



COMMONWEALTH of VIRGINIA

David E. Brown, D.C.
Director

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

March 10, 2015

Frankie Burnette, C.N.A.
1401 Westshire Lane
Henrico, Virginia 23238

CERTIFIED MAIL
9414726699042003261247

RE: Certificate No.: 1401-166166
Expiration Date: April 30, 2016

Dear Ms. Burnette:

This letter is official notification that an informal conference of the Virginia Board of Nursing ("Board") will be held on **April 14, 2015 at 2:00 p.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 nurse aide practice in Virginia.

Specifically:

1. You may have violated §54.1-3007(2), (5), (6) and (8) of the Code and 18 VAC 90-25-100(2)(e) and (h) of the Regulations Governing Certified Nurse Aides ("Regulations") in that during the course of your employment as a personal care aide, providing care to a patient in her home:
 - a. Between or about August, 2014, and September 11, 2014, by your own admission, you took your patient's hydrocodone 5/325 (Schedule II) medication for your own personal and unauthorized use and replaced the medication with your own hydrocodone 10/325, which you had cut in half.
 - b. On or about September 8, 2014, you called in a refill for your patient's hydrocodone 5/325, picked it up from the pharmacy, and diverted the medication for your own personal and unauthorized use.
2. You may have violated §54.1-3007(5), (6) and (8) of the Code in that between or about

April, 2014, and September, 2014, by your own admission, you consumed hydrocodone while on duty and while providing care for your patient.

3. You may have violated §54.1-3007(6) of the Code in that you may be unsafe to practice as a nurse aide due to your admitted substance dependence or abuse, as you acknowledged in signing a Participation Contract with the Health Practitioners' Monitoring Program on November 13, 2014.

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 as a nurse aide 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 certificate, 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.

If the agency subordinate finds that there is sufficient evidence to find you in violation of the above charge(s) and § 54.1-3007(8) of the Code, the agency subordinate shall recommend that the Board make a finding of abuse, neglect, or misappropriation of patient property, which will be entered in the Virginia Nurse Aide Registry pursuant to 42 CFR § 483.156(b)(2) and (c)(1)(iv)(D) of the Code of Federal Regulations. According to 42 CFR § 483.13(c)(1)(ii)(B), such a finding will prohibit your future employment as a certified nurse aide in any long term care facility that receives Medicare or Medicaid reimbursement.

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 agency subordinate to consider to the Board of Nursing, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, by April 6, 2015. 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 14, 2015. 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 6, 2015. Only one such motion will be considered. Absent critical circumstances, such as personal or family illness, a request for a continuance after April 6, 2015 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) 367-4614.

Sincerely,



Brenda Krohn, R.N., M.S.
Deputy Executive Director

BK/fdb
Enclosures

cc: Anne Joseph, Deputy Director, Administrative Proceedings Division
Wendy Deaner, Adjudication Specialist
Andria Christian, Senior Investigator (Case No. 159748)
Agency Subordinate
Peggy Wood, Monitoring Program Manager