

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: KENNETH L. FRYE, C.N.A.
Certificate No.: 1401-069582

ORDER

In accordance with §§ 2.2-4019, 2.2-4021 and 54.1-2400(10) of the Code of Virginia (1950), as amended ("Code"), an informal conference was conducted on behalf of the Board of Nursing ("Board") on October 18, 2012, in Henrico County, Virginia. Kenneth L. Frye, C.N.A., was present and was not represented by counsel. Jane Elliott, R.N., Ph.D., serving as Agency Subordinate for the Board, submitted a Recommended Decision for consideration.

On January 30, 2013, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Mr. Frye was present and was not represented by legal counsel.

Based upon its review of the Recommended Decision of the Agency Subordinate, the Board makes the following Findings of Fact and Conclusions of Law and issues the following Order.

FINDINGS OF FACT

1. Kenneth L. Frye, C.N.A., was issued Certificate No. 1401-069582 to practice as a nurse aide in Virginia on November 15, 1997. The certificate is scheduled to expire on November 30, 2013.
2. By letter dated September 19, 2012, the Board of Nursing sent a Notice of Informal Conference ("Notice") to Mr. Frye notifying him that an informal conference would be held on October 18, 2012. The Notice was sent by certified and first class mail to 1100 Cherry Street, Charlottesville, VA 22903, the address of record on file with the Board of Nursing.
3. On May 24, 2012, during the course of his employment with the Laurels of Charlottesville, Virginia, Mr. Frye attempted to sell crack cocaine to a confidential police informant while on duty and in work uniform.
4. Mr. Frye refused to submit to a urine drug screen at work on May 25, 2012, following his arrest

on drug-related charges the day before.

5. Mr. Frye's employment with the Laurels, which began in September 2009, was terminated in May 2012. He is currently employed with Kroger food store.

6. Mr. Frye stated at the informal conference that he has been using crack cocaine for approximately 30 years and that he smoked marijuana several times per month. Further, Mr. Frye stated that he last knowingly used cocaine on May 25, 2012.

7. Mr. Frye was charged with possession of crack cocaine in the Albemarle County General District Court, and the case was certified to the circuit court. His case is currently under advisement with the circuit court pending his participation in the drug court program.

8. Mr. Frye successfully completed intensive outpatient treatment at the Region Ten Community Services Board on September 11, 2012, and presented a certificate of completion at the informal conference. He currently submits to five urine drug screens per week and attends two Narcotics Anonymous meetings and two substance abuse counseling sessions per week. Mr. Frye reported that a urine drug screen was positive for alcohol on September 11, 2012, following his admitted consumption of beer. He also admitted that he tested positive for cocaine in early October 2012, although he attributes that positive screen to exposure to cocaine in his current living situation. He stated that he is looking for alternative living arrangements.

9. At the informal conference, Mr. Frye stated that he intends to enter into the Health Practitioners' Monitoring Program and is in the process of registering for the program.

10. Mr. Frye reported at the informal conference that he has had no disciplinary issues during his nurse aide career other than absenteeism.

11. Mr. Frye's supervisor stated to the investigator for the Department of Health Professions that she considered Mr. Frye to be a good nurse aide and noted that there had been no evidence that Mr. Frye had been impaired at work.

CONCLUSIONS OF LAW

1. Finding of Fact No. 3 constitutes a violation of § 54.1-3007(5) of the Code.

2. Findings of Fact No. 4 and 6 constitute a violation of § 54.1-3007(6) of the Code.

ORDER

WHEREFORE, it is hereby ORDERED as follows:

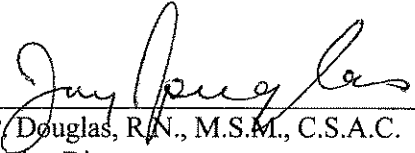
1. Certificate No. 1401-069582 of Kenneth L. Frye, C.N.A., is INDEFINITELY SUSPENDED.
2. The certificate will be recorded as suspended and no longer current.
3. At such time as Mr. Frye shall petition the Board for reinstatement of his certificate, an administrative proceeding will be convened to determine whether he is capable of resuming the safe and competent practice of a nurse aide. Mr. Frye shall be responsible for any fees that may be required for the reinstatement and renewal of the certificate prior to issuance of the certificate to resume practice.
4. This suspension shall be STAYED upon proof of entry into the HPMP. At such time, the indefinite suspension shall be STAYED and the following terms and conditions shall apply:
 - a. Mr. Frye 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 certificate of Mr. Frye, and an administrative proceeding shall be held to determine whether his certificate shall be revoked. The stay of indefinite suspension may be summarily rescinded at such time the Board is notified that:
 - i. Mr. Frye is not in compliance with the terms and conditions specified by the HPMP;
 - ii. Mr. Frye's participation in the HPMP has been terminated;
 - iii. There is a pending investigation or unresolved allegation against Mr. Frye involving a violation of law, regulation, or any term or condition of this order.
5. Upon receipt of evidence of Mr. Frye's participation and successful completion of the HPMP, the Board, at its discretion, may waive Mr. Frye's appearance before a Committee and conduct an administrative review of this matter, at which time he may be issued an unrestricted Certificate.

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

Pursuant to § 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 a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2400(10) of the Code, Mr. Frye may, not later than 5:00 p.m., on **March 11, 2013**, notify 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, in writing that he desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

FOR THE BOARD:


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

ENTERED: February 6th, 2013

This Order shall become final on March 11, 2013; unless a request for a formal administrative hearing is received as described above.