

**VIRGINIA:**

**BEFORE THE BOARD OF NURSING**

**IN RE:**

**BENJAMIN CUNNINGHAM, R.N.**

**CONSENT ORDER**

The Virginia Board of Nursing ("Board") and Benjamin Cunningham, R.N., as evidenced by his signature hereto, enter into the following Consent Order affecting Mr. Cunningham's license to practice professional nursing in Virginia.

The Board adopts the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. Benjamin Cunningham was issued License No. 0001-214740 to practice professional nursing by the Virginia Board of Nursing on August 7, 2008. Said license is set to expire on October 31, 2010.
2. During the course of his employment in the Emergency Department of Carilion Franklin Memorial Hospital, Rocky Mount, Virginia, between February 5 and April 20, 2009, Mr. Cunningham diverted Dilaudid (hydromorphone, Schedule II) from hospital supplies for his own personal and unauthorized use. He accomplished this diversion by withdrawing the medication for patients who had no physician's order, and falsely documenting administration of the medication per verbal order.
3. Mr. Cunningham resigned his employment in lieu of termination.
4. Mr. Cunningham is unable to safely practice professional nursing due to substance abuse, for which he is receiving treatment.
5. On May 1, 2009, Mr. Cunningham entered into participation with the Health Practitioners' Monitoring Program (*formerly, the Health Practitioners' Intervention Program*) and is currently in compliance with the Program.

**CONCLUSIONS OF LAW**

1. Finding of Fact No. 2 constitutes a violation of § 54.1-3007(2), (5), and (6) of the Code of Virginia (1950), as amended (“Code”) and 18 VAC 90-20-300(A)(2)(c) and (e) of the Regulations Governing the Practice of Nursing.
2. Finding of Fact No. 4 constitutes a violation of § 54.1-3007(6) of the Code.

**CONSENT**

Benjamin Cunningham, R.N., by affixing his signature hereon, agrees to the following:

1. He has been advised to seek advice of counsel prior to signing this document;
2. He acknowledges that without his consent, no legal action can be taken against him except pursuant to the Virginia Administrative Process Act, § 2.2-4000(A) *et seq.* of the Code;
3. He acknowledges that he has the following rights, among others: the right to an informal fact finding conference before the Board, the right to reasonable notice of said hearing, the right to representation by counsel, and the right to cross-examine witnesses against him;
4. He waives all such right to an informal conference;
5. He admits to the Findings of Fact contained herein and waives his right to contest such Findings of Fact in any subsequent proceeding before the Board;
6. He consents to the entry of the following Order affecting his right to practice professional nursing in Virginia.

**ORDER**

WHEREFORE, on the basis of the foregoing, the Virginia Board of Nursing, effective upon entry of this Order, and in lieu of further proceedings, hereby ORDERS as follows:

1. The Board shall TAKE NO ACTION at this time contingent on Benjamin Cunningham's continued compliance with the Health Practitioners' Monitoring Program for the period specified by the Program.

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

a. He 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 him involving a violation of law or regulation or any term or condition of this Order; or


c. He has successfully completed the above-referenced period of participation in the HPMP. However, upon receipt of Mr. Cunningham's participation in and compliance with the HPMP, the Board, at its discretion, may waive his appearance before the Board and conduct an administrative review of this matter.

3. This Order is applicable to Benjamin Cunningham's multistate licensure privileges, if any, to practice professional nursing in the Commonwealth of Virginia. For the duration of this Order, Mr. Cunningham 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 he wishes to work. Any requests for out of state employment should be directed, in writing, to the Executive Director of the Board.

4. Mr. Cunningham shall maintain a course of conduct in his capacity as a professional nurse commensurate with the requirements of § 54.1-3000 *et seq.* of the Code and the Board of Nursing Regulations.

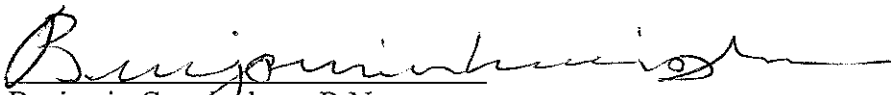
Pursuant to §§ 2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as public record and shall be made available for public inspection or copying upon request.

FOR THE BOARD

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

ENTERED: October 29<sup>th</sup>, 2009

SEEN AND AGREED TO:

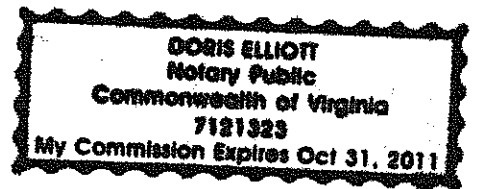
  
Benjamin Cunningham, R.N.

COMMONWEALTH OF VIRGINIA,  
COUNTY/CITY OF Campbell, TO WIT:

Subscribed and sworn to before me, Doris Elliott, a Notary Public, this 26 day of October, 2009.

My commission expires Oct 31, 2011.

Registration Number 7121323.



  
NOTARY PUBLIC