

**VIRGINIA:**

**BEFORE THE BOARD OF NURSING**

**IN RE:        MARK MAYBERRY, R.N.**  
**License No.: 0001-149223**

**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 February 18, 2015 in Henrico County, Virginia. Mr. Mayberry 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 March 25, 2015, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Mr. Mayberry 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.     Mark Mayberry, R.N., was issued License No. 0001-149223 to practice professional nursing in Virginia on July 9, 1996. Said license is set to expire on July 31, 2016. Mr. Mayberry's primary state of residence is Virginia.

2.     By letter dated January 6, 2015, the Board of Nursing sent a Notice of Informal Conference ("Notice") to Mr. Mayberry notifying him that an informal conference would be held on February 18, 2015. The Notice was sent by certified and first class mail to 260 Kenwood Lane, Ruckersville, Virginia, 22968, the address of record on file with the Board of Nursing.

3.     During the course of his employment with Martha Jefferson Hospital, Charlottesville,

Virginia, by his own admission, Mr. Mayberry diverted Fentanyl and oxycodone for his own personal and unauthorized use. At the informal conference, Mr. Mayberry stated that he diverted Fentanyl four or five times beginning in January, 2013, and that he diverted two tablets of oxycodone in April-May, 2014. In addition, by his own admission, Mr. Mayberry had fellow nurses sign for wasted medications, without their actually witnessing the waste. At the informal conference, Mr. Mayberry acknowledged that he never allowed himself to grieve the loss of a family member and the anxiety and guilt built up and he internalized his pain. He indicated that he knew he could not keep diverting medications and realized that he needed help.

4. Mr. Mayberry resigned from Martha Jefferson Hospital on May 19, 2014, after he was confronted with allegations of diversion; Mr. Mayberry initially denied the diversion allegations. Three days after his resignation, Mr. Mayberry contacted Martha Jefferson Hospital and admitted that he had diverted narcotics from the facility and apologized for his actions.

5. On May 28, 2014, Mr. Mayberry signed a Participation Contract and entered into the Health Practitioners' Monitoring Program ("HPMP"). On his contract, Mr. Mayberry acknowledged that he may suffer from chemical dependency which may impair his ability to safely practice nursing due to Fentanyl and oxycodone abuse. In July 2014, the HPMP informed Mr. Mayberry that he should complete inpatient treatment. Mr. Mayberry indicated that the recommendation came months after his last use of any controlled substances and he had been clean since May, 2014, but he still followed the HPMP recommendation. At the informal conference, Mr. Mayberry indicated that he had not used any controlled substances since his resignation from the Martha Jefferson Hospital.

6. On July 27, 2014, Mr. Mayberry was admitted to Blackberry Ridge, Amherst, Virginia, to receive treatment for opiate dependency. Mr. Mayberry completed the program on August 24, 2014 and was referred to a therapist for individual counseling. At his discharge, Mr. Mayberry agreed to attend

AA/NA meetings three to five times a week. Mr. Mayberry currently attends Caduceus and AA/NA three times a week and participates in Smart Recovery online.

7. On September 8, 2014, Mr. Mayberry signed a Recovery Monitoring Contract (“RMC”) with the HPMP which required that he continue to be involved in individual and group therapy.

8. On October 27, 2014, during an interview with a Virginia Department of Health Professions investigator, Mr. Mayberry indicated that he was in compliance with the Health Practitioners’ Monitoring Program (“HPMP”) but he felt that the HPMP was not adequate to address his situation. Mr. Mayberry indicated that he would remain in the HPMP until the Board told him otherwise but he requested that the Board allow him to discuss his status at an informal conference.

9. On November 4, 2014, Mr. Mayberry’s licensed professional counselor indicated in a letter to the investigator that he supported Mr. Mayberry’s return to practice.

10. On February 11, 2015, a compliance report was received from the HPMP; the report indicated that Mr. Mayberry was in full compliance with his RMC. In addition, the report indicated that the HPMP had determined that Mr. Mayberry was safe to return to nursing practice. Mr. Mayberry’s employment is currently restricted to no more than 40 hours per week, he cannot have access to controlled substances and he can only work day-shift.

11. At the informal conference, Mr. Mayberry stated that he is currently employed at the University of Virginia, Health System, Infusion Procedural Center. Mr. Mayberry indicated that the HPMP’s restrictions on his employment hours limit his ability to return to school. Further, he stated that the HPMP’s restriction placed on medication access has rendered him unable to administer some medications to patients and he must ask someone else to administer the medications for him. Mr. Mayberry indicated that he understands that he had to gain back trust and he feels that he has done so. Additionally, Mr. Mayberry indicated that the HPMP is requiring him to attend counseling which he

believes he already receives through other sources including his LPC and Dr. Noel Jewell, M.D., from Blackberry Ridge.

12. Mr. Mayberry indicated that his date of sobriety is May 12, 2014, and he is not prescribed any medications. Additionally, he stated that while he has been in the HPMP he has had three to four random drug screens a month and has never had a positive screen. Mr. Mayberry indicated that if released from the HPMP he intends to continue attending AA/NA meetings and Caduceus, and to participate in Smart Recovery online.

### CONCLUSIONS OF LAW

1. Finding of Fact No. 3 constitutes a violation of § 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.
2. Findings of Fact Nos. 5 and 6 constitute a violation of §54.1-3007(6) of the Code.

### ORDER

WHEREFORE, it is hereby ORDERED that Mark Mayberry, R.N., shall be placed on PROBATION for two years of actual nursing practice subject to the following terms and conditions:

1. The period of probation shall begin on the date that this Order is entered and shall end at such time as Mr. Mayberry has completed two years of actual nursing practice in employment as a professional nurse (“practice employment”). The license of Mr. Mayberry shall be reinstated without restriction at the completion of the probationary period without an administrative hearing 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 with the Administrative Process Act, §2.2-4000 et seq. and §54.1-2400(9) et seq. of the Code.
2. Mr. Mayberry shall not use alcohol or any other mood altering chemical, except as

prescribed by a health care practitioner with whom he has a bona fide practitioner/patient relationship and for accepted medicinal or therapeutic purposes. Should he be prescribed any Schedule II-V controlled medication, a written report from the prescribing practitioner shall be provided to the Board within ten days of the date the medication is prescribed.

3. Mr. Mayberry shall be required to have two supervised, unannounced random drug screens a month from a Board-approved testing entity, which includes testing for alcohol and the following drugs of choice: Fentanyl and oxycodone.

4. For the first 12 months of practice employment after being placed on probation, Mr. Mayberry shall not administer any Schedule II-V controlled substances, the Schedule VI controlled substance Nubain, or any other controlled substances designated by the Board. For 12 months thereafter, Mr. Mayberry may administer the above medications only under the supervision of a physician/licensed nurse practitioner/professional nurse.

5. Mr. Mayberry shall attend Alcoholics Anonymous/Narcotics Anonymous/Caduceus recovery support groups or other groups accepted by the Board three times per week and shall have written evidence of attendance by a sponsor or contact person sent to the Board within ten days of each meeting.

6. Mr. Mayberry shall cause performance evaluations to be provided to the Board, at the direction of Mr. Mayberry, by all practice employer(s), using the forms provided by Compliance and available on the Board's website.

7. Mr. Mayberry 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 Mr. Mayberry has current practice employment or not.

8. Mr. Mayberry shall inform the Board in writing within ten days of the date any practice employment begins, changes, is interrupted, or ends. Additionally, Mr. Mayberry shall provide a contact name, address and phone number for each practice employer to the Board.
9. Mr. Mayberry shall inform all current and future practice employers that the Board has placed him on probation and Mr. Mayberry shall provide each practice employer with a complete copy of this Order. If Mr. Mayberry is employed through a staffing agency, he shall inform his supervisor at each facility where assigned that he is on probation.
10. Mr. Mayberry 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 any consultants designated by the Board, if applicable.
11. Written reports are required by the 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.
12. Mr. Mayberry shall return all copies of his license to practice professional nursing to the Board office within ten days of the date of entry of this Order, along with payment of a duplicate license fee as specified in the regulations governing nursing. Upon receipt, the Board shall issue a replacement professional nurse license marked "Valid in Virginia Only; Probation with Terms."
13. Mr. Mayberry 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.

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

15. Any violation of the stated terms and conditions contained in this Order, failure to comply with all terms of this Order within five years of the date of entry of the Order, or of any law or regulation affecting the practice of nursing in the Commonwealth of Virginia shall be reason for suspending or revoking the license of Mr. Mayberry, and an administrative hearing may be held to determine whether his license shall be suspended or revoked.

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. Mayberry may, not later than 5:00 p.m., on May 13, 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:

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

ENTERED: April 13<sup>TH</sup>, 2015

This Order shall become final on May 13, 2015, unless a request for a formal administrative hearing is received as described above.

Certified True Copy  
By Stan E. [Signature]  
Virginia Board of Nursing