



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 6, 2015

Mark Anthony Mayberry, R.N.
260 Kenwood Lane
Ruckersville, Virginia 22968

CERTIFIED MAIL
71603901984831613541

RE: VA License No.: 0001-149223
Expiration Date: July 31, 2016

Dear Mr. Mayberry:

This letter is official notification that an informal conference of the Virginia Board of Nursing ("Board") will be held on **February 18, 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 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) and (e) of the Regulations Governing the Practice of Nursing in that, during the course of your employment with the Martha Jefferson Hospital, Charlottesville, Virginia, during April and May, 2014, by your own admission, you diverted Fentanyl and oxycodone for your own personal and unauthorized use. Additionally, you documented wastage of the medications using name of fellow nurses as your witnesses, without their actually witnessing the waste.
2. You may have violated §54.1-3007(6) of the Code in that you may be unsafe to practice nursing due to substance abuse as evidenced by the following:

a. On or about July 27, 2014 you were admitted to Blackberry Ridge, Amherst, Virginia, to receive treatment for opiate dependency. You were discharged on August 24, 2014, with a referral for individual counseling and a continuing care agreement to attend three to five AA/NA meetings a week.

b. On May 28, 2014, you signed a Participation Contract and entered into the Health Practitioners' Monitoring Program. On your contract you indicated that you may suffer from chemical dependency that may impair your ability to safely practice due to your Fentanyl and oxycodone abuse.

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 nursing 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 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.

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 **February 9, 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 18, 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 February 9, 2015. Only one such motion will be considered. Absent critical circumstances, such as personal or family illness, a request for a continuance after February 9, 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) 367-4543.

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,



SD Gloria D. Mitchell, R.N., M.S.N., M.B.A.
Deputy Executive Director

Enclosures

cc: Anne Joseph, Deputy Director, Administrative Proceedings Division
Wendy Deaner, Adjudication Specialist
Ron Houser, Senior Investigator (Case No. 157090)
Agency Subordinate
Peggy Wood, Monitoring Program Manager