

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

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IN THE MATTER OF THE  
LICENSURE PROCEEDINGS

RE: AUDREY M. LORIUS, L.P.N., R.N.,  
License Nos. P007027, R023912,

FINAL ORDER  
AND DECISION

Licensee.

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The above-captioned matter, having been brought before the Board for finalization of a Tentative and Proposed Order and Decision of the South Dakota Board of Nursing on this 13th day of April, 1994, and having come before the South Dakota Board of Nursing on January 20, 1994, and the Board and the members thereof having individually reviewed the transcript of the hearing held before the hearing examiner appointed by the Board, said hearing beginning on November 1, 1993, and continuing through November 3, 1993, as more fully stated in the Findings of Fact and Conclusions of Law, and Order submitted by the hearing examiner by letter dated January 5, 1994; and

The members of the Board having also reviewed the record made at said hearing, and the Board having been presented at its January 20, 1994, meeting with the letter of January 18, 1994, from Jeffrey Maks on behalf of the Licensee Audrey M. Lorius, and also having heard the argument of Terry N. Prendergast, as counsel for the Complainant Board; and

The Board having reviewed the transcript, exhibits, files, depositions and records in the matter and the proposed Findings of Fact and Conclusions of Law of the hearing examiner and issuing a

Tentative and Proposed Order and Decision following the January 20, 1994, meeting, and the Board now having been served with Licensee's Objections to Tentative and Proposed Order and Decision and Memorandum in Support Thereof dated March 31, 1994, by Jeffrey Maks, and having reviewed the same, along with the transcript, exhibits, files, depositions and records herein, and the proposed Findings of Fact and Conclusions of Law of the hearing examiner, and the Board's Tentative and Proposed Order and Decision, and also having heard the argument of Terry N. Prendergast as counsel for the Complainant Board at its April 13, 1994, meeting, and the Board having received a letter from Jeffrey Maks indicating that the Licensee would not be presenting oral argument at the time of the Board meeting, and the Board having determined that it is fully advised in the premises and good cause therefore appearing; and

For the reasons as set forth in the Findings of Fact and Conclusions of Law of the hearing examiner, which are hereby adopted, and for the further reasons that the Board has determined that the conduct of Audrey Lorius merits a suspension and probationary period as hereinbelow set forth; and

For the further reasons that the Board rejects the Licensee's Objections because this Order is based upon the Board's best judgment as to the appropriate sanction given this Licensee's conduct, including the Board's responsibility to protect the public and to give the Licensee a sufficient period of time to reorient and refresh herself in nursing after the period of suspension, and the Board having determined that each nurse must be responsible for his or her own conduct and a sanction must be based upon that

particular nurse's conduct in order to protect the public welfare and safeguard life and health as required by SDCL § 36-9-1.1; and

The Board specifically having rejected the Licensee's argument that it has no justification for the ordered sanction, said justification being the Board's opinion that given the nature of this Licensee's conduct and deviation, the public interest and safety will best be served by the suspension followed by the probationary period as ordered and that said sanctions will protect the public; and

The Board also specifically rejecting Licensee's argument that the Board's decision is retaliation because the Board's decision is based solely on the facts found by the hearing examiner and adopted by this Board's decision, and the evidence presented to the hearing examiner, neither retaliating nor rewarding Licensee for exercising her legal rights; and

The Board specifically rejecting Licensee's claim that the only distinguishing factor between Licensee and the other nurses involved in the incident giving rise to the Complaint is that Licensee has exercised her right to a hearing, since this Licensee: (a) had hands-on direction of the other nurses; (b) was the only nurse informed following the medication error that the patient was experiencing breathing problems; and further that (c) this Licensee's testimony was that she was the only nurse who, by running the pump, determined the amount of fluid to remove from the tubing following the discovery of the medication error; and further that (d) this Licensee was the only nurse on the unit during the most critical time to perform a complete assessment of the patient, but she failed to perform any assessment of the patient; and for

the further reason that (e) this Licensee, even after the incident, gave an incomplete answer at the hearing as to what she would have done differently; and further that (f) this Licensee showed a clear pattern of signing documents she admittedly hadn't read; and the Board having determined that this Licensee showed a pattern of severe deviation from accepted standards of nursing practice and accountability; and it is for these reasons, not for the reasons that the Licensee has exercised her right to a hearing that the Board has determined it appropriate, consistent with its duty to protect the public, to modify the hearing examiner's recommendation as set forth hereinbelow; and

The Board having determined that it must consider not only the level of accountability, as suggested by the Licensee, but also the quality of a nurse's response to her accountability level when it determines an appropriate sanction to insure the public will be protected;

NOW, THEREFORE, based upon the whole of the record herein as above cited, as well as the arguments cited in the Tentative and Proposed Order and Decision, and the arguments made herein, and this Order, the Licensee's objections are hereby rejected and overruled and the Board adopts the Tentative and Proposed Order and Decision as described below and in this Order, as its final Decision and Order in this matter:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the Board hereby adopts in full the Findings of Fact and Conclusions of Law proposed by the hearing examiner, Jane M. Farrell, a copy of which is attached hereto as Exhibit A and incorporated herein, and modifies the order of the hearing examiner as described herein. That said Findings of Fact and Conclusions of Law support this modified Order, for the reasons set forth herein, which shall be entered in the above matter.

2. That although the counsel for the Board has urged that Findings of Fact and Conclusions of Law need not be made on the recommendation of ordered sanctions, but only on the "liability" of the Licensee, the Board does not reach that issue because based upon the Findings of Fact and Conclusions of Law that were reached, the sanction as set forth below in this Order is appropriate and necessary to protect the public health and safety and to carry out the functions of the Board in this matter.
3. That the L.P.N. and R.N. licenses of Licensee to practice nursing shall be suspended for a period of thirty-six (36) months of nursing practice from the date of this order. Licensee shall, within ten (10) days, furnish her licenses to the Board together with any renewal documentation. Licensee may apply to have her licenses reinstated after a period of at least thirty-six (36) months from the date hereof, after completion of the terms and conditions as set forth below. Licensee shall not be required to pay her renewal fee during the period of suspension.
4. That if Licensee requests reinstatement, the Licensee shall bear the burden of presenting information showing that her licenses should be reinstated following the thirty-six (36) month period described above. In order to prove that her licenses should be reinstated, Licensee must provide the Board with a written request for reinstatement.

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

- A. Licensee will notify the Board of any employment, including changes in employment.
- B. 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 her 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.
- C. FURTHERMORE, the Licensee will submit a self-evaluation report to the Board office prior to the application for reinstatement. The report shall provide and/or address:
  - 1) Nursing ethics and the requirements that the nurse acts to safeguard the patient and the public when health care and safety are affected by incompetent, unethical or illegal practice by any person, and nursing responsibility and accountability;
  - 2) Licensee's future professional goals for nursing;

- 3) Any other information the Licensee would assist the Board in its ultimate review of the case.
  - 4) References/resources utilized in the report shall be documented.
- D. Licensee shall at any time during the period of suspension, upon reasonable notice and stated reasons, 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.
  - E. Licensee shall provide documentation of completing a refresher course approved by the Board within the six (6) month period prior to her request for reinstatement, which refresher course shall include theory and clinical components. 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 refresher course shall be pre-approved by the Board or its representatives and shall be completed no later than the date of the request for reinstatement, and no earlier than six (6) months prior to the date of the request for reinstatement.
  - F. Licensee shall not violate any law or regulation regarding the practice of nursing.
  - G. Licensee shall notify the Board in writing within two (2) weeks of any change of employment, personal address and/or telephone number.
  - H. Licensee shall bear all Licensee's costs reasonably incurred in carrying out the provisions of this Order.
5. If Licensee is reinstated, the Licensee shall be placed on probationary status for an additional period of thirty-six (36) months' 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 Licensee as follows:
    - A. Licensee will notify the Board of any employment in the health care field, including changes in employment. Furthermore, the Licensee will inform any current or prospective employer with whom she seeks employment as a nurse, as to the fact that she is on probation, and will further agree that such employer would be required to provide quarterly reports to the Board as to her progress as an employee. The reports shall provide and/or address:

- 1) In the first report evidence that the Licensee's supervisor has received a copy of the Order within ten (10) days of service or within ten (10) days of Licensee beginning new employment;
  - 2) Licensee's attendance and reliability;
  - 3) Licensee's ability to practice professional nursing;
  - 4) Licensee's ability to carry out assigned functions, including clinical judgment, decision-making skills and crisis management;
  - 5) Licensee's ability to handle stress;
  - 6) Number of hours Licensee worked during the reporting period;
  - 7) Any other information the supervisor believes would assist the Board in its ultimate review of the case.
- B. That the Licensee shall not be employed by a temporary agency;
- C. That Licensee shall observed the following restrictions:
- 1) May not hold a charge or supervisory position for one (1) year from the date of reinstatement.
  - 2) May only practice under on-site supervision of a registered nurse in good standing with the Board, or a medically trained person approved in advance by the Board, for a minimum of six (6) months.
- D. Licensee shall arrange with the Board staff probationary meetings once every quarter during 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.
- E. Licensee will submit a self-evaluation report to the Board office every six (6) months during the probation. The report shall provide and/or address:
- 1) Licensee's ability to manage patient care, including the ability to set priorities, apply clinical judgment skills, ethical decision making and management of patient crisis;
  - 2) Licensee's professional employment status, including employer support, peer support, ability to handle stress;
  - 3) Licensee's future professional goals for nursing; and

- 4) Any other information the Licensee believes would assist the Board in its ultimate review of the case.
- F. Licensee shall not violate any law or regulation regarding the practice of nursing.
- G. Within ten (10) days of the effective date of the Order of reinstatement, the Licensee's renewal certificate will be returned and stamped "probation."
- H. Licensee shall notify the Board, in writing, within two (2) weeks of any change in nursing employment, personal address and/or telephone number.
- I. If any condition of the probation is violated, the Board shall take such actions as the Board deems necessary up to and including a total and complete revocation of Licensee's rights as a nurse in South Dakota.
- J. Licensee shall execute all release of information forms as may reasonably be required by the Board or its designate. Licensee shall pay for all Licensee's costs and expenses in carrying out any conditions of the probation.
- K. Before any out-of-state practice or residence can be credited towards fulfillment of these terms and conditions, they must first be approved by the Board. If Licensee fails to receive such approval, none of the time spent out of state will be credited to the fulfillment of the terms and conditions of this Order.
- L. In the event the Licensee does not work in nursing within eighteen (18) months of the effective date of the Order of reinstatement, the Licensee may, at Licensee's option, petition the Board for re-evaluation of the probationary conditions.
- M. Licensee shall at any time during the period of probation, report in person to such meetings of the Board or its designated representatives as directed and otherwise fully cooperate with the Board or its representatives in the terms of this probation.
- N. Licensee shall provide documentation of completing twenty (20) contact hours of continuing education in IV therapy, nursing ethics, and the role of a nurse. 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 designee and written evidence of successful completion. The continuing education activities shall be approved by the Board or its representatives and shall be completed no later

than two (2) years from the date of the Licensee's reinstatement.

Dated this 13th day of April, 1994.

SOUTH DAKOTA BOARD OF NURSING

Diana VanderWoude  
Diana Vander Woude, Exec. Secretary

The South Dakota Board of Nursing hereby certifies that this final Decision and Order was approved as its final Decision and Order on the 13<sup>th</sup> day of April, 1994, by a vote of Six (6) yes; zero (0) no; one (1) absent; and four (4) abstentions.

Diana VanderWoude  
Diana Vander Woude, Executive Secretary