

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: MICHAEL P. PERSCH, R.N.
License No.: 0001-246822

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 June 1, 2015, in Henrico County, Virginia. Michael P. Persch, R.N., was present and was not represented by legal counsel. Jane Elliott, R.N., Ph.D., serving as Agency Subordinate for the Board, submitted a Recommended Decision for consideration.

On September 16, 2015, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Mr. Persch was not present nor was he 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. Michael P. Persch, R.N., was issued License No. 0001-246822 to practice professional nursing in Virginia on August 8, 2013. The license is scheduled to expire on March 31, 2016. His primary state of residence is Virginia.

2. By letter dated May 12, 2015, the Board sent a Notice of Informal Conference ("Notice") to Mr. Persch notifying him that an informal conference would be held on June 1, 2015. The Notice was sent by certified and first class mail to 3314 Circle Brook Drive, Apt. H, Roanoke, Virginia 24018, the address of record on file with the Board of Nursing.

3. During the course of his employment with Carilion Roanoke Memorial Hospital, Roanoke, Virginia ("Carilion"):

a. Mr. Persch diverted controlled medications for his own personal and unauthorized use, as evidenced by a pharmacy audit covering the period January 1, 2014 to March 31, 2014, which revealed multiple

discrepancies in his administration and documentation of narcotics. These discrepancies involved administering IV and oral narcotic pain medications around the same time and pulling narcotics and not documenting administration.

b. On April 8, 2014, Mr. Persch submitted to a reasonable cause urine drug screen that was positive for norfentanyl (identified as a major metabolite of fentanyl) and oxycodone, for which he did not have valid prescriptions.

4. On April 23, 2014, Mr. Persch was separated from his employment with Carilion, where he was initially hired in August 2013, for violating the facility's drug-free workplace policy. Prior to his employment separation, he was offered assistance from the Employee Assistance Program. As a result, he was referred to the Mount Regis Center, Salem, Virginia, and to the Health Practitioners' Monitoring Program ("HPMP"). At the informal conference, Mr. Persch acknowledged a history of mental illness and substance abuse. He stated that during this time, he was working the midnight shift and was having trouble sleeping and feeling depressed. He also stated that he became addicted to Percocet in 2008, after having been prescribed it when he broke his foot. He further indicated that he began using oxycodone and fentanyl he had obtained "off the street." He denied diversion from Carilion.

5. On April 24, 2014, Mr. Persch signed a Participation Contract with the HPMP and entered inpatient treatment at the Mount Regis Center. He successfully completed inpatient treatment on May 22, 2014, and was discharged with diagnoses of alcohol dependence, opioid dependence, and adjustment disorder with mixed features. He subsequently successfully attended intensive outpatient treatment from June 2, 2014, through July 10, 2014. He remains enrolled in the HPMP.

6. Mr. Persch reported that his sobriety date is April 24, 2014. He stated that he goes to individual therapy once per week, NA meetings at least three times per week, and Caduceus meetings two times per week. He indicated that he has a sponsor and is actively working the 12-step program. He also stated that he attended aftercare and sees his psychiatrist monthly. Mr. Persch's psychiatrist provided a letter dated January 28, 2015, indicating that, in his professional opinion, Mr. Persch was safe to practice.

7. Mr. Persch was rehired at Carilion on October 20, 2014, upon being approved to return to practice by the HPMP. He has an HPMP onsite monitor, who was interviewed by an investigator for the Virginia

Department of Health Professions on January 9, 2015, and who reported that Mr. Persch was a “stellar” employee with excellent performance. She stated that there has been no suspicion that Mr. Persch has been impaired on duty. Mr. Persch’s HPMP onsite monitor and his unit director accompanied him to the informal conference in support.

8. On August 9, 2012, Mr. Persch was convicted of misdemeanor DUI – Liquor and Drugs - 1st Offense in the Justice Court, Las Vegas Township of Clark County, Nevada. He was ordered to attend DUI school and a victim impact panel. He was also ordered to pay fees and fines totaling \$585.00, or to complete 59 hours of community services in lieu of the fines. In addition, he was sentenced to 30 days in jail with 30 days suspended. On September 24, 2012, Mr. Persch satisfied all of the court’s requirements.

9. By a judgment signed on June 24, 2003, Mr. Persch was convicted of driving while intoxicated, a misdemeanor, in the United States District Court for the Eastern District of Virginia, Alexandria Division. He was ordered to pay a \$250.00 fine and \$25.00 special assessment fee, and to complete one year of supervised probation. He was also ordered to complete the Virginia Alcohol Safety Action Program and to have a restricted status placed on his operator/driver’s license. Mr. Persch paid all related fees and court costs, and on June 22, 2004, he successfully completed his probation.

10. By letter from the Nevada State Board of Nursing dated January 21, 2014, Mr. Persch’s application for licensure to practice as a registered nurse in the State of Nevada, received on April 8, 2013, was denied based on “a violation of NRS 632.320 (1)(b) criminal convictions, and (1)(e) controlled substances and/or alcohol.” Prior to the denial of his application for licensure, Nevada State Board of Nursing staff recommended monitoring for five years. At the informal conference, Mr. Persch indicated that he denied an agreement for monitoring with the Nevada State Board of Nursing because he had no intention of remaining in Las Vegas.

11. On his Application for Licensure by Examination – Registered Nurse, dated July 3, 2013:

a. Mr. Persch responded “no” to the question “Have you ever applied for a license/registration/certificate or multi-state privilege as a health care provider in Virginia or any other state/jurisdiction” when, in fact, he applied for licensure to practice as a registered nurse in the State of Nevada as referenced above.

b. Mr. Persch responded “no” to the question “Have you ever been convicted, pled guilty to

or pled Nolo Contendere to the violation of any federal, state or ordinance constituting a felony or misdemeanor? (including convictions for driving under the influence, but excluding traffic violations)?” when, in fact, he was convicted of misdemeanor DUI – Liquor and Drugs - 1st Offense and a misdemeanor offense of driving while intoxicated as referenced above.

12. On his application for employment with Carilion Roanoke Memorial Hospital dated August 22, 2014, when asked if he had received disciplinary action, been placed on probation, or been investigated by any state licensing board(s), Mr. Persch failed to list the denial of his application for licensure in the State of Nevada as referenced above.

CONCLUSIONS OF LAW

1. Findings of Fact Nos. 3(b), 4, 5, 8, and 9 constitute violations of § 54.1-3007(6) of the Code.
2. Finding of Fact No. 3(a) constitutes a violation of § 54.1-3007(2), (3), (5), (6), and (8) of the Code and 18 VAC 90-20-300(A)(2)(c) and (e) of the Regulations Governing the Practice of Nursing (“Regulations”).
3. Finding of Fact No. 10 constitutes a violation of § 54.1-3007(7) of the Code.
4. Findings of Fact Nos. 11(a) and 11(b) constitute violations of § 54.1-3007(1) of the Code and 18 VAC 90-20-300(A)(1)(b) of the Regulations.
5. Finding of Fact No. 12 constitutes a violation of § 54.1-3007(2) of the Code and 18 VAC 90-20-300(A)(2)(e) of the Regulations.

ORDER

WHEREFORE, it is hereby ORDERED as follows:

1. Michael P. Persch, R.N., is hereby REPRIMANDED.
2. The Board shall TAKE NO FURTHER ACTION against Mr. Persch contingent upon his continued compliance with the HPMP.
3. Any violation of the terms and conditions stated in this Order shall be reason for revoking the license of Michael P. Persch, R.N., and an administrative proceeding shall be held to decide whether his license should be revoked. Mr. Persch shall be noticed to appear before the Board at such time as the Board is notified that:

a. He is not in compliance with the terms and conditions of the HPMP, or has been terminated from participation in the HPMP;

b. There is a pending investigation or unresolved allegation against him involving a violation of law or regulation or any term or condition of this Order; or

c. He has successfully completed the above-referenced period of participation in the HPMP. However, upon receipt of evidence of Mr. Persch's participation in and compliance with the HPMP, the Board, at its discretion, may waive his appearance before the Board and conduct an administrative review of this matter.

4. This Order is applicable to Mr. Persch's multistate licensure privileges, if any, to practice professional nursing. For the duration of this Order, Mr. Persch shall not work outside of the Commonwealth of Virginia pursuant to a multistate licensure privilege without the written permission of the Virginia Board of Nursing and the Board of Nursing in the party state where he wishes to work. Any requests for out of state employment should be directed, in writing, to the Executive Director of the Board.

5. Mr. Persch shall maintain a course of conduct in his capacity as a professional nurse commensurate with the requirements of § 54.1-3000 *et seq.* of the Code and the Board of Nursing Regulations.

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.

Pursuant to Section 54.1-2400(10) of the Code, Mr. Persch may, not later than 5:00 p.m., on **October 26, 2015**, notify Jay P. 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 he 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.

FOR THE BOARD:

for *Aberia Mitchell-Lively*
Jay P. Douglas, M.S.M., R.N., C.S.A.C., F.R.E.
Executive Director
Virginia Board of Nursing

ENTERED: *September 22, 2015*

This Order shall become final on October 26, 2015; unless a request for a formal administrative hearing is received as described above.

Certified True Copy

By *J. Patton*
Virginia Board Of Nursing