



COMMONWEALTH of VIRGINIA

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Virginia Board of Nursing
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NOTICE OF INFORMAL CONFERENCE BEFORE AN AGENCY SUBORDINATE

September 28, 2007

Rebecca A. Tolbert, L.P.N.
P. O. Box 493
Tasley, Virginia 23441

CERTIFIED MAIL
71603901984990860701

RE: VA License No.: 0002-053554
Expiration Date: March 31, 2009

Dear Ms. Tolbert:

This letter is official notification that an informal conference of the Virginia Board of Nursing will be held on **October 18, 2007, at 9:00 a.m.**, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, Virginia. In accordance with §§ 2.2-4019, 2.2-4021, and 54.1-2400(10) of the Code of Virginia (1950), as amended ("Code"), this informal conference will be held before an agency subordinate of the Board of Nursing. This informal conference will be convened as a public meeting pursuant to § 2.2-3700 *et seq.* of the Code. The agency subordinate will inquire into allegations that you may have violated certain laws and regulations governing nursing practice in Virginia.

Specifically:

1. You may be in violation of § 54.1-3007(6) of the Code in that:
 - a. On or about January 25, 2007, you submitted to a urine drug screen, which was positive for cocaine.
 - b. On or about July 28, 2006, you submitted to a urine drug screen as a condition of your employment with Arcadia Nursing Center, Nelsonia, Virginia, which tested positive for cocaine. As a result, your employment was terminated.

c. You admittedly suffer from substance abuse and mental health diagnoses for which you have received outpatient treatment, and which may render you unsafe to practice. Equally important, your treating professional counselor stated that she believed that you continued to use alcohol and also that you were not ready to resume practice as a nurse, particularly not in a position that would include the administration of medication.

d. On or about November 1, 2006, you 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 or about January 11, 2007, you entered into Recovery Monitoring Contract #1, which recognized your impairment due to abuse of alcohol and other addicting drugs, and from mental illness.

2. You may have violated §54.1-3007(2) and (3) of the Code and 18 VAC 90-20-300(A)(2)(e) of the Board of Nursing Regulations in that on your application for employment with Arcadia Nursing Home dated, June 11, 2006:

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

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

3. During the course of your employment with Shorelife Care at Parksley:

a. You may have violated § 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 in that on or about April 18, 2006, you documented waste of 80 tablets of Vicodin (hydrocodone, Schedule III) without proper witnessing by another nurse.

b. You may have violated § 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 in that on or about December 29, 2005, you received a counseling for removing a resident's peg tub without a physician's order.

c. You may have violated § 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 in that on or about October 26, 2005, you received a counseling for your failure to report critical lab values to the resident's physician on October 19, 2005. Your failure to do so resulted in the resident receiving a medication that should have been discontinued.

d. You may have violated § 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 in that on or about October 18, 2005, you received a written reprimand due to your failure to complete wound care treatment on a resident on October 11, 2005. You documented that you had completed the ordered treatment.

e. You may have violated § 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 in that on or about August 10, 2005, you received a counseling due to your failure to report critical lab values to the resident's physician and your failure to document said lab values in the resident's nursing notes on August 8, 2005.

f. You may have violated § 54.1-3007(2), (5) and (8) of the Code and 18 VAC 90-20-300(A)(f) of the Board of Nursing Regulations in that on or about August 26, 2005, you received a counseling for failing to take a resident's vital signs and temperature as instructed.

g. You may have violated § 54.1-3007(2), (5) and (8) of the Code and 18 VAC 90-20-300(A)(e) and (f) of the Board of Nursing Regulations in that on June 17, 2005, you received a performance improvement plan due to your failure to complete wound care treatment on three residents. You documented that you had completed the ordered treatments.

h. As a result of these incidents, your employment was terminated on April 28, 2006.

4. You may have violated § 54.1-3007(4) of the Code in that you were convicted of a misdemeanor bad check offense in Northampton County General District Court on July 12, 2001.

In its deliberations, the agency subordinate may use the Sanction Reference Points System, as contained in the Sanction Reference Manual. The manual, which is a guidance document of the Board, may be accessed at <http://www.dhp.virginia.gov/nursing>. Please click on *Guidance Documents*, then select #90-7. You may also request a paper copy from the Board office by calling (804) 662-9909.

After consideration of all information, the agency subordinate may:

- If the agency subordinate finds that there is insufficient evidence to warrant further action or that the charges are without foundation, notify you by mail that your record has been cleared of any charge which might affect your right to practice nursing in the Commonwealth; or
- Recommend findings of fact, conclusions of law and a sanction, to include a reprimand, placing you on probation with terms, suspension or revocation of your license, or imposing a monetary penalty pursuant to § 54.1-2401 of the Code.

Further, the agency subordinate may refer this matter for a formal administrative proceeding pursuant to § 2.2-4020 of the Code.

Since the allegations listed above involve impairment, please be advised that you may make application to the Health Practitioners' Intervention Program ("HPIP"), which is available to all health care practitioners licensed in Virginia. A brochure about the HPIP is enclosed. Should you enter into a written agreement with the HPIP prior to your informal conference, the agency subordinate will take that into consideration when making a recommendation in your case.

Board's Review of Agency Subordinate's Recommended Decision

If you **appear in person or by counsel at the informal conference**, the recommendation of the agency subordinate will be presented to a quorum of the Board. The Board may accept or modify the recommendation, or reject the recommendation and move the case to formal hearing. If you do not agree with the decision of the Board, you have the right to a formal administrative hearing before the Board.

If you **fail to appear in person or by counsel at the informal conference**, the recommendation of the agency subordinate will be presented to a quorum of the Board. The Board may accept or modify the recommendation, or reject the recommendation. The Board's decision regarding the agency subordinate's recommendation is a final order that can only be appealed to circuit court as provided by Rule 2A:2 of the Supreme Court of Virginia.

You have the right to information that will be relied upon by the agency subordinate in making a decision. Therefore, I enclose a copy of the documents that will be distributed to the agency subordinate, and will be considered when discussing the allegations with you and when deliberating upon your case. **These documents are enclosed only with the original notice sent by certified mail, which you may be required to claim at the post office. Please bring these documents with you to the informal conference.**

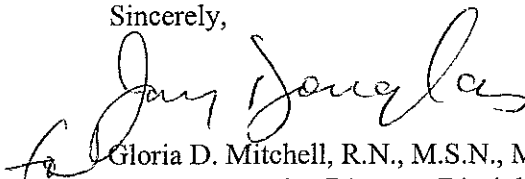
To facilitate this proceeding, you should submit five copies of any documents you wish the Committee to consider to the Board of Nursing, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, by October 12, 2007. Your documents may not be submitted by facsimile or email.

You may be represented by an attorney at the informal conference. If you obtain counsel, you should do so as soon as possible, because absent good cause to support a request for a continuance, the informal conference will be held on October 18, 2007. A request to continue this proceeding must state **in detail** the reason for the request and must establish good cause. Such request must be made, in writing, to me at the address listed on this letter and must be received by 12 noon on October 12, 2007. Only one such motion will be considered. Absent critical circumstances, such as personal or family illness, a request for a continuance after October 12, 2007, will not be considered

Relevant sections of the Administrative Process Act, which govern proceedings of this nature, as well as laws relating to the practice of nursing and other healing arts in Virginia cited in this notice can be found on the Internet at <http://leg1.state.va.us>. To access this information, please click on the *Code of Virginia* for statutes and *Virginia Administrative Code* for regulations.

Please advise the Board, in writing, of your intention to be present. If you have any questions regarding this notice, please contact this office, at (804) 367-4515.

Sincerely,



Gloria D. Mitchell, R.N., M.S.N., M.B.A.
Deputy Executive Director, Discipline

GDM/lrw

Enclosures

cc: Sandra Whitley Ryals, Director, Department of Health Professions
Anne G. Joseph, Deputy Director, Administrative Proceedings Division
Amanda E. Mitchell, Adjudication Specialist
Peggy Wood, Intervention Program Manager
June Morrison, R.N., B.S.N., Senior Investigator (Case No. 110767)
Agency Subordinate