

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: BYRON W. WILMOTH, R.N. REINSTATEMENT APPLICANT
License No: 0001-211266

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 July 18, 2013, in Henrico County, Virginia, to receive and act upon Byron W. Wilmoth's application for reinstatement of his license to practice professional nursing in Virginia, following its mandatory suspension by the Virginia Department of Health Professions on November 8, 2011, and to inquire into evidence that Mr. Wilmoth may have violated certain laws and regulations governing professional nursing practice in Virginia. The case was presented by James E. Rutkowski, Administrative Proceedings Division. Charis Mitchell, Assistant Attorney General, was present as legal counsel for the Board. Mr. Wilmoth was present and was not represented by 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. Byron W. Wilmoth, R.N., was issued License No. 0001-211266 to practice professional nursing in the Commonwealth of Virginia on February 12, 2008. Said license was mandatorily suspended pursuant to § 54.1-2409 of the Code by Order of the Department of Health Professions entered on November 8, 2011. Mr. Wilmoth also held a license to practice professional nursing in Florida that is null and void. Mr. Wilmoth's primary state of residence is Virginia.

2. Mr. Wilmoth submitted an application for reinstatement of his license to practice professional nursing, which was received by the Board on May 14, 2013.

3. By Final Order dated August 30, 2011, the Florida Board of Nursing ("Florida Board") suspended Mr. Wilmoth's license to practice professional nursing until such time that he entered into the Intervention Project for Nurses ("IPN") based on the following findings: During his employment at Manatee Memorial Hospital, Bradenton, Florida, on six occasions from July 27, 2009, to July 28, 2009, Mr. Wilmoth inaccurately reported the removal and administration of hydromorphone (Schedule II) for a patient. The Florida Board also found that an IPN evaluator evaluated Mr. Wilmoth and concluded that he showed signs of alcohol abuse or dependence, and morphine use or abuse dependence. The IPN evaluator opined that Mr. Wilmoth is unable to practice nursing with reasonable skill or safety. On May 4, 2010, Mr. Wilmoth informed his IPN case manager that he wanted to withdraw from the IPN before signing an IPN advocacy contract. The Florida Board's suspension of Mr. Wilmoth's license to practice professional nursing was the basis of the mandatory suspension of his license in Virginia.

4. On November 6, 2012, Mr. Wilmoth was convicted in the Danville, Virginia, Circuit Court of three counts of first offense obtaining drugs by fraud, which are misdemeanors involving moral turpitude.

5. During Mr. Wilmoth's employment with the Danville Regional Medical Center, Danville, Virginia, in February and March 2011 he diverted narcotics as evidenced by the convictions in Finding of Fact No. 4 above, and the following:

a. The records for seven patients indicate that Mr. Wilmoth's documentation failed to account for approximately 75mcg of fentanyl (Schedule II), 4mg of morphine (Schedule II), and 14mg of hydromorphone.

b. In an interview with a Department of Health Professions investigator on April 13,

2011, and June 16, 2011, Mr. Wilmoth admitted that he diverted hydromorphone for his personal use on two to three occasions and morphine for his personal use on two to three occasions.

6. On April 25, 2011, Mr. Wilmoth signed a Participation Contract with the Health Practitioners' Monitoring Program in which he admitted that he may suffer from the disease of chemical abuse that may impair his ability to safely practice as evidenced by his self report of chemical abuse issues. Mr. Wilmoth was dismissed from HPMP for failure to complete a substance abuse assessment in August 2011.

7. On June 25, 2013, Mr. Wilmoth admitted to a Department of Health Professions investigator that he used marijuana in February 2011.

8. On his employment application for Danville Regional Medical Center dated January 3, 2011:

a. Mr. Wilmoth was asked to list all his professional licenses and he failed to list his professional nursing license in Florida that was issued on December 9, 2008.

b. Mr. Wilmoth falsely answered "No" to the question of whether his license in this state or another state has been suspended, limited, revoked or under investigation, when, in fact, Mr. Wilmoth's professional nursing license in Florida had been under investigation as evidenced by the Florida Board's Administrative Complaint dated August 19, 2010.

c. Mr. Wilmoth failed to list Manatee Memorial Hospital, where he was employed in 2009, as a previous employer.

9. At the hearing, Mr. Wilmoth admitted that he had misused his license, diverted medication, and used the diverted medication for himself. He justified this pattern of diversion by stating that he could not afford continual trips to the emergency room. Mr. Wilmoth testified that he does not have an addiction problem.

10. Mr. Wilmoth testified that he would do whatever he had to do in order to protect and provide for his family, even if he had to break the law or mislead people.

CONCLUSIONS OF LAW

The Board concludes that:

1. Finding of Fact No. 3 constitutes a violation of § 54.1-3007(5), (6), (7) and (8) of the Code.
2. Finding of Fact No. 4 constitutes a violation of § 54.1-3007(4) and (6) of the Code.
3. Finding of Fact No. 5 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 ("Regulations").
4. Findings of Fact Nos. 6 and 7 constitute a violation of § 54.1-3007(6) of the Code.
5. Finding of Fact No. 8 constitutes a violation of § 54.1-3007(2) and (5) of the Code and 18 VAC 90-20-300(A)(2)(e) of the Regulations.

ORDER

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

1. The application of Byron W. Wilmoth for reinstatement of License No. 0001-211266 to practice professional nursing in the Commonwealth of Virginia is DENIED, due to a failure to obtain the affirmative vote for reinstatement of three-fourths of the members of the Board at the hearing. Further, it is hereby ORDERED that the license of Mr. Wilmoth be CONTINUED on INDEFINITE SUSPENSION. At such time as he shall petition the Board for reinstatement of his license, an administrative proceeding will be convened to determine whether he is able to return to the safe and competent practice of professional nursing.
2. The license shall be recorded as suspended.

3. This Order shall be applicable to Mr. Wilmoth's multistate licensure privileges, if any, to practice professional nursing in the Commonwealth of Virginia.

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

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

August 2, 2013

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.

Certified True Copy

By *[Signature]*

Virginia Board of Nursing