

SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF LICENSURE
PROCEEDINGS

:

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF REVOCATION**

RE: BETTY C. ARTHUR, R.N.

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License No. R-034888,

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Licensee.

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This matter came on before the South Dakota Board of Nursing (“Board”) for a due process hearing on the summary suspension of Betty C. Arthur, R.N., license number R-034888 (“Licensee”) on June 19, 2006, at 10:00 a.m. in the conference rooms of the South Dakota Board of Nursing’s office in Sioux Falls, South Dakota. Hillary Brady, Hearing Examiner, Office of Hearing Examiners, State of South Dakota presided. Licensee appeared personally and by her attorney Elizabeth Lorina. The Board appeared by and through its attorney, Kristine Kreiter O’Connell. A quorum on the Board was present in person throughout these proceedings in accordance with SDCL § 36-9-18. Members of the Board present for this hearing were Linda Bunkers, Teresa Disburg, John Jones, June Larson, Adrian Mohr, Patricia Wagner, and Robin York. There was no objection to any member of the Board sitting on this case. This was an open meeting under the laws of the State of South Dakota. Four witnesses testified in person. These included the Licensee, Andrew Albers, Dawn Hendricks, and Maria Eining. Exhibits 1

through 13 were introduced into evidence by the Board, all of which were admitted without objection. Exhibit number 14 was introduced into evidence by the Licensee, which was admitted without objection. The entire hearing was fully audio recorded.

At the close of testimony, the Board moved into executive session pursuant to SDCL § 1-25-2 on motion duly made and unanimously carried, to deliberate regarding its decision. At the close of deliberation, the Board came back into open session with the parties present. Based on questions that were raised by the Board during its deliberations and the Board's consultation with the NURSIS data bank, the Judge re-opened the hearing for receipt of new evidence. Judicial notice was taken of the NURSIS data bank information.

At the close of the taking of new evidence, the Board again moved into executive session pursuant to SDCL § 1-25-2 on motion duly made and unanimously carried, to deliberate regarding its decision.

At the close of deliberation, the Board came back into open session with parties present. One motion was made by the Board: "That the South Dakota Board of Nursing revokes the R.N. license of Betty Arthur based on the evidence presented at this hearing". This motion was adopted on a vote of 7 to 0.

The Board considering the evidentiary testimony of the witnesses, the exhibits admitted into evidence, the new evidence taken following the close of the hearing, and

other documents on file, and being charged with the statutory obligation to protect the public safety and welfare as set forth in SDCL chapter 36-9, the Board hereby makes to following:

FINDINGS OF FACT

1. On January 19, 2006, Licensee made application for licensure by endorsement to the South Dakota Board of Nursing.
2. On her Application, Licensee, circled LPN as current licensure and wrote that she was presently seeking R.N. licensure at Excelsior College, New York.
3. Licensee did have an L.P.N. license issued on July 11, 1996, by examination from the state of Florida (PN1237811). She received her L.P.N. training from Indian River College, graduating in 1996.
4. Licensee was issued an R.N. license by the South Dakota Board of Nursing on January 19, 2006.
5. Licensee has not completed an R.N. education program.
6. Licensee did not ever take an NCLEX examination for R.N. licensure.
7. Licensee was issued an R.N. license by the South Dakota Board of Nursing in error.
8. Licensee, when issued her R.N. license by mail, noted that she had been issued an R.N. license.

9. Licensee knowingly failed to inform the South Dakota Board of Nursing of said error, and did not take any action to correct or advise of such error in regards to the license issuance.

10. Licensee knew that she was not a registered nurse, but nevertheless accepted the R.N. license and used it to obtain employment as a register nurse.

11. Licensee applied for and was hired by the Lead-Deadwood Regional Hospital in Deadwood, South Dakota on or about March, 2006, as an R.N.

12. Licensee was terminated from Lead-Deadwood Regional Hospital on August 8, 2006, for alleged diversion of Demerol.

13. On or about August 14, 2006, the South Dakota Board of Nursing received a complaint from Lead-Deadwood Regional Hospital regarding Licensee's alleged diversion. Licensee had admitted said diversion to her employer.

14. Following several versions of the facts related to the alleged diversion, the Licensee admitted to taking the Demerol and trying to inject it into herself using an insulin syringe.

15. At the time of the alleged diversion, Licensee's urine screen was negative for any medications.

16. Licensee, at the time she was employed by the Lead-Deadwood Regional Hospital, had sustained a shoulder injury and was taking prescriptions of Darvocet and

Relafin for pain.

17. On September 13, 2007, the Board mandated Licensee into the Health Professionals Assistance Program ("HPAP").

18. Participant delayed her enrollment in HPAP, and did not sign the HPAP Agreement until January 31, 2007.

19. On February 12, 2007, HPAP returned the Licensee to work.

20. On April 16, 2007, Licensee applied and was hired as a triage/float registered nurse working on a PRN basis at Queen City Regional Medical Center ("QCRMC") in Spearfish, South Dakota.

21. Licensee was liked by her colleagues at QCRMC and she received the employee of the month award in August 2007, while employed there.

22. On July 1, 2007, QCRMC was purchased by the Regional Health System. Licensee's name appeared on the list of former Regional Health Employees who had issues while employed by the Regional Health System. Because of the diversion incident at the Lead-Deadwood Hospital, Licensee was asked to enter into a special probationary contract as a condition of her continued employment with QCRMC. The probationary contract addressed Licensee's handling of narcotics.

23. The employer and the Licensee signed the probationary contract on or about July 7, 2007.

24. Following return to employment, the Licensee was compliant with HPAP. Licensee did have positive urine drug screens for Darvocet, which were accompanied by valid prescriptions.

25. Dawn Hendricks was Licensee's work site monitor as QCRMC and submitted reports of Licensee's progress under her employment agreement for July, August, and September, 2007, which were all satisfactory.

26. QCRMC received a progress report from HPAP on July 30, 2007, which showed compliance.

27. In July, 2007, HPAP was working with Licensee and The Regional Health System Employer Assistance Program. HPAP advocated for Licensee and her participation in each program.

28. On or about October 29, 2007, Licensee demonstrated behaviors that were contrary to her probationary contract with QCRMC. These included:

A. Licensee violated her probationary restrictions of handling narcotics when she filled a prescription of Oxycodone for an elderly woman, a patient of QCRMC, which she had been assisting in her home.

B. In filling the Oxycodone prescription for the elderly woman, Licensee used another nurse's computer which made it look like the other nurse had processed the prescription.

C. Licensee presented a script to a doctor at the clinic for a refill of Licensee's blood pressure medication. When this prescription was presented to the pharmacy it also contained prescriptions for Darvocet and Flexeril with three refills each. These prescriptions were not documented in Licensee's medical records.

D. The Licensee called in two prescriptions for her husband. These prescriptions were not documented in any medical record.

E. Licensee called in a renewal prescription for Darvocet when she was off duty from the clinic.

29. On December 3, 2007, the Board received a complaint from QCRMC dated November 26, 2007, alleging that the Licensee had inappropriately obtained narcotics in violation of her probationary terms. Investigation began.

30. Licensee was filling Darvocet prescriptions and Oxycodone prescriptions at various pharmacies (Walmart, Bobs, and Safeway) which were being issued by various physicians (Drs. Lawler, Anderson, Brady, and Walker).

31. Licensee obtained 90, up to 330, Darvocet tablets per month between January, 2007, to November, 2007. Licensee's prescription for Darvocet was to take one tablet three to four times a day on an as needed basis.

32. Licensee's reported use of Darvocet to HPAP did not match with the amount of prescriptions that she was receiving.

33. Licensee filled all of the above prescriptions while under her HPAP Agreement. She did not report these multiple prescriptions to HPAP, and was therefore in violation of her HPAP monitoring terms.

34. Licensee had "hoarded" medication and had ten to thirteen bottles of Darvocet in her medicine cabinet at one time.

35. Licensee had no valid prescription for Darvocet from Dr. Lawler after September, 2007.

36. Licensee had a positive urine screen for Darvocet on November 29, 2007. Licensee was not able to provide a valid prescription to match the positive drug screen. Without a valid prescription, she was in violation of her HPAP Agreement.

37. Questions regarding Licensee's need for all of these prescriptions and what she was doing with the medication were not answered by the Licensee. Licensee's responses did not provide explanation for her behaviors.

38. On November 2, 2007, Licensee was terminated from QCRMC for violations of her terms of probation as well as for violations of HPAP.

39. Licensee was non-compliant with the terms and conditions of her HPAP Participation Agreement.

40. Licensee pled guilty to retail theft charge in Okeechobee County, Florida on September 2, 2002, for stealing \$117 worth of clothing from Walmart. The final disposition was a misdemeanor.

41. Licensee pled nolo contendere to a trespassing charge in Okeechobee County, Florida on May 10, 2005, when she returned to the Walmart store in which she had previously stolen. This was also a misdemeanor.

42. Licensee had excuses for her actions rather than explanations for her actions. She blamed her actions with narcotics as "poor judgment", "needing to own-up-to-it", "did not think", "a private person", "my heritage was to keep these matters private".

43. The Board does not find Licensee's testimony credible.

44. Licensee quit taking Darvocet cold-turkey in December, 2007.

45. Licensee continued to voluntarily participate in HPAP up through June 10, 2008.

46. Licensee currently is not working, but doing volunteer work.

47. Licensee's testimony regarding the length of time that she had worked as nurse, raised questions to the Board causing them to consult the NURSUS data bank.

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

CONCLUSIONS OF LAW

1. The South Dakota Board of Nursing has jurisdiction and authority over this matter pursuant to SDCL §§ 36-9-1.1 and 36-9-49.
2. That Licensee's conduct as identified in the Findings of Fact is, by clear and convincing evidence, in violation of SDCL § 36-9-49(5) in that Licensee negligently and intentionally acted in a manner inconsistent with the health and safety of persons entrusted to her care.
3. That the Licensee's conduct as identified in the Findings of Fact, is by clear and convincing evidence, in violation of SDCL § 36-9-49(10), in that she is guilty of incompetent, unprofessional, and dishonorable conduct.
4. That the Board had the opportunity to view all testimony in this hearing, to witness the demeanor of witness, and to view all evidence in the context of the Code of Ethics for Nursing and the South Dakota Nurse Practice Act.
5. That ARSD 20:48:04:01(1)(d) provides that the Board recognizes the "Scope and Standards of Practice", 2004 and "The Code of Ethics for Nurses with Interpretive Statements" 2001, as published by the American Nurses Association as a criteria for assuring safe and effective practice following licensure. The Code of Ethics require a nurse to function within an established legal guideline and uphold the basic standards of nursing practice. Licensee's conduct is, by clear and convincing evidence, in

violation of such code of ethics and thus, in violation of SDCL 36-9-49(7).

6. Licensee's conduct was, by clear and convincing evidence, a violation of her HPAP Participation Agreement.

7. That the evidence of violations of the Nurse Practice Act are clear and convincing and the Board of Nursing has met its burden of proof.

THEREFORE, let an order be entered accordingly:

ORDER

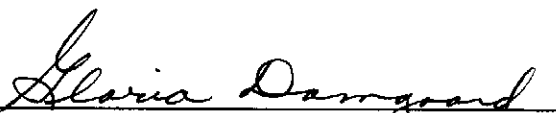
Based on the Findings of Fact and Conclusions of Law, the South Dakota Board of Nursing hereby orders:

1. That Licensee's license to practice nursing in the State of South Dakota is hereby revoked.

2. That Licensee is hereby notified that any practice as or holding herself out as a registered nurse or a nurse in the State of South Dakota is a violation of SDCL § 36-9-69.

Dated this 9th day of September, 2008.

SOUTH DAKOTA BOARD OF NURSING



Gloria Damgaard, Executive Director

The above-captioned Findings of Fact, Conclusion of Law, and Order of Revocation were adopted by the South Dakota Board of Nursing on this 9th day of Sept, 2008, by a vote of 8 - 0.

Dated this 15th day of Sept, 2008.

SOUTH DAKOTA BOARD OF NURSING

Gloria Damgaard
Gloria Damgaard, Executive Director