

SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE LICENSURE :
PROCEEDINGS :

DOH 17-01

RE: BONNIE MELISSA LEVY, a/k/a :
MELISSA LEVY, RN :

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

License No. R042096 :

Licensee. :

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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 Bonnie Melissa Levy, a/k/a Melissa Levy, RN, License No. R042096 ("Licensee"), on February 16, 2017, at 11:00 a.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, having been served with the Order of Summary Suspension and Notice of Hearing and Affidavit of Francie Miller by process server on January 5, 2017, did not appear in person to present evidence on her behalf or to confront witnesses. 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. The Board heard testimony presented by Amanda McKneely, MS, LAC, Program Director of the South Dakota Health Professionals Assistance Program. Exhibits 1 and 2 were entered into evidence. The Board also considered the affidavit and other documents on file in this case. 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 issues its order of suspension of Licensee, Bonnie Levy.” The motion was adopted by a vote of 9- 0.

The Board considered the evidentiary testimony of the witness, 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 Bonnie Melissa Levy, a/k/a Melissa Levy was licensed as a registered nurse in the State of South Dakota and held license number R042096.
2. That on or about October 30, 2013, Licensee admitted to the diversion of narcotics and other drugs from her then employer.
3. That as a result of said diversion, Licensee voluntarily surrendered her nursing license. The Voluntary Surrender Consent Order was approved by the Board on November 19, 2013.
4. Following her surrender, the Licensee entered into the Health Professionals Assistance Program (“HPAP”) and signed a Participation Agreement on July 20, 2014, and Licensee became fully enrolled in the program.

5. Licensee was compliant with HPAP and got to the point where HPAP supported her request to the Board for reinstatement.

6. HPAP sent a letter to the Board dated January 19, 2016, supporting Licensee's request for reinstatement.

7. On April 21, 2016, the Board voted to reinstate the RN license of the Licensee and mandated her continued participation in HPAP.

8. Licensee continued in HPAP after her reinstatement.

9. After reinstatement, the Licensee became discouraged as her action of diversion of narcotics limited her employment opportunities due to her receiving an OIG exclusion.

10. Licensee secured non-nursing employment. Shortly thereafter she became noncompliant with HPAP by failing to call in for testing or to follow up with HPAP.

11. On October 17, 2016, HPAP notified the Licensee and the Board that Licensee was being discharged from HPAP for failure to comply with her individual Participation Agreement.

12. On November 17, 2016, the Board took action and requested a voluntary surrender from the Licensee or face summary suspension for noncompliance with HPAP.

13. Licensee was nonresponsive to the Board or to any calls from HPAP or Board staff. As a result, Licensee's license was summarily suspended and she was noticed for a due process hearing.

From the foregoing findings of fact, the Board draws the following:

CONCLUSIONS OF LAW

1. That 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 Board had the opportunity to view all testimony in this hearing, to witness the demeanor of the witness, and to view all evidence.
3. That the Licensee's conduct as identified in the findings of fact is inconsistent with the health and safety of those persons entrusted to her care and violates statutes and rules and regulations regarding the practice of nursing and are in violation of SDCL § 36-9-49 (5), (7), and (10). In addition, the Licensee's conduct violates the statutes and rules regarding the practice of nursing.
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 hereby notified that any practice as or holding herself out as a registered nurse during the term of this suspension is a violation of SDCL § 36-9-68.

3. That Licensee may petition for reinstatement of her 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 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 to 0 with a quorum present at all times and in an open meeting by telephone / e-mail and notice given to parties.

Dated this 16th day of March, 2017.

SOUTH DAKOTA BOARD OF NURSING


Gloria Damgaard, Executive Secretary