



September 30, 2005, and November 2, 2005.

On December 27, 2005, Licensee's work-site monitor reported to HPAP that Licensee had admitted to diverting Dilaudid. Licensee, on December 27, 2005, also admitted to Mike Coley of HPAP that he [Licensee] had diverted the narcotic.

WHEREAS, Licensee has agreed that he would surrender his South Dakota nursing license; and

WHEREAS, the South Dakota Board of Nursing ("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

WHEREAS, Licensee agrees that the matters under investigation would be of a nature that would constitute grounds for the discipline of his license to practice nursing in South Dakota under SDCL § 36-9-49; and

WHEREAS, the Licensee agrees that he enters into this Voluntary Surrender Consent Order voluntarily and without duress or compulsion, in full understanding of the legal consequences of this document and his rights; therefore,

ITS IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. That the Board has jurisdiction over the person of the Licensee and the subject matter of this Voluntary Surrender Consent Order.
2. That Licensee on April 25, 2005, met with the South Dakota Board of Nursing staff ("Board Staff") at an Informal Meeting and admitted to having issues of

anxiety and depression. He also admitted to diversion of medication from his employer, United Retirement Center of Brookings, South Dakota. On May 2, 2005, Licensee signed a Voluntary Refrain from Nursing Practice. On June 8, 2005, Licensee voluntarily signed a Participation Agreement with the South Dakota Health Professionals Assistance Program (“HPAP”). On June 30, 2005, the South Dakota Board of Nursing (“Board”) mandated Licensee’s participation in HPAP. On July 15, 2005, Mike Coley of HPAP confirmed Licensee’s full participation and compliance in HPAP within the limitations set by the program. Due to his compliance, Licensee was released from his Voluntary Refrain from Practice and his license was re-issued to him. Licensee began employment at Brookings Manor and received satisfactory compliance reports from HPAP on September 30, 2005, and November 2, 2005.

On December 27, 2005, Licensee’s work-site monitor reported to HPAP that Licensee had admitted to diverting Dilaudid. Licensee, on December 27, 2005, also admitted to Mike Coley of HPAP that he [Licensee] had diverted the narcotic. Licensee now intends to leave the profession of nursing as a Practical Nurse.

3. That the Licensee has been given an opportunity to discuss this Voluntary Surrender Consent Order with an attorney of Licensee’s choice, and is aware of his right to a hearing in this matter, and of his rights under the United States and South Dakota Constitutions, laws, rules and/or regulations. Licensee hereby voluntarily waives all such rights to a hearing, notice, appearance, or any other rights under said Constitutions, laws,

rules and/or regulations. Licensee also agrees that the Board's Executive Secretary or her designee may present this Voluntary Surrender Consent Order to the Board and disclose to the Board all items of her investigation, including, but not limited to, any communications with Licensee.

4. That the Licensee's license to practice nursing in South Dakota shall be surrendered and the Board shall suspend said license for an indefinite period from the date of this Order. Licensee may apply to have his license reinstated for good cause shown.

5. That nothing in this Voluntary Surrender Consent Order should imply that the Licensee shall be reinstated. Licensee recognizes that the reinstatement terms, as well as the requirements for reinstatement, are at the sole discretion of the Board.

6. That if the Licensee requests reinstatement, Licensee has the burden of presenting information showing that Licensee's license should be reinstated.

7. That it is further stipulated and agreed that this Voluntary Surrender Consent Order is being entered into voluntarily by the Licensee and without threats or coercion and is entered into after the Licensee has been given ample opportunity to consider these matters and to discuss this Voluntary Surrender Consent Order with an attorney of Licensee's choice and that the Licensee has a full understanding of the legal consequences of this Voluntary Surrender Consent Order and of the Licensee's rights to a formal hearing on these matters, which rights are hereby waived by the signing of this

Voluntary Surrender Consent Order.

8. That the Board may enter an Order consistent with the terms of this Stipulation.

NOW, THEREFORE, the foregoing Voluntary Surrender Consent Order is entered into and is respectfully submitted to the Board with the request that the Board adopt its terms as an Order of the Board in the above matter.

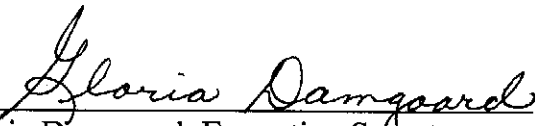
Dated this 1<sup>st</sup> day of Jan, 2006.

  
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Brian D. Smidt, L.P.N., Licensee

The South Dakota Board of Nursing meeting on the 7<sup>th</sup> day of February 2006, (approved)(rejected) the attached Voluntary Surrender Consent Order (as written) (with the following modifications):

and issued its Order as follows:

IT IS HEREBY ORDERED that the above Voluntary Surrender Consent Order is adopted shown herein by the South Dakota Board of Nursing this 7<sup>th</sup> day of February, 2006, by vote of 8 - 0.

  
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Gloria Damgaard, Executive Secretary  
South Dakota Board of Nursing