

BEFORE THE VIRGINIA BOARD OF NURSING

IN RE: NICOLE JANICE LYONS PORTER, R.N. REINSTATEMENT APPLICANT
License Number: 0001-244805
Suspension Date: August 24, 2016
Case Number: 179954

**AMENDED NOTICE OF FORMAL ADMINISTRATIVE HEARING
AND STATEMENT OF ALLEGATIONS**

You are hereby notified that a Formal Hearing has been scheduled before the Board of Nursing (“Board”) regarding your application for reinstatement of your license to practice professional nursing in the Commonwealth of Virginia following its mandatory suspension by the Department of Health Professions.

TYPE OF PROCEEDING:	This is a formal administrative hearing before a panel of the Board.
DATE AND TIME:	November 13, 2017 9:00 A.M.
PLACE:	Virginia Department of Health Professions Perimeter Center - 9960 Mayland Drive 2 nd Floor - Virginia Conference Center Henrico, Virginia 23233

LEGAL AUTHORITY AND JURISDICTION:

1. This formal hearing is being held pursuant to Virginia Code §§ 2.2-4020, 2.2-4024(F), and 54.1-2400(11). This proceeding will be convened as a public meeting pursuant to Virginia Code § 2.2-3700.
2. The burden rests on you, as the applicant, to demonstrate that you are prepared to resume the safe and competent practice of professional nursing.
3. In considering your application, the Board will consider evidence that grounds exist to deny your application for reinstatement of your license to practice professional nursing, as more fully set out in the enclosed Statement of Allegations.
4. At the conclusion of the proceeding, the Board is authorized to take any of the following actions:
 - Approve your application and issue an unrestricted license to practice professional nursing;
 - Approve your application and issue a reprimand, a monetary penalty, and/or a restricted license subject to terms and conditions;

• Deny your application and continue your license on indefinite suspension or revoke your license.

ABSENCE OF APPLICANT AND APPLICANT'S COUNSEL:

If you fail to appear at the formal hearing, the Board may proceed to hear this matter in your absence and may take any of the actions outlined above.

APPLICANT'S LEGAL RIGHTS:

You have the right to the information on which the Board will rely in making its decision, to be represented by counsel at this proceeding, to subpoena witnesses and/or documents, and to present relevant evidence on your behalf.

COMMONWEALTH'S EXHIBITS:

You have already received a copy of the documents that will be distributed to the members of the Board and will be considered by the Board when discussing any allegations with you and when deliberating on your case. **These documents are enclosed only with the notice sent by certified mail, which may be required to be claimed at the post office. Please bring these documents with you to the formal hearing.**

FILING DEADLINES:

1. Deadline for filing exhibits: **November 1, 2017**. Submit 15 copies of all documents you want the Board to consider to Darlene Graham, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233. Exhibits may not be sent by facsimile or e-mail.

The Commonwealth must file any objections to your submissions in writing, addressed to Darlene Graham at the Board office, no later than **November 6, 2017**. If no objections have been received by **November 6, 2017**, the evidence will be distributed to the Board members for their review, and will be considered by the Board as evidence when it deliberates upon your case. If the Commonwealth raises objections, you have until **November 9, 2017**, to file your response to the objections, in writing and addressed to Darlene Graham at the Board office. The Chair of the proceeding will rule on the motion.

2. Deadline for filing motions: **November 1, 2017**, addressed to Darlene Graham at the above address.

3. Deadline for filing any objections to the Commonwealth's exhibits, in writing, to Darlene Graham at the above address: **November 1, 2017**. If you do not file objections by this date, the exhibits will be distributed to the Board members for their review prior to your hearing, and will be considered by the Board as evidence when it deliberates on your case. If you do file objections, the Commonwealth has until **November 6, 2017** to file a response to the objections, in writing, and addressed to Darlene Graham at the Board office. The Chair of the proceeding will rule on the motion. NOTE: failure to object

to the distribution of the Commonwealth's exhibits prior to the proceeding will not affect your right to contest any information contained in those exhibits at the proceeding.

REQUEST FOR A CONTINUANCE:

Absent exigent circumstances, such as personal or family illness, a request for a continuance after **November 1, 2017** will not be considered. If you obtain counsel, you should do so as soon as possible, as a motion for a continuance due to the unavailability of counsel will not be considered unless received by **November 1, 2017**.

OTHER IMPORTANT INFORMATION:

Pursuant to Virginia Code § 54.1-2409(D), reinstatement of your license requires the affirmative vote of three-fourths of the members of the Board in attendance at the hearing.

STATEMENT OF ALLEGATIONS

The Board alleges that grounds exist to refuse to reinstate the license of Nicole Janice Lyons Porter, R.N. to practice professional nursing in that:

1. Ms. Porter violated Virginia Code § 54.1-3007(4), as evidenced by the following:

a. On or about 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 or about 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.

2. Ms. Porter violated Virginia Code § 54.1-3007(6) in that she is unsafe to practice professional nursing due to 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 Allegation No. 1.

b. On or about 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. See Confidential Exhibit.

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 on or about December 2015.

e. By her own admission, from approximately November 17, 2014 until on or about 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 or about 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. See Confidential Exhibit.

g. By her own admission, between on or about 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. See Confidential Exhibit.

i. By her own admission, between on or about December 29, 2015 and January 14, 2016, Ms. Porter received treatment in the partial hospitalization program at VBPC.

j. See Confidential Exhibit.

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 on or about 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 approximately February 18-26, 2016 due to worsening depressive symptoms.

m. In an interview with the Investigator on or about 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 or about 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 or about November 18, 2016, Ms. Porter was dismissed from the HPMP due to noncompliance with the drug screening program.

o. Ms. Porter reports that, starting on or about 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 or about 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.

3. Ms. Porter violated Virginia Code § 54.1-3007(1), and (5) and 18 VAC 90-19-230(A)(1)(b) of the Regulations Governing the Practice of Nursing in that she falsely indicated on her Reinstatement Application, dated March 21, 2017, that she did not have a "mental, physical or chemical dependency condition which could interfere with [her] current ability to practice nursing." However, Ms. Porter suffers from such conditions as evidenced by the allegations set forth in #2 above.

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.



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

October 18, 2017
Date