

2. On December 9, 2009, Ms. Marks was convicted of driving under the influence, third offense within less than five years, a felony, in the Circuit Court of Hanover County, Virginia. This conviction formed the basis for the mandatory suspension of her license to practice professional nursing.

3. Ms. Marks has a history of problems with substance abuse and uncontrolled migraine headaches. Since a positive drug test in September, 2011, Ms. Marks testified that she is not in any organized substance abuse program but does participate in Alcoholics Anonymous. Ms. Marks testified that she has not used alcohol since August 1, 2009. She acknowledged that she is a recovering alcoholic and is compliant with her VASAP terms. She described herself as having used controlled substances to manage her migraine headaches. Ms. Marks is not currently under the medical care of a physician for migraine management due to a lack of health insurance.

4. By her own admission, on September 26, 2011, Ms. Marks consumed at least 15mg of morphine that was not prescribed to her. She stated this was for treatment of a migraine and that she chose to take the morphine instead of make a trip to the emergency department.

5. Ms. Marks' employment with Kindred Hospital, Richmond, Virginia, was terminated on October 5, 2011, following the administration's review of a for-cause urine drug screen, which was collected on September 28, 2011. Ms. Marks' drug screen was positive for morphine, for which she did not have a prescription. She began working at Kindred Hospital in March 2011.

6. On December 28, 2011, the Board received Ms. Marks' "Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation." On her Application for Reinstatement, she falsely denied a physical or chemical dependency condition which could interfere with her ability to safely practice.

CONCLUSIONS OF LAW

The Board concludes that:

1. Finding of Fact No. 2 constitutes a violation of §54.1-3007(4) of the Code.

2. Findings of Fact Nos. 3 and 5 constitute violations of §54.1-3007(6) of the Code.
3. Findings of Fact Nos. 4 and 5 constitute violations of §54.1-3007(2) of the Code and 18 VAC 90-20-300(A)(2)(c) of the Regulations Governing the Practice of Nursing (“Regulations”).
4. Finding of Fact No. 6 constitutes a violation of §54.1-3007(1) of the Code and 18 VAC 90-20-300(A)(1)(b) of the Regulations.
5. Ms. Marks has not demonstrated satisfactory evidence that she is prepared to resume practice in a safe and competent manner.

ORDER

WHEREFORE, the Virginia Board of Nursing, effective upon entry of this Order, hereby ORDERS as follows:

1. Wendy Marks, R.N., is hereby REPRIMANDED.
2. The application of Wendy Marks, R.N., for reinstatement of License No. 0001-119612 to practice professional nursing in the Commonwealth of Virginia is hereby DENIED, due to a failure to obtain the affirmative vote for reinstatement of three-fourths of the members of the Board at the hearing. Further, it is hereby ORDERED that the license of Ms. Marks be CONTINUED on INDEFINITE SUSPENSION. At such time as she shall petition the Board for reinstatement of her license, a hearing will be convened to determine whether she is able to return to the safe and competent practice of professional nursing.
3. The license shall remain recorded as suspended.
4. At such time as Ms. Marks shall petition the Board for reinstatement of her license, a hearing will be convened to determine whether she is able to return to the safe and competent practice of professional nursing.
5. This Order shall be applicable to Ms. Marks’ multistate licensure privileges, if any, to practice professional nursing in the Commonwealth of Virginia.

6. Said suspension shall be STAYED upon proof that Ms. Marks has entered into the Health Practitioners' Monitoring Program ("HPMP") and upon the condition that she remain compliant with the terms of the HPMP and the following terms and conditions:

a. Ms. Marks shall comply with all terms and conditions for the period specified by the HPMP.

b. Any violation of the terms and conditions stated in this Order shall be reason for summarily rescinding the stay of indefinite suspension of the license of Ms. Marks, and an administrative proceeding shall be held to decide whether her license shall be revoked. The stay of indefinite suspension may be summarily rescinded at such time the Board is notified that:

i. Ms. Marks is not in compliance with the terms and conditions specified by the HPMP, or has been terminated from participation in the HPMP, or

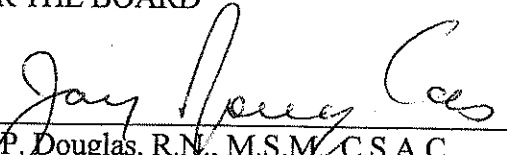
ii. There is a pending investigation or unresolved allegation involving a violation of law, regulation or any term or condition of this Order.

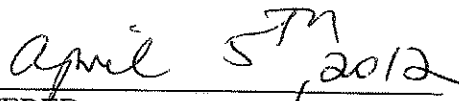
7. Upon receipt of evidence of Ms. Marks' participation in and successful completion of the terms specified by the HPMP, the Committee, at its discretion, may waive Ms. Marks' appearance before the Committee, and conduct an administrative review of this matter, at which time she may be issued an unrestricted license.

8. This Order shall be applicable to Ms. Marks' multistate licensure privileges, if any, to practice professional nursing in the Commonwealth of Virginia. It is further ordered that for the duration of this Order, Ms. Marks may 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.

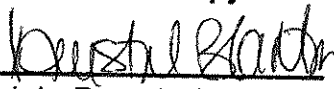
Pursuant to §§2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as public record and shall be made available for public inspection or copying on request.

FOR THE BOARD


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


ENTERED

Certified True Copy

By 
Virginia Board of Nursing

NOTICE OF RIGHT TO APPEAL

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 days from the date you are served with this Order 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, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233. The service date shall be defined as the date you actually received this decision or the date it was mailed to you, whichever occurred first. In the event this decision is served upon you by mail, three days are added to that period.