

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: PENNY KELLEY, L.P.N. APPLICANT

ORDER

In accordance with §§ 2.2-4019, 2.2-4021 and 54.1-2400(7) and (10) of the Code of Virginia (1950), as amended ("Code"), an informal conference was conducted on behalf of the Board of Nursing ("Board") on November 5, 2012, in Henrico County, Virginia. Penny Kelley was present and was not represented by legal counsel. Judith Piersall, R.N., B.S.N., serving as Agency Subordinate for the Board, submitted a Recommended Decision for consideration.

On January 29, 2013, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Ms. Kelley 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 Kelley submitted an application for licensure by examination to practice practical nursing in the Commonwealth of Virginia on July 19, 2012.
2. By letter dated September 26, 2012, the Board of Nursing sent a Notice of Informal Conference ("Notice") to Ms. Kelley notifying her that an informal conference would be held on November 5, 2012. The Notice was sent by certified and first class mail to 4120 San Salvador Drive, Chesapeake, Virginia 23321, the address of record on file with the Board of Nursing.
3. Ms. Kelley previously held a certificate to practice as a nurse aide in Virginia. The Board suspended said certificate for not less than two years by Order entered November 30, 2011. The

suspension was due to Ms. Kelley's being under the influence of an intoxicating substance while on duty in a client's home in February 2011, and because of two convictions for driving under the influence ("DUI"), in 2007 and 2010.

4. Ms. Kelley graduated from ECPI school of nursing in Virginia Beach, Virginia, July 2012. She stated at the informal conference that she finished first in her class.

5. Ms. Kelley stated that her sobriety date was January 19, 2010. She will continue to be monitored by the Southeastern Virginia Alcohol Safety Action Program ("ASAP") until April 2013. ASAP required her to attend substance abuse counseling, which she successfully completed in February 2011. She attended AA meetings for approximately one year. ASAP reported in a letter dated August 23, 2012, that Ms. Kelley was compliant with all program requirements.

6. Ms. Kelley signed a Participation Contract with the Health Practitioners' Monitoring Program on October 11, 2012. At the informal conference, she stated that she had resumed attending AA meetings once a week and that she has a substance abuse evaluation scheduled for the end of November 2012. She currently sees a psychiatrist and takes anti-anxiety and antidepressant medication.

CONCLUSIONS OF LAW

1. Findings of Fact No. 3,5 and 6 constitute a violation of § 54.1-3007(6) of the Code.
2. Ms. Kelley otherwise meets the requirements of § 54.1-3020 of the Code.

ORDER

WHEREFORE, it is hereby ORDERED as follows:

1. The application of Penny Kelley for licensure by examination as a practical nurse is APPROVED. Upon successful completion of the NCLEX-PN examination, Ms. Kelley shall be issued a license to practice as a practical nurse in the Commonwealth. Thereafter, Ms. Kelley shall continue to comply with all terms and conditions of the HPMP for the period specified by the HPMP.

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

- a. She is not in compliance with the terms and conditions of the HPMP, or has been terminated from participation in the HPMP;
- b. There is a pending investigation or unresolved allegation against her involving a violation of law or regulation or any term or condition of this Order; or
- c. She has successfully completed the above-referenced period of participation in the HPMP. However, upon receipt of Ms. Kelley's participation in and compliance with the HPMP, the Board, at its discretion, may waive her appearance before the Board and conduct an administrative review of this matter.

3. This Order is applicable to Ms. Kelley's multistate licensure privileges, if any, to practice practical nursing. For the duration of this Order, Ms. Kelley 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.

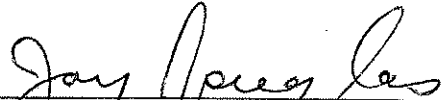
4. Ms. Kelley shall maintain a course of conduct in her capacity as a practical nurse commensurate with the requirements of § 54.1-3000 *et seq.* of the Code and the Board of Nursing Regulations.

Pursuant to § 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. Kelley may, not later than 5:00 p.m., on **March 11, 2013**, notify Jay P. Douglas, R.N., M.S.M., C.S.A.C., 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:



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

ENTERED: February 6TH, 2013

This Order shall become final on **March 11, 2013**, unless a request for a formal administrative hearing is received as described above.

Certified True Copy
By 

Virginia Board of Nursing