

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION**

BOARD OF NURSING

**In Re: Kate Barsah-Engel,
Applicant by Endorsement**

Docket No.: 2023-NUR-022

**FINAL DECISION AND
ORDER – 05/25/23**

I. ATTENDEES

Samantha O'Neill, Board Chair
Joni Menard, Board Vice-Chair
Melissa Tuttle, Board Member
Melissa Underhill, Board Member
Matthew Kitsis, Board Member
Maureen Murtagh, Board Member
Dwayne Thibeault, Board Member
Michele Melanson-Schmitt, Board Member
Jennifer Thibeault, Board Member
Attorney Rahkiya Medley, OPLC Board Counsel
Attorney Elizabeth Eaton, OPLC Board Counsel
Michael Gianunzio, OPLC Board Administrator
Jeanne Webber, OPLC Board Administrator
Attorney Nikolas K. Frye, OPLC Hearings Examiner and Presiding Officer
Kate Barash-Engel

II. CASE SUMMARY/PROCEDURAL HISTORY

On or about 3/31/23, the New Hampshire Board of Nursing ("Board") received an application for licensure as a RN from Kate Barash-Engel ("Applicant"). The Applicant supplemented her application with a written statement regarding her disciplinary history in Vermont. On 4/27/23 the Board voted to initiate an adjudicatory hearing to obtain clarification on the Applicant's past disciplinary matter and to determine if she meets the qualifications for licensure as an RN by endorsement. A Notice of Adjudicative

Hearing followed, and the Board then held the adjudicatory hearing on 05/25/23. This Final Decision and Order follows.

III. SUMMARY OF THE EVIDENCE

The Board received the following evidence pursuant to RSA 541-A:33 and Rule 207.09:

a. Exhibits were filed by Licensee, numbered as follows:

1. Application and supplemental paperwork

b. Sworn testimony was received from:

1. Kate Barash-Engel, Licensee (called by Licensee)

The Board took administrative notice of the Licensee's licensing file and the Licensee's NURSYS database file. The Presiding Officer fully admitted Exhibit 1 as material and relevant.

IV. PRELIMINARY MATTERS/OTHER MATTERS

The Board voted to hold most of the hearing in non-public pursuant to RSA 91-A:3, II(c), because the testimony was likely to adversely affect the reputation of the Applicant. Later during the hearing, the Applicant stated on the record that she had no objection to the Board adding an issue presented and explicitly waived her right to have 15 days' prior notice of that issue pursuant to RSA 326-B:38, IX. The additional issue presented allowed the Board to consider whether it should initiate reciprocal discipline against the Applicant's license should it grant her one. Pursuant to RSA 310-A:1-1, I, the Board also held this disciplinary portion of the hearing in non-public.

V. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED

The Licensee bears the burden of persuasion/proof by a preponderance of the evidence with respect to both the Issue Presented contained in the Notice of Hearing at section II.d.1¹ and the issue presented related to reciprocal discipline:

¹ At the outset of the hearing, the Board dismissed issue II.d.2 because it was a clerical mistake that should not have been included in the notice of hearing.

- 1) Whether the Applicant can show that she is eligible for licensure by endorsement pursuant to RSA 326-B:16, RSA 326-B:20, Rule 302.01, and Rule 302.03, by demonstrating sufficient evidence of good professional character and educational qualifications, where she was disciplined by the Vermont Board of Nursing on 9/16/21.

NOH at II.c.1.

- 2) Whether the Licensee can demonstrate why reciprocal discipline should not be imposed in New Hampshire, where the Licensee was disciplined in the State of Vermont. *See* RSA 326-B:37, II(f) and/or (r). *See also* Rules 402.04(d) and (e).

NOH at II.c.1.

Based upon the credible evidence presented at the hearing, the Board finds the following facts.

APPLICANT’S CASE-IN-CHIEF:

Kate Barash-Engel

The Applicant testified that she has been sober since 10/24/08. On or about 09/16/21, the Vermont Board of Nursing summarily suspended the Applicant’s Vermont registered nurse license for having diverted approximately 58 Gabapentin from her place of work in Burlington in July of 2021. *See* Exh. 1. The Applicant later entered into a 03/15/22 Stipulation and Consent Order with the Vermont Board of Nursing in docket numbers 2022-30 and 2022-31 to resolve this matter. *See id.* Under its terms, the Applicant agreed she committed professional misconduct under Vermont law by 1) diverting the aforementioned controlled substances and 2) failing to exercise professional judgment when it was necessary to avoid action repugnant to the obligations of the profession. *See id.* The Stipulation and Consent Order placed conditions on her license for a period of two years, commencing on 03/15/22. *See id.* The Board incorporates by reference herein Attachment A, which is a portion of Exhibit 1 and specifies the conditions on her Vermont License.

The Applicant testified that she is currently in compliance with the Stipulation and Consent Order. The Applicant stated she has consistently acknowledged the wrongfulness of her actions since the day her place of employment confronted her about the missing medication. She explained that she had a valid

prescription for the medication she took at the time of the diversion. She further detailed for the Board how she has addressed and resolved the issue with her PCP. Upon Board questioning, she explained the support systems she has in place that can help her in both Vermont and New Hampshire.

VI. DISCUSSION AND FINDINGS OF FACTS / CONCLUSIONS OF LAW:

After reviewing the evidence, drawing all reasonable inferences therefrom, and accounting for the demeanor and credibility of the witnesses, the Board finds that the Licensee failed to demonstrate, by a preponderance of the evidence, that her conduct in the jurisdiction of Vermont, as has been adjudicated, does not constitute grounds to impose no or lesser sanctions in New Hampshire. *See* Rule 402.04(d) and Plc Rule 213.04(b). Nonetheless, the Board also finds that the Licensee met her burden of proof, by a preponderance of the evidence, that she meets the requirements for licensure by endorsement as a registered nurse in New Hampshire, subject to her license having the disciplinary action taken by the Vermont Board of Nursing in docket numbers 2022-30 and 2022-31 imposed upon it. Based upon the evidence presented, the Board makes the following findings of fact in support:

1. The Applicant is applying to become a registered nurse by endorsement in New Hampshire. *See* Exh. 1 and Licensee's testimony.
2. On 09/16/21, the Vermont Board of Nursing summarily suspended the Applicant's Vermont Registered Nurse license for having diverted controlled substances at her place of work in Burlington, Vermont in July of 2021. *See* Exh. 1 and testimony of Applicant.
3. Subsequently, on 03/15/22, the Applicant entered into a Stipulation and Consent Order with the Vermont Board of Nursing in docket numbers 2022-30 and 2022-31, which finally resolved the allegations that she had diverted controlled substances at her place of work in Burlington, Vermont in July of 2021. *See* Exh. 1 and testimony of Applicant.
4. Specifically, the Vermont Board found that the Applicant had diverted or had attempted to divert drugs, equipment or supplies for unauthorized use and failed to exercise independent judgment in the performance of licensed activities when that judgment was necessary to avoid action repugnant to the obligations of the profession. *See* Exh. 1 and testimony of Applicant.
5. The Vermont Board of Nursing sanctioned the Applicant by placing the conditions on her license noted in the Stipulation and Consent Order for a minimum of two years, commencing

on 03/15/22. *See* Exh. 1 (Stipulation and Consent Order at pages 3-8)² and Testimony of Applicant.

6. The Applicant has filed a completed application with the Board that transparently discloses the disciplinary action taken by the state of Vermont against her Vermont registered nurse license. *See* Exh. 1.

Based upon those findings of facts and the evidence presented, the Board makes the following conclusions of law:

- 1) Pursuant Plc Rule 213.04, the Board concludes that the Licensee's conduct in the State of Vermont constitutes grounds to impose sanctions in New Hampshire. *See, i.e.*, RSA 326-B:37, II(f) and (r).
- 2) The Board concludes that the Applicant committed professional misconduct, as that term is defined at RSA 326-B:37, II(f).
- 3) The Board concludes that the Applicant committed professional misconduct, as that term is defined at RSA 326-B:37, II(r).
- 4) Pursuant to RSA 326-B:37, II, RSA 326-B:1, RSA 326-B:16, RSA 326-B:20, Rule 302.01, and Rule 302.03, the Board concludes that the Applicant is currently of good professional character and qualified for licensure by endorsement as a New Hampshire registered nurse with the disciplinary sanctions issued against her Vermont registered nurse license placed upon her New Hampshire registered nurse license.

Further, after consideration of the factors contained in Rule 402.04(g), and pursuant to RSA 326-B:37, III and Rule 402.04(i), (h), the Board takes the following disciplinary action intended to be the minimum sanctions, both in type and extent, that the Board believes will, based upon the unique facts and circumstances of each act of misconduct, protect the public and deter both the licensee charged and any other licensee from engaging in such misconduct in the future:

- A. Pursuant to RSA 326-B:37, III(a), Rule 402.04(i), and Rule 402.04(d) and (e), the Applicant's New Hampshire registered nurse license by endorsement is **CONDITIONED** for a **MINIMUM OF TWO (2) YEARS, commencing on 03/15/22**. The **CONDITIONS** on her New Hampshire registered nurse license by endorsement shall be as follows: **THOSE IMPOSED BY THE STATE OF VERMONT ON HER VERMONT REGISTERED LICENSE. SEE ATTACHMENT A, which is incorporated by reference herein.**

²² The relevant portion of Exhibit 1 is incorporated by reference herein as Attachment A.

VII. CONCLUSION AND DECISION:

Pursuant to RSA 326-B:37, and Rule 402, the Board hereby makes findings of professional misconduct and disciplined as specified herein. Pursuant to RSA 326-B:16 and RSA 326-B:20, the Applicant's application for becoming a New Hampshire registered nurse by endorsement is granted. The New Hampshire Office of Professional Licensure and Certification shall issue a license to the Applicant forthwith subject to the conditions noted herein and in Attachment A. Pursuant to RSA 326-B:36-a, a copy of this Order shall forthwith be forwarded to the New Hampshire Professional Health Program for compliance monitoring of the imposed conditions on the Applicant's license.

DATED: 5/30/2023

_____/s/ Nikolas K. Frye, Esq._____
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Authorized Representative of the Board of Nursing-
New Hampshire Office of
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