

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

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**BOARD OF NURSING**

**In Re: Jay Bean,  
Applicant for LNA Licensure**

Docket No.: 2022-NUR-0049

**FINAL DECISION AND  
ORDER – 12/15/22**

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**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 Murtaugh, Board Member  
Michele Melanson-Schmitt, Board Member  
Wendy Stanley-Jones, Board Member  
Dwayne Thibeault, Board Member  
Attorney Lauren Warner, OPLC Board Counsel  
Ashley Czechowicz, OPLC Board Administrator  
Jeanne Webber, OPLC Board Administrator  
Attorney Nikolas K. Frye, OPLC Hearings Examiner and Presiding Officer

**II. CASE SUMMARY/PROCEDURAL HISTORY**

On or about 09/15/22, the Office of Professional Licensure and Certification (“OPLC”) received a completed LNA application from Jay Bean (“Applicant”) on behalf of the New Hampshire Board of Nursing (“Board”). On 10/27/22, due to concerns about the Applicant’s criminal history (including 2021 convictions for domestic assault and disorderly conduct), the Board voted to commence an adjudicatory hearing. The purpose of the hearing was to obtain clarification on the past criminal matters and determine if the Applicant meets the qualifications for licensure as an LNA by endorsement pursuant to RSAs 326-

B:16 and 19. A Notice of Adjudicative Hearing followed, and the Board then held the adjudicatory hearing on 12/14/22 at 1:00 PM EST. 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 the Board, numbered as follows:

1. Applicant's application and related documentation submitted therewith
2. Email Correspondence from the Applicant to the Board Administrator dated 11/16/22-11/17/22

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

A. None.

b. Testimony was received from:

A. Not applicable, the Applicant failed to appear.

### **IV. PRELIMINARY MATTERS**

The Applicant failed to appear for the hearing, which was available via in-person and Zoom. The Board took administrative notice of its file in this matter. The Board's file shows the Board sent a Notice of Hearing to the Applicant at the address he provided on his application via certified mail, return receipt requested on 11/16/22. The certified mail was picked up on 11/17/21. The Board's file shows 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. The Board's file also shows that the Notice of Hearing was sent by email and first class mail to the email address and address provided on the Applicant's application. An email from the Licensee dated 11/16/22 responding to the emailed Notice of Hearing says: "[y]eah. That's what the letter I wrote was for." In response, the Board Administrator sent an 11/16/22 email saying: "[t]hey reviewed the letter you provided and voted to commence the Show Cause Hearing." To this email, the Applicant responds with "No." The Licensee failed to appear for the prehearing conference held via Zoom on 12/07/22 at 9:00 AM EST. The prehearing conference was noticed in the Notice of Hearing.

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 Applicant] ... of the pendency of the action and afford ... [him] ... an opportunity to present ... [his] ... objections.” *See, i.e., Jones v. Flowers*, 547 U.S. 220, 225-26 (2006). Although not necessarily required in this situation, the Board also finds its record demonstrate that the Board took “additional reasonable steps” to provide notice to the Applicant. *See Id.* For these reasons, the Presiding Officer recommended to the Board that it move forward with the hearing *in absentia* (without the Applicant 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**

The Board bears the burden of proof by clear and convincing evidence with respect to Issue Presented II.d.1, which says “[w]hether, pursuant to RSA 332-G:13, VI, the Applicant's criminal record disqualifies him from obtaining state recognition because it includes a conviction(s) for a felony or violent misdemeanor; and the state has an important interest in protecting public safety that is superior to the individual's right (The Board may make this conclusion only if it determines, by clear and convincing evidence that 1) the specific offense for which the Applicant was convicted is substantially related to the state's interest; 2) the Applicant, based on the nature of the specific offense for which the Applicant was convicted and the Applicant's current circumstances, is more likely to re-offend by virtue of having the license than if the Applicant did not have the license; and 3) a re-offense will cause greater harm than it

would if the Applicant did not have the license.)” NOH at II.d.1. The Applicant provided no additional documentation in advance of the hearing. The Board entered the Applicant’s previously submitted application materials as a full exhibit, including his criminal record, which was **SEALED** pursuant to RSA 326-B:15, III. The record shows 06/16/21 misdemeanor convictions for Assault-Domestic 13V1042 and Disorderly Conduct-Fight ETC in the state of Vermont. The Applicant received an 18 month deferred sentence for the first charge and a \$250.00 fine for the second charge. The Applicant provided an unsworn written statement/explanation of the convictions dated 10/13/22. The Board also relied upon the Applicant’s 11/16/22 through 11/17/22 email correspondence with the Board Administrator relating to this hearing.

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

Applying the standard set forth in RSA 332-G:13, as harmonized with RSA 326-B:16, IV and RSA 332-G:10, the Board concludes the burden of proof in this case has been met. The Board finds that on 06/16/21, the Applicant was convicted of misdemeanor Assault-Domestic 13V1042 and Disorderly Conduct-Fight ETC in the state of Vermont. The Board concludes both convictions are violent misdemeanors within the meaning of RSA 332-G: 13, VI(a).

Based on its combined training and experience, the Board finds that LNAs are tasked with assisting some of the most vulnerable members of society and working with them can, at times, be challenging, stressful, and frustrating. Further, the Board additionally finds that the facts surrounding the Applicant’s criminal convictions demonstrate poor decision making to engage in violent, confrontational behavior when placed in stressful situations. The Board therefore concludes, by clear and convincing evidence, that the specific offenses for which the Applicant was convicted are substantially related to the Board’s interest in protecting the public safety, namely the vulnerable members of society with whom LNAs may

and frequently assist. The Board further concludes based upon these findings of fact that a re-offense will therefore cause greater harm than it would if the Applicant did not have an LNA license.

The Board has also considered the Applicant's current circumstances as noted in his written submission to the Board dated 10/13/22. The Board; however, assigns it little weight because the explanation is not submitted under oath or subject to Board questioning. The Board also assigns it little weight because it finds based on his 11/16/22 through 11/17/22 email correspondence with the Board Administrator that the Applicant willfully failed to appear at this hearing, knowing that its purpose was for the Board to question him under oath about his written statement and criminal record. Additionally, the Board finds that these the convictions are recent. Based on the foregoing, the Board concludes, by clear and convincing evidence, the Applicant is more likely to re-offend by virtue of having an LNA license than if he did not have one. In making this determination the Board considered the vulnerable segment of society with whom LNAs may and frequently assist.

For the reasons stated herein, the Board concludes, by clear and convincing evidence, that the Board has an important interest in protecting public safety that is superior to the Applicant's right to obtain licensure as an LNA. Consequently, the Board hereby denies the Applicant's application for licensure as an LNA.

**VI. ORDER AND DECISION:**

Pursuant to RSA 326-B:16, RSA 326-B:19, RSA 332-G:13, and Rules 300 et seq., the Board hereby DENIES Jay Bean's application for LNA.

DATED: 12/20/2022

\_\_\_\_\_/s/ Nikolas K. Frye, Esq.\_\_\_\_\_  
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