COMMONWEALTH of VIRGINIA

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NOTICE OF INFORMAL CONFERENCE BEFORE AN AGENCY SUBORDINATE

February 5, 2016

Sharon S. Jessee, R.N., L.N.P.
637 Mallard Baye
Rutledge, TN 37861

VIA UPS
1Z 236 087 03 9696 4404

RE: VA License Nos.: 0024-170123
0017-140532
Expiration Date: October 31, 2016

TN License No.: 122285 with multistate privilege
Expiration Date: October 31, 2016

Dear Ms. Jessee:

This letter is official notification that an informal conference of the Virginia Board of Nursing ("Board") will be held on **March 1, 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 and the Committee of the Joint Boards of Nursing and Medicine ("Committee of the Joint Boards"). 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 nurse practitioners in Virginia.

Specifically, during the course of your employment as a nurse practitioner with Community Medical Care, Castlewood, Virginia, you may have violated §§ 54.1-2915(A)(3), (13), (17), and (18), 54.1-3007(2), (5), and (8), 54.1-3303(A), and 54.1-3408(A) of the Code, 18 VAC 90-20-300(A)(2)(b) and (f) of the Regulations Governing the Practice of Nursing, and 18 VAC 90-30-220(4) of the Regulations Governing the Licensure of Nurse Practitioners (*effective through May 7,* 2013) and the Emergency Regulations Governing the Licensure of Nurse Practitioners (*effective May 8, 2013 through November 6, 2014*) in that:

1. In your care of Patient A, a female in her mid-50's diagnosed with low back pain, lumbar spondylosis with myelopathy, and generalized osteoarthritis, cervical disc degeneration, migraines, and anxiety with depression (among other things), from approximately October 2012 through August 2014:

a. Beginning on or about October 18, 2012, when you took over the patient's care from another provider in the practice, you prescribed controlled substances for the treatment of her pain and anxiety with depression, including narcotics, benzodiazepines, sedative-hypnotics, and muscle relaxants, without attempting to treat the patient with non-narcotic modalities. In addition, despite the fact that on or about September 20, 2012, Patient A's urine toxicology was negative for her prescribed benzodiazepines, and the previous provider who had treated Patient A wrote "no more benzos," you continued to prescribe Patient A benzodiazepines throughout her treatment.

b. On or about April 16, 2014, Patient A requested that her prescription for MS Contin 30mg (C-II) be changed to Norco 10mg/325mg (C-III) because the MS Contin was "not working," yet you continued to prescribe Patient A both medications for the months of May, June, and July 2014.

c. Despite the fact that Patient A's condition did not improve under your care, you continued to prescribe narcotics, benzodiazepines, sedative-hypnotics, and muscle relaxants. You did not refer the patient to an orthopedist until approximately March 2013 and November 2013. You did not refer the patient to a rheumatologist until approximately May 2014. There is no indication in the records that you consulted with Patient A regarding the possibility that continued use of narcotics could make her pain worse.

d. Despite requiring Patient A to sign a controlled medication policy on or about December 20, 2013, there is no indication in the record that you conducted pill counts at each visit. You required Patient A to submit to only one random urine toxicology screen on or about August 28, 2014. You only reviewed Patient A's Prescription Monitoring Report ("PMP") once, on or about December 11, 2012 for the period of December 10, 2011 through December 10, 2012.

2. In your care of Patient B, a male in his early 40's diagnosed with low back pain, lumbar disc herniation, cervicalgia, and anxiety with depression (among other things), from approximately June 2013 through July 2014:

a. From June 2013 until May 2014, despite the fact that Patient B's condition did not improve under your care, you continued to prescribe Roxicodone (oxycodone hydrochloride, C-II) and Klonopin (clonazepam, C-IV), without any further referrals to specialists or any indication that you consulted with Patient B regarding the possibility that continued use of narcotics could make his pain worse. Further, on or about November 1, 2013, you increased Patient B's dosage of Roxicodone from 15mg every 4-6 hours to 30mg every 6 hours without explanation. On or about December 30, 2013, you added a prescription for Opana ER (oxymorphone hydrochloride, C-II) 30mg every 12 hours in addition to existing prescription medications without explanation.

b. Despite requiring Patient B to sign a controlled medications policy in March 2014, there is no indication in the record that you conducted pill counts at each visit, required Patient B

to submit to any random urine toxicology screens, or reviewed the patient's Prescription Monitoring Report to determine whether he was taking his medications as prescribed by you or whether he was being prescribed controlled medications by other providers.

c. On or about June 19, 2014, you stopped seeing Patient B on a monthly basis for medication management and stopped prescribing Patient B controlled substances without tapering Patient B off of any existing medication and without offering any alternative treatment plans. You did not refer Patient B to another provider for medication management until you sent a referral letter to a pain management provider on or about August 13, 2014.

3. In your care of Patient C, a female in her late 40's diagnosed with low back pain and anxiety with depression (among other things), from approximately February 2013 through March 2014:

a. Beginning on or about February 22, 2013, when you took over the patient's care from another provider in the practice, you prescribed controlled substances for the treatment of her pain and anxiety with depression, including narcotics, benzodiazepines, sedative-hypnotics, and muscle relaxants, without attempting to treat the patient with non-narcotic modalities and despite the fact that Patient C cancelled an appointment with her previous provider on September 20, 2012 and was a no show on October 4, 2012.

b. Despite the fact that Patient C's condition did not improve under your care, you continued to prescribe narcotics, benzodiazepines, sedative-hypnotics, and muscle relaxants, without any further referrals to specialists regarding Patient C's chronic low back pain or any indication that you consulted with Patient C regarding the possibility that continued use of narcotics could make her pain worse.

c. Despite requiring Patient C to sign a controlled medications policy in February 2013 and again in February 2014, there is no indication in the record that you conducted pill counts at each visit, required Patient C to submit to random urine toxicology screens, or reviewed the patient's Prescription Monitoring Report to determine whether she was taking her medications as prescribed by you or whether she was being prescribed controlled medications by other providers.

d. You told an investigator for the Department of Health Professions that after Patient C received inpatient treatment at Russell County Medical Center, Lebanon, Virginia, for a probable overdose from March 17 through 18, 2014, you did not prescribe her any further controlled medication. There is no indication in Patient C's record that you tapered her off her existing controlled medications or offered any alternative treatment plans.

4. In your care of Patient D, a female in her early 40's diagnosed with low back pain, unspecified arthropathy, disc disorder, sciatica, cervicalgia, lumbosacral radiculopathy, and anxiety with depression (among other things), from approximately September 2013 through June 2014:

a. Beginning on or about September 11, 2013, when you took over the patient's care from another provider in the practice, you prescribed controlled substances for the treatment of her pain and anxiety with depression, including narcotics, benzodiazepines, sedative-hypnotics, and

muscle relaxants, without attempting to treat the patient with non-narcotic modalities and despite the following indicia of substance misuse or abuse being noted in her record:

i. Under a previous provider, between approximately March and May 2013, Patient D was a no-show for three appointments.

ii. On or about May 29, 2013, Patient D's urine toxicology screen tested positive for Soma (carisoprodol, C-IV), which she was not prescribed. The previous provider noted "dismiss" on the results, but you continued to treat Patient D and prescribe her medications after this incident.

iii. On or about June 24, 2014, Patient D's urine toxicology screen was positive for oxymorphone (C-II), which you did not prescribe.

b. Following the failed urine toxicology screen on or about June 24, 2014, you noted "no more controlled medications" for Patient D without tapering Patient D off of any existing prescription medications or offering any alternative treatment plans.

c. Despite the fact that Patient D's condition did not improve under your care, you continued to prescribe narcotics, benzodiazepines, sedative-hypnotics, muscle relaxants, and Neurontin, without any further referrals to specialists or any indication that you consulted with Patient D regarding the possibility that continued use of narcotics could make her pain worse.

d. Despite requiring Patient D to sign a controlled medications policy in November 2013, there is no indication in the record that you conducted pill counts at each visit, required Patient D to submit to random urine toxicology screens until June 2014, or reviewed the patient's Prescription Monitoring Report to determine whether she was taking her medications as prescribed by you or whether she was being prescribed controlled medications by other providers.

5. In your care of Patient E, a male in his late 60's diagnosed with degenerative disc disease, low back pain, insomnia, and anxiety with depression (among other things), from July 2012 through August 2014:

a. Beginning on or about July 20, 2012, when you took over the patient's care from another provider in the practice, you prescribed controlled substances for the treatment of his pain and anxiety with depression, including narcotics, benzodiazepines, sedative-hypnotics, and muscle relaxants, without attempting to treat the patient with non-narcotic modalities.

b. You continued to prescribed controlled medications after on or about July 15, 2014, when Patient E's urine toxicology screen tested positive for tramadol, which you did not prescribe him, and negative for diclofenac and ketoprofen, which you did prescribe him.

c. On or about January 2, 2014, when Patient E missed an appointment due to weather, you phoned medications for controlled substances to a pharmacy for Patient E, including a new prescription for MS Contin (morphine sulfate, C-II) without evaluating Patient E in person.

d. Despite the fact that Patient E's condition did not improve under your care, and in fact, worsened, you continued to prescribe narcotics, benzodiazepines, and sedative-hypnotics, without any further referrals to specialists or any indication that you consulted with Patient E regarding the possibility that continued use of narcotics could make his pain worse.

e. Despite requiring Patient E to sign a controlled medications policy in May 2013 and July 2014, there is no indication in the record that you conducted pill counts at each visit, required Patient E to submit to more than one urine toxicology screen (in July 2014) or reviewed the patient's Prescription Monitoring Report before September 2014 to determine whether she was taking her medications as prescribed by you or whether he was being prescribed controlled medications by other providers.

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

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 privilege to practice nursing and/or your right to practice as a nurse practitioner 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 privilege and/or 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.

Boards' 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 panels of the Board of Nursing and of the Committee of the Joint Boards. The Board and the Committee 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 Committee, you have the right to a formal administrative hearing before the Board and/or the Committee.

If you **fail to appear in person or by counsel at the informal conference**, the recommendation of the agency subordinate will be presented to panels of the Board of Nursing and of the Committee. The Board and the Committee may accept or modify the recommendation, or reject the recommendation. The Board's and Committee's decisions regarding the agency subordinate's recommendation are final orders 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 February 23, 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 March 1, 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 February 23, 2016. Only one such motion will be considered. Absent critical circumstances, such as personal or family illness, a request for a continuance after February 23, 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) 367-4502.

In the event of inclement weather, please be advised that Board of Nursing hearings will be held unless state offices are closed. Please listen to television or radio announcements to provide information about official state closings or delays. If there is a delayed opening, hearings will begin at the time of the agency opening. A recorded announcement pertaining to closings or delays will also be available by calling the main telephone number for the Department of Health Professions at (804) 367-4400.

Sincerely,

Gloria Mitchell-Lively

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

GML/sts
Enclosures

cc: Anne G. Joseph, Deputy Director, Administrative Proceedings Division
Amy E. Weiss, Adjudication Specialist
Robin Carroll, R.N., Senior Investigator (Case no. 158008)
Agency Subordinate