

SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE LICENSURE
PROCEEDINGS :

DOH 17-02

RE CALEB BENSON, RN :

License No. R043328, :

Licensee. :

**SOUTH DAKOTA
BOARD OF NURSING'S
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF SUSPENSION
WITH MANDATED HPAP**

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This matter came on before the South Dakota Board of Nursing ("Board") for a due process hearing on the summary suspension of the license of Caleb Benson, RN, License No. R043328 ("Licensee"), on February 16, 2017, at 1:00 p.m. in the conference rooms of the South Dakota Board of Nursing's office in Sioux Falls, South Dakota. Catherine Duenwald, Chief Hearing Examiner, Office of Hearing Examiners, State of South Dakota presided. Licensee appeared personally and by his attorney, Steven R. Smith. The Board appeared by its attorney, Kristine K. O'Connell. A quorum of the Board was present in person throughout these proceedings, in accordance with SDCL § 36-9-18. 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 at this hearing. This included the Licensee and Maria Piacentino, Director of the Health Professionals Assistance Program ("HPAP"). Exhibits 1 through 6 were introduced into evidence by the Board, all of which were admitted without objection. 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 one motion was made by the Board:

"That the South Dakota Board of Nursing continue Licensee's suspension and mandate HPAP." This motion was adopted on a vote of 9 to 0.

The Board considered the evidentiary testimony of the witnesses, the exhibits admitted into evidence, and other documents on file and being charged with the statutory obligation to protect the public health, safety, and welfare, as set forth in SDCL Ch. 36-9, the Board hereby makes the following:

FINDINGS OF FACT

1. That Caleb Benson is licensed to practice as a registered nurse in the State of South Dakota and held license number R043328.
2. That the Licensee, while attending nursing school, became a voluntary participant in the Health Professionals Assistance Program ("HPAP") beginning on August 25, 2014.
3. That Licensee's participation in HPAP was a result of the Licensee testing positive for marijuana, benzometabolite and metabolite of cocaine. Licensee had been arrested at that time and charged with ingestion of a controlled substance.
4. Licensee has a history of an arrest in 2008 for a minor in possession.
5. Licensee also has a history of an arrest in 2009 for disorderly conduct and driving while under 21 under the influence.
6. Licensee made his initial application to HPAP on July 15, 2014.

7. Licensee completed his initial substance abuse evaluation at Stepping Stones Rehabilitation in Mitchell, South Dakota, on July 15, 2014, as part of his HPAP intake and evaluation.
8. Licensee followed through with the recommendations to meet with an individual counselor in Chamberlain to address his symptoms and history of anxiety and depression and current diagnosis of adjustment disorder.
9. Licensee's Participation Agreement with HPAP required the Licensee to:
 - a. Abstain from alcohol and other drug use;
 - b. Random toxicology (15 to 18 per year);
 - c. Continued counseling with approved provider;
 - d. Psychiatric evaluation – diagnostic rule-out; and
 - e. Two-year duration with HPAP with one-year successful practice as a nurse.
10. Licensee was initially compliant with his Participation Agreement with HPAP.
11. As a result of his arrest, Licensee was sentenced to six weeks in jail, and was to complete a Cognitive Behavioral Intervention for Substance Abuse ("CBISA").
12. Licensee was granted a suspended imposition of sentence if he complied with the court's recommendations.
13. In May 2015, Licensee graduated with a BSN from South Dakota State University. He continued with HPAP.
14. On October 15, 2015, Licensee had a non-negative drug test indicating the presence of alcohol. He admitted to drinking four to five beers the night before testing.
15. Due the positive test, Licensee was required by HPAP to sign a Voluntary Refrain from Practice (although Licensee was not employed in nursing).

16. Licensee was then re-evaluated at Avera Addiction Recovery and was found to meet DSM criteria for "rule-out mild alcohol use disorder, and history of mild cannabis use disorder."

17. Licensee was recommended to attend one outpatient substance abuse treatment. As he was enrolled in CBISA, this met that level of care.

18. On November 15, 2015, Licensee came to Sioux Falls to meet with HPAP.

19. After signing the Voluntary Refrain from Practice, Licensee became noncompliant with HPAP.

20. From November 2015 through January 2016, Licensee did not respond to phone calls from his HPAP case manager, which led to a letter of warning being sent to Licensee of potential discharge.

21. On January 21, 2016, Licensee had a second non-negative drug test indicating the presence of ethanol. At the time, Licensee indicated he had used alcoholic beverage as part of a Native American ritual ceremony. A day later he admitted to his case manager that he had consumed wine with his girlfriend the night before.

22. In February 2016, the HPAP evaluation committee recommended increased monitoring of Licensee due to his alcohol use. The recommendation was to extend monitoring for a five-year period. Licensee was to attend two AA meetings per week, and begin the online HPAP support group.

23. On February 19, 2016, Licensee sent a message through Affinity to HPAP indicating he was choosing to be discharged from the program. HPAP sent a letter to the Board advising the Board that Licensee was electing to be discharged from HPAP.

24. On February 23, 2016, HPAP received documentation that Licensee had successfully completed his court-ordered CBISA outpatient services. His summary discharge noted his attendance was spotty, but that he did attend the required eight sessions. It was recommended by CBISA that Licensee abstain from alcohol and other drugs due to the failed UA's with HPAP.

25. After the discharge from CBISA, Licensee reapplied to HPAP, making a special request. Based upon his request, the Board, at its meeting that was occurring at the same time, chose to take no action to see if Licensee would again become compliant with HPAP.

26. On April 12, 2016, Licensee reapplied to HPAP and was considered a Board-mandated participant due to his unsuccessful discharge in February of 2016.

27. On April 12, 2016, Licensee completed an assessment as part of his reapplication and was found to meet a diagnosis of alcohol use disorder mild/actively using. He submitted a random UA on May 10, 2016, which results were dilute.

28. The Board sent the Licensee a letter on April 27, 2016, indicating that Licensee was to complete his HPAP application and comply with all recommendations.

29. On June 3, 2016, Licensee signed his second HPAP Participation Agreement, again agreeing to all of the terms and conditions that were contained in his HPAP Participation Agreement.

30. After being fully enrolled, HPAP excused a drug test for the Licensee as he stated that testing sites in his area were telling him he needed an appointment and it was too late in the day to make an appointment.

2. That the Board had the opportunity to view all testimony in this hearing, to witness the demeanor of the witnesses, and to view all evidence.

3. That Licensee's conduct as identified in the findings of fact is by clear and convincing evidence in violation of SDCL § 36-9-49(4), (7), and (10) in that the Licensee has not followed through with the mandates of the Board in regard to his participation in HPAP.

4. That the evidence of violations of the Nursing Practice Act is clear and convincing and the Board of Nursing has met its burden of proof.

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 Licensee's license to practice nursing in the State of South Dakota is hereby suspended.

2. That Licensee is mandated into the Health Professionals Assistance Program ("HPAP") and should be compliant with all of the terms and conditions of the Participation Agreement that he has signed.

3. That Licensee is hereby notified that any practice as or holding himself out as a registered nurse during the term of this suspension is a violation of SDCL § 36-9-68.

4. That Licensee may petition for reinstatement of his license at any time for "good cause" pursuant to SDCL § 36-9-57.

Dated this 16th day of March, 2017.

SOUTH DAKOTA BOARD OF NURSING

Kristin L Possehl
Kristin Possehl, Chair

The foregoing Findings of Fact and Conclusions of Law were adopted by the South Dakota Board of Nursing on the 16th day of March, 2017, by a vote of 8 - 0 with a quorum present at all times and in an open meeting by telephone / e-mail and notice given to the parties.

Dated this 16th day of March, 2017.

SOUTH DAKOTA BOARD OF NURSING

Gloria Damgaard
Gloria Damgaard, Executive Secretary