

BEFORE THE VIRGINIA BOARD OF NURSING

IN RE: NICOLE JANICE LYONS PORTER, R.N. REINSTATEMENT APPLICANT
License Number: 0001-244805
Case Number: 179954

ORDER

JURISDICTION AND PROCEDURAL HISTORY

Pursuant to Virginia Code §§ 2.2-4020, 2.2-4024(F), and 54.1-2400(11), a panel of the Virginia Board of Nursing ("Board") held a formal administrative hearing on November 13, 2017, in Henrico County, Virginia, to receive and act upon Nicole Porter's application for reinstatement of her license to practice professional nursing in the Commonwealth of Virginia and to inquire into evidence that grounds may exist to deny said application.

Nicole Janice Lyons Porter, R.N., appeared at this proceeding and was represented by Nathan Mortier, Esquire.

NOTICE

By letter dated July 7, 2017, the Board sent a Notice of Formal Hearing ("Notice") to Ms. Porter notifying her that a formal administrative hearing would be held on July 17, 2017. At Ms. Porter's request, the matter was continued, and by letter dated October 17, 2017, the Board sent an Amended Notice of Formal Hearing ("Amended Notice") to Ms. Porter notifying her that a formal administrative hearing would be held on November 13, 2017. The Amended Notice was sent by certified and first class mail to the legal address of record on file with the Board.

Upon consideration of the evidence, the Board adopts the following Findings of Fact and Conclusions of Law and issues the Order contained herein.

FINDINGS OF FACT

1. On June 14, 2013, the Board issued License Number 0001-244805 to Nicole Janice Lyons Porter, R.N. to practice professional nursing in the Commonwealth of Virginia. Said license was suspended by Order of the Virginia Department of Health Professions pursuant to Virginia Code § 54.1-2409 on August 24, 2016. Her primary state of residence is Virginia. Ms. Porter submitted an application for reinstatement of her license on March 31, 2017.
2. Ms. Porter has been convicted of the following criminal offenses:
 - a. On February 9, 2016, in the Circuit Court for the City of Chesapeake, Virginia, she was convicted of one count of grand larceny, a felony, and one count of obtaining money, etc., by false pretenses for an amount less than \$200, a misdemeanor crime involving moral turpitude. The felony conviction formed the basis for the mandatory suspension of her Virginia professional nursing license by the Virginia Department of Health Professions.
 - b. On November 4, 2016, in the Circuit Court for the City of Suffolk, Virginia, she was convicted of one count of grand larceny, a felony; one count of larceny with intent to sell or distribute, a felony; two counts of obtaining money by false pretenses, one a misdemeanor and one a felony; and two counts of prescription fraud, both felonies.
3. Ms. Porter suffers from substance abuse and mental illness, as evidenced by the following:
 - a. By her own admission, Ms. Porter stole property in order to pawn it and use the money to buy pain pills off the street. She also stole Percocet (oxycodone, C-II) tablets for her own personal use from an individual's home where she was babysitting, replacing the stolen pills with Tylenol (acetaminophen) tablets. These actions resulted in the convictions in Finding of Fact No. 2.

b. On September 30, 2014, she signed a Participation Contract with the Health Practitioners' Monitoring Program ("HPMP") in which she acknowledged that her ability to practice her health profession safely may be impaired by her Percocet abuse.

c. Between September 3, 2014 and November 3, 2014, Ms. Porter received substance abuse treatment at the Farley Center at Williamsburg Place, Williamsburg, Virginia ("Farley Center"). Her discharge diagnoses included opioid dependence with physiological dependence; opioid withdrawal, resolved; depressive disorder NOS, in partial remission; anxiety disorder, in partial remission; and ADHD, hyperactive type.

d. Ms. Porter reported to a Department of Health Professions' ("DHP") Investigator ("Investigator") that, beginning in November 2014, at Meridian Psychotherapy, Virginia Beach, Virginia, she received treatment for, among other things, opioid dependence, attention deficit disorder, and major depressive disorder. She also began Suboxone (buprenorphine, C-III) treatment for opioid dependence at this practice starting in December 2015.

e. By her own admission, from November 17, 2014 until October 2016, Ms. Porter participated in an intensive outpatient and aftercare program for substance abuse at Finney Zimmerman Psychiatric Associates ("Zimmerman"), Norfolk, Virginia. Moreover, in an interview with a DHP Investigator on June 15, 2017, the group therapist at Zimmerman stated she would not recommend Ms. Porter return to nursing practice unless she had tapered off of Suboxone and was sober.

f. After suffering a relapse, Ms. Porter received detoxification treatment with respect to her abuse of prescribed opioids and valium at the Farley Center from December 3, 2015 to December 9, 2015, when she left the facility against medical advice.

- g. By her own admission, between December 14, 2015 and December 21, 2015, Ms. Porter received inpatient treatment at the Virginia Beach Psychiatric Center, Virginia Beach, Virginia (“VBPC”), for opiate detoxification.
- h. Ms. Porter’s diagnoses upon discharge from VBPC on December 21, 2015 included opiate disorder, severe continuous; opiate withdrawal; sedative/narcotic use disorder, episodic; and major depressive affective disorder.
- i. By her own admission, between December 29, 2015 and January 14, 2016, Ms. Porter received treatment in the partial hospitalization program at VBPC.
- j. Ms. Porter’s diagnosis upon discharge from the VBPC partial hospitalization program on January 14, 2016 included opiate use disorder, severe, continuous, and sedative hypnotic use disorder, mild, episodic.
- k. On February 11, 2016, Ms. Porter informed the Investigator that, while she was employed as a nurse with Maryview Medical Center, Portsmouth, Virginia, between June 2013 and July 2014, she had had a drug problem for many years, was using opiates every day, and was regularly impaired at work.
- l. Ms. Porter re-entered VBPC’s partial hospitalization program from February 18-26, 2016 due to worsening depressive symptoms.
- m. In an interview with the Investigator on March 11, 2016, Ms. Porter’s individual therapist since November 2014 stated that she did not believe Ms. Porter was safe to practice nursing at that time; that she did not believe Ms. Porter should hold a position that had anything to do with handling medications; and that she would be concerned about Ms. Porter providing direct patient care. Subsequently, in a progress report dated and submitted to the Investigator on April 24, 2017, said therapist reiterated that, at that time, she did not believe Ms. Porter should return to a nursing position

where she administers medication and that her license should be contingent on successful participation in the HPMP.

n. On November 18, 2016, Ms. Porter was dismissed from the HPMP due to noncompliance with the drug screening program.

o. Ms. Porter reported that, starting in December 2016, she began receiving Suboxone therapy from a physician at The Right Path Addiction Treatment Center and continues to receive such treatment up to the present time.

p. On May 18, 2017, Ms. Porter signed a Participation Contract with the HPMP in which she acknowledged that her ability to practice her health profession safely may be impaired as evidenced by her history of substance abuse.

4. Ms. Porter did not dispute the factual allegations contained in the statement of allegations.

5. Ms. Porter submitted four letters of support for her application for reinstatement. Included in these letters was an updated letter from her therapist as well as the physician who provides her medication assisted treatment (MAT).

6. At the hearing, Ms. Porter admitted that she is an addict. She told the Board that she has a strong support system in her family and that she is actively engaged in recovery treatment, including attending NA meetings. She submitted evidence of 48.5 hours of continuing education.

7. At the hearing, Susan Reynolds, R.N., Ms. Porter's former nursing instructor and personal friend, testified on her behalf. Ms. Reynolds testified that she considered Ms. Porter to be a "novice nurse" and recommended that Ms. Porter engage in a refresher course prior to practice, and that Ms. Porter would require a strong preceptor. Ms. Reynolds further stated that she would be happy to support in any way Ms. Porter's return to practice.

8. Ms. Porter testified that she would like to return to practice in a rehab setting in order to use her experience to help other recovering addicts.

9. Ms. Porter's current case manager at the Health Practitioners' Monitoring Program testified that Ms. Porter is currently in compliance with the program.

10. Ms. Porter has not practiced as a nurse since 2014.

CONCLUSIONS OF LAW

1. Finding of Fact No. 2 constitutes a violation of Virginia Code § 54.1-3004.
2. Finding of Fact No. 3 constitutes a violation of Virginia Code § 54.1-3007(6)
3. Ms. Porter has not demonstrated that she is able to resume the safe and competent practice of nursing.
4. Pursuant to Virginia Code § 54.1-2400.2(K), the Board considered whether to disclose or not disclose Ms. Porter's health records or health services.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Virginia Board of Nursing hereby ORDERS as follows:

1. Nicole Janice Lyons Porter, R.N., is REPRIMANDED.
2. The application of Nicole Janice Lyons Porter, R.N., for reinstatement of the license to practice professional nursing in the Commonwealth of Virginia is DENIED, due to a failure to obtain the affirmative vote for reinstatement of three-fourths of the members of the Board at the proceeding. Further, it is ORDERED that license be CONTINUED on INDEFINITE SUSPENSION. Should she petition the Board for reinstatement of her license, an administrative proceeding will be convened to determine whether is able to Ms. Porter return to the safe and competent practice of professional

nursing. Ms. Porter shall be responsible for any fees that may be required for the reinstatement and/or renewal of the license prior to issuance of the license to resume practice.

3. It is further ORDERED that said suspension shall be STAYED upon Ms. Porter's compliance with the terms and conditions of her Contract with the HPMP and any subsequent Contracts for the period specified in the Contract.

4. Ms. Porter shall not practice professional nursing until she provides proof satisfactory to the Board of successful completion of a Board-approved refresher course with a clinical component.

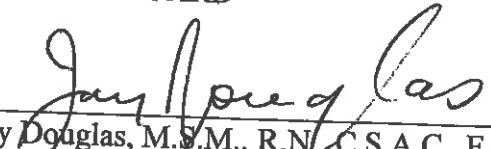
5. Upon receipt of evidence of Ms. Porter's participation in and successful completion of the terms specified by the HPMP, the Board, at its discretion, may waive Ms. Porter's appearance before the Board and conduct an administrative review of this matter, at which time she may be issued an unrestricted license.

6. This Order is applicable to Ms. Porter's multistate licensure privileges, if any, to practice professional nursing in the Commonwealth of Virginia. For the duration of this Order, Ms. Porter shall not work outside of the Commonwealth of Virginia pursuant to a multistate licensure privilege without the written permission of the Virginia Board of Nursing and the Board of Nursing in the party state where she seeks to work. Any requests for out of state employment should be directed, in writing, to the Executive Director of the Board.

7. Failure to comply with the terms and conditions of the stay of suspension shall result in the immediate rescission of the stay of suspension of the license of Ms. Porter and the license shall be recorded as suspended. After any rescission of the stay of suspension, Ms. Porter may, within 33 days of the effective date of the rescission, request a formal administrative hearing before the Board.

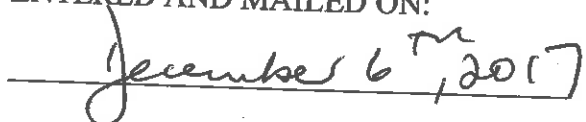
Pursuant to Virginia Code §§ 2.2-4023 and 54.1-2400.2, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

FOR THE BOARD



Jay Douglas, M.S.M., R.N., C.S.A.C., F.R.E.
Executive Director
Virginia Board of Nursing

ENTERED AND MAILED ON:



December 6th, 2017

NOTICE OF RIGHT TO APPEAL

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 days from the date you are served with this Order in which to appeal this decision by filing a Notice of Appeal with Jay P. Douglas, Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233. The service date shall be defined as the date you actually received this decision or the date it was mailed to you, whichever occurred first. In the event this decision is served upon you by mail, three days are added to that period.

Certified True Copy

By 

Virginia Board Of Nursing