

**VIRGINIA:**

**BEFORE THE BOARD OF NURSING**

**IN RE: BRITTANY S. KELLY, C.N.A.  
Certificate No.: 1401-137338**

**ORDER**

In accordance with §§ 2.2-4019, 2.2-4021 and 54.1-2400(10) of the Code of Virginia (1950), as amended ("Code"), an informal conference was conducted on behalf of the Board of Nursing ("Board") on January 14, 2016, in Henrico County, Virginia. Brittany S. Kelly, C.N.A., was not present nor was she represented by legal counsel. Jane Elliott, R.N., Ph.D., serving as Agency Subordinate for the Board, submitted a Recommended Decision for consideration.

On March 23, 2016, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Ms. Kelly was not present nor was she represented by legal counsel.

Based upon its review of the Recommended Decision of the Agency Subordinate, the Board makes the following Findings of Fact and Conclusions of Law and issues the following Order.

**FINDINGS OF FACT**

1. Brittany S. Kelly, C.N.A., was issued Certificate No. 1401-137338 to practice as a nurse aide in Virginia on June 2, 2010. The certificate is scheduled to expire on June 30, 2016.
2. By letter dated December 17, 2015, the Board of Nursing sent a Notice of Informal Conference ("Notice") to Ms. Kelly notifying her that an informal conference would be held on January 14, 2016. The Notice was sent by certified and first class mail to 4402 S. Buffalo Road, Lexington, Virginia 24450, the address of record on file with the Board of Nursing. The certified mail receipt was signed on December 19, 2015, and the first class mail was not returned to the Board office. The Agency Subordinate concluded that adequate notice was provided to Ms. Kelly and the informal conference proceeded in her absence.

3. During the course of her employment with Trinity Mission of Rocky Mount, Virginia, on July 13, 2015, Ms. Kelly told a resident that she smelled “rank” and to “shut the hell up,” or words to that effect.

4. The resident, who was alert and oriented, reported the incident to facility staff. The resident was also interviewed by the Department of Health Professions investigator and confirmed her initial report.

5. Ms. Kelly was hired on May 14, 2015 and her employment was terminated on August 7, 2015. Prior to the above-referenced incident, Ms. Kelly had received two written warnings for performance issues, one of which resulted in an advisory letter from the Board.

#### **CONCLUSIONS OF LAW**

1. Finding of Fact No. 3 constitutes a violation of § 54.1-3007(2), (5) and (8) of the Code and 18 VAC 90-25-100(2)(e) of the Regulations Governing Certified Nurse Aides.

2. Finding of Fact No. 3 and Conclusion of Law No. 1 constitute a Finding of Abuse pursuant to 42 CFR § 483.156(b)(2) and (c)(1)(iv)(D) of the Code of Federal Regulations.

#### **ORDER**

WHEREFORE, it is hereby ORDERED as follows:

1. Certificate No. 1401-137338 of Brittany S. Kelly, C.N.A., is REVOKED.

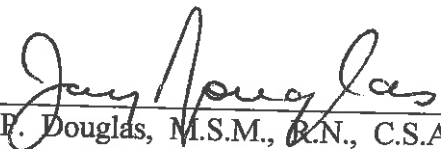
2. A Finding of Abuse shall be ENTERED against Ms. Kelly in the Virginia Nurse Aide Registry pursuant to 42 CFR § 483.13(c)(1)(ii)(B) and 42 CFR § 483.156(b)(2) and (c)(1)(iv)(D). This finding prohibits Ms. Kelly’s employment as a certified nurse aide in any long-term care facility that receives Medicare or Medicaid reimbursement, according to 42 CFR § 483.13(c)(1)(ii)(B).

Pursuant to § 54.1-2400.2 of the Code, 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.

Since Ms. Kelly failed to appear at the informal conference, this Order shall be considered final. Ms. Kelly has the right to appeal this Order directly to the appropriate Virginia circuit court. As provided by Rule 2A:2 of the Supreme Court of Virginia, Ms. Kelly has thirty (30) days from the date of service (the date she actually received this decision or the date it was mailed to her, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Jay P. Douglas, M.S.M., R.N., C.S.A.C., F.R.E., Executive Director, Board of Nursing, at Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233. In the event that this decision is served by mail, three (3) days are added to that period.

FOR THE BOARD

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

Entered: March 29<sup>th</sup>, 2016

Certified True Copy

By   
Virginia Board Of Nursing