



COMMONWEALTH of VIRGINIA

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NOTICE OF INFORMAL CONFERENCE BEFORE AN AGENCY SUBORDINATE

September 26, 2012

Penny Kelley, L.P.N. Applicant
4120 San Salvador Drive
Chesapeake, Virginia 23321

CERTIFIED MAIL
7196 9008 9111 0161 7434

Dear Ms. Kelley:

This letter is official notification that an informal conference of the Virginia Board of Nursing ("Board") will be held on **November 5, 2012, at 10:30 a.m.**, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Henrico, Virginia. 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"), 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 consider your application for licensure by examination as a practical nurse and will inquire into allegations that you may have violated certain laws and regulations governing nursing practice in Virginia.

Specifically:

1. You may be in violation of § 54.1-3007(6) of the Code in that you may be unable to safely practice practical nursing due to alcohol abuse, as evidenced by your convictions for driving under the influence in 2007 and 2010 and your termination from employment as a certified nurse aide in 2011 for being under the influence while on duty in a client's home.

2. You may have violated § 54.1-3007(1) of the Code and 18 VAC 90-20-300(A)(1)(b) of the Regulations Governing the Practice of Nursing in that on your application for licensure by examination as a practical nurse, you answered "no" to the question whether you have a chemical dependency condition that could interfere with your current ability to practice nursing despite your history of alcohol abuse as referenced above.

The burden rests on you, as the applicant, to demonstrate that you meet the requirements of § 54.1-3020 of the Code.

After consideration of all information, the agency subordinate may:

- Approve your application for licensure by examination;
- Recommend to the Board that your application be approved with a reprimand, a monetary penalty, or terms and conditions, which may include placing you on probation;
- Recommend to the Board that your application be denied;

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 31, 2012**. Your documents may not be submitted by facsimile or email.

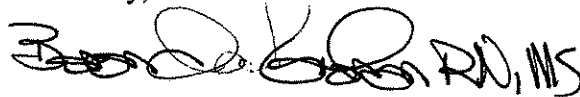
You may be represented by an attorney at the informal conference. If you obtain counsel, you should do so as soon as possible, because absent good cause to support a request for a continuance, the informal conference will be held on November 5, 2012. A request to continue this proceeding must state **in 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 31, 2012. Only one such motion will be considered. Absent critical circumstances, such as personal or family illness, a request for a continuance after October 31, 2012, 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 me, at (804) 367-4614.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenda Krohn, R.N., M.S.", with a stylized flourish at the end.

Brenda Krohn, R.N., M.S.
Deputy Executive Director

BK/lba

Enclosures

cc: Anne Joseph, Deputy Director, Administrative Proceedings Division
Agency Subordinate
Peggy Wood, Monitoring Program Manager