form. The document had been prepared without listing the title of the individual or the name of the organization to which disclosure was to be made. The document was not properly dated as to the actual date it was signed. The document was also missing both the required statement as to the fact that revocation may occur at any time, and a description of the date, event, or condition upon which the consent would expire.

Disciplinary Decision:

28. By letter dated October 6. 2010, Mr. Brewster informed Complainant that he had found that Complainant violated federal patient confidentiality and HIPAA regulations involving registered patients in treatment for drug abuse by sending protected and private health information in the form of group therapy notes and a memo referencing a named patient to the State Personnel Director. Mr. Brewster also found that Complainant created a written release after the fact and improperly involved a client in her deception.

29. Mr. Brewster considered that Complainant's willingness to create a release form after the fact, and to involve a patient in her deception was of serious concern to the program.

30. Mr. Brewster reviewed all of Complainant's prior performance reviews before making his decision on the level of discipline to be imposed. Complainant's prior performance evaluations demonstrated that that Complainant had good work reviews and a reputation for having good clinical skills. Mr. Brewster considered Complainant's good work history to be a reason to be more lenient in his assessment of the disciplinary penalty to be

imposed.

31. Mr. Brewster imposed a pay reduction of $279.00 per month for a period of one year.

32. The October 6, 2010 disciplinary letter did not disclose the identity of the patient whose treatment records were at issue.

33. Complainant filed a timely appeal of the imposed discipline with the Board.

DISCUSSION

I. GENERAL

Certified state employees have a property interest in their positions and may only be disciplined for just cause. Colo. Const. Art. 12, §§ 13-15; C.R.S. §§ 24-50-101, *et seq; Department of Institutions v. Kinchen*, 886 P.2d 700, 707 (Colo. 1994). Such cause is outlined in State Personnel Board Rule 6-12, 4 CCR 801, and generally includes:

(1) failure to comply with standards of efficient service or competence;
(2) willful misconduct including either a violation of the State Personnel Board's rules or of the rules of the agency of employment;
(3) false statements of fact during the application process for a state position;
(4) willful failure or inability to perform duties assigned; and
(5) final conviction of a felony or any other offense involving moral turpitude.

In this *de novo* disciplinary proceeding, the agency has the burden to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Kinchen*, 886 P.2d at 707-8. The Board may reverse Respondent's decision if the action is found to be arbitrary, capricious or contrary to rule or law. C.R.S. § 24-50-103(6).

II. HEARING ISSUES

A. Complainant committed the acts for which she was disciplined.

The central issues at hearing concerned the determination whether Complainant had released protected information during her presentation of information to the Board in 2011B010 that required a proper release from T.G., and whether Complainant had a proper release at the time of the release of the protected information on August 30, 2010.

Respondent demonstrated persuasively that the therapy notes included in Complainant's release were protected by the privacy rules applicable to ARTS. T.G.'s

name and her therapy information were disclosed by Complainant, and such information should not have been disclosed unless a proper release (or other lawful reason for disclosure) was present. Respondent has also demonstrated that the release presented by Complainant on August 30, 2010, was not valid.

Complainant also contested Respondent's determination that the release form had not been created at the time indicated on the release form but had, in fact, been generated after Complainant had been first interviewed.

Complainant's version of when the release was generated was not credible. Complainant told Mr. Brown and Mr. Gaipa that she did not have a written release when she was first interviewed on August 9, 2010. Even if her statements during the August 9, 2010 meeting had been made under some duress, as Complainant unconvincingly contended at hearing, Complainant was not under duress when she emailed Mr. Benson on the next day to complain about the August 9, 2010 meeting. In her email to Mr. Benson, however, Complainant repeated her story of having a verbal release obtained through the grapevine from T.G., with no mention of any written release. The lack of any discussion of a written release in Complainant's August 10, 2010 email is most probative, given that Mr. Gaipa had specifically told Complainant that a verbal release would not be sufficient to permit the release of protected information. It is also troubling that the very first mention of the written release occurs on August 30, 2010, which was less than a week after Complainant learned that she was to attend a Rule 6-10 meeting concerning her disclosure of T.G.'s protected health information.

One of the essential functions of a *de novo* hearing process is to permit the finder of fact to evaluate the credibility of witnesses. *See Charnes v. Lobato*, 743 P.2d 27, 32 (Colo. 1987)("An administrative hearing officer functions as the trier of fact, makes determinations of witness' credibility, and weighs the evidence presented at the hearing"). After observing Complainant's demeanor and answers on the stand, and evaluating her oral and written statements concerning the source of her authority to release T.G.'s information, Complainant's version of events was found to be incredible and was not adopted in the findings of fact. Respondent's witnesses, on the other hand, testified credibly that Complainant had committed the acts described in the October 6, 2010 disciplinary letter.

B. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law.

(1) <u>Arbitrary and capricious action analysis</u>:

In determining whether an agency's decision is arbitrary or capricious, a court must determine whether the agency has 1) neglected or refused to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it; 2) failed to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; or 3) exercised its discretion in such manner after a consideration of evidence before it as clearly to indicate

that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Lawley v. Department of Higher Education,* 36 P.3d 1239, 1252 (Colo. 2001).

Respondent has persuasively demonstrated that it took the time and effort necessary to procure the information it needed to properly decide this issue. Complainant was interviewed twice about the release, and had ample opportunity to answer Respondent's concerns and to present her information.

Respondent's reasoning was also sound and considered all of the information collected about this incident. Complainant argued at hearing that Respondent ignored the fact that this disciplinary case was the same as the discipline that had been withdrawn in September of 2010. Complainant's argument is not persuasive. The offense for which Complainant is being disciplined in this case did not even occur until after the prior discipline had been issued and was on appeal before the Board. Respondent acted correctly by rejecting Complainant's protests that the current disciplinary case was in some way barred by the imposition of the prior discipline or resolution of that prior disciplinary action.

Finally, the conclusions that Respondent reached, including the determination that Complainant was not credible in her assertions that the written release had been present at the time she filed the therapy notes in 2011B010, were reasonable conclusions given the facts presented. Respondent's disciplinary action in this matter was, therefore, neither arbitrary nor capricious.

(2) Application of Board Rule 6-2:

Board Rule 6-2, 4 CCR 801, provides that "[a] certified employee shall be subject to corrective action before discipline unless the act is so flagrant or serious that immediate discipline is proper." Respondent did not demonstrate that progressive discipline was employed in this case.

The Board's rule, of course, does not demand progressive discipline in every case. There is an exception within the rule permitting immediate discipline, including termination, for serious or flagrant actions.

This case presents more than a violation of federal and state privacy laws. The offer of therapy notes in Complainant's explanation of her actions in the prior disciplinary appeal, while certainly a violation of the professional standards that apply to Complainant, has at its heart Complainant's understandable desire to defend herself in a personnel action. The more serious and far more troubling aspect of this matter involves Complainant's willingness to create a back-dated release in which she involved a patient in her deception. As is so often true when an individual attempts to deny an initial problem rather that acknowledge and correct it, Complainant's actions as she was confronted with her original mistake have resulted in a significantly worse problem for Complainant.

Complainant's actions in violating patient privacy and in orchestrating a deception involving a patient are sufficiently serious and flagrant to warrant the imposition of immediate discipline. The requirements of Board Rule 6-2 have been met under the facts of this case.

Accordingly, Respondent has demonstrated by a preponderance of the evidence that its disciplinary decision was not contrary to rule or law.

C. Respondent's actions did not violate the State Employee Protection Act.

Complainant argued in her appeal form that the Colorado State Employee Protection Act, C.R.S. § 24-50.5-101, *et seq.*, protected her actions in this case.

The State Employee Protection Act, also commonly referred to as the Whistleblower Act, protects a state employee from retaliation through the imposition of disciplinary action if that employee has made protected disclosures of information and can demonstrate that the disclosures were a substantial or motivating factor in the imposition of the disciplinary action. C.R.S. § 24-50.5-103. *See also Ward v. Industrial Commission*, 699 P.2d 960 (Colo. 1985).

The law is written, however, with several important exceptions to its coverage. Of greatest importance in this case is the exception for "information which is confidential under any other provision of law." C.R.S. § 24-50.5-102(2)(c).

The identities of patients who are in drug and alcohol addiction treatment programs, and the medical records associated with that treatment, are confidential records under multiple state and federal statutes and regulations. *See e.g.* C.R.S. § 27-81-113; 42 U.S.C. §290dd-2(a); 42 C.F.R. §2.31 *et seq.* Disclosure of this confidential information has been removed from protection under the Whistleblower Act. Complainant's actions, therefore, do not qualify for the protection of C.R.S. § 24-50.5-103, and Respondent's imposition of discipline here does not violate the State Employee Protection Act.

D. A temporary pay reduction was within the range of reasonable sanctions available to the Appointing Authority.

Board Rule 6-9, 4 CCR 801, requires that an appointing authority is to weigh the facts of the incident as well as an employee's information and performance in making a decision on the level of discipline to impose. *See* Board Rule 6-9 ("The decision to take corrective or disciplinary action shall be based on the nature, extent, seriousness, and effect of the act... type and frequency of previous unsatisfactory behavior or acts, prior corrective or disciplinary actions, period of time since a prior offense, previous performance evaluations, and mitigating circumstances").

Mr. Brewster persuasively demonstrated at hearing that he had taken both the serious nature of the violations as well as Complainant's good work history into account in

assessing the level of the sanction to be imposed. The release of confidential information coupled with Complainant's attempted deception of her supervisors through the creation of a back-dated release, and Complainant's involvement of patient T.G. in the creation of the back-dated release, constitute the type of offense for which termination would be appropriate. Respondent's decision to assess a temporary pay reduction in the amount of less than $300 per month for a year, while a serious form a discipline, complies with Board Rule 6-9 and is within the reasonable range of sanctions available to Respondent.

CONCLUSIONS OF LAW

1. Complainant committed the acts for which she was disciplined.

2. Respondent's disciplinary action was not arbitrary, capricious, or contrary to rule or law.

3. Respondent's disciplinary action was not a violation of the State Employee Protection Act.

4. The discipline imposed was within the range of reasonable alternatives.

ORDER

Respondent's disciplinary action is **affirmed**. No attorney fees or costs are awarded. Complainant's appeal is dismissed with prejudice.

Dated this 16th day of May, 2011.

[redacted]

Denise DeForest
Administrative Law Judge
633 – 17th Street, Suite 1320
Denver, CO 80202
303-866-3300

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Section 24-4-105(14)(a)(II) and 24-50-125.4(4) C.R.S. and Board Rule 8-67, 4 CCR 801. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Board Rule 8-70, 4 CCR 801. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.); Board Rule 8-68, 4 CCR 801.
3. The parties are hereby advised that this constitutes the Board's motion, pursuant to Section 24-4-105(14)(a)(II), C.R.S., to review this Initial Decision regardless of whether the parties file exceptions.

RECORD ON APPEAL

The cost to prepare the electronic record on appeal in this case is $5.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. Board Rule 8-69, 4 CCR 801. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 59 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 866-3300.

BRIEFS ON APPEAL

When the Certificate of Record of Hearing Proceedings is mailed to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-72, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Board Rule 8-75, 4 CCR 801. Requests for oral argument are seldom granted.

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ must be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the ALJ's decision. Board Rule 8-65, 4 CCR 801.

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of May, 2011, I electronically served true copies of the foregoing **INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS** as follows:

Patricia A. Lewthwaite
[redacted]

and

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(rev'd. 5/07)