

SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE
LICENSURE PROCEEDINGS

RE: RICKY A. EADS, R.N.,
License No. R-020188,

STIPULATION AND ORDER

Licensee.

* * * * *

WHEREAS, Ricky A. Eads, R.N. ("Licensee"), is licensed to practice as a registered nurse in the State of South Dakota and holds License number R-020188; and

WHEREAS, allegations have been made that during his term of employment at the McKennan Hospital in Sioux Falls, South Dakota, engaged in conduct in violation of SDCL § 36-9-49(5), (7) and (10), in that he engaged in sexual conduct with a patient who was being treated for psychological and psychiatric problems; and such conduct was inconsistent with the health or safety of the persons entrusted to his care, was unprofessional and violates the statutes and rules regulating the practice of nursing, and the Licensee has agreed to voluntarily surrender his nursing license; and

WHEREAS, the Licensee recognizes and agrees that these matters are of a nature which would constitute grounds for the discipline of his license to practice nursing in South Dakota under SDCL § 36-9-49(5), (7) and (10); and

WHEREAS, the South Dakota Board of Nursing (hereinafter "the Board") has a statutory obligation to protect the public health, safety and welfare set forth in SDCL § 36-9, including the

protection of the public from unsafe nursing practices and practitioners; and

WHEREAS, the Licensee has requested the Board's Executive Secretary to present this Stipulation to the Board for action and recognize that the Board may approve this Stipulation, reject it, or modify it; and

WHEREAS, in the event the Board, in its discretion does not approve this settlement or a lesser remedy than indicated in this settlement, this Stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced by either party. Licensee agrees that if the Board rejects this Stipulation and the case proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any of the records or information relating hereto; and

WHEREAS, a complaint has been filed against Licensee and a hearing examiner appointed, but the Licensee has expressed a desire to resolve this matter without the necessity of additional formal disciplinary proceedings and hearings; and

WHEREAS, it is the intent of this Stipulation to provide for a settlement of the licensing issues presented by the Licensee's conduct, in a professional manner, without the necessity of further hearings and proceedings herein, to resolve the complaint against Licensee with no further involvement of the hearing examiner, and to provide for a responsible solution; now, therefore,

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. That the Board has jurisdiction over the person of the Licensee and the subject matter of this Stipulation.

2. Licensee admits that during the term of his employment at McKennan Hospital, he engaged in poor judgment concerning a patient he treated on the mental health unit and allegations have been made which are not admitted by Licensee, that during his term of employment at the McKennan Hospital in Sioux Falls, South Dakota, Licensee engaged in conduct in violation of SDCL § 36-9-49(5), (7) and (10), in that he engaged in sexual contact with a patient who was being treated for psychological and psychiatric problems.

3. The Licensee has been given an opportunity to discuss this Stipulation with an attorney of Licensee's choice, and is aware of Licensee's right to a hearing in this matter, and all rights under the United States and South Dakota Constitutions, laws, rules and/or regulations. Licensee hereby voluntarily waives all such rights to a hearing, notice, appearance, or any other rights under said Constitutions, laws, rules and/or regulations. Licensee is entering into this Stipulation voluntarily and without duress or compulsion. Licensee also agrees that the Board's Executive Secretary may present this Stipulation to the Board and disclose to the Board all items of his investigation, including, but not limited to, any communications with Licensee.

4. Licensee's license to practice nursing shall be suspended for a period from the date of this Order as described below. Licensee shall immediately furnish his license to the South Dakota

Board of Nursing. Licensee may apply to have his license reinstated after a period of at least one (1) year from the date this Order is approved by the Board, and the Licensee shall be reinstated after completion of the terms and conditions set forth in paragraph 5 below.

5. Conditions for Reinstatement. If the Licensee requests reinstatement, the Licensee shall bear the burden of presenting the information showing that his license should be reinstated following the one (1) year period described in paragraph 4 above. In order to prove that his license should be reinstated, Licensee must provide the Board with a written request for reinstatement.

In addition in Licensee's application for reinstatement, Licensee shall document compliance with the following:

- 1) Licensee shall sign a release of information for all documentation, including, but not limited to, progress notes, psychological evaluations, diagnoses, and treatment plans from any physicians, psychiatrist, psychologists, counselors, or other mental health professionals seen during Licensee's suspension and shall, prior to the application for reinstatement, provide copies of all records and documentation from said providers.
- 2) Licensee shall cause all his physicians, psychiatrists and psychologists to submit a report to the Board regarding the mental health status, treatment and prognosis in relation to Licensee's ability to safely practice as a nurse. The reports shall provide and/or address:
 - a) Verification that the professional has seen a copy of the Stipulation and Order, and the Complaint filed against Licensee;
 - b) Diagnosis and any treatment plan;
 - c) Licensee's ability to practice as a professional nurse;
 - d) Any other information which the reporter believes would assist the Board in its ultimate review of the case.

24/22

7A

7-8-65

Gene J. Papp

- 3) Licensee shall furnish a recommendation by his therapist or counselor qualified in the area of inappropriate sexual behavior as recommended by the State Psychological Association or Psychiatric Association in the state of Licensee's treatment. The counselor or therapist must be pre-approved by the South Dakota Board of Nursing, which consent shall not be unreasonably withheld. Before reinstatement, the counselor or therapist must prepare a report to the Board confirming that in the counselor's or therapist's unconditional opinion and evaluation, reinstatement of Licensee's license shall not present any danger of Licensee's inappropriate sexual behavior in the future to a reasonable medical probability. The report shall also address:
 - a) Verification that the counselor or therapist has seen a copy of this Stipulation and Order and the Complaint filed against Licensee;
 - b) Licensee's ability to practice as a professional nurse;
 - c) Diagnosis and any treatment plan;
 - d) Any other information which the counselor or therapist believes would assist the Board in its ultimate review of the case.
 - e) Any testing done with respect to Licensee's sexual behavior as requested by the counselor or therapist;
 - f) Documentation that Licensee has completed a specified structured treatment and rehabilitation program with documentation of the hours of treatment.
- 4) Licensee will notify the Board of any employment, including changes in employment.
- 5) Licensee shall arrange with the Board staff a pre-reinstatement meeting no sooner than forty-five (45) days and no later than fifteen (15) days prior to his application for reinstatement being heard at a Board meeting. It will be the obligation of the Licensee to schedule this meeting at such time and place as the Board staff would reasonably designate.

Furthermore, the Licensee will submit a self-evaluation report to the Board office. The report shall provide and/or address:

- a) Licensee's mistakes in judgment dealing with the particular case alleged in the Complaint;
- b) Licensee's understanding of inappropriate sexual behavior between nurses and patients;

24122
REDUCTION RATIO

4A
ROLL NUMBER

9-8-68
DATE MICROFILMED

Gene J. Kapi
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- c) Licensee's participation in a rehabilitation program;
- d) Licensee's professional employment status;
- e) Licensee's future professional goals for nursing;
- f) Licensee's future personal goals;
- g) What Licensee has learned about himself after taking ethics training and counseling; and
- h) Any other information which the Licensee believes would assist the Board in it's ultimate review of the case.

References/resources utilized in the report shall be documented.

- 6) Licensee shall at any time during the period of suspension, report in person to such meetings of the Board or to its designated representatives as directed and otherwise fully cooperate with the Board or its representatives in the terms of this suspension, and shall appear in person before the Board to petition for reinstatement.
- 7) Licensee shall provide documentation of completing twenty (20) credit hours of continuing education in nursing ethics or other course work which relates to the alleged violations. Documentation shall include written objectives; instructors qualifications in the subject, such as education and experience; method used to evaluate learning; written statement of participation provided by the instructor or a designee; and written evidence of successful completion. The continuing education activity shall be pre-approved by the Board or its representatives, which approval shall not be unreasonably withheld, and shall be completed no later than the date of the request for reinstatement.
- 8) Licensee shall not violate any law or regulation regarding the practice of nursing.
- 9) Licensee shall notify the Board, in writing, within one (1) week of any change in employment, personal address and/or telephone number.
- 10) Licensee shall bear all Licensee's costs in carrying out the provisions of this Stipulation.

6. Additional Probation After Reinstatement. If the Licensee is reinstated, Licensee will be placed on probationary status for an additional period of at least three (3) years

employment in nursing practice from the date of the reinstatement being approved by the Board, which probationary terms and conditions shall be completely followed by the Licensee as follows:

1. Licensee shall cause his physicians, psychologists or psychiatrists to submit reports to the Board quarterly the first year and every six months thereafter for the duration of treatment for the period recommended by the physicians, psychologists, or psychiatrists; regarding the mental health status, treatment and prognosis in relation to Licensee's ability to safely practice as a nurse. The reports shall provide and/or address:
 - a. Verification that the psychiatrist has seen a copy of the Stipulation and Order;
 - b. Diagnosis and any treatment plan;
 - c. Licensee's ability to practice as a professional nurse;
 - d. Any other information which the reporter believes would assist the Board in its ultimate review of the case.
2. Licensee shall continue counseling with at least a masters prepared clinical therapist for the period recommended by the counselor. The counselor shall submit reports to the Board quarterly the first year and every six months thereafter for the duration of treatment. The report shall provide and/or address:
 - a. Verification that the counselor has seen a copy of the Stipulation and Order.
 - b. Diagnosis and any treatment plan;
 - c. Licensee's ability to handle stress;
 - d. Licensee's ability to practice as a professional nurse;
 - e. Any other information which the counselor believes would assist the Board in its ultimate review of the case.
3. Licensee will notify the Board of any employment in the healthcare field, including changes in employment. Furthermore, the Licensee will inform any current or prospective employer with whom he seeks employment as a nurse, as to the fact that he is on probation, and would further agree that any such employer would, during the first year of probation, be required to provide quarterly reports to the Board as to his progress as an employee, and during the balance of the

REDUCTION RATIO
24/22

ROLL NUMBER
4A

DATE MICROFILMED
7-8-60

CAMERA OPERATOR SIGNATURE
John J. Kape

probationary period provide reports on a basis of every six (6) months. The reports shall provide and/or address:

- a. In the first report, evidence that Licensee's supervisor has received a copy of the order within ten days of service or within ten days of Licensee beginning a new employment;
 - b. Licensee's attendance and reliability;
 - c. Licensee's ability to practice professional nursing;
 - d. Licensee's ability to carry out assigned functions;
 - e. Licensee's ability to handle stress;
 - f. Number of hours Licensee worked during the reporting period;
 - g. Appropriateness of behavior with female patients;
 - h. Any other information which the supervisor believes would assist the Board in its ultimate review of the case.
4. Before Licensee is employed by any temporary or travelling agency, he will notify the Board of his proposed employment with a plan for safeguards for consistent supervision and monitoring. The assignment must be a minimum of three months duration and provide for consistent supervision and monitoring safeguards. If the Board does not approve the plan, which approval shall not be unreasonably withheld, the Licensee shall not be employed in a temporary or travelling agency for the duration of the probation.
5. Licensee shall observe the following employment restrictions:
- a. May not hold a charge or supervisory position for at least one (1) year. This restriction shall not apply to the position of Emergency Room supervisor at Lexington, Nebraska, if but only if he is under supervision of another nurse monitoring his day to day work performance. Licensee may request modification of this provision with a plan for day to day supervision by someone other than a nurse, and consent by the Board shall not be unreasonably withheld.
 - b. May not work where there is only one RN for at least one (1) year.
 - c. May not work in a psychiatric setting.

6. Licensee shall arrange with the Board staff probationary meetings once every quarter for the first year and once every six (6) months for the balance of the probationary period, which may be by telephone. It will be the obligation of the Licensee to schedule these meetings at such time and place as the Board staff would reasonably designate.
- The Licensee will submit a self-evaluation report to the Board office every six (6) months. The report shall provide and/or address:
- a. Evaluate his current employment situation and issues regarding it;
 - b. Any participation in rehabilitation programs;
 - c. Any changes in professional goals; and
 - d. Any other information which the Licensee believes would assist the Board in it's ultimate review of the case.
7. Licensee shall not violate any law or regulation regarding the practice of nursing.
8. Within ten (10) days of the effective date of the order of reinstatement, the Licensee's renewal certificate will be returned and stamped "probation."
9. Licensee shall notify the Board, in writing, within one (1) week of any change in nursing employment, personal address and/or telephone number.
10. If any condition of the probation is violated, the Licensee agrees that the Board may take such actions as the Board deems necessary up to and including a total and complete revocation of his licensing rights as a nurse in South Dakota.
11. Licensee shall execute all release of information forms as may be required by the Board or its designee.
12. Licensee shall pay for all Licensee's costs and expenses in carrying out any conditions of the probation.
13. Licensee may petition the Board for an early closure of his probation after a period of 24 months of satisfactory completion of all terms and conditions of the probation described herein following his reinstatement if Licensee's counselors described in paragraph 1 and therapist described in paragraph 2 certify in writing that in their opinions Licensee is rehabilitated and does not need any further counseling or monitoring to assure that Licensee will not

engage in inappropriate sexual behavior with patients or clients.

7. It is further stipulated and agreed that this Stipulation is being entered into voluntarily by the Licensee and without threats or coercion and is entered into after the Licensee has been given ample opportunity to consider these matters and to discuss this Stipulation with an attorney of Licensee's choice and that the Licensee has a full understanding of the legal consequences of this Stipulation and of the Licensee's rights to a formal hearing on these matters, which rights are hereby waived by the signing of this Stipulation.

8. Licensee agrees that following his probation he will not work in a psychiatric setting for a period of at least two (2) years.

NOW, THEREFORE, the foregoing stipulation is entered into and is respectfully submitted to the Board with the request that the Board adopt its terms as an order of the Board in the above matter.

Dated this 12th day of July, 1993.

Ricky A. Eads, R.N.
Ricky A. Eads, R.N., Licensee

Dennis McFarland
Dennis McFarland, Attorney for Licensee

The South Dakota Board of Nursing meeting on the 14th day of July, 1993, (approved) (rejected) the attached Stipulation (as written) (with the following modifications):

21122
REDUCTION RATIO

4A
ROLL NUMBER

7-0-00
DATE MICROFILMED

John J. Kape
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For the purposes of paragraphs 5.3, 6.1 and 6.2 of the Stipulation, the Board of Nursing will approve David P. Mellinger, C.P.C., of the Family Life Clinic of Kearney in Lexington, Nebraska, provided that:

1. Any reports required under this Stipulation are reviewed and approved by the psychiatrist, Dr. Eva G. Brion, of Family Life Clinic, and the said psychiatrist must personally interview Licensee at least once per quarter during the first year and once every six months thereafter during the term of this suspension and probation.
2. David P. Mellinger must provide the primary counselling required under this Stipulation so long as he is a Certified Professional Counsellor by the State of Nebraska. David P. Mellinger will also receive a copy of the preliminary submission by the South Dakota Board of Nursing to the hearing examiner.

and issued its order ~~of probation~~ consistent herewith as follows:

IT IS HEREBY ORDERED that the above Stipulation is adopted shown herein by the South Dakota Board of Nursing this 14th day of July, 1993, by vote of 5-yes, 1-abstain

Diana VanderWoude RN MS
Diana Vander Woude, Executive Secretary

STATE OF SOUTH DAKOTA
DEPARTMENT OF COMMERCE AND REGULATION
SOUTH DAKOTA BOARD OF NURSING

RECEIVED
APR 1 1993
SOUTH DAKOTA STATE

IN THE MATTER OF THE LICENSURE
PROCEEDINGS RE:

RICKY A. EADS, R.N.,
License No. R-020188,

NOTICE OF FORMAL HEARING

Licensee.

TO: RICKY A. EADS, LICENSEE:

PLEASE TAKE NOTICE that a formal hearing in the above-entitled matter will be held on April 27, 1993, commencing at 9:00 o'clock a.m. at Bryne Conference Center, 2701 South Minnesota Avenue, Sioux Falls, South Dakota, before the hearing examiner, Peter J. Horner, duly appointed by the South Dakota Board of Nursing to hear this matter pursuant to SDCL 36-9-51.1. Legal authority for the hearing is under the terms of SDCL 1-26, 36-9, and A.R.S.D. 20:48:08.

A formal complaint is herewith also served upon you. The particular statutes and sections of the rules involved are SDCL 36-9-49(5), (7), and (10), and A.R.S.D. 20:48:04:01(1)(c).

You are accused of entering into a relationship with a patient on whom you previously performed nursing services in the Psychiatric Ward at McKennan Hospital, Sioux Falls, South Dakota, and committing unprofessional conduct and violations of the law and regulations by exploitation of said patient, all as more fully explained in the Complaint.

As a result of the action, the hearing examiner will make a recommendation to the Board and the Board may affirm, reject, or

24/22	4A	7-8-00	John J. Kape
REDUCTION RATIO	ROLL NUMBER	DATE MICROFILMED	CAMERA OPERATOR SIGNATURE

modify the findings and conclusions of the hearing examiner. Punishments which may result may be issuance of a reprimand, a suspension of your license, a revocation of your license, and or other disciplinary or corrective action deemed appropriate by the Board in addition to or in lieu thereof.

NOTICE IS FURTHER given that said hearing is an adversary proceeding in that you have the right to appear at the hearing in person or by legal counsel, or both, to be present during the giving of all evidence, to inspect all documentary evidence in support of your position and to have subpoenas issued to compel attendance of witnesses and production of evidence in his behalf. These and other due process rights will be forfeited if they are not exercised at the hearing in this matter.

NOTICE IS FURTHER given that if you do not appear at the hearing set by the hearing examiner at the above time and place, that the South Dakota Board of Nursing may proceed to enter an Order by default against you for the relief requested in the Complaint.

YOU ARE FURTHER ADVISED that the decision of the Board of Nursing based upon the hearing may be appealed through the Courts pursuant to law.

Dated this 31st day of March, 1993.

SOUTH DAKOTA BOARD OF NURSING

By Diana Vander Woude
 Diana Vander Woude
 Its Executive Secretary