

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: REBECCA A. TOLBERT, L.P.N.

ORDER

In accordance with §§ 2.2-4019, 2.2-4021 and 54.1-2400(10) of the Code of Virginia (1950), as amended ("Code"), an informal conference was conducted on behalf of the Board of Nursing ("Board") on October 18, 2007, in Henrico County, Virginia. Ms. Tolbert was present and was not represented legal counsel. Nancy K. Durrett, R.N., serving as Agency Subordinate for the Board, submitted a Recommended Decision for consideration.

On January 30, 2008, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Ms. Tolbert was not present nor was she represented by legal counsel.

Based upon its review of the Recommended Decision of the Agency Subordinate, the Board makes the following Findings of Fact and Conclusions of Law and issues the following Order.

FINDINGS OF FACT

1. Rebecca A. Tolbert was issued License No. 0002-053554 to practice as a practical nurse in Virginia on September 26, 1996. The license is current.
2. By letter dated September 28, 2007, the Board of Nursing sent a Notice of Informal Conference ("Notice") to Ms. Tolbert notifying her that an informal conference would be held on October 18, 2007. The Notice was sent by certified and first class mail to P. O. Box 493, Tasley, Virginia 23441, the address of record on file with the Board of Nursing.

3. On January 25, 2007, Ms. Tolbert submitted to a urine drug screen, which was positive for cocaine.

4. On July 28, 2006, Ms. Tolbert submitted to a urine drug screen as a condition of her employment with Arcadia Nursing Center, Nelsonia, Virginia, which tested positive for cocaine. As a result, her employment was terminated.

5. Ms. Tolbert admittedly suffers from substance abuse and mental health diagnoses for which she has received outpatient treatment, and which render her unsafe to practice. Equally important, her treating professional counselor stated that she believed that Ms. Tolbert continued to use alcohol and also that she was not ready to resume practice as a nurse, particularly not in a position that would include the administration of medication.

6. On November 1, 2006, Ms. Tolbert entered into a Participation Contract with the Health Practitioners' Intervention Program ("HPIP"), pursuant to Chapter 25.1 of Title 54.1 of the Code and 18 VAC 76-10-10, et seq., of the Regulations Governing the HPIP. This was done with the understanding that the program is to assist those persons who have impairment, defined as "a physical or mental disability, including, but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public." On January 11, 2007, Ms. Tolbert entered into Recovery Monitoring Contract #1, which recognized her impairment due to abuse of alcohol and other addicting drugs, and from mental illness.

7. On her application for employment with Arcadia Nursing Home dated, June 11, 2006:

a. Ms. Tolbert stated "no" to the question of whether she had ever been convicted of a crime, when, in fact, she was convicted of a misdemeanor bad check offense and of contempt of court in Northampton County General District Court on July 12, 2001.

b. Ms. Tolbert failed to indicate that she was terminated from Shorelife Care of Parksley, Parksley, Virginia, on April 28, 2006; however, she signed said application, attesting that it was true and complete.

8. During the course of her employment with Shorelife Care at Parksley:

a. On April 18, 2006, Ms. Tolbert documented waste of 80 tablets of Vicodin (hydrocodone, Schedule III) without proper witnessing by another nurse.

b. On December 29, 2005, Ms. Tolbert received a counseling for removing a resident's peg tube without a physician's order.

c. On October 26, 2005, Ms. Tolbert received a counseling for her failure to report critical lab values to the resident's physician on October 19, 2005. Her failure to do so resulted in the resident receiving a medication that should have been discontinued.

d. On October 18, 2005, Ms. Tolbert received a written reprimand due to her failure to complete wound care treatment on a resident on October 11, 2005. She documented that she had completed the ordered treatment.

e. On August 10, 2005, Ms. Tolbert received a counseling due to her failure to report critical lab values to the resident's physician and her failure to document said lab values in the resident's nursing notes on August 8, 2005.

f. On August 26, 2005, Ms. Tolbert received a counseling for failing to take a resident's vital signs and temperature as instructed.

g. On June 17, 2005, Ms. Tolbert received a performance improvement plan due to her failure to complete wound care treatment on three residents. Ms. Tolbert documented that she had completed the ordered treatments.

h. As a result of these incidents, Ms. Tolbert's employment was terminated on April 28, 2006.

9. Ms. Tolbert was convicted of a misdemeanor bad check offense in Northampton County General District Court on July 12, 2001.

10. Ms. Tolbert stated that she received residential treatment at Willow Oaks Treatment Center from April 15, 2007 through May 15, 2007.

11. Ms. Tolbert reported that she last used cocaine and drank alcohol on October 16, 2007.

12. Donna Whitney, HPIP Community Outreach Manager, attended the informal conference and stated that Ms. Tolbert failed to call-in for drug screens nine times between August 1, 2007 and October 5, 2007. She also indicated that Ms. Tolbert missed a drug screen on October 5, 2007, and had not attended group meetings for the past four weeks. Ms. Whitney stated that for these reasons, Ms. Tolbert signed a new Recovery Monitoring Contract on October 18, 2007, which prohibited her from working and increased her level of treatment.

CONCLUSIONS OF LAW

1. Findings of Fact #3, #4, #5 and #6 constitute violations of § 54.1-3007(6) of the Code of Virginia (1950), as amended ("Code").

2. Finding of Fact #7 constitutes a violation of §54.1-3007(2) and (3) of the Code and 18 VAC 90-20-300(A)(2)(e) of the Board of Nursing Regulations.

3. Finding of Fact #8a constitutes a violation of § 54.1-3007(2), (5), (6), and (8) of the Code and 18 VAC 90-20-300(A)(2)(c) of the Board of Nursing Regulations.

2. Finding of Fact #8b constitutes a violation of § 54.1-3007(2), (5) and (8) of the Code and 18 VAC 90-20-300(A)(2)(a) of the Board of Nursing Regulations.

3. Findings of Fact #8c, #8e and #8f constitute violations of § 54.1-3007(2), (5) and (8) of the Code and 18 VAC 90-20-300(A)(2)(f) of the Board of Nursing Regulations.

4. Findings of Fact #8d and #8g constitute violations of § 54.1-3007(2), (5) and (8) of the Code and 18 VAC 90-20-300(A)(2)(e) and (f) of the Board of Nursing Regulations.

5. Finding of Fact #9 constitutes a violation of § 54.1-3007(4) of the Code.

ORDER

1. License No. 0002-053554 of Rebecca A. Tolbert is INDEFINITELY SUSPENDED.

2. This suspension shall be STAYED contingent expressly upon Ms. Tolbert's continued compliance with the following terms and conditions:

a. Ms. Tolbert shall comply with all terms and conditions for the period specified by the HPIP.

b. Any violation of the terms and conditions stated in this Order shall be reason for summarily rescinding the stay of indefinite suspension of the license of Ms. Tolbert, and an administrative proceeding shall be held to determine whether her license shall be revoked. The stay of indefinite suspension may be summarily rescinded at such time the Board is notified that:

i. Ms. Tolbert is not in compliance with the terms and conditions specified by the HPIP;

ii. Ms. Tolbert's participation in the HPIP has been terminated;

iii. There is a pending investigation or unresolved allegation against Ms. Tolbert involving a violation of law, regulation, or any term or condition of this order.

3. This Order is applicable to Ms. Tolbert's multistate licensure privileges, if any, to practice practical nursing in the Commonwealth of Virginia. For the duration of this Order, Ms. Tolbert 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 wishes to work. Any requests for out of state employment should be directed, in writing, to the Executive Director of the Board.

4. Ms. Tolbert shall maintain a course of conduct in her capacity as a practical nurse commensurate with the requirements of § 54.1-3000 *et seq.* of the Code and the Board of Nursing Regulations.

This Order is subject to appeal to the Board. If Ms. Tolbert desires a formal administrative hearing before the Board pursuant to §§ 2.2-4020 and 2.2-4021 of the Code, she must notify Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, in writing, within thirty-three (33) days from the date of service of this Order. Upon the filing of a request for the hearing with the Executive Director, this Order shall be vacated.

Pursuant to § 54.1-2400.2 of the Code, 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

Gloria Mitchell
for Jay P. Douglas, R.N., M.S.M., C.S.A.C.
Executive Director, Virginia Board of Nursing

Entered: March 7, 2008

Certificate of Service

I hereby certify that a true copy of the foregoing Order was mailed this day to Rebecca A. Tolbert, L.P.N., at P. O. Box 493, Tasley, Virginia 23441.

for Gloria Mitchell
Jay P. Douglas, R.N., M.S.M., C.S.A.C.
Executive Director
Board of Nursing

March 7, 2008
DATE