

SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE LICENSURE :
PROCEEDINGS :

RE: MARNIE G. MITCHELL, LPN :

License No. P008923 :

Licensee. :

**ORDER FOR SUMMARY
SUSPENSION AND
NOTICE OF HEARING**

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WHEREAS, Marnie G. Mitchell, LPN (“Licensee”), is licensed to practice as a practical nurse in the State of South Dakota and holds license number P008923; and

WHEREAS, on or about March 7, 2016, the South Dakota Board of Nursing (“Board”) received a complaint alleging that a pharmacy medication package was found in the Licensee’s apartment during move-out cleaning. The medication package contained one Tramadol 50 mg tablet with resident identification from the Licensee’s long term care employer; and

WHEREAS, after receiving the complaint, Board staff began an investigation into the complaint received; and

WHEREAS, on March 8, 2016, Board investigator, Francie Miller (“Miller”), sent a letter to the Licensee providing her notice of the case that was being opened by the Board; and

WHEREAS, Miller also wrote and obtained the Licensee’s employee file from the long term care facility; and

WHEREAS, on March 9, 2016, the Licensee contacted Miller. At that time, Miller explained the investigation process to Licensee. Because the case involved allegations related to narcotics, Miller gave the Licensee, as she does with other Licensees with similar issues, contact

information for the Health Professionals Assistance Program (“HPAP”). Miller later found out that Licensee voluntarily contacted HPAP that same day; and

WHEREAS, upon receipt and review of the Licensee’s employee file, it was noted that Licensee was written up for failure to perform assigned duties. Licensee had documented care items as being done and they were not done. Licensee was disciplined on September 23, 2015, for documenting a treatment as being done when the treatment was not done. On this same date, Licensee left the facility prior to reconciling the narcotic count. An audit of the PRN automatic medication dispensing machine showed that Licensee failed to document the administration of 98 PRN medications (including narcotics). The audit was from June 2015 through December 2015. Licensee had the highest failure to document totals than any other staff member. No other staff member had similar results. Licensee received corrective action in regard to this audit. She was written up on December 16, 2015, for the medication audit. On January 25, 2016, it was suggested that Licensee move to the day shift for additional education and to address her performance issues. On February 5, 2016, Licensee resigned immediately due to “health issues and feeling harassed and targeted for petty things;” and

WHEREAS, HPAP contacted the Board on March 17, 2016, advising that Licensee had been to the HPAP office for her initial evaluation; and

WHEREAS, on March 22, 2016, Board staff conducted an informal meeting with the Licensee at the Board office in Sioux Falls, South Dakota. Licensee denied taking any medication from the facility. Licensee stated that she cleaned her apartment and there could not have been any medication card left at the residence. When asked about the 98 medications not

documented, she said there was a faculty audit and other caregivers had similar results. (Follow up with employer on PRN medication audit indicated that no other staff had similar results.)

Licensee stated she left this employer because she was being harassed. She stated she had been in long term care all her career and never been treated like this. The facility was always busy; she cared for 63 patients; no other licensed staff and often only two CNA's; stated she was constantly stressed out and had to leave; and

WHEREAS, HPAP contacted the Board and advised that on March 24, 2016, Licensee again voluntarily met with HPAP and a provider to review her current medication list. HPAP reviewed recommendations made by the provider to Licensee. A month later, on April 20, 2016, Licensee advised she did not agree with the recommendations. On April 26, 2016, Licensee advised HPAP that she did not wish to sign a Participation Agreement with HPAP; and

WHEREAS, at the Board meeting held on April 21, 2016, the Board unanimously voted to mandate Licensee into HPAP. HPAP is a non-disciplinary action on Licensee's license and an alternative to discipline. The Licensee was also advised that being in HPAP would limit her to a single state license only. Licensee was sent a formal letter dated April 29, 2016, advising of the mandate, a single state licensure only, and the requirement that she be enrolled in HPAP within 60 days. Appeal information was also provided in the April 29, 2016, letter; and

WHEREAS, prior to receipt of the letter, the Licensee e-mailed Board staff asking what her discipline would be if she did not participate in HPAP. In an e-mail Licensee stated that she was "very discouraged with the program" and wondered what an alternative would be to HPAP; and

WHEREAS, it was reported that HPAP contacted the Licensee on May 2, 2016, to schedule a time for her to review the Participation Agreement. HPAP advised the Licensee that she needed to get something scheduled that week. Licensee indicated to HPAP that she was agreeable, but told HPAP she would call them back; and

WHEREAS, on or about May 6, 2016, Licensee scheduled an appointment with HPAP to sign her Participation Agreement. Licensee canceled her appointment to sign the Participation Agreement, advised that she had retained counsel and told HPAP that she had 60 days to become enrolled; and

WHEREAS, based on the above conduct and pursuant to SDCL § 36-2A-6, HPAP notified the Board on May 11, 2016, and advised that Licensee had been unsuccessfully discharged from HPAP. This information was conveyed to the Licensee in an e-mail from HPAP. The Board was copied on the e-mail; and

WHEREAS, due to Licensee's unsuccessful discharge from HPAP, her case was put back on the Disciplinary Committee agenda for a disciplinary review and for a recommendation to the Board for additional action. The Disciplinary Committee met on May 26, 2016, and made a recommendation which was presented to the full Board for its concurrence on June 9, 2016. The Board unanimously voted to summarily suspend the Licensee's license and notice her for a due process hearing; and

WHEREAS, based upon the affidavit of Francie Miller and the above stated conduct, the Board has concluded that Licensee's actions constitute unprofessional conduct in not following the Board's mandate into HPAP as an alternative to discipline. The Board has concluded

Licensee's actions require emergency action, in that Licensee's actions may endanger the health and safety of those who are, or will be, entrusted to her care in the future; and

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

NOW THEREFORE IT IS HEREBY ORDERED:

1. That the Board has jurisdiction of the Licensee and the subject matter of this Order.
2. That based on the above, the Board specifically finds that the public health, safety and welfare require emergency action against Licensee's license.
3. That based on the above, the Board specifically finds that the actions of the Licensee endanger the public health, safety and welfare, and imperatively require emergency action in that Licensee may endanger the health and safety of those persons who are or will be entrusted to her care in the future and that these are matters of a nature that would constitute further grounds for discipline of her license to practice nursing under SDCL § 36-9-49 (5), (7) and (10).
4. Based upon these findings, Licensee's license to practice nursing in South Dakota is hereby summarily suspended. Licensee may petition according to SDCL § 36-9-57 for reinstatement of her license at any time for "good cause."
5. That Licensee shall turn in her license to the Board within ten (10) days from the date of this Order and it shall be kept by the Board until further action on this matter.

6. Licensee is hereby notified that any practice of or holding herself out as a practical nurse during the terms of this Order of Summary Suspension is a violation of SDCL § 36-9-68.

7. This action is reportable discipline and will be published in the Board's newsletter and posted on its website and reported into the National Practitioner Data Bank (NPDB) as required by law.

The South Board of Nursing met on the 9th day of June, 2016, and approved this Order of Summary Suspension by a vote of 9-0, and issues its Order for Summary Suspension consistent herein as follows:

IT IS HEREBY ORDERED that the above is adopted as an Order of the South Dakota Board of Nursing this 22 day of June, 2016.

SOUTH DAKOTA BOARD OF NURSING



Gloria Damgaard, RN, MS
Executive Director

NOTICE OF HEARING

The South Dakota Board of Nursing ("Board") pursuant to SDCL §§ 1-26-16, 1-26-27, and 1-26-29, hereby provides this Notice of Hearing to Marnie G. Mitchell, LPN, License No. P008923 ("Licensee") as follows:

1. Hearing on the Order of Summary Suspension will take place before the Board on September 8, 2016, at 1:00 p.m. at the office of the South Dakota Board of Nursing, 4305 S. Louise Avenue, Suite 201, Sioux Falls, South Dakota.

2. This matter is an adversarial proceeding and Licensee has the right to be present at the hearing and to be represented by an attorney. These due process rights will be forfeited if they are not exercised at the hearing.

3. The hearing will address the Board's assertion, as set forth in its Summary Suspension, that the Licensee, by her conduct, violated SDCL §§ 36-9-49 (5), (7) and (10).


4. At the hearing, the Board will determine whether the Licensee's license shall be suspended, revoked or subject to other disciplinary action as determined by the evidence presented.

5. Licensee has a right to request that the agency use the Office of Hearing Examiners for this proceeding by giving notice of the request to the Board no later than ten (10) days after the service of this Notice of Hearing on Order of Summary Suspension.

6. A decision issued by the Board after the hearing may be appealed to the circuit court and to the state Supreme Court as provided by law.

Dated this 22 day of June, 2016.

SOUTH DAKOTA BOARD OF NURSING



Gloria Damgaard, RN, MS
Executive Director