

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE:

MELISSA D. BATES, L.P.N.

ORDER

Pursuant to §§ 2.2-4020, 54.1-110 and 54.1-2400(11) of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was held before a panel of the Board of Nursing ("Board") on February 19, 2010, in Henrico County, Virginia, to inquire into evidence that Melissa D. Bates, L.P.N., may have violated certain laws and regulations governing nursing practice in Virginia. The case was presented by Corie E. Tillman Wolf, Assistant Attorney General. Ishneila G. Moore, Assistant Attorney General, was present as legal counsel for the Board. Ms. Bates was present and was not represented by legal counsel. The proceedings were recorded by a certified court reporter.

Upon consideration of the evidence presented, the Board adopted the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Melissa D. Bates, L.P.N., was issued License No. 0002-073398 to practice practical nursing by the Virginia Board of Nursing on May 10, 2006. Said license is set to expire on March 31, 2011. Ms. Bates was issued Certificate No. 1401-092362 to practice as a nurse aide by the Virginia Board of Nursing on May 18, 2002. Said certificate expired on May 31, 2006.

2. By her own admission, during the course of her employment with Berkshire Health and Rehabilitation Center ("Berkshire") in Vinton, Virginia, from December, 2008, until February, 2009, Ms. Bates, along with several other nurses, diverted approximately 480 Lortab (hydrocodone/acetaminophen, schedule III) tablets for their personal and unauthorized use. The evidence indicated that of the 480 tablets, Ms. Bates diverted between 40-50 tablets for her own use. Ms. Bates, in concert with other nurses, accomplished this diversion by ordering refill medications for residents that were not needed by the residents

and by taking discontinued medications. Ms. Bates and the other nurses then divided the medications.

3. Ms. Bates was charged with two felonies in the Roanoke Circuit Court due to the diversion of Lortab at Berkshire. Ms. Bates pleaded nolo contendere to these charges, and on August 12, 2009, the Court took the charges under advisement for a period of 12 months.

4. Ms. Bates entered into a participation contract and recovery monitoring contract with the Health Practitioners' Monitoring Program ("HPMP") on November 30, 2009, and January 24, 2010, respectively. She has been compliant with the terms of these contracts. She acknowledged that she suffers from depression, and she is being treated for migraines. She is receiving prescription medication for both diagnoses. She testified that she voluntarily entered and completed an intensive outpatient program at Blue Ridge Behavioral Healthcare, and she continues to engage in counseling and Caduceus meetings. She further testified that her sobriety date is February 11, 2009, and that she has completed the 12 steps of the Narcotics Anonymous program.

5. Amanda Champney, Director of Nursing at Berkshire, testified that, but for the diversion of Lortab from Berkshire described above, Ms. Bates was an excellent nurse and an exemplary employee. She also stated that Ms. Bates continues to be employed at Berkshire in a non-nursing capacity.

CONCLUSIONS OF LAW

The Board concludes that:

1. Finding of Fact No. 2 constitutes a violation of § 54.1-3007(2), (5), (6) and (8) of the Code and 18 VAC 90-20-300(A)(2)(c) of the Regulations Governing the Practice of Nursing.
2. Ms. Bates is properly enrolled in the Health Practitioners' Monitoring Program ("HPMP").

ORDER

WHEREFORE, the Virginia Board of Nursing, effective upon entry of this Order, hereby ORDERS as follows:

1. Melissa D. Bates, L.P.N., is hereby REPRIMANDED.

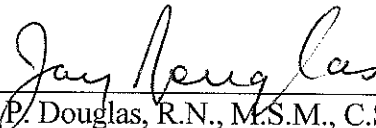
2. License No. 0002-073398, issued to Melissa D. Bates to practice practical nursing in the Commonwealth of Virginia, is hereby INDEFINITELY SUSPENDED.
3. The license will be recorded as suspended and no longer current.
4. At such time as Ms. Bates shall petition the Board for reinstatement of her license, an administrative proceeding will be convened to determine whether she is capable of resuming the safe and competent practice of practical nursing. Ms. Bates shall be responsible for any fees that may be required for the reinstatement and renewal of the license prior to issuance of the license to resume practice.
5. This suspension applies to any multistate privilege to practice practical nursing.
6. This suspension shall be STAYED upon the condition that Ms. Bates remain compliant with the terms of a Recovery Monitoring Contract with the Health Practitioners' Monitoring Program ("HPMP") and the following terms and conditions:
 - a. Ms. Bates shall comply with all terms and conditions for the period specified by the HPMP.
 - b. Any violation of the terms and conditions stated in this Order shall be reason for summarily rescinding the stay of indefinite suspension of the license, and an administrative proceeding shall be held to decide whether her license shall be revoked. The stay of indefinite suspension may be summarily rescinded at such time the Board is notified that:
 - i. Ms. Bates is not in compliance with the terms and conditions specified by the HPMP, or has been terminated from participation in the HPMP, or
 - ii. There is a pending investigation or unresolved allegation involving a violation of law, regulation or any term or condition of this Order.
7. Upon receipt of evidence of Ms. Bates' participation in and successful completion of the terms specified by the HPMP, the Committee, at its discretion, may waive Ms. Bates' appearance before the Committee, and conduct an administrative review of this matter.

8. This Order shall be applicable to Ms. Bates' multistate licensure privileges, if any, to practice practical nursing in the Commonwealth of Virginia. It is further ordered that for the duration of this Order, Ms. Bates may 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 she wishes to work.

9. Ms. Bates 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.

Pursuant to §§ 2.2-4023 and 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 public record and shall be made available for public inspection or copying on request.

FOR THE BOARD



Jay P. Douglas, R.N., M.S.M., C.S.A.C.

Executive Director

Virginia Board of Nursing

March 4th, 2010

ENTERED

NOTICE OF RIGHT TO APPEAL

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 days from the date you are served with this Order in which to appeal this decision by filing a Notice of Appeal with Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233. The service date shall be

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defined as the date you actually received this decision or the date it was mailed to you, whichever occurred first. In the event this decision is served upon you by mail, three days are added to that period.