



COMMONWEALTH of VIRGINIA

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NOTICE OF INFORMAL CONFERENCE BEFORE AN AGENCY SUBORDINATE

September 19, 2012

Kenneth Frye, C.N.A.
1100 Cherry Street
Charlottesville, VA 22902

CERTIFIED MAIL
71969008911101622254

RE: VA Certificate No.: 1401-069582
Expiration Date: November 30, 2012

Dear Mr. Frye:

This letter is official notification that an informal conference of the Virginia Board of Nursing ("Board") will be held on **October 18, 2012, at 1:00 p.m.**, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Henrico, Virginia. In accordance with §§ 2.2-4019, 2.2-4021, and 54.1-2400(10) of the Code of Virginia (1950), as amended ("Code"), this informal conference will be held before an agency subordinate of the Board of Nursing. This informal conference will be convened as a public meeting pursuant to § 2.2-3700 *et seq.* of the Code. The agency subordinate will inquire into allegations that you may have violated certain laws and regulations governing nurse aide practice in Virginia.

Specifically,

1. You may be in violation of § 54.1-3007(6) of the Code in that you may be unable to safely practice as a nurse aide due to substance abuse, as evidenced by your own admission that you have been using crack cocaine for approximately 30 years and that you smoke marijuana several times per month and your refusal to submit to a urine drug screen at work on May 25, 2012, following your arrest on drug-related charges the day before.

2. You may have violated § 54.1-3007(5) of the Code in that on or about May 24, 2012, during the course of your employment with the Laurels of Charlottesville, Virginia, you attempted to sell crack cocaine to a confidential police informant while on duty and in work uniform.

In its deliberations, the agency subordinate may use the Sanction Reference Points System, as contained in the Sanction Reference Manual. The manual, which is a guidance document of the Board, may be accessed at <http://www.dhp.virginia.gov/nursing>. Please click on *Guidance Documents*, then select #90-7. You may also request a paper copy from the Board office by calling (804) 367-4515.

After consideration of all information, the agency subordinate may:

- If the agency subordinate finds that there is insufficient evidence to warrant further action or that the charges are without foundation, notify you by mail that your record has been cleared of any charge which might affect your right to practice as a nurse aide in the Commonwealth;
- Recommend findings of fact, conclusions of law and a sanction, to include a reprimand, placing you on probation with terms, suspension or revocation of your license/certificate/registration, or imposing a monetary penalty pursuant to § 54.1-2401 of the Code.

Further, the agency subordinate may refer this matter for a formal administrative proceeding pursuant to § 2.2-4020 of the Code.

Since the allegations listed above involve impairment, please be advised that you may make application to the Health Practitioners' Monitoring Program ("HPMP"), which is available to all health care practitioners licensed in Virginia. Information about the HPMP is enclosed. Should you enter into a written agreement with the HPMP prior to your informal conference, the agency subordinate will take that into consideration when making a recommendation in your case.

Board's Review of Agency Subordinate's Recommended Decision

If you **appear in person or by counsel at the informal conference**, the recommendation of the agency subordinate will be presented to a quorum of the Board. The Board may accept or modify the recommendation, or reject the recommendation and move the case to formal hearing. If you do not agree with the decision of the Board, you have the right to a formal administrative hearing before the Board.

If you **fail to appear in person or by counsel at the informal conference**, the recommendation of the agency subordinate will be presented to a quorum of the Board. The Board may accept or modify the recommendation, or reject the recommendation. The Board's decision regarding the agency subordinate's recommendation is a final order that can only be appealed to circuit court as provided by Rule 2A:2 of the Supreme Court of Virginia.

You have the right to information that will be relied upon by the agency subordinate in making a decision. Therefore, I enclose a copy of the documents that will be distributed to the agency subordinate, and will be considered when discussing the allegations with you and when deliberating upon your case. **These documents are enclosed only with the original notice sent by certified mail,**

which you may be required to claim at the post office. Please bring these documents with you to the informal conference.

To facilitate this proceeding, you should submit five copies of any documents you wish the agency subordinate to consider to the Board of Nursing, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, by October 13, 2012. Your documents may not be submitted by facsimile or email.

You may be represented by an attorney at the informal conference. If you obtain counsel, you should do so as soon as possible, because absent good cause to support a request for a continuance, the informal conference will be held on October 18, 2012. A request to continue this proceeding must state **in detail** the reason for the request and must establish good cause. Such request must be made, in writing, to me at the address listed on this letter and must be received by 12 noon on October 13, 2012. Only one such motion will be considered. Absent critical circumstances, such as personal or family illness, a request for a continuance after October 13, 2012, will not be considered.

Relevant sections of the Administrative Process Act, which govern proceedings of this nature, as well as laws relating to the practice of nursing and other healing arts in Virginia cited in this notice can be found on the Internet at <http://leg1.state.va.us>. To access this information, please click on the *Code of Virginia* for statutes and *Virginia Administrative Code* for regulations.

Please advise the Board, in writing, of your intention to be present. If you have any questions regarding this notice, please contact this office, at (804) 367-4614.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenda Krohn, R.N., M.S.", written over a horizontal line.

Brenda Krohn, R.N., M.S.
Deputy Executive Director

BK/fdb

Enclosures

cc: Anne G. Joseph, Deputy Director, Administrative Proceedings Division
David W. Kazzie, Adjudication Specialist
Debra Hay-Pierce, Senior Investigator (Case No. 145001)
Agency Subordinate
Peggy Wood, Monitoring Program Manager