

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF COMMERCE AND REGULATION  
SOUTH DAKOTA BOARD OF NURSING**

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**IN THE MATTER OF THE  
LICENSURE PROCEEDINGS  
RE: SYLVIA SHIRLEY, L.P.N.**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW; AND ORDER OF  
PROBATION**

**License No. P-009091**

**Licensee,**

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WHEREAS the above-captioned matter came on for hearing before the South Dakota Board of Nursing pursuant to a Complaint and Notice of Hearing on the 23rd day of January, 2004, and;

WHEREAS the Licensee, Sylvia Shirley, L.P.N., having received notice of the hearing personally appeared, and;

WHEREAS the South Board of Nursing appeared by and through its attorney, Terry N. Prendergast, and;

WHEREAS the Board of Nursing presented testimony of Michele Crissman, Board Staff, and Exhibits which were received in evidence and stipulated to by the Licensee, and;

WHEREAS, Licensee was given an opportunity to confront the Board witnesses and to present evidence on her behalf , and did so as well as answering questions by the Board and;

WHEREAS, the Board has a statutory obligation to protect the public health, safety and welfare set forth in SDCL 36-9, including the protection of the public from unsafe nursing practices and practitioners; and

NOW, THEREFORE, the Board of Nursing makes the following:

**FINDINGS OF FACT**

1. Licensee has advised that she was convicted of a third offense DUI on June 16, 2003, after which the Board staff recommended that Licensee contact the Health Professionals Assistance Program and undergo a chemical dependency examination, and Licensee has failed and refused to so contact the HPAP and undergo the examination, and such conduct is inconsistent with the health or safety of persons entrusted to his care;.

2. That Licensee appeared at the Board meeting and indicated that she had now sent in all required paperwork for HPAP and was fully intending to complete the HPAP program..

**CONCLUSIONS OF LAW**

1. That Licensee's conduct as identified in the Findings of Fact 1 is in violation of SDCL § 36-9-49 (7) and (10).

2. A.R.S.D. 20:48:04:01(2)(e) provides that the Board recognize the "NAPNES Standards of Practice for Licensed Practical/Vocational Nurses" 1993, and the Code of Ethics for the Licensed Practical/Vocational Nurse" 1993 as published by the National Association for Practical Nurse Education and Service as the criteria for assuring safe and effective practice following licensure. The Code of Ethics requires the L.P.N. to function within established legal guidelines and uphold the laws of the land.

3. Licensee's actions as identified in findings of fact number 1 have violated the provisions of the law, thus violating SDCL § 36-9-49(5), (7) and (10), and amounts to unprofessional or dishonorable conduct violating SDCL § 36-9-49(10).

4. That the Board of Nursing has authority to put Licensee's license on probationary monitoring for said conduct.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, the South Dakota Board of Nursing hereby ORDERS:

1. That the Board has jurisdiction of the Licensee and the subject matter of this Order.

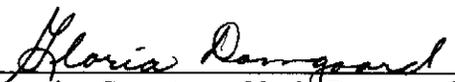
2. Based upon these findings and conclusions, the Licensee's renewal application for her license to practice nursing in South Dakota is hereby granted but her license to practice is hereby placed on a probationary status for an indefinite period of at least 36 months active practice as a nurse and employment in nursing practice from the date of this Order, which probationary terms and conditions shall be set by the HPAP (in which Licensee is mandated to participate) and which monitoring conditions shall be fully complied with by Licensee. After verification from the HPAP that Licensee has fully completed all monitoring terms, Licensee may petition the Board for closure of her probation. The duration of the probation shall be set by the HPAP but shall not be less than the initial term of 36 months, but it is recognized that the Board may require additional probationary time or additional terms upon the completion of HPAP. Additionally, Licensee shall comply with the following during her probation:

- (a) Licensee shall at any time during the period of probation report in person to such meetings of the Board or to its designated representatives as directed and otherwise fully cooperate with the Board or its representatives and the terms of this probation.

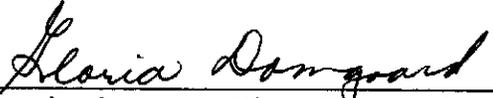
- (b) Licensee shall notify the Board, as well as the HPAP, in writing, within one week of any change of nursing employment, personal address and/or telephone number.
- (c) Licensee shall pay for all costs and expenses in carrying out any conditions of the probation.
- (d) Licensee shall return her License within 10 days of the date of this order to have her License stamped "PROBATION."
- (e) Notwithstanding anything in this Stipulation and Order to the contrary, should the Licensee be convicted of a felony, which would be grounds for discipline under SDCL §36-9-49, either relating to the allegations which led to her suspension or to any other actions or omissions of the Licensee, the Licensee agrees that the Board may take further action against Licensee's license, including, but not limited to immediate suspension. Licensee agrees to immediately inform the Board of the outcome of any criminal charges presently or hereafter pending against Licensee.
- (f) If Licensee violates any of the terms of this probation, Licensee agrees that the Board may take all action against Licensee's license, including, but not limited, to immediate suspension, additional probation terms, revocation, or other disciplinary action.
- (g) If Licensee obtains a license issued by the Board other than the license to which this Stipulation refers in the above-captioned paragraphs, at any time during the period of probation, the terms of this probation shall apply to the other or additional license(s) issued by the Board.
- (h) Licensee shall not violate any law or regulation regarding the practice of nursing or otherwise during the terms of the probation.
- (i) 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.

Dated this 30<sup>th</sup> day of January, 2004.

SOUTH DAKOTA BOARD OF NURSING

  
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Executive Secretary, Gloria Damgaard

The above-captioned Findings of Fact and Conclusions of Law and Order were adopted by the South Dakota Board of Nursing on the 23rd day of January, 2004, by a vote of 9 yea.

  
Executive Secretary, Gloria Damgaard