

BEFORE THE VIRGINIA BOARD OF NURSING

IN RE: ESTHER N. CARTER, C.N.A.
Certificate Number: 1401-147136
Case Number: 175393

RATIFICATION AND ORDER

On January 25, 2017, a panel of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Esther N. Carter, C.N.A., was not present nor was she represented by legal counsel.


In consideration whereof, the Board of Nursing ACCEPTS the attached Recommended Findings of Fact and Conclusions of Law of the Agency Subordinate and ADOPTS the Recommended Order in its entirety.

Pursuant to Virginia Code § 54.1-2400.2, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Virginia Code § 54.1-2400(10), Ms. Carter may, not later than 5:00 p.m., on **March 13, 2017**, notify Jay Douglas, M.S.M, R.N., C.S.A.C., F.R.E., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233, in writing that she desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

Certified True Copy
By 
Virginia Board Of Nursing

FOR THE BOARD


Jay Douglas, M.S.M, R.N., C.S.A.C., F.R.E.
Executive Director
Virginia Board of Nursing

ENTERED AND MAILED ON:

February 6th, 2017

This Order shall become final on March 13, 2017, unless a request for a formal administrative hearing is received as described above.

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REPORT AND RECOMMENDATION OF AGENCY SUBORDINATE

Jurisdiction and Procedural History

Pursuant to Virginia Code §§ 2.2-4019 and 54.1-2400(10), Nancy Durrett, R.N., M.S., serving as Agency Subordinate of the Virginia Board of Nursing (“Board”), held an informal conference on November 9, 2016 in Henrico County, Virginia, to inquire into evidence that Esther N. Carter, C.N.A., have violated certain terms and conditions imposed on her by an Order of the Board entered April 27, 2016 (“Board’s Order”).

Ms. Carter appeared at this proceeding and was not represented by legal counsel.

Upon consideration of the evidence, the Agency Subordinate makes the following Findings of Fact and Conclusions of Law and recommends that the Board adopt the following Order.

Notice

By letter dated September 13, 2016, the Board sent a Notice of Informal Conference (“Notice”) to Ms. Carter notifying her that an informal conference would be held on November 9, 2016. The Notice was sent by certified and first class mail to the legal address of record on file with the Board.

Recommended Findings of Fact and Conclusions of Law

1. Esther N. Carter, C.N.A., was issued Certificate Number 1401-147136 to practice as a nurse aide on August 11, 2011, which expired on August 31, 2017. At all times relevant to the findings herein, said certificate was in full force and effect.

2. By Order of the Board entered April 27, 2016 (“Board’s Order”), Ms. Carter was placed on probation for one year of actual nurse aide employment, subject to terms and conditions. This was the result of Ms. Carter’s multiple mental health hospitalizations.

3. Ms. Carter violated Term Number 1(a) of the Board’s Order entered April 27, 2016, which required her to obtain a mental health evaluation within 90 days of entry of the Order or by July 26, 2016, in that she failed to obtain the mental health evaluation.

4. Ms. Carter violated Term 1(f) of the Board’s Order, which required her to have written reports sent to Board office, with the first report due 60 days of entry of the Order, in that Ms. Carter failed to have written reports submitted to the Board office.

5. Ms. Carter violated Term 1(i) of the Board’s Order, which required her to provide a copy of the Order to her treating providers and execute an *Authorization for Disclosure of Information* form providing for unrestricted communication between the Board, Compliance, and any treatment providers, in that Ms. Carter failed to execute the disclosure form and return it to the Board office.

6. Ms. Carter violated Term 1(j) of the Board’s Order, which required her to submit a self-report to the Board on or about June 26, 2016, in that she submitted the self-report early, on or about June 7, 2016.

7. Ms. Carter stated that she sees her psychiatrist for medication management, and that she sees her case manager every three months.

8. Ms. Carter stated the reason she did not comply with the Order was that she did not understand it. She stated that she misunderstood what the compliance case manager for the Board was telling her on the phone about the Order. She stated that English is not her primary language, and that she felt this was a failure in communication.

9. Following the informal conference, Ms. Carter met with the compliance case manager to review her order and clarify any misunderstandings.

Recommended Order

Based on the foregoing Findings of Fact and Conclusions of Law, the Agency Subordinate recommends that the Board issue an Order as follows:

1. Esther N. Carter, C.N.A., is REPRIMANDED.
2. Ms. Carter is CONTINUED on PROBATION for a period of not less than 1 year subject to the following terms and conditions:
 - a. The period of probation shall begin on the date that this Order is entered and shall end at such time as Ms. Carter has completed one year of active practice in employment as a certified nurse aide (“practice employment”).
 - b. The certificate of Ms. Carter shall be reinstated without restriction at the completion of the probationary period without an administrative proceeding unless there is a pending investigation or unresolved allegation involving a violation of law, regulation or any term or condition of probation. In that event, the period of probation shall be continued indefinitely or until such time as the Board makes a case decision in accordance with the Administrative Process Act, Virginia Code § 2.2-4000 et seq. and Virginia Code § 54.1-2400.9 et seq. of the Code.
 - c. Ms. Carter shall have an evaluation by a mental health specialist satisfactory to the Board and shall have a written report of the evaluation, including a diagnosis, a recommended course of therapy, and a prognosis sent to the Board within **90 days** from the date this Order is entered. Ms. Carter shall comply with any recommendations of the specialist. If therapy is recommended, written progress reports by the therapist shall be sent to the Board until Ms. Carter is discharged from therapy. Ms. Carter shall direct the therapist to notify the Board if she withdraws from the treatment program before being

officially discharged by the therapist.

d. Performance Evaluations shall be provided to the Board, at the direction of Ms. Carter, by all practice employer(s), using the forms provided by Compliance and available on the Board's website.

e. Ms. Carter shall practice only in a *structured / supervised* practice employment setting satisfactory to the Board for one year of probation. This employment setting shall provide on-site supervision by a physician, licensed nurse practitioner, professional nurse, or licensed practical nurse, who works the same shift and works on the same level of the building, and holds an unrestricted license. For all current practice employment, and before beginning or changing practice employment during this period, Ms. Carter shall have current and all prospective practice employers provide a written description of the employment setting to the Board office for approval.

f. Written reports are required by this Order and, unless otherwise specified, shall be sent to Compliance at the Board offices with the first report(s) received in the Board office no later than 60 days from the date this Order is entered. Subsequent reports must be received quarterly by the last day of the months of March, June, September and December until the period of probation ends. Many of the required report forms are available on the Board's website for your convenience.

g. Ms. Carter shall inform the Board in writing within ten days of the date any practice employment begins, changes, is interrupted, or ends. Additionally, Ms. Carter shall provide a contact name, address, and phone number for each practice employer to the Board.

h. Ms. Carter shall inform all current and future practice employers that the Board has placed her on probation under terms and conditions and Ms. Carter shall provide each practice employer with a complete copy of this Order. If Ms. Carter is employed through a staffing agency, she shall inform her supervisor in each facility where assigned that she is on probation under terms and conditions.

i. Ms. Carter shall provide all current and future treating practitioners with a complete copy of this Order and shall execute an Authorization for Disclosure of Information form providing for unrestricted communication between the Board, Compliance, and any treatment providers, court-appointed probation or parole officers, and/or any consultants designated by the Board, if applicable.

j. Ms. Carter shall submit "Self-Reports" which include a current address, telephone number, and verification of any and all current practice employment. These reports shall also include any changes in practice employment status. Self-Reports must be submitted whether Ms. Carter has current practice employment or not.

3. Ms. Carter shall comply with all laws and regulations governing the practice of certified nurse aides in the Commonwealth of Virginia.

4. Failure to comply with all terms and conditions of this Order within five years of the date of entry of the Order may be reason for revoking or suspending the certificate of Ms. Carter and an administrative proceeding shall be held to determine whether to impose such action.

Reviewed and approved on December 13, 2016
By Nancy Durrett, R.N., M.S.
Agency Subordinate