

VIRGINIA:

BEFORE THE BOARD OF NURSING

RE: DELANA MICHELLE TONEY BOGGESS, R.N.

ORDER

Pursuant to § 2.2-4020, § 2.2-4021, § 54.1-110 and § 54.1-2400(11) of the Code of Virginia (1950), as amended (the "Code"), a formal administrative hearing was held before a panel of the Board of Nursing (the "Board") on May 19, 2004, in Henrico County, Virginia, to receive and act upon evidence that Delana Michelle Toney Boggess, R.N., may have violated certain laws and regulations governing the practice of nursing in Virginia. The case was presented by William C. Garrett, Assistant Attorney General. Howard M. Casway, Senior Assistant Attorney General, was present as legal counsel for the Board. Ms. Boggess was not 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. Delana Michelle Toney Boggess, R.N., held license number 0001-181993 to practice as a professional nurse in the Commonwealth of Virginia. Said license was summarily suspended by the Board of Nursing on May 5, 2004.
2. Based on Commonwealth's Exhibit 1 and the representations of William C. Garrett, Assistant Attorney General, the presiding officer ruled that adequate notice had been provided to Ms. Boggess and the hearing proceeded in the absence of Ms. Boggess.
3. On or about January 21, 2004, Ms. Boggess entered into a Participation Contract with the Health Practitioners' Intervention Program ("HPIP"), pursuant to Chapter 25.1 of Title

54.1 of the Code of Virginia (1950), as amended, and 18 VAC 76-10-10, et. seq., of the Regulations Governing the Health Practitioners' Intervention Program.

4. On or about April 16, 2004, Ms. Boggess was dismissed from the HPIP for non-compliance with her Participation Contract, to include missing several assessment appointments at Richmond IOP and refusing to enter any of three recommended residential treatment programs, including one that was willing to work with indigent clients.

5. By her own admission, during the course of her employment with Bon Secours Richmond Community Hospital, Richmond, Virginia, from October 31, 2003 to on or about November 17, 2003, Ms. Boggess diverted and adulterated Demerol (meperidine hydrochloride, Schedule II) on numerous occasions for her personal and unauthorized use. Ms. Boggess admitted to committing said diversion by gaining access to the stock through the "cancel remove" function in Pyxis. Ms. Boggess thereafter transferred the Demerol from the tubex into a plain syringe, replaced the diverted Demerol with saline, and then returned the adulterated Demerol tubex back into the patient stock. Ms. Boggess admitted to collecting approximately 200 mg of Demerol during the course of each shift. Ms. Boggess acknowledged the possibility that the adulterated doses could be administered to patients. Ms. Boggess gave formal written resignation of her position at Bon Secours Richmond Community Hospital on November 21, 2003.

6. Between approximately June 17, 2003 and June 18, 2003, during the course of her employment with Montgomery General Hospital, Montgomery, West Virginia, Ms. Boggess diverted Demerol for her personal and unauthorized use. As a result of this incident, on or about June 18, 2003, Ms. Boggess' employment with Montgomery General Hospital was terminated.

7. Between approximately December 8, 2001 and December 9, 2001, during the course of her employment with Jackson General Hospital, Ripley, West Virginia, Ms. Boggess diverted Demerol on approximately ten (10) occasions and morphine sulfate (Schedule II) on approximately one (1) occasion for her personal and unauthorized use. On or about December 10, 2001, Ms. Boggess' employment was suspended.

8. From in or about January 2001 to September 2001, during the course of her employment with Charleston Area Medical Center, Charleston, West Virginia, Ms. Boggess diverted Demerol and Xanax (alprazolam, Schedule IV). Furthermore, by her own admission, Charleston Area Medical Center terminated Ms. Boggess in or about September 2001 for repeated diversion.

9. By her own admission, during the course of her employment with Charleston Area Medical Center, on or about September 15, 1994, Ms. Boggess diverted Demerol for her personal and unauthorized use. Furthermore, Ms. Boggess documented in the medical record that she administered Demerol when in fact she had diverted it. Additionally, review of Ms. Boggess' documentation of patient narcotic usage for the period of approximately September 9, 1994 to September 15, 1994, revealed discrepancies in the record for Demerol, morphine, and Ativan (Lorazepam, Schedule IV).

10. Action has been taken against Ms. Boggess' State of West Virginia nursing license as follows:

- a. In or about September 1994 and by her own admission, Ms. Boggess voluntarily surrendered her West Virginia professional nursing license. This surrender was memorialized in a consent agreement entered into with the West Virginia State Board of Examiners for Registered Professional Nurses ("West Virginia Board"),

effective January 25, 1995. Under the terms of the surrender, Ms. Boggess – under her maiden name “Toney” – surrendered her license for six (6) months, with leave to petition for reinstatement after the six (6) month period or not until all criminal matters pending against her, specifically a criminal prescription forgery charge, are resolved, whichever is longer.

- b. In or about December 1995, Ms. Boggess petitioned the West Virginia Board for reinstatement of her license. In response to said petition, on or about February 16, 1996, the West Virginia Board approved the reinstatement of Ms. Boggess’ license and suspended Ms. Boggess for one (1) year, staying the suspension contingent upon Ms. Boggess complying with the terms of the agreement. Additionally, the West Virginia Board placed Ms. Boggess on three (3) years probation. By her own admission, Ms. Boggess returned to her employment at Charleston Area Medical Center in or about March 1996.
- c. On August 10, 1999, the West Virginia Board reinstated Ms. Boggess’ license to full unencumbered status after hearing her petition for reinstatement.

11. By her own admission, Ms. Boggess was convicted of a misdemeanor in 1996, related to a September 1994 prescription forgery. Ms. Boggess stole the prescription from her place of employment, Charleston Area Medical Center.

12. Ms. Boggess falsified her application for employment with Bon Secours Richmond Community Hospital as follows:

- a. Ms. Boggess failed to report her employment in 2003 at Montgomery General Hospital and her employment in 2001 at Jackson General Hospital.

- b. Ms. Boggess stated “family responsibilities” as her reason for leaving Charleston Area Medical Center in September 2001. When, in fact, by her own admission, Ms. Boggess was dismissed from Charleston Area Medical Center in September 2001 for repeated diversion of Demerol and Xanax.
- c. Ms. Boggess stated “pregnancy/family responsibilities” as her reason for leaving Charleston Area Medical Center in June 1994. When, in fact, by her own admission, Ms. Boggess diverted drugs from Charleston Area Medical Center in or about September 1994.

13. Ms. Boggess is currently licensed in West Virginia and Maryland. An administrative action is presently pending against Ms. Boggess’ license in West Virginia.

CONCLUSIONS OF LAW

The Board concludes that:

- 1. Finding of Fact No. 5 constitutes a violation of § 54.1-3007(2), (3), (5), (6) and (8) of the Code, and 18 VAC 90-20-300(A)(2)(c), (e) and (f) of the Board of Nursing Regulations.
- 2. Finding of Fact No. 6 constitutes a violation of § 54.1-3007(2), (3), (5) and (6) of the Code, and 18 VAC 90-20-300(A)(2)(c) of the Board of Nursing Regulations.
- 3. Finding of Fact No. 7 constitutes a violation of § 54.1-3007(2), (3), (5) and (6) of the Code, and 18 VAC 90-20-300(A)(2)(c) of the Board of Nursing Regulations.
- 4. Finding of Fact No. 8 constitutes a violation of § 54.1-3007(2), (3), (5) and (6) of the Code, and 18 VAC 90-20-300(A)(2)(c) of the Board of Nursing Regulations.
- 5. Finding of Fact No. 9 constitutes a violation of § 54.1-3007(2), (3), (5) and (6) of the Code, and 18 VAC 90-20-300(A)(2)(c), (e) and (f) of the Board of Nursing Regulations.
- 6. Finding of Fact No. 10 constitutes a violation of § 54.1-3007(7) of the Code.

7. Finding of Fact No. 11 constitutes a violation of § 54.1-3007(2), (4) and (5) of the Code, and 18 VAC 90-20-300(A)(2)(c) and (e) of the Board of Nursing Regulations.

8. Finding of Fact No. 12 constitutes a violation of § 54.1-3007(2) of the Code, and 18 VAC 90-20-300(A)(2)(e) of the Board of Nursing Regulations.

ORDER

WHEREFORE, the Virginia Board of Nursing, effective upon entry of this Order, hereby ORDERS that License No. 0001-181993, issued to Delana Michelle Toney Boggess, R.N., to practice professional nursing in the Commonwealth of Virginia, be and hereby is INDEFINITELY SUSPENDED. Ms. Boggess may petition the Board after not less than three (3) years from the date of entry of this Order for reinstatement of her license to practice professional nursing, at which time a meeting will be convened to receive evidence satisfactory to the Board that Ms. Boggess is able to resume the safe and competent practice of nursing. Upon entry of this Order, the license of Delana Michelle Toney Boggess, R.N., will be recorded as SUSPENDED and no longer current. Consistent with the terms of this Order, in the event that Delana Michelle Toney Boggess, R.N., seeks reinstatement of her license, she shall be responsible for any fees that may be required for the reinstatement and renewal of her license prior to issuance of her license to resume practice.

Pursuant to § 2.2-4023 of the Code of Virginia (1950), as amended, 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.

As provided by Rule 2A:2 of the Supreme Court of Virginia, Ms. Boggess has thirty (30) days from the service date 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, 6603 W. Broad

Street, Fifth Floor, Richmond, Virginia 23230-1712. The service date shall be defined as the date Ms. Boggess actually received this decision or the date it was mailed to her, whichever occurred first. In the event this decision is served upon her by mail, three (3) days are added to that period.

FOR THE BOARD

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

May 27th, 2004
ENTERED