

**BEFORE THE  
SOUTH DAKOTA BOARD OF NURSING**

**IN THE MATTER OF THE  
LICENSURE PROCEEDINGS**

**RE: TERESA T. NEUROTH, R.N.**

**License No. R032526,**

**Licensee.**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER OF  
REINSTATEMENT WITH  
MANDATED HPAP**

**BON 7-03**

This matter came on before the South Dakota Board of Nursing ("Board") for a due process hearing on the Summary Suspension and Notice of Hearing (dated February 7, 2007) of the license of Teresa T. Neuroth, R.N., License No. R-032526 ("Licensee"), on April 17, 2007, at 2:00 p.m. in the conference room of the office of the South Dakota Board of Nursing in Sioux Falls, South Dakota. Julie M. Johnson, Hearing Examiner, Office of Hearing Examiners, State of South Dakota, presided and ruled on the evidence and motions. Licensee appeared personally and by her attorney, Robert L. Mabee, Sioux Falls, SD. The Board appeared by its attorney, Kristine Kreiter O'Connell, Sioux Falls, SD.

Prior to the hearing, the parties had two prehearing telephone conferences with the Hearing Examiner. In the first prehearing conference, the Licensee, through her attorney moved to Vacate Order of Summary Suspension, which was

reduced to writing. The parties agreed to submit briefs on the issue, which were submitted to the Hearing Examiner by electronic communication by April 13, 2007. On April 16, 2007, by telephone conference, the Hearing Examiner denied the Motion to Vacate Summary Suspension. The Hearing Examiner also ordered that the drug test of March 2006, considered by the Board in its Summary Suspension, would not be reopened at the hearing.

For the hearing, the entire Board was present. Therefore, a quorum of the Board was present in person throughout these proceedings, in accordance with SDCL § 36-9-18. The members of the Board present for this hearing were Chair June Larson, Linda Bunkers, Diana Berkland, Patricia Wagner, Christine Pellett, Deb Soholt, Robin York, Teresa Disburg, Dori Dufault, John Jones (public member), and Adrian Mohr (public member). There was no objection to any member of the Board sitting on the case. This was an open meeting under the laws of the State of South Dakota. Two witnesses testified in person, including Licensee and Dr. Joel E. Houglum, Ph.D. Exhibits 1 through 4 were introduced into evidence by the Board, all of which were admitted without objection. Exhibits B, C and E were introduced into evidence by Licensee and were admitted. The entire hearing was fully transcribed by a court reporter.

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 parties present where a motion was made by a member of the Board that: "The South Dakota Board of Nursing finds clear and convincing evidence that the Licensee is in non-compliance with the Board ordered HPAP Participation Agreement of May 1, 2006. The SDBON will re-instate the R.N. license of Teresa Neuroth upon re-enrollment in the HPAP program as mandated by the Board for a period of one year with terms and conditions the same as the [HPAP] Agreement of May 1, 2006. Failure to comply with the HPAP program will result in an indefinite suspension of the R.N. license." This motion was seconded, discussed and adopted on a unanimous vote of 11 to 0. The Board adjourned the hearing at approximately 6:00 p.m.

Following the hearing, the Board submitted Proposed Findings of Fact and Conclusions of Law to the Hearing Examiners, which were received on April 27, 2007. The Licensee submitted Objections and Proposed Modifications to the Board's Proposed Findings of Fact and Conclusions by electronic communication to the Hearing Examiner on May 4, 2007.

Having considered the testimony of the witnesses, the exhibits admitted into evidence, the credibility and demeanor of the witnesses, other documents on file, and being charged with the statutory obligation to protect the public, safety,

and welfare, as set forth in SDCL Ch. 36-9, the Board hereby makes and files the following:

### **FINDINGS OF FACT**

1. Teresa T. Neuroth, R.N. ("Licensee") is licensed to practice as a registered nurse in the State of South Dakota and holds license number R-032526.
2. Licensee completed her L.P.N. education at Southeast Technical Institute in 1979 and completed her R.N. training at Augustana College in 2002.
3. As a registered nurse, the Licensee has worked as a traveling nurse in dialysis. She has also worked in long term care, emergency room, and home care in various counties in western South Dakota.
4. On or about March 7, 2006, Licensee applied for a nursing job with Beverly Enterprises in Rapid City, South Dakota.
5. Licensee voluntarily submitted to a post-offer, pre-employment, drug screen for employer, Beverly Enterprises, which came back positive for marijuana and propoxyphene.
6. The Licensee, as well as the prospective employer, reported the positive drug screen to the South Dakota Board of Nursing ("Board") on or about March 15, 2006.
7. On or about March 15, 2006, the Licensee also contacted the South

Dakota Health Professionals Assistance Program (“HPAP”) in regards to her positive drug screen.

8. The South Dakota Board of Nursing staff held an Informal Meeting with the Licensee on March 28, 2006, as part of its investigational process.

9. Licensee proceeded to undergo a chemical dependency evaluation on April 4, 2006, which negated alcohol or cannabis abuse/dependency. Exhibit B.

10. On April 19, 2006, Licensee’s matter was submitted to the full Board of Nursing, which took corrective action and mandated the Licensee to participation in HPAP for a period of one year. Exhibit 1.

11. Licensee’s participation in the HPAP program was mandated for her to maintain an active and unencumbered license. Exhibit 1.

12. The HPAP Agreement was signed by the Licensee on May 1, 2006, and set forth the specific terms for Licensee’s mandated HPAP. Exhibit 1.

Licensee testified that she understood the Participation Agreement, Exhibit 1.

13. Licensee did not contest nor appeal the mandated HPAP directive from the Board of Nursing.

14. Licensee used or had been exposed to marijuana prior to her positive drug screen on March 7, 2006.

15. A condition of Licensee’s HPAP participation was abstinence from

alcohol and other mood altering chemicals. Exhibit 1.

16. A condition of Licensee's HPAP participation was a minimum of twelve random drug screens during the initial year. Exhibit 1.

17. Licensee was not required to attend AA or other programs or after-care as part of her HPAP participation. Exhibit 1.

18. Licensee had no practice limitations imposed by her Participation Agreement and had an unencumbered license and could have worked as a registered nurse during her HPAP participation. Exhibit 1.

19. Licensee is currently employed as a lifeguard at Evans Plunge, in Hot Springs, South Dakota

20. Licensee mandated HPAP, by the Board, was non-reportable discipline.

21. Licensee complied with all terms of her HPAP participation agreement and had no positive drug tests until September 8, 2006, at which time, a random urine drug screen revealed a positive test result for marijuana/THC.

22. Licensee made the decision to opt-out of the HPAP program and terminate her HPAP participation on or about October 13, 2006. Exhibit 2 and 3.

23. Licensee did not want to comply with the demands that she felt were imposed by the HPAP program. She described the program as "stressful" and a financial burden". Exhibit 2.

24. Licensee did not feel that she had to comply with HPAP. Exhibit 2 and 3.

25. Licensee's positive urine test or 11ng of THC on September 8, 2006 indicates exposure to marijuana. Exhibit C.

26. The Board specifically rejects Licensee's Objections to Board's Findings of Fact, Conclusions of Law and Proposed Modifications, as they are not based in the facts as the Board finds them.

27. To the extent any of the foregoing are improperly designated and are instead conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

Based on the foregoing Findings of Fact, the Board makes and files the following:

### **CONCLUSIONS OF LAW**

1. The South Dakota Board of Nursing has jurisdiction and authority over this matter and this licensee pursuant to SDCL §§ 36-9-1.1 and 36-9-49. The Office of Hearing Examiners has the authority to conduct this hearing in this matter under SDCL 1-26, 1-26D and the administrative rules of the Board. The Board has the authority to make the decision in this matter.

2. The Board had the opportunity to view all testimony in this hearing, to witness the credibility and demeanor of live witness testimony, and to review all

evidence in the context of the Code of Ethics of Nursing, which requires an RN to function within established legal guidelines and uphold the basic standards of nursing practice ARSD § 20:48:04:01(1)(d).

3. The evidence is clear and convincing that Licensee's conduct, as identified in the findings of fact, is in violation of, and non-compliant with, the Board's ordered HPAP Participation Agreement of May 1, 2006.

4. The evidence is clear and convincing that Licensee's conduct as identified in the findings of fact is a violation of SDCL § 36-9-49(7), in that she has violated provisions of the Nurse Practice Act and the rules promulgated under it.

5. The evidence is clear and convincing that Licensee's conduct as identified in the Findings of Fact is in violation of SDCL § 36-9-49(10), in that she is guilty of unprofessional conduct.

6. The Board concludes that the Board of Nursing has met its burden of proof. The Licensee's testimony regarding use or exposure to marijuana or other drugs was not credible.

7. The Board has the obligation to protect the public, safety and welfare, under its statutory authority of SDCL 36-9 to take this action regarding this Licensee.

8. The Board possesses specialized knowledge and special expertise in these matters, which it brings to factual, legal and ethical determinations such as

this matter.

9. The Board specifically rejects Licensee's Proposed Modifications to the Conclusions of Law and Licensee's Objections to Board's Conclusions of Law, as not based in the facts of this case or the law of this case.

10. To the extent any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as findings of fact.

THEREFORE, let an **ORDER** be entered accordingly:

Based on the foregoing 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 be hereby reinstated upon Licensee's re-enrollment in the HPAP program, as previously mandated by the Board, for a period of one year with terms and conditions the same as set forth in the HPAP Participation Agreement of May 1, 2006.

2. That Licensee's failure to re-enroll in HPAP or failure to comply with the terms and conditions of the HPAP participation program will result in an indefinite suspension of Licensee's R.N. license.

3. That Licensee shall not be required to pay any of the costs of this matter.

Dated this 17<sup>th</sup> day of May, 2007.

SOUTH DAKOTA BOARD OF NURSING

June Larson  
June Larson, Chair

The foregoing Findings of Fact and Conclusions of Law were adopted by the South Dakota Board of Nursing on the 17<sup>th</sup> day of April, 2007, by a vote of 11 - 0 with a quorum present at all times and in an open meeting by telephone and notice given to the parties.

Dated this 17<sup>th</sup> day of May, 2007.

SOUTH DAKOTA BOARD OF NURSING

Gloria Damgaard  
Gloria Damgaard, Executive Director