

**VIRGINIA:**

**BEFORE THE BOARD OF NURSING**

**IN RE:                   KIMBERLY M. MAWYER, R.N. REINSTATEMENT APPLICANT**

**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 April 18, 2011, in Henrico County, Virginia, to receive and act upon Kimberly M. Mawyer's application for reinstatement of her license to practice professional nursing in Virginia, which was mandatorily suspended by Order of the Department of Health Professions entered November 3, 2008, and to inquire into evidence that Ms. Mawyer may have violated certain laws governing nursing practice in Virginia. The case was presented by Cynthia E. Gaines, Adjudication Specialist, Administrative Proceedings Division. Howard M. Casway, Senior Assistant Attorney General, was present as legal counsel for the Board. Ms. Mawyer 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.       Kimberly M. Mawyer, R.N., was issued License No. 0001-144900 to practice professional nursing in the Commonwealth of Virginia on August 4, 1995. Said license was mandatorily suspended pursuant to § 54.1-2409 of the Code by Order of the Department of Health Professions entered on November 3, 2008. Ms. Mawyer's primary state of residence is Virginia.

2. Ms. Mawyer submitted an application for reinstatement of her license which was received by the Board on June 3, 2010.

3. On July 16, 2003, Ms. Mawyer was convicted of felony driving while intoxicated, 3<sup>rd</sup> offense within ten years in the Circuit Court of Amherst County, Virginia, ("Amherst Circuit Court").

4. On November 19, 2003, Ms. Mawyer was convicted of felony driving under the influence, 4<sup>th</sup> offense in the Amherst Circuit Court.

5. On March 7, 2006, Ms. Mawyer was convicted of felony driving while intoxicated, 3<sup>rd</sup> offense within ten years, in the Amherst Circuit Court.

6. On March 18, 2009, Ms. Mawyer was convicted of felony driving under the influence, 4<sup>th</sup> or subsequent offense in the Amherst Circuit Court.

7. On May 1, 2006, and January 30, 2009, Ms. Mawyer was charged with felony probation violation, and her probation was revoked on June 6, 2006, and March 18, 2009, respectively in the Amherst Circuit Court.

8. Ms. Mawyer is unsafe to practice professional nursing due to her admitted alcohol abuse and multiple felony convictions as evidenced above.

9. Following her release from incarceration in May, 2010, and while on court-ordered probation, Ms. Mawyer tested positive for marijuana on June 18, 2010. Her probation officer decided not to report the incident as a probation violation.

10. Ms. Mawyer testified that while she does not consider herself to be an alcoholic, she did admit to being a binge drinker when drinking.

11. Ms. Mawyer did not practice nursing between 2001 and 2008 except for a brief period beginning in January 2008, until being incarcerated in August 2008, following her arrest and conviction for a probation violation and for driving on a revoked license.

12. Ms. Mawyer testified that her sobriety date is October 2010, followed by a ten month participation in a Therapeutic Community while incarcerated at the Virginia Correctional Center for Women, Goochland, Virginia. Ms. Mawyer testified that she attends Alcoholics Anonymous and receives ongoing medical care for her bipolar disorder as well as mental health counseling.

13. Ms. Mawyer testified that she has taken a few on-line courses as well as read nursing journals in order to remain current with changes in the nursing profession.

### **CONCLUSIONS OF LAW**

The Board concludes that:

1. Findings of Fact Nos. 3 -7 constitute a violation of 54.1-3007(4) of the Code.
2. Finding of Fact No. 8 constitutes a violation of § 54.1-3007(6) of the Code.
3. Ms. Mawyer is a candidate for participation in the Virginia Health Practitioners' Monitoring Program ("HPMP").

### **ORDER**

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

1. The application Kimberly Mawyer for reinstatement of License No. 0001-144900 to practice professional nursing in the Commonwealth of Virginia, is hereby DENIED.
2. Ms. Mawyer is hereby REPRIMANDED.
3. Ms. Mawyer's license to practice professional nursing in the Commonwealth of Virginia shall be continued on INDEFINITE SUSPENSION, with said suspension STAYED upon proof that Ms. Mawyer has entered into a Recovery Monitoring Contract with the HPMP and upon the condition that she remain compliant with the terms of a Recovery Monitoring Contract with the HPMP and the following terms and conditions:

a. Ms. Mawyer 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. Mawyer, 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. Mawyer 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.

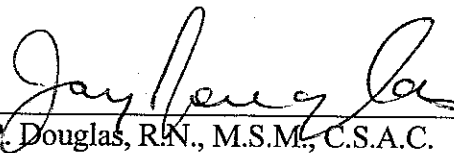
4. Upon receipt of evidence of Ms. Mawyer's participation in and successful completion of the terms specified by the HPMP, the Board, at its discretion, may waive Ms. Mawyer's appearance before the Board, and conduct an administrative review of this matter, at which time she may be issued an unrestricted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

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

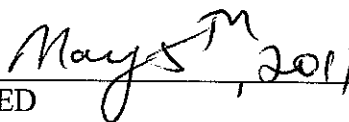
6. Ms. Mawyer shall maintain a course of conduct in her capacity as a professional nurse commensurate with the requirements of § 54.1-3000 *et seq.* of the Code and the Board of Nursing Regulations.

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 on request.

FOR THE BOARD



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



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.