

and D (entered into evidence by the Licensee). The Board also considered the Affidavit and other documents on file in this case, and being charged with the statutory obligation to protect the public health, safety and welfare as set forth in SDCL § 36-9, including the protection of the public from unsafe nursing practices and practitioners, the Board hereby makes the following:

FINDINGS OF FACT

1. That Kerry L. Richardson is licensed to practice as a registered nurse in the State of South Dakota and holds license number R-023024.
2. That Licensee obtained her registered nurse training, receiving an associates degree in nursing from Presentation College in 1988.
3. Since 1988, Licensee has been employed in practice as a registered nurse, and was most recently employed by Rapid City Regional Hospital from 2002 until her termination from the hospital on September 4, 2012.
4. At the time of her discharge from employment, Licensee was working full time 12 hour shifts in the PCU, which is a step-down unit from critical care.
5. Licensee has had no discipline against her nursing license since she was initially licensed as a registered nurse.
6. On September 6, 2012, the Board received a complaint from Licensee's employer alleging that the Licensee, on August 29, 2012, was exhibiting signs of

impairment, including dilated pupils, speech impairment, and fragmented explanations of patient care, and was terminated for refusing to submit to a drug screen.

7. Licensee was working a 7:00 a.m. to 7:30 p.m., 12 hour shift on August 29, 2012.

8. Licensee had four patients in the step-down unit and it was a busy day. Licensee did feel “scattered” that day due to the work load.

9. Licensee was approached by her supervisors around 2:00 p.m. indicating that they wanted to talk to her. Licensee was then asked to come to their office at 5:30 p.m., at which time they indicated that they wanted her to submit to a drug screen.

10. Licensee initially agreed to take the test, but when she arrived at the lab, she found that the staff person in the lab was inexperienced and did not understand what was going on. Despite the Licensee’s request, the employer refused to make a notation on the laboratory form that the Licensee would test positive for amphetamines as she was on Adderall. As a result, Licensee refused to complete the testing.

11. Licensee was consequently terminated from employment pursuant to the hospital’s policy that a refusal to submit to a drug screen is grounds for automatic termination.

12. Licensee was on Adderall for ADHD at the time of the requested drug screen. A PDMP confirmed Licensee’s prescription for Adderall. Licensee stopped

taking Aderall after the drug screen incident. Per her PDMP, she did not refill this prescription after September 2012.

13. At the time of her termination, Licensee was taking medication for anxiety and depression.

14. Licensee was concerned about the employer's handling of this situation and felt that she was not treated properly at the time the drug test was being requested.

15. Licensee appealed her termination a total of four times with the employer. Licensee felt that she wanted to complete the grievance process with the employer before she dealt with the issues with the Board.

16. Following the complaint, the Board called Licensee on September 18 and 24, and October 10 and 18, 2012, at the number on file with the Board and messages were left in regards to the complaint that was received by the Board. Licensee did not respond to the calls.

17. Licensee admitted to receiving the September 24, 2012, letter from the Board requesting a Voluntary Refrain from Practice and mentioning an informal hearing. Licensee did not respond to the letter nor make any contact with the Board.

18. As a result of her non-cooperation with the Board, and out of concern for the alleged impaired practice, Licensee was issued an emergency Summary Suspension and noticed for hearing.

19. After Licensee received the initial Summary Suspension, Notice of Hearing, and Affidavit, she did call the Board trying to explain about the situation with the drug testing.

20. When Licensee received the Amended Notice of Hearing on the Motion for Summary Suspension, Licensee again contacted the Board on January 7, 2013, indicating that she planned to be at the hearing.

21. Licensee denies that she had any impaired nursing practice. Licensee was apologetic for ignoring the calls and letters from the Board.

From the foregoing Findings of Fact, the Board draws the following:

CONCLUSION OF LAW

1. That the Board has jurisdiction and authority over this matter pursuant to SDCL §§ 36-9-1.1 and 36-9-49.
2. The Licensee failed to cooperate through the investigative process with the Board.
3. The Licensee's conduct as identified in the Findings of Fact and Conclusions of Law is by clear and convincing evidence violation of SDCL § 36-9-49(10) in that she is guilty of unprofessional conduct in that she has failed to cooperate with the investigation of the complaint by the Board.

4. That due to her refusal to do the drug screen, any issues surrounding the alleged impairment is unknown.

THEREFORE, let an order be entered accordingly:

ORDER

Based on the Findings of Fact and Conclusions of Law, the South Dakota Board of Nursing hereby orders:

1. That the Licensee's license to practice as a registered nurse in the State of South Dakota is hereby reinstated and placed on probationary status for a period of twelve (12) months of active practice as a registered nurse.

3. The Board hereby mandates the Licensee's participation in the Health Professionals Assistance Program ("HPAP") for a period of twelve (12) months to rule-out risk.

4. All probationary terms and conditions as well as clearance to return to employment and any restrictions on access to narcotics shall be set by the HPAP and the Licensee shall be fully compliant with all of the terms and conditions. HPAP will notify the Board when the Licensee is fully enrolled, at which time Licensee's probationary RN license will be issued.

5. After verification from HPAP that the Licensee has completed all of her monitoring terms for the term of twelve (12) months of active nursing practice, the Licensee may petition the Board for closure of this probation. The Licensee is not entitled

to early closure of probation. The duration of the terms of probation as set by HPAP shall be no less than the initial term of twelve (12) months. It is recognized that the Board may require additional probationary time or additional terms upon completion of HPAP. In addition, Licensee shall comply with the following conditions during her probation:

1. 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 terms of this probation.
2. The Licensee shall notify the Board, as well as the HPAP, in writing, within one (1) week of any change in nursing employment, personal address, and/or telephone number.
3. Licensee shall pay for all costs and expenses in carrying out the conditions of probation.
4. That when advised by HPAP of full enrollment, the Licensee will be issued her RN license by the Board office and it is to be stamped "PROBATION".
5. If the Licensee violates any terms of this probation, the Licensee agrees that the Board may take such action against Licensee's license as the Board deems necessary, up to and including an immediate suspension, additional probationary terms, revocation, or other disciplinary action.
6. Licensee shall not violate any law or regulation regarding the practice of nursing.

7. The Licensee shall not practice nursing in any state other than South Dakota which is a party state to the Nurse Licensure Compact, without prior written authorization from both the Board and the Nursing Regulatory Authority in the party state in which the Licensee desires to practice.

8. This probation also affects Licensee's practice privilege to practice in South Dakota should Licensee change her home state under the Nurse Licensure Compact and Licensee's practice privilege is subject to the same requirements set forth in this order as her South Dakota license.

IT IS HEREBY ORDERED that the above Findings of Fact, Conclusions of Law and Order of Reinstatement with Probation are hereby adopted by the South Dakota Board of Nursing this 20th day of March, 2013.

SOUTH DAKOTA BOARD OF NURSING



Gloria Damgaard, RN, MS
Executive Director
South Dakota Board of Nursing

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 2013, I sent to Kerry L. Richardson, 5119 Valley View Drive, Black Hawk, South Dakota 57718, a true and correct copy of the foregoing Notice of Entry of Findings of Fact, Conclusions of Law and Order of Reinstatement with Probation, by United States first class mail, postage prepaid.



One of the attorneys for the South Dakota
Board of Nursing