

Being charged with the statutory obligation to protect the public health, safety and welfare set forth in ARSD 20:48:04:01, *et al.*, including the protection of the public from unsafe nursing practices and practitioners, the Board hereby makes the following:

FINDINGS OF FACT

1. Licensee is licensed to practice as a registered nurse in the State of South Dakota and holds license number R041875.
2. Licensee has been licensed as a registered nurse in South Dakota since December 1, 2013.
3. Prior to licensure, Licensee voluntarily entered into the Health Professionals Assistance Program (HPAP) in July 2012.
4. The Board mandated Licensee to HPAP in November 2013 and issued a letter of concern regarding Licensee.
5. In September 2014, the Board again issued a letter of concern for Licensee and ordered she continue her HPAP participation.
6. Licensee became non-compliant with HPAP. The Board noticed a hearing on Licensee's license due to her HPAP non-compliance in June 2015.
7. Licensee did not appear for the hearing. The Board suspended her license on June 11, 2015.
8. On August 16, 2018, Licensee requested reinstatement of her license. HPAP provided support for the reinstatement request.
9. The Board granted Licensee reinstatement in September 2018.

10. On October 15, 2018, the Board received an anonymous telephonic complaint regarding Licensee. The Complainant alleged Licensee was purchasing urine to pass random urine drug screens.

11. On October 16, 2018, HPAP requested a drug test. Licensee tested positive for methamphetamine on October 23, 2018.

12. Due to Licensee not responding to HPAP for over 28 days, missing required counseling over the same time period, and testing positive for an illegal substance, the HPAP evaluation committee reviewed Licensee's continued participation in the program and decided to discharge Licensee unsuccessfully from the program on November 26, 2018.

13. The Board's staff representative sent Licensee notice of the complaint and attempted to contact Licensee during the investigation of the complaint to no avail. Licensee has not responded or otherwise addressed the complaint and positive methamphetamine test with the Board's staff representative.

14. As of the date of the hearing, Licensee did not otherwise respond to the Board staff regarding the complaint.

15. No evidence exists as to whether Licensee is currently practicing in this state or elsewhere. Licensee has not responded or otherwise cooperated with the investigation or disciplinary proceedings as of the date of the hearing.

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 ARSD 20:48:04:01.
2. Pursuant to SDCL § 36-9-69, it shall be necessary to prove in any prosecution for any violation of this chapter only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation.
3. Based upon the above clear and convincing findings of fact, the Board concludes that Licensee has engaged in conduct in violation of SDCL § 36-9-49(4), in that Licensee has committed a drug related act, specifically consumption of illegal drugs, that interferes with Licensee's ability to practice nursing safely.
4. Based upon the above clear and convincing findings of fact, the Board concludes that Licensee engaged in conduct in violation of SDCL § 36-9-49(10), in that Licensee engaged in unsafe nursing practice, substandard care, or unprofessional or dishonorable conduct, including but not limited to the scope and standards of nursing practice contained in ARSD 20:48:04.01; ARSD 20:48:04.01:01, 02, 07.
5. Based upon the above clear and convincing findings of fact, the Board concludes that Licensee's mental condition, specifically continuous drug addiction, endangers the health or safety of a person who is or will be entrusted to the licensee's or applicant's care pursuant to SDCL § 36-9-49.1

6. The Board has a statutory obligation to protect the public health, safety and welfare set forth in SDCL § 36-9-1.1, including the protection of the public from unsafe nursing practices and practitioners.

7. Under SDCL 1-26-29, if the Board finds that public health, safety, or welfare require action, including suspension of a license, suspension may be ordered even on an emergency basis.

8. The Board concludes that, given the evidence presented at the hearing, there is clear and convincing evidence that Licensee continuing to practice nursing endangers the health and safety of those persons who are or will be entrusted to Licensee's care.

9. The Board concludes that disciplinary action, including specifically suspension of Licensee's license, is appropriate due to Licensee's violations of SDCL 36-9-49.

10. The South Dakota Board of Nursing, at the hearing on the 16th day of April, 2019, by a vote of 8-0, decided based on these Findings of Fact and Conclusions of Law to issue an Order of Suspension. Such Order of Suspension shall be separately entered.

Dated this 21st day of May, 2019.

SOUTH DAKOTA BOARD OF NURSING


Gloria Damgaard, RN, MS
Executive Director