



COMMONWEALTH of VIRGINIA

David E. Brown, D.C.
Director

Department of Health Professions

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Virginia Board of Nursing
Jay P. Douglas, MSM, RN, CSAC, FRE
Executive Director

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NOTICE OF INFORMAL CONFERENCE BEFORE AN AGENCY SUBORDINATE

January 4, 2016

Jessica L. Smith, L.P.N.
1820 Ballahack Road
Chesapeake, VA 23322

CERTIFIED MAIL
9414 7266 9904 2028 4478 79

RE: VA License No.: 0002-063609
Expiration Date: January 31, 2015

Dear Ms. Smith:

This letter is official notification that an informal conference of the Virginia Board of Nursing ("Board") will be held on **February 2, 2016, at 10:30 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 practical nursing practice in Virginia.

Specifically:

1. You may have violated § 54.1-3007(2), (5), (6), and (8) of the Code and 18 VAC 90-20-300(A)(2)(c) of the Regulations Governing the Practice of Nursing in that:

a. From on or about October 7, 2014 through November 11, 2014, during the course of your employment with Eastern Virginia Ear, Nose, and Throat Specialists, Chesapeake Virginia, you forged prescriptions for narcotic medications on approximately six occasions using a prescription pad you stole from your employer. You filled approximately five of the prescriptions for your personal and unauthorized use.

b. From on or about December 3, 2014 through December 16, 2014, during the course of your employment with Medical Temporaries, Inc., Virginia Beach, Virginia, while working

as a contractor at Chesapeake Regional Medical Group, you forged prescriptions for narcotic medications on at least two occasions using a prescription pad you stole from your employer. You filled or attempted to fill the prescriptions for your personal and unauthorized use.

2. You may have violated § 54.1-3007(6) of the Code in that you may be unsafe to practice due to chemical dependency and/ or mental illness, as evidenced by the following:

a. By your own admission, you have had a “problem” with narcotic pain medication in the past.

b. From on or about June 16, 2009 through September 24, 2014, you received mental health counseling at Coastal Counseling Center, Chesapeake, Virginia for a diagnosis of bipolar disorder. As of December 31, 2014, you told an investigator for the Department of Health Professions that you were not currently receiving any mental health or substance abuse treatment.

c. Three of your former coworkers told the DHP investigator that you exhibited strange behavior at work including being groggy, glassy-eyed, walking around with a blank stare and your mouth open, and taking frequent, long breaks.

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 practical nursing 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 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.

Since the allegations listed above involve impairment, please be advised that you may make application to the Health Practitioners’ Monitoring Program (“HPMP”), which is available to all health care practitioners licensed in Virginia. Information about the HPMP is enclosed. Should you enter into a written agreement with the HPMP prior to your informal conference, the agency subordinate will take that into consideration when making a recommendation in your case.

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 January 29, 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 February 2, 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 January 29, 2015. Only one such motion will be considered. Absent critical circumstances, such as personal or family illness, a request for a continuance after January 29, 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 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,

A handwritten signature in black ink, appearing to read "Gloria D. Mitchell-Lively, R.N., M.S.N., M.B.A.", written in a cursive style.

 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
Meghan R. Wingate, Senior Investigator (Case no. 160245)
Agency Subordinate