

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: KIMBERLY C. WHITBY, R.N.
License No.: 0001-164311

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 February 15, 2012, in Henrico County, Virginia. Kimberly C. Whitby, R.N., was present and was not represented by legal counsel. Jane Elliott, R.N., Ph.D., serving as Agency Subordinate for the Board, submitted a Recommended Decision for consideration.

On May 16, 2012, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Ms. Whitby 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. Kimberly C. Whitby, R.N., was issued License No. 0001-164311 to practice practical nursing in Virginia on May 24, 1999. The license is scheduled to expire on March 31, 2014. Her primary state of residence is Virginia.

2. By letter dated October 14, 2011, the Board of Nursing sent a Notice of Informal Conference ("Notice") to Ms. Whitby notifying her that an informal conference would be held on November 9, 2011. The Notice was sent by certified and first class mail to 1205 Tanglewood Drive, South Hill, Virginia 23970, the address of record on file with the Board of Nursing. A continuance was granted and by letter dated November 21, 2011, the Board notified Ms. Whitby that an informal

conference would be held on February 15, 2012.

3. During the course of her employment with Mecklenburg County Public Schools, Boydton, Virginia, on April 25, 2011, during a random urine drug screen, Ms. Whitby tested positive for cocaine. On April 27, 2011, Ms. Whitby was placed on administrative leave and told to obtain a note from her physician stating the medications she was taking and that she was safe to supervise children. On May 3, 2011, Ms. Whitby submitted her resignation.

4. Ms. Whitby has a history of narcotic pain medication use related to Lyme's disease. While being treated for pain management by Dr. Saleeby at C.M.H. Pain Management Services, Ms. Whitby consumed more than the prescribed amount of Dilaudid (hydromorphone, Schedule II). She failed to disclose all prescriptions from other practitioners and was subsequently dismissed from the pain management practice after testing positive for cocaine on December 20, 2010.

5. A prescription monitoring report for the period of January 1, 2010, to May 25, 2011, indicates that Ms. Whitby used eleven prescribers and had prescriptions filled at eight different pharmacies, primarily for hydrocodone, oxycodone and Adderall.

6. At the informal conference, Ms. Whitby admitted to using cocaine during the Christmas break in 2010. Ms. Whitby stated that she last used cocaine on April 23, 2011. Ms. Whitby reported being depressed in early 2011 due to family issues, and that she saw a psychiatrist until April, 2011. She also reported a history of severe depression in 1994, for which she was hospitalized at Poplar Springs Hospital. Ms. Whitby reported that she contacted the Health Practitioners' Monitoring Program ("HPMP") for information; however, she did not enroll.

7. Ms. Whitby has been employed P.R.N. at C.J.W. Medical Center, Richmond, Virginia, since October, 2011. Her employer is not aware of her reason for resigning from Mecklenburg County Public Schools, nor is it aware of the investigation by the Board. Ms. Whitby has had four employers

since 2007.

CONCLUSIONS OF LAW

1. Finding of Fact No. 3 constitutes a violation of § 54.1-3007(5) and (6) of the Code.
2. Findings of Fact Nos. 4, 5 and 6 constitute a violation of § 54.1-3007(6) of the Code.

ORDER

WHEREFORE, it is hereby ORDERED as follows:

1. License No. 0001-164311 of Kimberly C. Whitby, R.N., is INDEFINITELY SUSPENDED.
2. The license will be recorded as suspended and no longer current.
3. At such time as Ms. Whitby 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 professional nursing. Ms. Whitby 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.
3. This suspension applies to any multistate privilege to practice professional nursing in the Commonwealth of Virginia.
4. This suspension shall be STAYED upon proof of entry into the HPMP. At such time, the indefinite suspension shall be STAYED and the following terms and conditions shall apply:
 - a. Ms. Whitby 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 Kimberly C. Whitby, R.N., 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. Whitby is not in compliance with the terms and conditions specified by the HPMP;
- ii. Ms. Whitby's participation in the HPMP has been terminated;
- iii. There is a pending investigation or unresolved allegation against her involving a violation of law, regulation, or any term or condition of this order.

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

6. This Order is applicable to Ms. Whitby's multistate licensure privileges, if any, to practice professional nursing in the Commonwealth of Virginia. For the duration of this Order, Ms. Whitby 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 she wishes to work. Any requests for out of state employment should be directed, in writing, to the Executive Director of the Board.

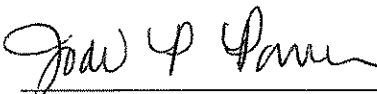
7. Ms. Whitby shall maintain a course of conduct in her capacity as a professional nurse commensurate with the requirements of § 54.1-3000 *et seq.* of the Code and the Board of Nursing Regulations.

Pursuant to § 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.

Pursuant to Section 54.1-2400(10) of the Code, Ms. Whitby may, not later than 5:00 p.m., on

July 1, 2012, notify 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, in writing that he/she desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

FOR THE BOARD:



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

ENTERED: May 29, 2012

This Order shall become final on **July 1, 2012**, unless a request for a formal administrative hearing is received as described above.