



# COMMONWEALTH of VIRGINIA

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Director

*Department of Health Professions*

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Virginia Board of Nursing  
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## NOTICE OF INFORMAL CONFERENCE BEFORE AN AGENCY SUBORDINATE

October 9, 2009

Tracy L. Matthews, L.P.N.  
P. O. Box 521  
Seaford, VA 23696

*sent by overnight mail*

**RE: VA License No.: 0002-052606**  
**Expiration Date: August 31, 2010**

Dear Ms. Matthews:

This letter is official notification that an informal conference of the Virginia Board of Nursing ("Board") will be held on **November 3, 2009, at 2:00 p.m.**, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, 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), (e) and (f) of the Regulations Governing the Practice of Nursing in that, during the course of your employment at Mary Immaculate Hospital, Newport News, Virginia, by your own admission, for approximately one year, you diverted Dilaudid (hydromorphone, Schedule II) for your personal and unauthorized use and self-injected the drug while on duty. You accomplished the diversion by:

- a. Withdrawing more than a patient's ordered dose, administering the ordered dose and keeping the remainder for yourself;
- b. Withdrawing medication for patients who did not request it, documenting it as administered and keeping the drug for yourself; and
- c. Documenting the withdrawal and administration of medication more often than ordered and keeping the drug for yourself.

2. You may be in violation of § 54.1-3007(6) of the Code in that by your own admission to an investigator for the Department of Health Professions, you are dependent on pain medications, including Dilaudid and Vicodin (hydrocodone, Schedule III). By your own admission, you have obtained prescriptions for pain medications from multiple physicians. You have also ingested Percocet (oxycodone, Schedule II) prescribed to a family member.

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.

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 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.**

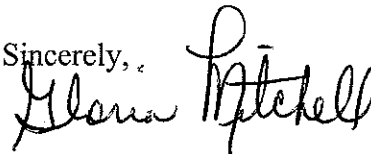
To facilitate this proceeding, you should submit five copies of any documents you wish the agency subordinate to consider to the Board of Nursing, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, by October 27, 2009. Your documents may not be submitted by facsimile or email.

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 November 3, 2009. 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 October 27, 2009. Only one such motion will be considered. Absent critical circumstances, such as personal or family illness, a request for a continuance after October 27, 2009, 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) 367-4576.

Sincerely,



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

Enclosures

cc: Sandra Whitley Ryals, Director, Department of Health Professions  
Anne Joseph, Deputy Director, Administrative Proceedings Division  
Tammie D. Jones, Adjudication Specialist  
June Morrison, Senior Investigator (Case no. 127584)  
Agency Subordinate  
Peggy Wood, Intervention Program Manager

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE:

TRACY MATTHEWS, L.P.N.

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 December 15, 2009, in Henrico County, Virginia. Tracy Matthews, L.P.N., was present and was represented by Gerald Canaan, Esquire. Jodi Power, R.N., J.D., serving as Agency Subordinate for the Board, submitted a Recommended Decision for consideration.

On January 27, 2010, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Ms. Matthews was not present nor 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. Tracy Matthews, L.P.N., was issued License No. 0002-052606 to practice as a practical nurse in Virginia on May 9, 1996. The license is current and will expire on August 31, 2010.
2. By letter dated October 9, 2009, the Board sent a Notice of Informal Conference ("Notice") to Ms. Matthews notifying her that an informal conference would be held on November 3, 2009. The Notice was sent by overnight mail and first class mail to Post Office Box 521, Seaford, Virginia 23696, the address of record on file with the Board. After granting Ms. Matthew's request for continuance, the informal conference was rescheduled; and on November 13, 2009, the Board sent Ms. Matthew's correspondence notifying her that the informal conference would be held on December 15, 2009.
3. During the course of her employment at Mary Immaculate Hospital, Newport News, Virginia, by her own admission, for approximately one year during 2008-2009, Ms. Matthews diverted Dilaudid

(hydromorphone – Schedule II) for her personal and unauthorized use and self-injected the drug while on duty.

To accomplish the diversion,

- a. Ms. Matthews withdrew more medication than a patient's ordered dose, administered the ordered dose, and kept the remainder for herself; and
- b. Ms. Matthews withdrew medication for patients who did not request it, documented it as administered, and kept the medication for herself; and
- c. Ms. Matthews documented the withdrawal and administration of medication more often than ordered, failed to administer it to the patient, but kept the medication for herself.

4. On August 17, 2009, Ms. Matthews submitted to a urine drug screen at Mary Immaculate Hospital, which was positive for hydrocodone (Schedule II), hydromorphone (Schedule II), and oxymorphone (Schedule II). Ms. Matthews had a valid prescription for hydrocodone only. As a result of her admitted diversion, her 4-year employment was terminated on August 17, 2009.

5. No patient harm or patient deprivation of medication occurred as a result of Ms. Matthews actions. No criminal charges have been filed to date as a result of her diversion.

6. Ms. Matthews admitted her chemical dependency on opioid pain medication including Dilaudid and Vicodin at both the informal conference and during the DHP investigation. She acknowledged obtaining prescription pain medications from multiple physicians at the same time and ingesting Percocet (Schedule II) prescribed to a family member in 2008-2009.

7. On August 21, 2009, Ms. Matthews voluntarily sought substance abuse treatment with Timothy O'Connell, M.D., Addiction Medicine Specialists, Newport News, Virginia, for her acknowledged opiate addiction. Dr. O'Connell verified in a letter dated December 14, 2009, that Ms. Matthews has been participating in the Opioid Addiction Program since that time and receiving Suboxone treatment. Dr. O'Connell also verified that Ms. Matthews has had all negative urine drug screens since initiating treatment, and described her as "highly motivated to remain clean."

8. At the informal conference, Ms. Matthews expressed shame regarding her actions and was honest and forthright regarding questions about her admitted diversion and drug use. She reported a sobriety date of August 21, 2009, the date she entered treatment with Dr. O'Connell. She reported that she attends Narcotics Anonymous meetings two times per week and has a sponsor, in addition to the support of her parents.

9. On December 1, 2009, Ms. Matthews entered the Health Practitioners' Monitoring Program ("HPMP") by signing a Participation Contract. Ms. Matthews has not executed a Recovery Monitoring Contract, but was reported by the HPMP Intake Coordinator in a Compliance Report dated December 10, 2009, as being in "full compliance with her Participation Contract." Ms. Matthews has been referred for additional substance abuse treatment and was scheduled for an intake appointment at The Counseling Center on December 14, 2009. At the informal conference, Ms. Matthews stated that she attended the counseling appointment. Ms. Matthews also stated that she will be participating in intensive outpatient treatment at The Counseling Center with group therapy three days per week, Narcotics Anonymous meetings two days per week, and will be subject to random urine drug screenings.

10. Since being issued a license in 1996, Ms. Matthews has held three nursing positions ranging from three to six years in length. Ms. Matthews has not received any complaints from her prior employers regarding her practice. Prior to her termination, Ms. Matthews received the "LPN of the Year" award from Mary Immaculate Hospital in May, 2009.

#### CONCLUSIONS OF LAW

1. Finding of Fact #3 constitutes a violation of §54.1-3007(2), (5), and (6) of the Code, and 18 VAC 90-20-300(A)(2)(c) and (e) of the Regulations Governing the Practice of Nursing.
2. Finding of Facts #6-7 constitutes a violation of §54.1-3007(6) of the Code.

#### ORDER

WHEREFORE, it is hereby ORDERED as follows:

1. The Board shall TAKE NO ACTION contingent on the following conditions:

a. Ms. Matthews shall comply with all terms and conditions for the period specified by the Health Practitioners' Monitoring Program ("HPMP").

b. Any violation of the terms and conditions stated in this Order shall be reason for revoking the license of Ms. Matthews, and an administrative proceeding shall be held to decide whether her license should be revoked. Ms. Matthews shall be noticed to appear before the Board at such time as the Board is notified that:

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

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

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

2. This Order is applicable to Ms. Matthews's multistate licensure privileges, if any, to practice practical nursing in the Commonwealth of Virginia. For the duration of this Order, Ms. Matthews 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 Ms. Matthews wishes to work. Any requests for out of state employment should be directed, in writing, to the Executive Director of the Board.

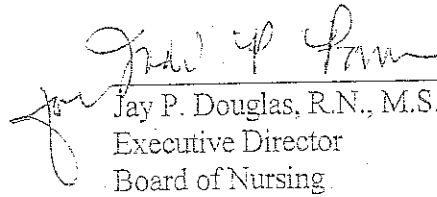
3. Ms. Matthews shall maintain a course of conduct in her capacity as a practical nurse commensurate with the requirements of § 54.1-3000 *et seq.* of the Code and the Board of Nursing Regulations.

This Order is subject to appeal to the Board. If Ms. Matthews desires a formal administrative hearing before the Board pursuant to §§2.2-4020 and 2.2-4021 of the Code, she must notify Jay P. Douglas, R.N., M.S.M.,

C.S.A.C., Executive Director, Board of Nursing, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, in writing, within thirty-three (33) days from the date of service of this Order. Upon the filing of a request for the hearing with the Executive Director, this Order shall be vacated.

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.

FOR THE BOARD

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

Entered: February 10, 2010