

SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE LICENSURE :
PROCEEDINGS :

RE: ELLEN M. HEER, R.N. :

License No. R-037483, :

Licensee. :

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

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The South Dakota Board of Nursing’s Order of Summary Suspension of the license of Ellen M. Heer, RN, license number R-037483 (“Licensee”) came on for hearing before the South Dakota Board of Nursing (“Board”) at its office in Sioux Falls, South Dakota on November 20, 2009, at 10:00 a.m. Licensee, Ellen M. Heer, having received notice of the hearing and having been given the opportunity to confront Board witnesses and to present evidence on her behalf, did not appear in person or by an attorney. The Board appeared by and through its attorney, Kristine K. O’Connell of Woods, Fuller, Shultz & Smith, P.C.

The Board considered the evidentiary testimony of Kathleen Rausch, Board of Nursing Program Specialist/Investigator. The Board also considered the Board of Nursing’s Exhibits (number 1 - 4 inclusive) entered into evidence. The Board, 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 Ellen M. Heer is licensed to practice as a registered nurse in the State of South Dakota and holds license number R-037483.
2. That the Licensee, in February 2008, applied for a registered nurse license in the State of South Dakota endorsing from the State of Minnesota.
3. That on said application, the Licensee disclosed prior discipline in the State of Minnesota whereby her license had been suspended for noncompliance with the Health Professionals Service Program (“HPSP”) of Minnesota, and that her suspension was stayed on the condition that she return to HPSP and maintain sobriety.
4. That the Licensee was granted a temporary South Dakota license conditioned upon her participation in the South Dakota Health Professionals Assistance Program (“HPAP”) to which she applied.
5. That on September 12, 2008, the Board reviewed Licensee’s endorsement application and voted to issue her a single state license and mandated the Licensee’s participation in HPAP for a period of five (5) years with credit given for the six (6) months of participation in the HPSP of Minnesota program.
6. That thereafter, Licensee was employed and was compliant with HPAP until June 10, 2009, when HPAP advised the Board that the Licensee had a positive drug screen for amphetamines on May 12, 2009, had admitted to submitting a fraudulent specimen, and had a positive urine screen for ethanol on June 1, 2009.

7. That HPAP was concerned with Licensee's admitted relapse.
8. That at the time Licensee was having a number of stressors in her life, including the death of her husband. Licensee was in need of additional help to address her issues of relapse.
9. The June 30, 2009 quarterly report from HPAP had a score of 41 points for non-compliance with HPAP and relapse. HPAP recommended a six (6) month refrain from practice.
10. In August 2009, Licensee agreed that she would surrender her South Dakota nursing license, but when presented with the Voluntary Surrender Consent Order, Licensee failed to sign and return said Order to the Board.

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 the Licensee's 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(4), (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 licensed registered nurse in the State of South Dakota is hereby indefinitely suspended.

2. That the Licensee may petition according to SDCL § 36-9-57 for reinstatement of her license following the period of suspension for "good cause".

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

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

The South Dakota Board of Nursing at its meeting on the 20th day of November, 2009, approved this Order of Suspension as written, without modification, and issues its Order of Suspension consistent herein as follows:

IT IS NOW HEREBY ORDERED:

1. That the above is adopted as an Order of the South Dakota Board of Nursing this 20th day of November, 2009, by a vote of 10 -- 0.

Dated this 24th day of November, 2009.

SOUTH DAKOTA BOARD OF NURSING



Gloria Damgaard, Executive Director