

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: TOMA L. KEMP, C.N.A.
Certificate No.: 1401-129758

ORDER

Pursuant to §§ 2.2-4020, 54.1-110 and 54.1-2400(11) of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was held before a panel of the Board of Nursing ("Board") on March 17, 2014, in Henrico County, Virginia, to inquire into evidence that Toma L. Kemp, C.N.A., may have violated certain laws and regulations governing nurse aide practice in Virginia. The case was presented by Amanda E. M. Blount, Adjudication Specialist, Administrative Proceedings Division. Charis A. Mitchell, Assistant Attorney General, was present as legal counsel for the Board. Mr. Kemp was 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. Toma L. Kemp, C.N.A., was issued Certificate No. 1401-129758 to practice as a nurse aide in Virginia on May 2, 2009. The certificate is scheduled to expire on May 31, 2014.
2. On April 11, 2013, during the course of his employment with Commonwealth Memory Care at Norfolk ("Commonwealth Memory Care"), Norfolk, Virginia, Mr. Kemp kissed Resident A, who suffers from Alzheimer's disease, smacked her on the buttocks, and used profane language towards her. When Resident A told Mr. Kemp not to touch her and that he was hurting her, Mr. Kemp responded by teasing her and using profanity. As a result of this incident, Mr. Kemp's employment was terminated on April 12, 2013.
3. At the hearing, Mr. Kemp testified that he did not use any foul language during the incident, but in his statement to the Department of Health Professions investigator, he said that when he was confronted by the Administrator of the facility, he told him that was just the way he talked. Further, he

testified at the hearing that at the time of the incident, he was cheek to cheek with Resident A in order to help her walk, but he told the investigator that he gave her a hug and kissed her.

4. Mr. Kemp testified that he was convicted of misdemeanor assault based on this incident.

CONCLUSIONS OF LAW

The Board concludes that:

1. Finding of Fact No. 2 constitutes a violation of § 54.1-3007(2), (5) and (8) of the Code and 18 VAC 90-25-100(2)(e) of the Regulations Governing Certified Nurse Aides.
2. Finding of Fact No. 2 and Conclusion of Law No. 1 constitute a Finding of Abuse pursuant to 42 CFR § 483.156(b)(2) and (c)(1)(iv)(D) of the Code of Federal Regulations.

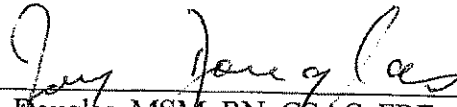
ORDER

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

1. Certificate No. 1401-129758 issued to Toma L. Kemp, C.N.A., to practice as a nurse aide in the Commonwealth of Virginia, is hereby REVOKED.
2. The certificate will be recorded as REVOKED and no longer current.
3. A finding of abuse shall be ENTERED against Mr. Kemp in the Virginia Nurse Aide Registry pursuant to 42 CFR § 483.13(C)(1)(ii)(B) and 42 CFR § 483.156(b)(2) and (c)(1)(iv)(D). This finding prohibits Mr. Kemp's employment as a certified nurse aide in any long-term care facility that receives Medicare or Medicaid reimbursement, according to 42 CFR § 483.13(c)(1)(ii)(B).

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, MSM, RN, CSAC, FRE
Executive Director
Virginia Board of Nursing

April 4th, 2014

ENTERED

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.

Certified True Copy

By 
Virginia Board Of Nursing