

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: **EMMA B. TOWNES, L.P.N.**

ORDER

Pursuant to § 9-6.14:12, § 54.1-110 and § 54.1-2400(11) of the Code of Virginia (1950), as amended (the "Code"), a formal administrative hearing was held in Richmond, Virginia, on June 29, 1999, to receive and act upon evidence that Emma B. Townes, L.P.N., may have violated certain laws and regulations governing nursing in Virginia. William B. Bray, Esquire, hearing officer, presided and heard the matter in the absence of the Virginia Board of Nursing (the "Board"). The case was presented by Frank W. Pedrotty, Assistant Attorney General. Ms. Townes was present and represented by Reginald M. Barley, Esquire. The proceedings were recorded by a certified court reporter.

On September 29, 1999, the Board met to receive and act upon the transcript and record in this case, and to consider the proposed Findings of Fact and Conclusions of Law submitted by the hearing officer. Based upon its review of the evidence, the Board voted to adopt the Findings of Fact as submitted by the hearing officer, numbering the Findings of Fact, paragraphs one (1) through twenty-four (24), and make modifications as noted below. A copy of the hearing officer's report is attached hereto and incorporated by reference herein (Attachment #1). The modifications are as follows:

7. From February 8, 1996 to April 4, 1998, a series of 31 prescriptions were provided for Emma Townes for the prescription drug Fastin at Kmart Pharmacy, Sycamore Cardinal Drug and IPS Pharmacy. The total number of pills involved exceeded 900, most of which were for 30 mg. I have determined from the chart at page 000015 of exhibit 9 that 14 prescriptions for Fastin were filled at the Sycamore Cardinal Drug, 13 prescriptions for Fastin were filled at the IPS Pharmacy at the Boulders, and 4 Fastin prescriptions were filled at Kmart. The only documented prescriptions for Fastin were prescribed by Dr. Taylor on February 8 and March 6, 1996, with a refill placed in the

respondent's medical record for April 30, 1996.

9. Dr. McLeod testified that Fastin is approved for up to two years for weight control, that it is not indicated for long-term use, and that it doesn't really work. See page 60 of the transcript. He testified he no longer prescribed that drug and that in the past they would usually write prescriptions for one or two months at a time. I find from his testimony that Dr. McLeod would not have written or authorized multiple prescriptions for Fastin for the respondent from October 23, 1996 to April 9, 1998. Yet eight prescriptions for Fastin were filled for Emma Townes during that period listing him as the prescribing physician.

12. The prescription log referred to by Laurie Whitman is referenced in Exhibit 6 at pages 9-12....

Further, the Board voted to adopt the hearing officer's Summary of Findings of Fact with amendments, as follows: Based upon the evidence obtained at the hearing, I find that seven (7) unauthorized prescriptions or refills for Fastin were obtained by the respondent, Emma Townes, four (4) on the alleged authorization of Dr. McLeod and three (3) on the alleged authorization of Dr. Taylor, which were dispensed to Emma Townes at the IPS Pharmacy on the following dates: July 29, 1996, August 27, 1996, September 25, 1996, October 23, 1996, December 3, 1996, December 27, 1996 and January 27, 1997, respectively. I find that the respondent admitted telephoning a prescription for Fastin without authorization on one occasion stating, "I may have called in one for myself when I was down in Chester but I did not do a lot of them".

CONCLUSIONS OF LAW

Based upon the findings of fact, the Board concludes that Emma B. Townes, L.P.N., has violated § 54.1-3007(2) and (5) of the Code of Virginia (1950) as amended, and 18 VAC 90-20-300(A)(2)(c) of the Board of Nursing Regulations.

ORDER

WHEREFORE, the Virginia Board of Nursing, effective upon entry of this Order, hereby

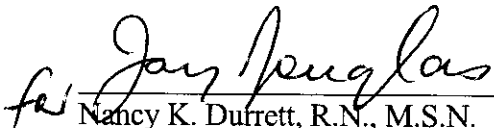
ORDERS that License No. 0002-010500, issued to Emma B. Townes, L.P.N., to practice practical nursing in the Commonwealth of Virginia, be and hereby is INDEFINITELY SUSPENDED. Ms. Townes may petition the Board after not less than one (1) year from the date of entry of this Order for reinstatement of her license to practice practical nursing, at which time a meeting will be convened to receive evidence satisfactory to the Board that Ms. Townes is able to resume the safe and competent practice of nursing.

Pursuant to § 9-6.14:14 of the Code of Virginia (1950), as amended, 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.

Upon entry of this Order, the license of Emma B. Townes, L.P.N., will be recorded as suspended and no longer current. Consistent with the terms of this Order, in the event that Ms. Townes seeks reinstatement of her license, she shall be responsible for any fees that may be required for the reinstatement and renewal of her license prior to issuance of her license to resume practice.

As provided by Rule 2A:2 of the Supreme Court of Virginia, Ms. Townes has thirty (30) days from the service date in which to appeal this decision by filing a Notice of Appeal with Nancy K. Durrett, R.N., M.S.N., Executive Director, Board of Nursing, 6606 W. Broad Street, Fourth Floor, Richmond, Virginia 23230-1717. The service date shall be defined as the date Ms. Townes actually received this decision or the date it was mailed to her, whichever occurred first. In the event this decision is served upon her by mail, three (3) days are added to that period.

FOR THE BOARD

for 

Nancy K. Durrett, R.N., M.S.N.
Executive Director for the
Board of Nursing

10/18/99

ENTERED

Certificate of Service

I hereby certify that a certified true copy of the foregoing Order was mailed on this day to Emma B. Townes, L.P.N., at 1128 Old Hundred Road, Midlothian, Virginia 23112, and to her attorney, Reginald M. Barley, Esquire, at The 21 Center, 2025 East Main Street, Suite 210, Richmond, Virginia 23223.

for Jay Douglas

Nancy K. Durrett, R.N., M.S.N.
Executive Director for the
Board of Nursing

10/13/99

DATE

AUG 16 1999

COMMONWEALTH OF VIRGINIA

VIRGINIA BOARD OF NURSING V. EMMA B. TOWNES

VABD. OF NURSIN

HEARING OFFICER'S DECISION

On June 29, 1999, this hearing officer conducted a hearing on the above-styled matter at 6606 West Broad Street, in Richmond, Virginia. Frank W. Pedrotty represented the Virginia Board of Nursing, and Reginald M. Barley represented the respondent, Emma B. Townes. The respondent objected to the hearing, first by a letter received by the hearing officer the day before the hearing, and again before the hearing opened.

In that letter, dated June 24, the respondent objected to this hearing on the grounds that the same matter was heard before a panel of the Virginia Board of Nursing on January 28, 1999. The respondent alleged that the Board of Nursing could not consider and rule on the same matter twice. By order entered on February 23, 1999, the Board of Nursing determined that the hearing conducted on January 28, 1999 was improperly convened because two members of the panel had participated in the informal conference. Based upon that determination, the order entered on February 11, 1999, was declared void *ab initio*, and was vacated. See exhibit 13.

Just prior to the current hearing, the respondent raised the issue that the Board of Nursing could not consider and rule on this matter again, and both sides argued the case. I took that motion under advisement. After a review of the law and the arguments provided by both sides, as recorded in the transcript of the hearing, I find that the hearing on June 29, 1999 was proper, and that the Board of Nursing has the legal authority to render a decision in this matter.

The respondent relied upon *Board of Medicine v. Fetta*, 244 Virginia 276 (1992). When that case was decided, the entire Board heard evidence against Fetta, and it was not possible for him to obtain a new and impartial hearing before the same Board after some members engaged in improper conduct. The circuit court set aside the Board's decision, and instructed that the matter be dismissed. The circuit court ordered the Board not to initiate any further proceedings based upon the same allegations of misconduct, and determined that the Board could not hear the case on remand.

The Virginia Supreme Court ruled that the circuit court did not abuse its judicial discretion in refusing to order a new hearing and in ordering a dismissal. The *Fetta* case does not hold that the circuit court was required to dismiss the matter. Furthermore, the current procedure involves panel hearings, not hearings before the entire Board of Nursing.

One advantage of the system of panel hearings is that a new and impartial panel may be chosen from members of the Board who have had no contact with the case. Those members can proceed with a *de novo* hearing without prejudice to the respondent. Under those circumstances, I find that another hearing before a new panel would be fair, would not violate respondent's rights to due process, and would avoid prejudice to either party to this action.

On July 27, 1999, I received the transcript of the hearing at my office.

FINDINGS OF FACT

After review of the entire record, including the transcript and all exhibits, I make the following findings of fact as part of the record of this decision:

1. I find that the hearing and procedures relating thereto properly accorded the respondent her due process rights.
2. Emma B. Townes, the respondent, is a licensed practicing nurse who finished her nursing course at Petersburg General Hospital in 1967. Recently, she worked for Richmond Health Care Group under the supervision of Dr. David McLeod. At one point, Dr. McLeod treated the respondent for hypertension.
3. The respondent's chart indicates a visit with Dr. Gail Taylor on February 8, 1996, when Fastin was first prescribed to assist with weight loss. Dr. Taylor's notes concerning that prescription for Fastin state, "We have agreed that this is going to be short-term and I have stressed the importance of developing good habits for life rather than relying on medication." See exhibit 9, page 000131. The respondent was described as mildly obese, with a weight of 180 pounds as of February 8, 1996. Other medical notes for the respondent give her height as five feet three inches.
4. Medical records obtained during the investigation show that Dr. McLeod, Dr. Tiedemann and Dr. Wu-Pong treated the respondent at various times through April 1998 for problems including stress fracture, probably of the right cuboid, and leg pain.
5. On April 24, 1998, the respondent submitted a resignation from her employment with the Richmond Health Care Group effective May 8 giving no explanation for her action.
6. From time to time, Dr. McLeod signed blank prescription forms, and permitted the respondent to fill in some prescriptions for patients under his direction. From time to time, he gave signed blank prescription forms to the respondent, who was his only nurse at the office at that time.

7. From February 8, 1996 to April 4, 1998, a series of 31 prescriptions were provided for Emma Townes for the prescription drug Fastin at Kmart Pharmacy, Sycamore Cardinal Drug and IPS Pharmacy. The total number of pills involved exceeded 900, most of which were for 30 mg. I have determined from the chart at page 000015 of exhibit 9 that 14 prescriptions for Fastin were filled at the Sycamore Cardinal Drug, 13 prescriptions for Fastin were filled at the IPS Pharmacy at the Boulders, and 4 Fastin prescriptions were filled at Kmart. The only authorized prescriptions for Fastin were prescribed by Dr. Taylor on February 8 and March 6, 1996, with a refill placed in the respondent's medical record for April 30, 1996.
8. I find that Dr. McLeod never prescribed for the respondent a medication known as Fastin, with the generic name phentermine, although he did prescribe certain other medications for her. Dr. McLeod did not authorize telephoned prescriptions made out to the respondent for Fastin, with his name listed as the prescribing physician. One such prescription is found in exhibit 9, page 000222 of the case exhibits. I find from the chart of prescriptions referenced earlier and his testimony at the hearing that eight fraudulent prescriptions were issued to Emma Townes apparently under the authorization of Dr. McLeod but without his knowledge.
9. Although this was not conclusive, Dr. McLeod identified handwriting on one of the prescriptions in question as resembling the respondent's handwriting. See page 51 of the transcript. Dr. McLeod testified that Fastin is approved for up to two years for weight control, that it is not indicated for long-term use, and that it doesn't really work. See page 60 of the transcript. He testified he no longer prescribed that drug, and that in the past they would usually write prescriptions for one or two months at a time. I find from his

testimony that Dr. McLeod would not have written or authorized multiple prescriptions for Fastin for the respondent from October 23, 1996 to April 9, 1998. Yet eight prescriptions for Fastin were filled for Emma Townes during that period listing him as the prescribing physician.

10. Laurie Whitman, a pharmacist with the IPS pharmacy, knew the respondent and they had worked together at both the Chester facility and the Boulders facility. She testified that a log existed for persons to sign when picking up prescriptions, but that it was not required by law, and the sign-out procedure was not always followed. During the time the respondent worked at Chester, toward the end of 1996 and into 1997, the respondent was the charge nurse for adult patients.
11. The pharmacy where Ms. Whitman worked was small. They knew the people they worked with, and no one picked up prescriptions for Emma Townes. Emma Townes called in refills of her own prescriptions on occasion. It is highly unlikely that another person picked up these prescriptions because the pharmacists and technicians knew the respondent.
12. The prescription log referred to by Laurie Whitman is referenced in Exhibit 6 at pages 10 through 12. I find from the evidence of this log that the respondent, Emma Townes, signed for prescriptions for Fastin on May 1, 1996, July 29, 1996 (using initials), and September 25, 1996. I find that her signatures and initials referenced on this log match the signature on her personnel release, found in Exhibit 9, page 21, and her signature on an application for employment, found at page 94 of the same exhibit. The prescription numbers for those prescriptions are given as: C06040503, C06043488, X06043489 (not for phentermine), 06045188 (not for phentermine), and C06043488. The

respondent's three prescriptions for phentermine numbered 6040503, 6043488 and C06043488 were written by Dr. Gail Taylor. All prescriptions listed in this log with the respondent's name were signed for, although one of the two prescriptions listed for July 29, 1996 has a signature in the wrong space.

13. Dr. Gail Taylor knows the respondent, who consulted with her over weight loss. She wrote prescriptions for Fastin for the respondent, and identified her own handwriting for prescriptions on March 6, April 4, April 15, April 30 and May 29 of 1996. Her testimony was, "I did prescribe these because it is my handwriting. This is my signature." See page 91 of hearing transcript. Dr. Taylor told the respondent that Fastin was for short-term use, that she should see a nutritionist and that she could obtain refills periodically.

14. Dr. Taylor was made aware of a number of prescriptions for the respondent under her name, and before the hearing was shown a piece of paper with verbal orders for her to call in Fastin for Emma Townes. Dr. Taylor testified that she did not approve those prescriptions, and had not signed them. See transcript, page 93. At the hearing, when shown a list of prescriptions generated by computer with dates and prescription numbers, she stated she could not remember if she authorized those specific prescriptions with refills.

15. Based upon the totality of the evidence, I find that Dr. Gail Taylor approved a number of prescriptions and refills for the respondent, but that she did not approve all prescription orders telephoned to various pharmacies under her name for the respondent. She was questioned about prescriptions filled more than three years ago, and could not recall various transactions from a computer summary. She testified that she had

previously determined before the hearing, after examination of a list of telephoned prescriptions, that she had not authorized those prescriptions to the respondent.

16. Beverly Collins, a staff nurse at the Richmond Health Care Group, worked with the respondent for period of time. She had never seen signed blank prescriptions at that facility except for those signed by Dr. McLeod and given to the respondent. See page 103 of the transcript. There were a total of about five nurses at that location.
17. On exhibit 9, page 227, a prescription for Fastin was documented at Sycamore Cardinal Drug for September 20, 1996, indicating a telephone prescription order for the respondent from Dr. Taylor. On that prescription order the name Beverly Collins is noted. Beverly Collins did not know anything about that prescription, and never called in any prescriptions for Fastin or phentermine for the respondent.
18. Janet Thompson, Human Resources Manager for Richmond Health Care Group, became aware of the prescriptions in question, and spoke to Dr. McLeod. He confirmed to her that he had not written one of the prescriptions to the respondent. She checked the medical records, and discovered documentation for one prescription and two refills, but could not find documentation for the large number of prescriptions written to the respondent. She checked with two employees who had supposedly called in refills, Debbie and Beverly, and they both advised her they had not called in those prescriptions, and had not been asked to do so.
19. On May 6, Janet Thompson and Beth Jones, office manager at the Boulders location, spoke to the respondent, who had previously tendered her resignation. Her last day at work was to be May 8. When Janet Thompson explained the situation to the respondent, she asked if the respondent had ever telephoned prescriptions for Fastin for

herself. The respondent admitted doing so on one occasion. She was terminated that date for admitting telephoning a prescription without authorization by a physician. See page 122 transcript. Although the respondent later denied to the investigator that she admitted making an unauthorized telephone prescription, I find on the basis of two witnesses, both of whom documented their interview with the respondent, that she did make that admission.

20. Janet Thompson signed a Documentation Of Termination Notice For Employee dated May 6, 1998 concerning this incident. In this document she states, "I informed Emma that we had been notified by an outside pharmacy that there had been multiple prescription refills requested for Fastin for 'Emma Townes' that had not been authorized or documented in her medical record. I asked her if she could explain that and her reply was: **'I may have called in one for myself when I was down in Chester but I did not do a lot of them.'**" See pages 97 and 98 of exhibit 9. Janet Thompson signed a separate document on May 6, 1998 indicating that Emma Townes was terminated after admitting to telephoning one prescription refill for Fastin for herself without authorization by a physician. See page 99 of exhibit 9.
21. Elizabeth Jones was present during the interview with the respondent. She is no longer employed at Richmond Health Care Group. She confirmed that Janet Thompson asked respondent if she ever called in an unauthorized prescription for herself, and that the respondent indicated she might have done it one time.
22. Elizabeth Jones signed a handwritten memorandum of the incident and recorded that Janet Thompson explained to the respondent that someone had been picking up prescriptions for Fastin at different pharmacies and that none of the refills had been

documented in her chart and that no doctor had signed off on them. Then the respondent was asked if she had called in any refills for herself after Dr. Taylor had given her an original prescription for Fastin in February of 1996. She documented the respondent's reply as, "Maybe once I did. Yeah I did." This document was written about two weeks afterward, but the statement of the respondent was quoted verbatim. See pages 134 through 136 of the transcript.

23. Elizabeth Jones confirmed that the reason for terminating the respondent on May 6 was the improper filling or re-filling of prescriptions. They were not going to terminate the respondent unless there was an admission of guilt. See page 142 of the transcript. She established that a prescription or refill when authorized by a doctor would normally be placed in the patient's chart or medical record, and that a failure to document such a prescription would not happen often. Based upon her observations, if a doctor gave an authorization for an employee's prescription, the doctor would document that himself.
24. The respondent called one witness, Laurie Whitman, who had previously testified. She established that Dr. Taylor telephoned the prescription for Fastin on July 3, 1996.

CONCLUSIONS OF LAW:

For the reasons specified in the first two pages of this opinion, I have determined that a new panel of the Board of Nursing may properly be convened to hear this case. I find no violations of due process. As specified in my letter of appointment, dated May 6, 1999, I am authorized to file a finding of fact and conclusion of law, but am not authorized to recommend a sanction. That issue is left entirely to the discretion of the Board of Nursing.

SUMMARY OF FINDINGS OF FACT

Based upon the evidence contained in the record and from the evidence obtained at the hearing, I find that 8 unauthorized prescriptions or refills for Fastin were obtained by the respondent, Emma Townes, on the alleged authority of Dr. McLeod. I find that a significant but undetermined number of the 23 prescriptions or refills under Dr. Taylor's name were obtained by the respondent, Emma Townes, without authorization.

I find that the respondent admitted telephoning a prescription for Fastin without authorization on one occasion.

Date: August 10, 1999


William B. Bray, Hearing Officer