

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

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**BOARD OF NURSING**

**In Re: Mark LaBranche,  
License # 064635-24 (LNA)**

Docket No.: 2023-NUR-002

**FINAL DECISION AND  
ORDER – 03/23/23**

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**I. ATTENDEES**

Samantha O'Neill, Board Chair  
Joni Menard, Board Vice-Chair  
Melissa Tuttle, Board Member  
Matthew Kitsis, Board Member  
Maureen Murtaugh, Board Member  
Dwayne Thibeault, Board Member  
Michele Melanson-Schmitt, Board Member  
Attorney Elizabeth Eaton, OPLC Board Counsel  
Michael Gianunzio, OPLC Board Administrator  
Jeanne Webber, OPLC Board Administrator  
Attorney Collin Phillips, OPLC Hearing Counsel  
Attorney Shane Goulet, OPLC Hearings Examiner and Presiding Officer  
Ren Horne, OPLC Investigator (Witness)  
Dr. Molly Rossignol, Medical Director New Hampshire Professional Health Program (Remote Witness)  
Lynn M. Beede, Administrator Coos County Nursing Home (Witness)

**II. CASE SUMMARY/PROCEDURAL HISTORY**

On 07/28/22, the Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”), acting on behalf of the Board of Nursing (“Board”), received a complaint from Sara Berry, RN, Coos County Nursing Home alleging that Mark LaBranche (“Licensee”) was suspected of having reported to work under the influence of liquor and/or illegal drugs on 07/15/21 and has a history of poor work performance stemming back to at least 12/16/21. After discussion, the Board voted on

11/17/22 to commence an adjudicative/disciplinary proceeding in this matter. A Notice of Adjudicative Hearing followed, and the Board then held the adjudicatory hearing on 03/23/23 at 11:00 AM. 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 submitted by Hearing Counsel, numbered as follows:

1. Addendum to Report of Investigation
2. Complaint filed by Sarah Berry, Rn/DON
3. 03/29/2022 Incident Narrative by ADON
4. 03/30/2022 Alcohol Lab Test Results
5. 03/30/2022 Employee Warning Notice
6. 06/06/2022 Incident Narrative by Audrey Cintron RN/BSN
7. 06/07/2022 Incident Review by DON Berry and Administrator Beede
8. 08/15/2022 Voluntary Preliminary Agreement Not to Practice
9. Letter from Dr. Molly Rossignol

b. Exhibits were submitted by Licensee, labeled as follows:

A. None.

b. Testimony was received from:

1. Lynn M. Beede, Administrator Coos County Nursing Home (called by Hearing Counsel, through offer of proof)
2. Dr. Molly Rossignol, Medical Director New Hampshire Professional Health Program
3. Ren Horne, OPLC Investigator

All exhibits were admitted into evidence as full exhibits after the Presiding Officer determined they were material and relevant. The witness' were sworn to their testimony and further offer of proof under oath.

### **IV. PRELIMINARY MATTERS**

The Licensee failed to appear for the hearing, which was available via in-person. The Board took administrative notice of its file in this matter. The Board's file shows the Board Administrator emailed the Notice of Hearing to the Licensee on February 1, 2023 to the email address listed in his licensing

profile. It was returned undeliverable. The Board Administrator mailed the Licensee a Notice of Hearing via certified mail, return receipt requested on 02/01/23 at the last known address he provided to the Board, receipt was returned signed by the Licensee and the regular mail was not returned. The Notice of Hearing contains the date, time, and location of the adjudicatory hearing, as well as the items required by RSA 541-A:31, III. It also informs the recipients that the Board's action was initiated based upon a complaint and provides the complainant with the ability to intervene. Hearing Counsel represented that he had received no correspondence from the Licensee, despite sending him an appearance, the witness and exhibit list, and exhibits pursuant to the Notice of Hearing and Board Rule 207.07. Hearing Counsel's Notice of Appearance, Letter of Production was sent to the Licensee via Certified mail on February 16, 2023 and was signed for by the Licensee. Hearing Counsels Proposed Findings of Fact and Rulings of Law were sent via certified mail to the Licensee on March 20, 2023 and was signed for by the Licensee.

Based upon the foregoing, the Board finds that it has complied with the service requirements under RSA 326-B:38, IX. The Board additionally finds that it has provided "notice reasonably calculated, under all the circumstances, to apprise ... [the Licensee] ... of the pendency of the action and afford ... [her] ... an opportunity to present ... [her] ... objections." *See, i.e., Jones v. Flowers*, 547 U.S. 220, 225-26 (2006). Although not necessarily required in this situation, the Board also find its record and Hearing Counsel's offer of proof demonstrate that the Board took "additional reasonable steps" to provide notice to the Licensee. *See Id.* For these reasons, the Presiding Officer recommended to the Board that it move forward with the hearing *in absentia* (without the Licensee present), pursuant to Rule 208.02(f). The Board voted unanimously in favor of this recommendation. **THIS ORDER SERVES AS THE PRESIDING OFFICER'S WRITTEN MEMORIALIZATION OF THAT RECOMMENDATION TO THE BOARD. PARTIES AND INTERVENORS HAVE 10 DAYS FROM THE DATE OF THIS ORDER**

**TO FILE ANY WRITTEN OBJECTIONS WITH THE BOARD REGARDING THAT DECISION.**

**RULE 208.02(F).**

**V. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED**

Hearing Counsel bears the burden of proof by a preponderance of the evidence with respect to Issue Presented II.c.1 and 2, Rule 207.10. To present his case, Hearing Counsel provided an offer of proof supported by the sworn testimony of Lynne Beede and Exhibits 1-9. Dr. Molly Rossignol was sworn and testified briefly to authenticate Exhibit 9. OPLC Investigator Ren Horne was sworn and testified that Exhibit 1 was a true and accurate report. Additionally, “Findings of Fact” were submitted by Hearing Counsel. Based upon the evidence presented at the hearing, the Board finds the following facts.

“Hearing Counsel’s Findings of Fact” (paragraphs 1-14) are incorporated by reference into this Order as follows:

1. Respondent<sup>1</sup> is a Licensed Nursing Assistant (LNA) having license #064635-24.
2. Respondent has no prior disciplinary history.
3. Respondent was employed at Coos County Nursing Home (“CCNH”) in Berlin, NH. *See* Exhibit 2 and Exhibit 5.
4. On 03/29/2022, Respondent reported for a work at CCNH. *See* Exhibit 3.
5. During this shift, Respondent was confronted by Assistant Director of Nursing Susanne Rano, RN on suspicion of being under the influence while at work. *See* Exhibit 3.
6. Respondent submitted to a fitness for duty test. *See* Exhibit 3 and Exhibit 4.
7. The fitness for duty test reflected impairment from a positive alcohol result of 203.0 mg/dL. *See* Exhibit 4.
8. As a result, CCNH Administrator Lynn Beede, MSN, APRN, FNP-BC, NHA, imposed a five-day suspension and other expectations. *See* Exhibit 5.
9. On 07/15/2022, multiple staff reported Respondent smelled of alcohol. *See* Exhibit 2.
10. On 07/15/2022, Respondent refused to submit to a fitness for duty test. *See* Exhibit 2.
11. On 08/11/2022, Respondent entered into a Voluntary Preliminary Agreement Not to Practice (“PANP”) with the Board. *See* Exhibit 8.
12. As a term of the PANP, Respondent agreed in paragraph 5. to “cooperate and meaningfully participate with the New Hampshire Professionals Health Program (“NHPHP”) and fulfill all requirements and recommendations set forth by NHPHP.” *See* Exhibit 8.
13. Respondent met with Dr. Molly Rosignol, Medical Director of NHPHP who discussed the program of monitoring at NHPHP. *See* Exhibit 9.
14. After learning of NHPHP’s program of monitoring, Respondent has neither cooperated nor participated with NHPHP. *See* Exhibit 9.

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<sup>1</sup> The Licensee (Mark LaBranche) is identified in Hearing Counsel’s, (incorporated), Findings of Fact as “Respondent”.

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

After reviewing all the evidence and drawing all reasonable inferences therefrom, as well as accounting for the demeanor and credibility of the witness, the Board finds, by a preponderance of the evidence, that the Licensee committed professional misconduct. “Hearing Counsel’s Findings of Facts” are adopted by the Board and incorporated by reference into the Board’s findings. “Hearing Counsel’s Conclusions of Law” are adopted in so far as they do not contradict the Boards findings below. Based upon the evidence presented and the findings of fact made herein, the Board additionally finds and concludes as follows:

- 1) The Board concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(g), RSA 326-B:37, II(p)(1), and RSA 326-B:37, II(q)(2). In drawing this conclusion, the Board specifically finds, by a preponderance of the evidence, that the Licensee worked while under the influence of alcohol.
- 2) The Board concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(o). In drawing this conclusion, the Board specifically finds, by a preponderance of the evidence, that the Licensee violating one or more terms of the approved Preliminary Agreement Not to Practice signed by the Licensee on 08/11/2022.
- 3) Pursuant to RSA 326-B:37(III)(b), and upon a finding of misconduct under RSA 326-B:37, II, the Board **REVOKES** the Licensee’s license to practice as a LNA in New Hampshire.
- 4) In administering this discipline, the Board considered and weighed the factors enumerated in RSA 326-B:37(III) and Rule 402.04(g).

**VII. CONCLUSION AND DECISION:**

Pursuant to RSA 326-B:37, and Rule 402, the Board hereby makes the herein findings of professional misconduct. The Licensee' license to practice as an LNA in New Hampshire is **REVOKED**.

DATED: ~~4/25/2023~~~~4/18/2023~~  
Esq. \_\_\_\_\_

\_\_\_\_\_/s/ Shane D. Goulet,

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