

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

BOARD OF NURSING

**In Re: Antonio Boyd,
LNA License # 061980-24
Expired**

Docket No.: NUR 22-019

**FINAL DECISION AND
ORDER – 09/22/22**

I. ATTENDEES

Samantha O'Neill, Board Chair
Joni Menard, Vice Chair
Melissa Tuttle, Board Member
Melissa Underhill, Board Member
Matthew Kitsis, Board Member
Maureen Murtaugh, Board Member
Michele Melanson-Schmitt, Board Member
Attorney Lauren Warner, OPLC Board Counsel
Attorney Shane Goulet, OPLC Board Counsel
Attorney Michael Haley, DOJ Board Counsel
Ashley Czechowicz, OPLC Board Administrator
Jeanne Webber, OPLC Board Administrator
Attorney Marissa Schuetz, OPLC Hearing Counsel
Attorney Nikolas K. Frye, OPLC Hearings Examiner and Presiding Officer
Brianna Miller, OPLC Investigative Paralegal and Witness

II. CASE SUMMARY/PROCEDURAL HISTORY

On or about 10/08/19, the Office of Professional Licensure & Certification, Division of Enforcement (“OPLC Enforcement”) received, on behalf of the New Hampshire Board of Nursing (“Board”), a complaint from Aureus Medical alleging Antonio Boyd (“Licensee”) had taken a break from his shift at Rockingham County Rehabilitation and Nursing Center (“RCRNC”) in Brentwood, New Hampshire on 08/12/19 and never returned, abandoning his patients. After investigation, the Board voted on 05/26/22 to commence an adjudicative/disciplinary proceeding in this matter. A Notice of Adjudicative

Hearing followed, and the Board then held the adjudicatory hearing on 09/22/22 at 1:00 PM. 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. Report of Investigation
2. Complaint dated 10/07/19
3. Notification Letter dated 09/13/19
4. Second Request for Response dated 10/16/19
5. Employment Records from Aureus Medical
6. Employment Records from Rockingham County Nursing Home
7. IN License information
8. OH License information
9. WA License information
10. CO License information

b. Sworn testimony was received from:

1. Brianna Miller, OPLC Investigative Paralegal (via offer of proof and through questioning)

c. Proposed Findings of Fact and Conclusions of Law presented by Hearing Counsel.

All exhibits were admitted into evidence as full exhibits after the Presiding Officer determined they were material and relevant. The Board accepted Hearing Counsel's Proposed Findings of Fact and Conclusions of Law for its consideration.

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED

The Licensee failed to appear for the hearing, which was available via in-person attendance and Zoom. The Board took administrative notice of its file in this matter. The Board's file shows the Board Administrator mailed the Licensee a Notice of Hearing via certified mail, return receipt requested at the last known address he provided to the Board more than 15 days before 09/22/22. 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. Based upon the following, the Board finds that the aforementioned complies with the services requirements under RSA 326-B:38, IX.

The Board undertakes a due process analysis as well. The Board's file shows its Administrator also sent copies of the notice to the Licensee via first class mail and email to the respective last known address and email address on file with the Board. The first class mail was not returned. The certified mail was available for pick up on 07/18/22 but never picked up. The Board sought further information from Hearing Counsel as to any efforts she had made to inform the Licensee of this matter. Hearing Counsel stated that she had made multiple attempts to contact the licensee between July and early September of 2022 as follows: via telephone, email, regular mail, and certified mail. Hearing Counsel was unable to reach Licensee at the telephone number but was able to leave one voicemail, later the line was disconnected. Hearing Counsel had two email addresses for the Licensee. She tried communicating with him by his email address on file with the Board, as well as one she found in his curriculum vitae, but never heard back. She never received a mailed response from the Licensee either.

Based upon the forgoing, the Board 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). Additionally, although not necessarily required in this situation, the Board finds the Board's 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).

The Board next proceeded to adjudicate the matter. Although the Licensee failed to appear, Hearing Counsel still held the burden of proof by a preponderance of the evidence. Rule 207.10. To make her case, Hearing Counsel provided Exhibits 1 through 10, which were accepted as full exhibits by the Board, and an offer of proof with brief questioning, which was supported by sworn testimony from Brianna Miller, the OPLC Investigative Paralegal in this matter. Based upon the evidence presented at the hearing, the Board finds the following facts.

Based upon the offer of proof and the exhibits, the Board adopts Hearing Counsel's proposed findings of fact which are as follows:

Antonio Boyd ("Respondent") is a licensed nursing assistant who holds New Hampshire license number LNA 061980-24, which was issued on April 5, 2019. His license expired April 27, 2022. Respondent was employed on a travel assignment at Rockingham County Rehabilitation and Nursing Center in Brentwood, NH ("Facility") beginning June 14, 2019, and scheduled to end August 17, 2019. During that time frame, Respondent was employed by Aureus Medical Group ("Aureus") as a travel LNA/CNA. On or about July 1, 2019¹, while on shift at the Facility, Respondent went on a scheduled meal break and never returned. *See* Exhibit 5, pg HC018, Exhibit 6, pg HC051 and HC053. Respondent failed to inform a supervisor or other staff that he did not plan to return to complete his shift. Aureus subsequently requested a wellness check on Respondent's provided housing and discovered all of Respondent's belongings had been removed. *See* Exhibit 6, pg HC05. Respondent failed to respond to repeated inquiries from both the Facility and Aureus, and subsequently was terminated from both for patient abandonment. *See* Exhibit 5, pg HC015. A Complaint was filed by Aureus on or about October 7, 2019. Respondent failed to respond to repeated requests from the Board for more information. *See* Exhibits 3 and 4. Respondent appears to have an active CNA/LNA license in several other states, including Indiana, Ohio, and Colorado. *See* Exhibits 7-10. In May of 2019, Respondent was reported to Aureus from a facility in Wisconsin for a "no call, no show" to a shift. When he finally responded to Aureus, Respondent stated he no longer felt safe in the hospital provided housing due to an incident with local police. Respondent then requested to end that assignment early. *See* Exhibit 5, pg HC023-HC031.

09/21/22 Proposed Findings of Fact and Conclusions of Law at pars. 1-11.

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

¹ The Complaint from Aureus incorrectly states the incident occurred on 8/12/19. Evidence provided by the Facility confirms the incident occurred on July 1, 2019. *See Prosecutors Exhibit 6 page HC053.*

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. Based upon the evidence presented and the findings of fact made herein the Board concludes:

- 1) The Licensee committed professional misconduct as defined at RSA 326-B:37, II(e);
- 2) The Licensee committed professional misconduct as defined at RSA 326-B:37, II(g);
- 3) The Licensee committed professional misconduct as defined at RSA 326-B:37, II(h);
- 4) The Licensee committed professional misconduct as defined at RSA 326-B:37, II(k); and
- 5) The Licensee committed professional misconduct as defined at RSA 326-B:37, II(q)(2) (*see* Rule 402.04(b)(2));

The Board next considers the appropriate discipline to administer, if any, pursuant to RSA 326-B:37(III)(b). In the instant case, the Licensee's license has expired. For this reason alone, the Board administers no sanction in relation to the above findings of professional misconduct. However, the Board wishes to make it clear that viewing the facts of this case in light of the factors enumerated in RSA 326-B:37(III) and Rule 402.04(g). Factors 1, 2, 5, 6, 7 and 8 of Rule 402.04(g) would have weighed heavily in favor of imposing significant discipline against the Licensee, whose misconduct can be concisely described as egregious and a threat to the public safety, health, and welfare. Were the Licensee still actively licensed, the Board would have indefinitely suspended his license or revoked it. *See* RSA 326-B:37, III(a) and (b).

VI. CONCLUSION AND DECISION:

Pursuant to RSA 326-B:37, and Rule 402, the Board hereby makes the herein findings of professional misconduct. Hearing Counsel's Proposed Findings of Fact and Conclusions of Law are

adopted insofar as they are consistent with this order and decision. No sanctions are administered for the reason stated in Section V of this Order.

DATED: 9/30/2022

_____/s/ Nikolas K. Frye, Esq._____
Nikolas K. Frye, Esq., Hearings Examiner
Authorized Representative of the Board of Nursing-
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301