SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE LICENSURE PROCEEDINGS	:	
	:	**ORDER OF SUMMARY SUSPENSION AND NOTICE OF HEARING**
RE: SHELBY L. MCKELVEY, L.P.N.	:	
License No. P009914,	:	
Licensee.		

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WHEREAS, Shelby L. McKelvey, L.P.N., ("Licensee"), is licensed to practice as a registered nurse in the State of South Dakota and hold license number P009914; and

WHEREAS, on or about August 19, 2008, the South Dakota Board of Nursing ("Board") received a complaint alleging that the Licensee did not render appropriate nursing care for a resident of the Covington Heights Care Center on June 18, 2008. After receiving the complaint, an investigation into the complaint commenced.

After review of the internal investigation of the June 18, 2008 incident, it was noted that the Licensee, on June 18, 2008, at 6:00 a.m., while giving report to the change of shift, was summoned by a C.N.A. who advised that a resident was gasping for air and may be choking. Licensee proceeded to complete her report on a patient when she was again summoned by the C.N.A. in regards to the patient. Licensee then went and gathered the suction equipment and went to the resident's room. She attempted to suction the patient at which time the resident stopped breathing and expired. The patient was a

do-not-resuscitate patient. During the initial investigation, the Licensee admitted that when she called to notify the family and the physician she falsely reported that the resident had been found passed away in her sleep.

A written statement was received from the resident's family dated August 19, 2008, indicating that the Licensee had made a call to them on June 18, 2008, at approximately 6:19 a.m., after the death of the resident. The Licensee stated that she had found their mother passed away and that she had died in her sleep. In a follow-up call by the family to the facility later that day, the family was told a different story than what was relayed to the them by the Licensee.

The family also reported that a family member of the resident had heard comments from the Licensee's husband at a bar as to why Licensee lost her job. These comments were disparaging to the resident's family.

The Licensee was suspended and ultimately discharged from her employment for improper conduct, failure to disclose all details surrounding the end of life of a resident to the family and physician, and for violation of the code of conduct for improper response to an emergency situation.

On August 21, 2008, Board staff conducted an Informal Meeting with the Licensee at the Board office in Sioux Falls, South Dakota. Said minutes of the Informal Meeting are hereby incorporated as if fully set forth herein. At the Informal Meeting, Licensee

provided a written statement in regards to the events of June 18, 2008. Some of the information and timeline of the events was inconsistent. The Licensee did admit to providing inaccurate information regarding the resident's death to the family and to the physician.

WHEREAS, based upon the affidavit of Kathleen Rausch and the above stated conduct, the Board has concluded that the public health, safety and welfare requires emergency action, in that Licensee's actions may endanger the health and safety of those who are, or will be, entrusted to her care in the future; and

WHEREAS, the Board, has a statutory obligation to protect the health, safety and welfare set forth in SDCL §36-9, including the protection of the public from unsafe nursing practices and practitioners.

NOW THEREFORE IT IS HEREBY ORDERED:

1. That the Board has jurisdiction of the Licensee and the subject matter of this Order.

2. That based on the above, the Board specifically finds that the public health, safety and welfare require emergency action against Licensee's license.

3. That based on the above, the Board specifically finds that the Licensee's actions endanger the public health, safety and welfare, and imperatively requires emergency action in that Licensee may endanger the health and safety of those persons

who are or will be entrusted to her care in the future and that these are matters of a nature that would constitute further grounds for discipline of her license to practice nursing under SDCL § 36-9-49(5), (7), and (10).

4. Based upon these findings, Licensee's license to practice nursing in South Dakota is hereby summarily suspended. Licensee may petition according to SDCL § 36-9-57 for reinstatement of her license at any time for "good cause". This Order also affects Licensee's privilege to practice in South Dakota. Should licensee change her home state under the Nurse Licensure Compact, then Licensee's practice privilege is subject to the same requirements as set forth in this order as her South Dakota license.

5. That Licensee shall turn in her license to the Board within ten (10) days from the date of this Order and it shall be kept by the Board until further action on this matter.

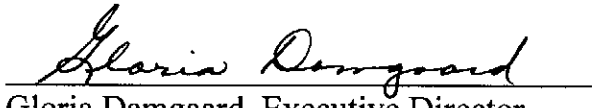
6. Licensee is hereby notified that any practice of or holding herself out as a practical nurse during the terms of this Order of Summary Suspension is a violation of SDCL § 36-9-68.

7. That this action is reportable discipline and will be published in the Board's newsletter, posted on its website, and reported into the HIPDB and NPDB data banks as required by law.

The South Board of Nursing at its meeting on the 13th day of November, 2008, approved this Order of Summary Suspension as written without modifications and issues its Order of Summary Suspension consistent herein as follows:

IT IS HEREBY ORDERED that the above is adopted as an Order of the South Dakota Board of Nursing this 13th day of November, 2008, by a vote of 9-0.

SOUTH DAKOTA BOARD OF NURSING



Gloria Damgaard, Executive Director

NOTICE OF HEARING

The South Dakota Board of Nursing ("Board") pursuant to SDCL §§ 1-26-16, 1-26-27, and 1-26-29, hereby provides this Notice of Hearing to Shelby L. McKelvey, L.P.N., License No. P009914 ("Licensee") as follows:

1. Hearing on the Order of Summary Suspension will take place before the Board on January 22, 2009, at 3:00 o'clock p.m. at the Board of Nursing office located at 4305 S. Louise Avenue, Suite 201 in Sioux Falls, South Dakota.

2. This matter is an adversarial proceeding and Licensee has the right to be present at the hearing and to be represented by an attorney. These due process rights will be forfeited if they are not exercised at the hearing.

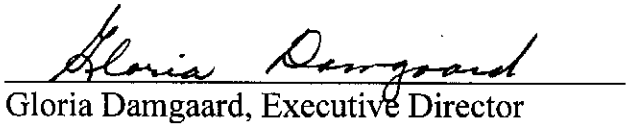
3. Licensee has a right to request that the agency use the Office of Hearing

Examiners for this proceeding by giving notice of the request to the Board no later than ten (10) days after the service of this Notice of Hearing on Order of Summary Suspension.

4. A decision issued by the Board after the hearing may be appealed to the circuit court and to the state Supreme Court as provided by law.

Dated this 21st day of November, 2008.

SOUTH DAKOTA BOARD OF NURSING



Gloria Damgaard, Executive Director