



COMMONWEALTH of VIRGINIA

Robert A. Nebiker
Director

Department of Health Professions
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September 2, 2005

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Virginia Board of Nursing
Jay P. Douglas, RN, MSM, CSAC
Executive Director

Diane M.G. Hake, R.N.
449 Zelkova Road
Williamsburg, Virginia 23185

CERTIFIED MAIL
71603901984887289950

RE: Notice of Formal Administrative Hearing
September 22, 2005 at 9:00 a.m.

Dear Ms. Hake:

Enclosed please find a Notice of Hearing which is scheduled for **September 22, 2005, at 9:00 a.m.**, at the Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. Arrangements should be made for you to be there at 8:30 a.m.


You have the following rights, among others: to be represented by legal counsel, to have witnesses subpoenaed on your behalf, to present documentary evidence and to cross-examine adverse witnesses. Should you wish to subpoena witnesses, requests for subpoenas must be made in writing in accordance with the enclosed Instructions for Requesting Subpoenas.

You have the right to have a copy of the investigative report and supporting documents, which may be used as evidence at your hearing. These documents are enclosed only with the original notice sent by certified mail, and must be claimed at the post office. Please bring these documents with you. Prior to the hearing, it is the Board's intention to distribute these documents to the members of the Board who will conduct the hearing. If you have any objections to the materials, you must submit your objections **in writing** before **September 12, 2005**. If you do not object to this proposed distribution before **September 12, 2005**, the Board will assume that you have no objection to the Board member's prior review of the documents. Failure to object to the distribution prior to the hearing will not affect your right to contest any information contained in these documents at the hearing.

Further, to facilitate this hearing, the Board requests that you provide to Mykl D. Egan, Adjudication Specialist, Administrative Proceedings Division, Department of Health Professions, 6603 West Broad Street, Richmond, Virginia 23230, **eighteen (18) copies** of any documents you intend to introduce into evidence by **September 7, 2005**.

Please indicate, by letter to this office no later than September 12, 2005, your intention to be present for the hearing. If you should have any questions, please contact us at the above number.

Sincerely,


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

Enclosures

cc: Members, Board of Nursing
Robert A. Nebiker, Director, Department of Health Professions
James L. Banning, Director, Administrative Proceedings Division
William C. Garrett, Assistant Attorney General
Mykl D. Egan, Adjudication Specialist, APD
Lisa Thomas R.N, Senior Investigator, Division of Enforcement (97008)
Peggy W. Call, Intervention Program Manager
Kim Robinson, Legal Secretary, Office of the Attorney General

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE:

DIANE M. G. HAKE, R.N.

NOTICE OF HEARING

Pursuant to § 2.2-4020, § 2.2-4021, § 54.1-110 and § 54.1-2400(11) of the Code of Virginia (1950), as amended, Diane M. G. Hake, R.N., who holds License No. 0001-173517, currently expiring January 31, 2006, is hereby given notice that, pursuant to § 2.2-4024 F, a formal administrative hearing will be held in the presence of a panel of the Board of Nursing ("the Board"). The hearing will be held on September 22, 2005, at 9:00 a.m., at the offices of the Department of Health Professions, 6603 West Broad Street, Fifth Floor, Richmond, Virginia, at which time Ms. Hake will be afforded the opportunity to be heard in person or by counsel.

~~At the hearing Ms. Hake has the following rights, among others: the right to representation~~
by counsel, the right to have witnesses subpoenaed and to present witnesses on her behalf, the right to present documentary evidence and the right to cross-examine adverse witnesses. If Ms. Hake desires any witnesses to appear on her behalf, she must notify the Director of Administrative Proceedings, 6603 West Broad Street, 5th Floor, Richmond, Virginia 23230-1712, in accordance with the Instructions for Requesting Subpoenas.

The purpose of the hearing is to receive and act upon evidence that Ms. Hake may have violated certain laws and regulations governing the practice of nursing in Virginia, as more fully set forth in the Statement of Particulars below.

STATEMENT OF PARTICULARS

The Board alleges that:

1. On July 6, 2000, Diane M.G. Hake, R.N. entered into a Participation Contract with the

Health Practitioners' Intervention Program ("HPIP"), 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 HPIP. This was done with the understanding that the program is to assist those persons who have impairment, defined as "a physical or mental disability, including, but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public." Ms. Hake signed a Recovery Monitoring Contract with the HPIP on July 26, 2000, which was superseded by a Recovery Monitoring Contract dated April 21, 2004. She may have violated § 54.1-3007(6) of the Code, in that, on December 10, 2004, she was dismissed from the HPIP program due to noncompliance. Specifically, the HPIP stated in its Report of Noncompliance, dated October 21, 2004, that Ms. Hake failed to enter and complete treatment as recommended, tested positive for alcohol on September 7, 2004, entered Tucker Treatment Center for detoxification from alcohol on October 15, 2004, and failed to submit to urine toxicology screens on September 29, October 8, October 13, October 14, and October 15, 2004. The HPIP had previously submitted three (3) other Reports of Noncompliance against her. The first report, dated September 15, 2003, pertained to a positive urine drug screen for propoxyphene, a Schedule IV controlled substance. Ms. Hake was asked to refrain from practice and referred to residential treatment. In the second report, dated February 26, 2004, she was cited for missing a call to NCPS on February 20, 2004, which was a test day, and for failing to send in monthly reports for January 2004. Pre-dismissal and non-compliance letters were sent to her. In the third instance dated September 15, 2004, she was found to be non-compliant with her HPIP contract(s) in that she had relapsed in May 2004 with alcohol

and diversion of opiates, failed to attend or call and cancel group therapy appointments in the first week of September 2004, submitted diluted urine on August 30 and 31, 2004, and submitted a urine drug screen positive for alcohol at .29%, on September 7, 2004.

2. During the course of her employment at the Plastic Surgery Center of Hampton Roads ("Center"), Newport News, Virginia, where Ms. Hake was under a work site monitoring contract through the HPIP prohibiting her from accessing and giving narcotics, she may have violated § 54.1-3007(2), (5), (6), and (8) of the Code, and 18 VAC 90-20-300(A)(2)(c) and (e) of the Regulations of the Board of Nursing. Specifically:

a. By her own admission, from January to April 2004, she requested and received Percocet 7.5/500 (oxycodone and acetaminophen), a Schedule II controlled substance, and Vicodin 5/500 (hydrocodone and acetaminophen), a Schedule III controlled substance, from the Center's recovery room nurses. Ms. Hake


accomplished these diversions by signing out the Percocet and Vicodin under patients' names in the narcotics logs. From January 26, 2004, until April 16, 2004, she signed Percocet out for 20 patients, and Vicodin out for 12 patients, in the narcotics log. Ms. Hake documented in several patients' charts that they had received the medication; however, when these patients were questioned, they denied ever having received these narcotics. In some cases, Ms. Hake generated chart paperwork documenting treatments and medication for patients who were not seen on those dates for treatments.

b. By her own admission, Ms. Hake acquired approximately 26 pre-signed prescription blanks from four (4) Center physicians for patients coming in for pre-operative

histories and physical appointments. Ms. Hake subsequently filled in the bodies of the prescription blanks to receive Percocet, Darvocet (propoxyphene hydrochloride), a Schedule IV controlled substance, Vicodin, and Vicodin ES (hydrocodone and acetaminophen), a Schedule III controlled substance, for her personal use. Ms. Hake filled most of these prescriptions in person at local pharmacies and paid for them with her insurance. All of the Center physicians denied ever prescribing these narcotics for Ms. Hake. On April 21 and April 26, 2004, she called in prescriptions for Vicodin ES, identifying herself as one of the Center's surgical technicians; however, when questioned, the surgical technician denied making such calls.

- c. In early January 2004, Ms. Hake gave Valium (diazepam), a Schedule IV controlled substance, to a patient. When confronted by her work site monitor about how she had obtained the medication, Ms. Hake admitted that she removed the keys to the narcotics cabinet from the pocket of her monitor's lab coat, which was in her office.
- d. Ms. Hake's employment was terminated on May 3, 2004, for failure to show up for work.

FOR THE BOARD


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

ENTERED: September 2nd, 2005