

VIRGINIA:

BEFORE THE BOARD OF NURSING

**IN RE: PENNY M. KIRKLAND, R.N.
License No.: 0001-172580**

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 17, 2014, in Henrico County, Virginia. Penny M. Kirkland, 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 17, 2014, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Ms. Kirkland was not present nor was she 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. Penny M. Kirkland, R.N., was issued License No. 0001-172580 to practice professional nursing in Virginia on October 31, 2000. The license is scheduled to expire on December 31, 2014. Her primary state of residence is Virginia. Ms. Kirkland holds an expired license to practice professional nursing in Georgia.

2. By letter dated May 14, 2014, the Board of Nursing sent a Notice of Informal Conference ("Notice") to Ms. Kirkland notifying her that an informal conference would be held on June 17, 2014. The Notice was sent by certified and first class mail to 9105 Whirlaway Trail, Midlothian, Virginia 23112, the address of record on file with the Board of Nursing.

3. During the course of her employment with Hospice of Virginia, Richmond, Virginia, between January 2014, and February 26, 2014, Ms. Kirkland diverted Dilaudid (hydromorphone, Schedule II) and phenobarbital (Schedule IV) for her personal and unauthorized use, and used the drugs while on duty. Further, on several occasions, Ms. Kirkland was observed to be very fatigued, confused and unable to concentrate, and she failed to administer and/or document administering medications to assigned patients.

4. Ms. Kirkland's employment was terminated on February 26, 2014.

5. On February 3, 2014, in the General District Court of Chesterfield County, Virginia, Ms. Kirkland was ordered to complete the Virginia Alcohol Safety Action Program, subsequent to a reckless driving conviction.

6. Ms. Kirkland is currently employed as a telephone triage nurse at Capital Area Health Network, Midlothian, Virginia. She does not participate in counseling and does not attend Alcoholics Anonymous or Narcotics Anonymous. When asked about re-entry into nursing practice, Ms. Kirkland stated that she would not put herself in that situation again and described her current job as safe.

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) of the Regulations Governing the Practice of Nursing.

2. Finding of Fact No. 5 constitutes a violation of § 54.1-3007(6) of the Code.

ORDER

WHEREFORE, it is hereby ORDERED as follows:

1. License No. 0001-172580 of Penny M. Kirkland, R.N., is INDEFINITELY SUSPENDED.

2. The license will be recorded as suspended and no longer current.

3. At such time as Ms. Kirkland 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 professional nursing. Ms. Kirkland 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.

4. This suspension applies to any multistate privilege to practice professional nursing.

5. This suspension shall be STAYED upon proof of entry into the Health Practitioners' Monitoring Program ("HPMP") pursuant to Chapter 25.1 of Title 54.1 of the Code and 18 VAC 76-10-10 *et seq.* of the Regulations Governing the HPMP. At such time, the indefinite suspension shall be STAYED and the following terms and conditions shall apply:

a. Ms. Kirkland 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 of Penny M. Kirkland, R.N., and an administrative proceeding shall be held to determine 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. Kirkland is not in compliance with the terms and conditions specified by the HPMP;

ii. Ms. Kirkland's participation in the HPMP has been terminated;

iii. There is a pending investigation or unresolved allegation against Ms. Kirkland involving a violation of law, regulation, or any term or condition of this order.

6. Upon receipt of evidence of Ms. Kirkland's participation and successful completion of the HPMP, the Board, at its discretion, may waive her appearance before a Committee and conduct an

administrative review of this matter, at which time she may be issued an unrestricted license.


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

8. Ms. Kirkland shall maintain a course of conduct in her 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, Ms. Kirkland may, not later than 5:00 p.m., on **November 11, 2014**, 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 she 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 Jay P. Douglas, M.S.M., R.N., C.S.A.C., F.R.E.
Executive Director
Virginia Board of Nursing

ENTERED: October 9, 2014

This Order shall become final on **November 11, 2014**, unless a request for a formal administrative hearing is received as described above.

Certified True Copy

By U. Robinson-Howers
Virginia Board of Nursing