

VIRGINIA:

BEFORE THE BOARD OF NURSING

**IN RE: TONYA PENA, L.P.N.
 License No.: 0002-075115**

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 June 18, 2013, in Henrico County, Virginia. Tonya Pena, L.P.N., was not present nor was she represented by legal counsel. Judith Piersall, R.N., B.S.N., serving as Agency Subordinate for the Board, submitted a Recommended Decision for consideration.

On September 18, 2013, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Ms. Pena was not present nor was she 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. Tonya Pena, L.P.N., was issued License No. 0002-075115 to practice as a practical nurse in Virginia on December 29, 2006. The license is scheduled to expire on March 31, 2014. Ms. Pena's primary state of residence is Virginia.

2. By letter dated May 23, 2013, the Board of Nursing sent a Notice of Informal Conference ("Notice") to Ms. Pena notifying her that an informal conference would be held on June 18, 2013. The Notice was sent by certified and first class mail to 2472 Winfred Road, Hayes, Virginia, 23072, the address of record on file with the Board of Nursing. The receipt for the Notice sent via certified mail was returned to the Board unsigned on June 10, 2013. The Notice sent via certified mail was returned to the Board

unclaimed. The Notice sent via first-class mail was not returned to the Board. The Agency Subordinate concluded that adequate notice was provided to Ms. Pena, and the informal conference proceeded in her absence.

3. During the course of her employment with the Emergency Department of Riverside Regional Medical Center, Newport News, Virginia, by her own admission, Ms. Pena diverted Dilaudid (hydromorphone – Schedule II) for her personal and unauthorized use on multiple occasions between March 2012 and August 2012.

4. Ms. Pena’s five-year employment with Riverside Regional Medical Center was terminated.

5. On August 23, 2012, at the request of an investigator for the Department of Health Professions, Ms. Pena submitted to a urine drug screen, which was positive for barbiturates, butalbital, and methadone, medications for which she did not have valid prescriptions.

6. As of the date of the informal conference, Ms. Pena was not a participant in the Virginia Health Practitioners’ Monitoring Program.

CONCLUSIONS OF LAW

1. Finding of Fact No. 3 constitutes a violation of § 54.1-3007(2), (5), and (6) of the Code and 18 VAC 90-20-300(A)(2)(c) of the Regulations Governing the Practice of Nursing.

2. Finding of Fact No. 5 constitutes a violation of § 54.1-3007(6) of the Code.

ORDER

WHEREFORE, it is hereby ORDERED as follows:

1. License No. 0002-075115 of Tonya Pena, L.P.N., is INDEFINITELY SUSPENDED.

2. The license will be recorded as suspended and no longer current.

3. At such time as Ms. Pena shall petition the Board for reinstatement of her license, an administrative proceeding will be convened to determine whether she is capable of resuming the safe and

competent practice of practical nursing. Ms. Pena shall be responsible for any fees that may be required for the reinstatement and renewal of the license prior to issuance of the license to resume practice.

4. This suspension applies to any multistate privilege to practice practical nursing.

5. This suspension shall be STAYED upon proof of entry into the Health Practitioners' Monitoring Program ("HPMP"). At such time, the indefinite suspension shall be STAYED and the following terms and conditions shall apply:

a. Ms. Pena 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. Pena, and an administrative proceeding shall be held to determine 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. Pena is not in compliance with the terms and conditions specified by the HPMP;

ii. Ms. Pena's participation in the HPMP has been terminated;

iii. There is a pending investigation or unresolved allegation against Ms. Pena involving a violation of law, regulation, or any term or condition of this order.

6. Upon receipt of evidence of Ms. Pena's participation and successful completion of the HPMP, the Board, at its discretion, may waive Ms. Pena's appearance before a Committee and conduct an administrative review of this matter, at which time she may be issued an unrestricted license.


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

8. This Order is applicable to Ms. Pena’s multistate licensure privileges, if any, to practice practical nursing. For the duration of this Order, Ms. Pena shall 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 Ms. Pena wishes to work. Any requests for out of state employment should be directed, in writing, to the Executive Director of the Board.

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.

Since Ms. Pena failed to appear at the informal conference, this Order shall be considered final. Ms. Pena has the right to appeal this Order directly to the appropriate Virginia circuit court. As provided by Rule 2A:2 of the Supreme Court of Virginia, Ms. Pena has thirty (30) days from the date of service (the date she actually received this decision or the date it was mailed to her, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Jay P. Douglas, M.S.M., R.N., C.S.A.C., F.R.E., Executive Director, Board of Nursing, at Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233. In the event that this decision is served by mail, three (3) days are added to that period.

FOR THE BOARD:


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

Entered: October 2nd, 2013

Certified True Copy

By: 
Virginia Board of Nursing