

VIRGINIA:

BEFORE THE BOARD OF NURSING

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

NOTICE OF HEARING

Pursuant to §§ 2.2-4020, 2.2-4024(F), and 54.1-2400(11) of the Code of Virginia (1950), as amended (“Code”), Byron W. Wilmoth, R.N., who, prior to its mandatory suspension by the Department of Health Professions on November 8, 2011, held License No. 0001-211266, is hereby given notice that a formal administrative hearing will be held in the presence of a panel of the Board of Nursing. The hearing will be held on July 18, 2013, at 1:00 p.m., at the offices of the Department of Health Professions, Board of Nursing, Perimeter Center, 9960 Mayland Drive, Suite 201, Henrico, Virginia 23233, at which time Mr. Wilmoth will be afforded the opportunity to be heard in person or by counsel.

At the hearing, Mr. Wilmoth has the following rights, among others: the right to representation by counsel; the right to have witnesses subpoenaed and to present witnesses on his behalf; the right to present documentary evidence; and the right to cross-examine adverse witnesses. If Mr. Wilmoth desires any witnesses to appear on his behalf, he must notify the Director of Administrative Proceedings, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233, in accordance with the Instructions for Requesting Subpoenas.

The purpose of the hearing is to receive and act upon Mr. Wilmoth’s application for reinstatement of his license to practice professional nursing in Virginia and to inquire into evidence that Mr. Wilmoth may have violated certain laws and regulations governing nursing practice in Virginia, as more fully set forth in the Statement of Particulars below.

The burden rests upon Mr. Wilmoth, as the applicant, to demonstrate that he is capable of resuming the safe and competent practice of professional nursing in Virginia.

Pursuant to § 54.1-2409(D) of the Code, reinstatement of Mr. Wilmoth's license requires the affirmative vote of three-fourths of the members of the Board in attendance at the hearing.

STATEMENT OF PARTICULARS

The Board alleges:

1. Byron W. Wilmoth may have violated § 54.1-3007(5), (6), (7) and (8) of the Code in that 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 enters 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.

2. Mr. Wilmoth may have violated § 54.1-3007(4) and (6) of the Code in that on November 6, 2012, he was convicted in the Danville, Virginia, Circuit Court, of three counts of first offense obtaining drugs by fraud, which are misdemeanors involving moral turpitude.

3. Mr. Wilmoth may have violated § 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") in that during his employment with the Danville Regional Medical Center, Danville, Virginia, in February and March 2011

Mr. Wilmoth diverted narcotics as evidenced by the convictions in Allegation No. 2 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 or about 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.

4. Mr. Wilmoth may have violated § 54.1-3007(6) of the Code in that he may be unsafe to practice professional nursing due to substance abuse as evidenced by Allegation Nos. 1, 2, and 3 above and the following:

a. On or about 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.

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

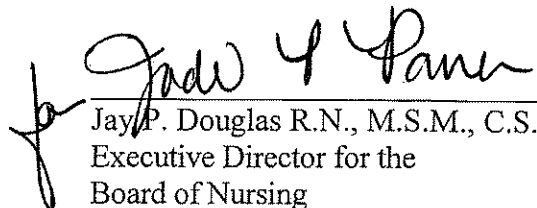
5. Mr. Wilmoth may have violated § 54.1-3007(2) and (5) of the Code and 18 VAC 90-20-300(A)(2)(e) of the Regulations in that on his employment application for Danville Regional Medical Center dated January 3, 2011:

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 or about 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.

FOR THE BOARD


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

ENTERED: July 3, 2013