

**BEFORE THE VIRGINIA BOARD OF NURSING**

**IN RE: JUSTIN EARL NEWBERRY, R.N.**  
**License Number: 0001-260808**  
**Expiration Date: December 31, 2017**  
**Case Number: 173018**

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**NOTICE OF INFORMAL CONFERENCE BEFORE AN AGENCY SUBORDINATE  
AND STATEMENT OF ALLEGATIONS**

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**You are hereby notified that an informal conference has been scheduled before an Agency Subordinate of the Board of Nursing (“Board”) regarding your license to practice professional nursing in the Commonwealth of Virginia.**

<b>TYPE OF PROCEEDING:</b>	This is an informal conference before an Agency Subordinate of the Board of Nursing.
<b>DATE AND TIME:</b>	September 7, 2016 at 1:00 p.m.
<b>PLACE:</b>	Virginia Department of Health Professions Perimeter Center - 9960 Mayland Drive 2 <sup>nd</sup> Floor - Virginia Conference Center Henrico, Virginia 23233

**LEGAL AUTHORITY AND JURISDICTION:**

1. This informal conference is being held pursuant to Virginia Code §§ 2.2-4019 and 54.1-2400(10). This proceeding will be convened as a public meeting pursuant to Virginia Code § 2.2-3700.

2. After consideration of all information, the Agency Subordinate is authorized to take any of the following actions:

- 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 professional nursing in the Commonwealth;

- 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 Virginia Code § 2.2-4020.

**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 refer the case to a 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 and refer the case to a formal hearing. 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.

**ABSENCE OF RESPONDENT AND RESPONDENT'S COUNSEL:**

If you fail to appear at the informal conference, the Agency Subordinate may proceed to hear this matter in your absence and may take any of the actions outlined above.

**RESPONDENT'S LEGAL RIGHTS:**

You have the right to the information on which the Agency Subordinate will rely in making a 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 EXHIBIT:**

Enclosed is a copy of the documents that will be considered by the Agency Subordinate 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 you may be required to claim at the post office. Please bring these documents with you to the informal conference.**

**FILING DEADLINES:**

1. **Deadline for filing exhibits: August 31, 2016.** Submit five copies of all documents you want the Board to consider to Sylvia Tamayo-Suijk, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233. Exhibits may not be sent by facsimile or e-mail.
2. **Deadline for filing motions, including requests for continuance or objections to exhibits, in writing, to Sylvia Tamayo-Suijk at the above address: August 31, 2016.** NOTE: the failure to object to exhibits does not deprive you of the right to contest their contents at the proceeding.

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**STATEMENT OF ALLEGATIONS**

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The Board of Nursing alleges that:

1. At all times relevant hereto, Justin Earl Newberry, R.N. was licensed to practice professional nursing in the Commonwealth of Virginia.

2. Mr. Newberry violated Virginia Code § 54.1-3007(5) and (6) in that during the course of his employment with Clinch Valley Medical Center, Richlands, Virginia, from on or about March 24 to 31, 2016, Mr. Newberry was impaired while on duty, as evidenced by the following:

a. On or about March 24, 2016, Mr. Newberry was observed to be sweating profusely and left work early.

b. On or about March 30, 2016, Mr. Newberry was observed moving very slowly and shuffling instruments.

c. On or about March 31, 2016, Mr. Newberry was observed falling asleep while in the operating room ("OR"), was slow and had difficulty performing his duties. Mr. Newberry appeared to be unable to stand without staggering and was assisted from the OR to the lounge. While in the lounge, he was observed sleeping in the lounge, holding a cup of coffee that was spilling on the floor. After being awakened, Mr. Newberry spoke very slowly, his hands were fidgety and he repeatedly removed and replaced his hat. Mr. Newberry also stated that he felt confused and that his mind was foggy.

3. Mr. Newberry violated Virginia Code § 54.1-3007(6) in that he is unsafe to practice professional nursing due to admitted substance abuse and depression, for which he is not receiving any treatment.

Pursuant to Virginia Code § 54.1-2400.2(K), the Board considered whether to disclose or not disclose Mr. Newberry's health records or health services.



Gloria Mitchell-Lively, R.N., M.S.N., M.B.A.  
Deputy Executive Director  
Virginia Board of Nursing



Date