

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: TOMEKA MCLEAN, L.P.N. REINSTATEMENT APPLICANT
License No.: 0002-074305

ORDER

Pursuant to §§ 2.2-4020, 54.1-110 and 54.1-2400(11) of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was held before a panel of the Board of Nursing ("Board") on May 22, 2014, in Henrico County, Virginia, to receive and act upon Tomeka McLean's application for reinstatement of her license to practice practical nursing in Virginia, which was mandatorily suspended by the Department of Health Professions on January 30, 2013, and to inquire into evidence that Ms. McLean may have violated certain laws and regulations governing practical nursing practice in Virginia. The case was presented by Amanda E. M. Blount, Adjudication Specialist, Administrative Proceedings Division. Charis A. Mitchell, Assistant Attorney General, was present as legal counsel for the Board. Ms. McLean was present and was not represented by legal counsel. The proceedings were recorded by a certified court reporter.

Upon consideration of the evidence presented, the Board adopted the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Tomeka McLean was issued License Number 0002-074305 to practice practical nursing in the Commonwealth of Virginia on September 1, 2006. Said license was mandatorily suspended pursuant to § 54.1-2409 of the Code of Virginia by Order of the Director of the Department of Health Professions on January 30, 2013. Her primary state of residence is Virginia.
2. Ms. McLean submitted an application for reinstatement of her license to the Board, which was received on March 13, 2014.
3. By an order entered on January 14, 2013, by the Circuit Court of the County of Chesterfield, Virginia, Ms. McLean was convicted of one count of obtaining money or property by false pretenses, and

three counts of uttering a forged document, all felonies, and was sentenced by an order entered April 26, 2013. These convictions formed the basis for the mandatory suspension of Ms. McLean's license.

4. By her own admission, between September 2011 and June 2012, during the course of her employment with American Critical Care Services, Richmond, Virginia, Ms. McLean falsely documented providing care to Patient A, a 36-year-old quadriplegic male who is ventilator-dependent, and completing shifts for which she failed to appear. She accomplished this by altering her hours worked after the patient's family signed her documentation and/or by forging family members' signatures to false documents, totaling more than 433 hours and resulting in overpayment of approximately \$6,963 during that period.

5. On her applications for employment with Human Resources, Inc., dated October 18, 2012, with American Critical Care Services dated November 17, 2009, with Capital Area Health Network dated September 19, 2011, and with the Virginia Home dated May 25, 2011, Ms. McLean cited "new employment" as her reason for leaving a prior employer, The Laurels of University Park, Richmond, Virginia, despite her termination of employment from the facility. Further, on her applications for employment with American Critical Care Services and with Capital Area Health Network, she cited "not enough work" and "new employment," as her reasons, respectively, for leaving a prior employer, Health Force, Inc., Richmond, Virginia, despite her termination of employment from the facility.

6. On her Application for Licensure by Examination – Licensed Practical Nurse dated June 14, 2006, and on her Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation dated March 13, 2014, Ms. McLean failed to disclose her conviction for misdemeanor assault and battery in the Circuit Court of the City of Richmond, Virginia on March 21, 1997. She also failed to disclose this conviction during an interview with an investigator with the Virginia Department of Health Professions on March 24, 2014.

7. At the hearing, Ms. McLean admitted to the findings in Finding of Fact number 6.

8. Although Ms. McLean acknowledged there was no excuse for what she did, Ms. McLean

failed to take responsibility for her behavior and did not recognize that failure to provide care to a ventilator-dependent quadriplegic patient is substandard care. Ms. McLean repeatedly testified that she made a mistake in falsifying these documents, and she continued to rationalize her behavior.

CONCLUSIONS OF LAW

The Board concludes that:

1. Finding of Fact No. 3 constitutes a violation of § 54.1-3007(4) of the Code.
2. Finding of Fact No. 4 constitutes a violation of § 54.1-3007(2), (3), (5), and (8) of the Code and 18 VAC 90-20-300(A)(2)(e) and (f) of the Regulations Governing the Practice of Nursing (“Regulations”).
3. Finding of Fact No. 5 constitutes a violation of § 54.1-3007(2) of the Code and 18 VAC 90-20-300(A)(2)(e) of the Regulations.
4. Finding of Fact No. 6 constitutes a violation of § 54.1-3007(1) and (3) of the Code and 18 VAC 90-20-300(A)(1)(b) of the Regulations.

ORDER

WHEREFORE, the Virginia Board of Nursing, effective upon entry of this Order, hereby ORDERS as follows:

1. Tomeka McLean is hereby REPRIMANDED.
2. The application of Tomeka McLean for reinstatement of License No. 0002-074305 to practice practical nursing in the Commonwealth of Virginia is hereby DENIED, due to a failure to obtain the affirmative vote for reinstatement of three-fourths of the members of the Board at the hearing. Further, it is hereby ORDERED that the license of Tomeka McLean be CONTINUED on INDEFINITE SUSPENSION for a period of not less than two years. At such time as she shall petition the Board for reinstatement of her license, an administrative proceeding will be convened to determine whether she is able to return to the safe and competent practice of practical nursing.

3. The license shall be recorded as suspended.

4. This Order shall be applicable to Ms. McLean's multistate licensure privileges, if any, to practice practical nursing in the Commonwealth of Virginia.

Pursuant to §§ 2.2-4023 and 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 public record and shall be made available for public inspection or copying on request.

FOR THE BOARD

Jay P. Douglas

for Jay P. Douglas, MSM, RN, CSAC, FRE
Executive Director
Virginia Board of Nursing

June 12, 2014

ENTERED

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, R.N., M.S.M., C.S.A.C., 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 *Dr. [Signature]*

Virginia Board Of Nursing