

SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE LICENSURE :
PROCEEDINGS :

RE: TRACIE L. McCLARTY, LPN :

License No. P011950, :

Licensee. :

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND
ORDER OF SUSPENSION**

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The South Dakota Board of Nursing's ("Board") hearing on the summary suspension of Tracie L. McClarty, LPN, license number P011950 ("Licensee") came on for hearing before the Board at its office in Sioux Falls, South Dakota, on November 17, 2016, at 2:30 p.m.

The Licensee was provided notice of said hearing by regular and certified mail at her last known addresses. Licensee did not appear in person to present evidence on her behalf or to confront witnesses. The Board appeared by and through its attorney, Kristine K. O'Connell.

The Board considered the evidentiary testimony of Francie Miller, Board Investigator. The Board also considered the Board's exhibits numbered 1 and 2 that were entered into evidence. The Board also considered the affidavit and other documents on file in this case and being charged with the 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, the Board hereby makes the following:

FINDINGS OF FACT

1. That Tracie L. McClarty is licensed to practice as a practical nurse in the State of South Dakota and holds license number P011950.

2. That on or about March 11, 2016, while working in a long term care facility, the Licensee tested positive for marijuana.
3. As a result, the Licensee was terminated from employment and the positive test results were reported to the Board.
4. The Board investigator had telephone communication with the Licensee on April 15, 2016, at which time the Licensee indicated she would submit a second sample to the Board that would show her test results were negative.
5. The Licensee did not submit the second test results and attempts to contact her by the Board were unsuccessful.
6. The investigator also called Licensee's former employer regarding the results of the second test and received no response.
7. On or about August 5, 2016, the Board received notification from the Colorado Board of Nursing that the Licensee had been suspended from the practice of nursing in Colorado (Case Number 2016-2302).
8. The action by the Colorado Board of Nursing involved the Licensee's failure to submit to a mental health and/or physical examination to be conducted by the Peer Assistant Services (PAS) as ordered by the Colorado Board.
9. The Colorado Board ordered exam was required to determine if the Licensee was able to practice nursing with reasonable skill and safety to patients.
10. The Licensee failed to comply with the requirements of the Colorado Board's order, thus the Colorado initiation suspended McClarty's license to practice. Said order is to

continue until it has been vacated and Licensee is in compliance with the July 11, 2016, Colorado Board order.

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

CONCLUSIONS OF LAW

1. That the Board has jurisdiction and authority over this matter pursuant to SDCL §§ 36-9-1.1 and 36-9-49

2. 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 (4), (5), (7) and (10).

3. In addition, the Licensee is subject to this disciplinary action in that there has been a proceeding and action taken against the Licensee's license in another state in violation of SDCL § 36-9-49 (6).

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

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

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

Dated this 29th day of November, 2016.

SOUTH DAKOTA BOARD OF NURSING



Gloria Damgaard, RN, MS
Executive Director

The South Dakota Board of Nursing at its meeting on the 17th day of November, 2016, approved this Order of Suspension as written by a vote of 8-0, and issues its Order of Suspension consistent herein.

IT IS HEREBY ORDERED that the above Order of Suspension is adopted as an Order of the South Dakota Board of Nursing on this 29th day of November, 2016.

SOUTH DAKOTA BOARD OF NURSING



Gloria Damgaard, RN, MS
Executive Director