



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 Sarah Englebert is licensed to practice as a practical nurse in the State of South Dakota and holds license number P008885.
2. That on or about March 18, 2009, the South Dakota Board of Nursing (“Board”) received a complaint alleging attendance and practice issues involving said Licensee and advising of Licensee’s termination from the Rapid City Regional Clinic on January 26, 2009 after refusing a drug screen. The employer indicated that Licensee admitted to the occasional use of marijuana and to using “probably a month ago”.
3. After receiving the complaint, the Board began its investigation into the complaint received. As part of the Board’s investigation, an Informal Meeting was scheduled with the Licensee for May 18, 2009. Prior to the meeting, Licensee was given the opportunity to provide a written statement.
4. In Licensee’s written statement, dated May 7, 2009, Licensee submitted to the Board an explanation of the situation surrounding her termination from employment. Licensee believed the complaint against her was unjustified and that two other employees should also have been made to take a drug screen. Licensee believed she had been defamed by these co-employees. Licensee also advised the Board that she had recently been hired at the Rapid City Medical Center as of April 20, 2009 and had passed her pre-employment drug test.

5. Licensee did not appear for her Informal Meeting nor did she advise the Board that she was not going to attend.

6. Licensee's case was presented to the full South Dakota Board of Nursing, on June 19, 2009. Licensee was mandated by the Board into the Health Professionals Assistance Program ("HPAP") for a period of five (5) years with a single state license. Licensee was advised of said outcome.

7. On July 7, 2009, the Licensee contacted HPAP to inquire about enrollment into the program. The enrollment information packet was sent out to Licensee on July 8, 2009.

8. On July 15, 2009, the Licensee contacted the Board requesting an appeal of the Board's June 19, 2009 decision. Licensee indicated she would be willing to participate in HPAP, but wanted to appeal. As this was a non-disciplinary order, the Licensee was advised of her due process rights under ARSD 20:48:11:01 in that she could petition for a hearing on any decision taken by the Board without a hearing in which she was aggrieved. Licensee submitted a written Petition for Hearing. A hearing on her Petition was held on September 16, 2009 at the Board office in Sioux Falls, South Dakota at 11:00 a.m.

9. Following the formal hearing, the Board amended its previous disciplinary Order and mandated Licensee's participation in HPAP for a period of one (1) year to rule out any risk, with random drug screening and continue with single state licensing. Said Order of the Board was sent to the Licensee.

10. Licensee reconnected with HPAP on October 14, 2009, after the mandated participation in HPAP had been reduced to a one year rule out risk. HPAP had not received any of the required enrollment paperwork or the alcohol and drug evaluation that was need to process the Licensee's application for enrollment in HPAP.

11. An alcohol and drug assessment done on November 17, 2009, did not reveal a substance related diagnosis.

12. Licensee's case was reviewed by the HPAP evaluation committee on January 12, 2010, and conditions of her participation were recommended and drafted into a contract that was sent to her for her review on January 27, 2010.

13. The conditions that were to be imposed upon the Licensee were light in comparison to other HPAP participants as she was a one year rule-out-risk. The terms included random UAs.

14. The Board pays for the cost of HPAP when a Licensee is mandated into the program. The Licensee is required to pay for urinalysis tests, which may cost \$60 to \$65 per test. Any additional treatment or attendance at programs would be the Licensee's responsibility.

15. Licensee wrote to HPAP on March 14, 2010 advising that due to the cold weather and her husband being laid off from his job, she could not afford to enter into the program until April, when her husband returned to work. She also wrote that she wanted to participate in this program to prove her innocence.

16. HPAP met with Licensee in a face-to-face on March 18, 2010, and again discussed enrollment into the HPAP program. Licensee voiced concerns that her husband was not employed and that she could not afford the conditions of the program. As of April 15, 2010, Licensee still was not enrolled.

17. On May 6, 2010, the Board investigator participated in a conference call with Licensee and her employer. The Licensee had told her employer that HPAP suspended her license. Licensee also told her employer that it cost \$1,000 a month to participate in HPAP. The Board investigator advised the employer that Licensee had been mandated into HPAP for one year from September 16, 2009. Licensee's employer was also advised that she had been uncooperative in initiating the required participation and that the cost for HPAP was not \$1,000 a month as Licensee had told her.

18. The Director of HPAP had also been in contact with Licensee's employer to discuss Licensee's concerns about HPAP. Licensee had disseminated a number of untruths to the employer regarding HPAP, including that HPAP had sent her a letter suspending her License, advising the employer that she had ongoing counseling with HPAP, that HPAP cost \$1,000 a month, and that Licensee had never been terminated nor had other issues in previous jobs.

19. On May 6, 2010, the Licensee returned a signed Participation Agreement to HPAP.

20. Due to the untruths being provided by Licensee, HPAP suggested a face-to-face meeting with Licensee to make sure that everyone was on the same page in regards to her complete activation into the HPAP program.

21. The Board of Nursing and HPAP determined it important to have a face-to-face meeting with the Licensee in regards to her participation in HPAP and her possible lack of understanding of the requirements. Arrangements were made to have the Licensee meet with HPAP on May 19, 2010. Licensee did attend that meeting.

22. On May 19, 2010, Licensee and HPAP met and it was discussed at length all of the information that she was telling her employer. HPAP indicated that they wanted full compliance. Licensee said she would on establishing a work-site monitor and would get activated over the weekend.

23. On June 1, 2010, the Board received a copy of a letter, written by the Licensee, To Whom it May Concern, stating that due to the mental and emotional stress of not being able to afford to participate in HPAP and fear of her license being suspended, she had resigned her nursing position at the Rapid City Medical Center as of May 21, 2010.

24. Licensee has never completed her enrollment into HPAP.

25. It is the Board's belief that the Licensee has been trying to circumvent participation in HPAP and has failed to follow through with the mandate of the Board.

26. HPAP discharged Licensee for non-compliance on July 1, 2010, advising the Board of such.

27. Licensee's license was summarily suspended by the South Dakota Board of Nursing for non-compliance with its Order.

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

### **CONCLUSIONS 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. That the Licensee conduct as identified in the Findings of Fact are inconsistent with health and safety of persons entrusted to her care and violates the statutes, rules and regulations regarding the practice of nursing and are in violation of SDCL § 36-9-49(5), (7) and (10).

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 practical nurse in the State of South Dakota is hereby indefinitely suspended for failure to follow the mandates of the Board in entering the HPAP program pursuant to its Order dated September 23, 2009.

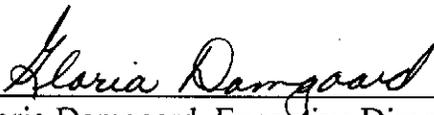
2. That the Licensee may petition according to SDCL § 36-9-57 for reinstatement of her license at any time for "good cause".

3. That the Licensee shall turn in her license to the Board of Nursing within ten (10) days of the date of this Order.

4. That the Licensee is hereby notified that any practice as, or holding herself out as, a practical nurse during the terms of this suspension is in violation of SDCL § 36-9-69.

Dated this 28<sup>th</sup> day of September, 2010.

SOUTH DAKOTA BOARD OF NURSING

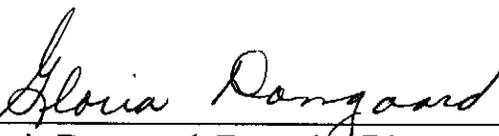
  
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Gloria Damgaard, Executive Director

IT IS NOW HEREBY ORDERED:

That the above Finding of Fact, Conclusions of Law and Order of Suspension were adopted by the South Dakota Board of Nursing on the 15<sup>th</sup> day of September, 2010 by a vote of 10 -- 0.

Dated this 28<sup>th</sup> day of September, 2010.

SOUTH DAKOTA BOARD OF NURSING

  
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Gloria Damgaard, Executive Director