



COMMONWEALTH of VIRGINIA

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Director

Department of Health Professions

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

March 21, 2016

Cherri V. Whitaker, L.P.N.
13106 Kumar Court
Woodbridge, Virginia 22193

CERTIFIED MAIL
9414 7266 9904 2062 9058 85

RE: VA License No.: 0002-077301
Expiration Date: August 31, 2017

Dear Ms. Whitaker:

This letter is official notification that an informal conference of the Virginia Board of Nursing ("Board") will be held on **April 20, 2016 at 9:00 a.m.**, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Henrico, 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 the practice of nursing in Virginia.

Specifically:

1. You may have violated § 54.1-3007(2), (5) and (6) of the Code and 18 VAC 90-20-300(A)(2)(c) of the Regulations Governing the Practice of Nursing in that during the course of your employment with Mount Vernon Nursing and Rehabilitation Center, Alexandria, Virginia ("Mount Vernon"), between April and July 2015, you diverted controlled substances from patients' supplies, as evidenced by the following:

a. On or about June 18, 19, and 25, 2015, you signed out one dose of Percocet (oxycodone/acetaminophen, C-II) on Patient A's Controlled Medication Utilization Record ("CMUR"), but you failed to document administration of these doses in the patient's Medication Administration Record ("MAR").

b. On or about June 20 and 22 and July 1 and 4, 2015, you signed out one dose of oxycodone on Patient B's CMUR, but you failed to document administration of these doses in the patient's MAR.

c. On or about April 4, 7, and 11 and June 28, 2015, you signed out one dose of diazepam (C-IV) on Patient C's CMUR, but you failed to document administration of these doses in the patient's MAR.

d. On or about April 1 and 2, 2015, you signed out four .25ml doses of morphine (C-II) on Patient D's CMUR, but you documented administering only three of these doses on the patient's MAR. No other nurse gave this patient morphine more than once a shift, if at all.

e. On or about May 23 and 24, 2015, you signed out one dose of alprazolam (C-IV) on Patient E's CMUR, but you failed to document administration of these doses on the patient's MAR.

f. On or about May 23 and 24, June 20, and July 1 and 4, 2015, you signed out one dose of Tramadol (C-IV) on Patient E's CMUR, but you failed to document administration of these doses on the Patient's MAR.

g. On or about July 1 and 4, at 9:00 a.m., you signed out one dose of Ritalin (methylphenidate, C-II) on Patient E's CMUR, but you failed to document administration of these doses on the patient's MAR. Further, another nurse had already signed out and documented administering one dose of Ritalin for Patient E at 9:00 a.m. on July 1, 2015.

2. You may have violated § 54.1-3007(5) and (6) of the Code in that on or about July 10, 2015, you tested positive for morphine and heroin on a drug screen that was requested by Mount Vernon during an investigation into your documentation and administration of controlled medications.

3. You may have violated § 54.1-3007(6) of the Code in that you may be unsafe to practice nursing due to substance abuse and/or physical and/or mental illness, as evidenced by your diagnosis of and treatment for bipolar disorder, your dependence on narcotics for long-term treatment of chronic pain, and your use of heroin.

Please see Attachment I for the names of the patients referenced above.

The Board hereby offers to enter into the enclosed Consent Order with you in lieu of an informal conference in this matter. Please review this document, and should you consent to its terms, sign it in the presence of a notary public. In order for this Consent Order to become effective, you must return the entire document bearing your witnessed signature to the Board office on or before *April 8, 2016*. Upon its receipt in the Board office, the Consent Order will be entered upon approval by the full Board and the informal conference will be cancelled. You will receive a certified copy of the Consent Order, bearing the date of entry, shortly thereafter. Should the Board not receive this signed Consent Order from you by 5:00 p.m. on *April 8, 2016*, the Board will proceed with the informal conference as scheduled.

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) 367-4515.

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;
- 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.

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 panel 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 panel 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 agency subordinate to consider to the Board of Nursing, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, by April 15, 2016. 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 April 20, 2016. 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 April 15, 2016. Only one such motion will be considered. Absent critical circumstances, such as personal or family illness, a request for a continuance after April 15, 2016 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 our office, at (804) 367-4634.

Sincerely,



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

GML/sts
Enclosures

cc: Anne Joseph, Deputy Director, Administrative Proceedings Division
Naima Fellers, Senior Investigator (Case no. 168739)
Agency Subordinate