

SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE LICENSURE :
PROCEEDINGS :

RE: ASHLEY JACOBSON, LPN, :
License No. P009659, :
Licensee. :

DOH 19-10
FINDINGS OF FACT
AND CONCLUSIONS OF LAW

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The South Dakota Board of Nursing (“Board”) noticed a contested case hearing in the above licensure proceedings, specifically for the Complaint and Notice of Hearing dated March 18, 2019, to be held on April 16, 2019, at 9:00 a.m.

The South Dakota Board of Nursing presided over the proceedings, along with Administrative Law Judge Catherine Williamson, Office of Hearing Examiners. Licensee Ashley Jacobson, LPN, failed to appear at the hearing. Michele Munson, the attorney prosecuting the licensing matter, presented evidence on behalf of the Board of Nursing. The proceeding was transcribed by a court reporter.

At the conclusion of the hearing, the Board considered the evidence and exhibits offered during the hearing, argument of counsel, as well as the entire record before the Board. After deliberations, the Board entered a verbal order to suspend Licensee’s license.

Pursuant to SDCL 1-26-25, the Board issues its final decision in writing through these written Findings of Fact and Conclusions of Law as well as a separate written Order issued pursuant to these Findings of Fact and Conclusions of Law.

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 licensed practical nurse in the State of South Dakota and holds license number P009659. Licensee is also licensed to practice as a licensed practical nurse in the State of Colorado and holds license number 334015. The State of Colorado is Licensee's primary licensing state.
2. On or about December 13, 2018, Licensee voluntarily completed an assessment with the Peer Assistance Services (PAS) in the State of Colorado.
3. During the assessment, Licensee admitted she had diverted opiates from October 2018 to November 2018, while employed at Pioneer Health Care Center in Rocky Ford, Colorado.
4. Licensee also admitted she had ongoing mental health concerns, for which she had not received any current treatment.
5. The professional evaluator with PAS determined, after the assessment, that Licensee was only safe to practice as a licensed practical nurse if she received treatment and monitoring.
6. Licensee signed a Cease Practice Agreement with PAS and agreed to follow a treatment plan with PAS prior to returning to work.

7. On December 18, 2018, Licensee signed a Non-Disciplinary Interim Cessation of Practice Agreement with the Colorado State Board of Nursing.

8. Licensee agreed, and the Colorado Board of Nursing ordered, that Licensee refrain from the practice of nursing pending further evaluation and investigation of Licensee so that the Board may determine what further action, if any, is warranted.

9. While Licensee's interim agreement with the Colorado Board of Nursing does not constitute discipline, Exhibit A was reported to the National Practitioner Data Bank.

10. The South Dakota Board of Nursing became aware of the action taken by the Colorado Board of Nursing regarding Licensee and obtained a Discipline Case Summary Report for Licensee.

11. On January 4, 2019, this Board's staff investigator and Nursing Program Specialist, Francie Miller, sent a letter to Licensee at her last known address on record with the Board, advising Licensee of the complaint received regarding her License and offering Licensee an opportunity to respond.

12. Licensee did not respond to the Board's January 4, 2019 letter.

13. The Board's staff investigator attempted to call Licensee on January 3, 2019 and February 20, 2019, but Licensee did not answer or otherwise respond.

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 South Dakota. 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 diversion of prescription medications, 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(5), in that Licensee has negligently, willfully, or intentionally acted in a manner inconsistent with the health or safety of a person entrusted to Licensee's care.
5. Based upon the above clear and convincing findings of fact, the Board concludes Licensee engaged in conduct in violation of SDCL § 36-9-49(7), in that Licensee violated provisions of Chapter 36-9 and/or the rules promulgated under it.

6. Based upon the above clear and convincing findings of fact, the Board concludes 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.

7. 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.

8. 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.

9. The Board concludes that, given the evidence presented at the hearing, there is clear and convincing evidence that Licensee engaged in drug diversion during her employment as a nurse that endangers the health and safety of those persons who are or will be entrusted to Licensee's care.

10. The Board concludes that disciplinary action, including specifically suspension of Licensee's South Dakota license, so that she has only a single state license in Colorado, is appropriate due to Licensee's violations of SDCL 36-9-49 (4), (5), (7), and/or (10).

11. 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 Suspending License. Such Letter of Reprimand shall be separately entered.