

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

BOARD OF NURSING

**In Re: Jennifer Buonopane,
LNA License #045373-24**

Docket No.: 2022-NUR-010

**FINAL DECISION AND
ORDER – 05/26/22**

I. ATTENDEES

Samantha O'Neill, Board Chair
Melissa Tuttle, Board Member
Melissa Underhill, Board Member
Matthew Kitsis, Board Member
Maureen Murtaugh, Board Member
Gene Harkless, Board Member
Wendy Stanley Jones, Board Member
Michele Melanson-Schmitt, Board Member
Attorney Michael Haley, DOJ Board Counsel
Ashley Czechowicz, OPLC Board Administrator
Attorney John Garrigan, OPLC Hearing Counsel
Attorney Nikolas K. Frye, OPLC Hearings Examiner and Presiding Officer
Jennifer Buonopane, Licensee
Karen Belair, OPLC Investigator and as Witness

II. CASE SUMMARY/PROCEDURAL HISTORY

On or about 07/30/21, the Board of Nursing (“Board”) received a complaint from the New Hampshire Department of Health and Human Services, Division of Community Based Services, Bureau of Elderly and Adult Services (“BEAS”) alleging that between 06/28/21 and 07/15/21 Jennifer Buonopane (“Licensee”), while working at Salemhaven Skilled Nursing and Rehabilitation Center in Salem, New Hampshire (“Salemhaven”), used undue influence to obtain money from a resident of, RD for her own profit/advantage. After investigation, the Board voted on 01/27/22 to commence an

adjudicative/disciplinary proceeding in this matter. A Notice of Adjudicative Hearing followed, and the Board then held the adjudicatory hearing on 05/26/22 at 9:00 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. Report of Investigation, dated 12/15/21
2. Salemhaven Patient Checkout Form dated 06/28/21
3. Andrea Janiak Internal Investigation Notes, dated 07/12/21 – 07/14/21
4. Licensee's Response to Complaint, dated 09/10/21
5. NH Lottery Website Screenshot showing 06/21 winners
6. Salemhaven Professional Boundaries Policy, undated

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

- A. Printout of Licensee's Bank of America bank statement showing 01/01/21 – 06/30/21

b. Testimony was received from:

1. Karen Belair, OPLC Investigator (called by Hearing Counsel)
2. Licensee (called by Licensee)

All exhibits were admitted into evidence as full exhibits after the Presiding Officer determined they were material and relevant. All witnesses testified under oath.

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED

Hearing Counsel has the burden of proof by a preponderance of the evidence. Rule 207.10. To present his case, Hearing Counsel provided Exhibits 1 through 5 and testimony from Karen Belair, the complainant in this matter. The Board also requested submission of Exhibit 6 in this matter, which was admitted as a full exhibit as part of Hearing Counsel's case-in-chief. Licensee presented Exhibit A and her own testimony for her case-in-chief. Based upon the evidence presented at the hearing, the Board finds the following facts.

Karen Belair

The Board's file reflects that the Licensee is actively licensed as a Licensed Nursing Assistant ("LNA") in New Hampshire, with license number 045373-24. The first witness to testify was Karen Belair, who opened by explaining she is the OPLC investigator who was assigned to investigate this matter. She testified that on 07/30/21, OPLC received an email notification from Adult Protective Services alleging the Licensee exploited a resident at Salemhaven between 06/28/21 and 07/12/21. The specific allegations were that the Respondent "through undue influence, harassment, deception, and/or fraud, obtained between \$4,500.00 and \$38,000.00 belonging to RD, for her own profit/advantage." See Exh. 1.

In response to the complaint, Investigator Belair explained that she first contacted Salemhaven by telephone and spoke with its Nursing Director, Andrea Janiak, and its Director of Social Services, Allison Battis. Investigator Belair indicated that these individuals had explained that the Licensee worked at Salemhaven as an LNA during the relevant time frame in this matter, which is approximately January of 2021 until 07/15/21. Investigator Belair additionally testified that she learned from Ms. Janiak and Ms. Battis that Licensee and a resident of Salemhaven had each contributed to buying a New Hampshire scratch ticket \$50,000.00 winner, had agreed to split the winnings, and planned to pick up the proceeds check at the New Hampshire Lottery Commission on 06/28/21. According to Ms. Belair's testimony, she had also discovered from these individuals that another LNA working at Salemhaven, Melissa Glasser, had gone with the Licensee and resident when they went to claim the lottery winnings on 06/28/21. Ms. Belair stated that Ms. Janiak and Ms. Battis had mentioned that when the Licensee, resident, and Ms. Glasser arrived at the New Hampshire Lottery Commission, the resident had told the Licensee he did not want to collect his winnings because he lived at Salemhaven.¹

¹ The implication being that it would affect his Medicaid.

Investigator Belair next testified about the sources of information she used in writing her report of investigation for this case. In addition to speaking with Ms. Janiak and Battis, she obtained Salemhaven's Investigation file, *See* Exh. 3, spoke with other employees, and reviewed the resident sign out chart at Salemhaven for 06/28/21. *See* Exh. 2. From this information, Investigator Belair learned that Licensee and the resident had allegedly agreed to split the \$50,000.00 winnings but the plan changed on 06/28/21 when the resident indicated he did not want to collect his share. Instead, Investigator Belair explained, the Licensee went into the New Hampshire Lottery Commission with Ms. Glasser while the resident waited in the car. Ms. Belair testified that the Licensee signed for the winning proceeds herself, which amounted to approximately \$38,000.00 after the Lottery Commission deducted taxes. Ms. Belair stated that the information she considered showed that the Licensee then went to two banks to attempt cashing the proceeds check but was unsuccessful because it was too large. Consequently, as Ms. Belair explained during her testimony, the Licensee deposited the check into her own bank account and withdrew \$5,000.00 cash, which she gave to the resident. Afterward, the Licensee, resident, and Ms. Glasser went to lunch, which the resident bought. The documentation also indicated that the resident gave the Licensee and Ms. Glasser each \$100.00 while at lunch. After lunch, everyone returned to Salemhaven.

According to Investigator Belair's testimony, the next significant event in this matter occurred on 07/11/21. Investigator Belair testified that the resident had threatened to call the police on Licensee, claiming she had taken the remainder of the \$5,000.00 she had given him on 06/28/21.² Salemhaven's investigative file shows that the Licensee alerted Salemhaven of the resident's threat and the situation involving the lottery ticket on 07/12/21. *See* Exh. 3. The Salem Police Department was briefly involved but filed no charges against the Licensee or resident. Ms. Belair testified that after completing its investigation, Salemhaven terminated the Licensee for violating its Professional Boundaries Policy. *See*

² Investigator Belair identified this amount to be \$4,500.00.

Exhibit 6. Investigator Belair explained that thereafter the Licensee provided her with a written response to the 07/30/21 complaint. *See* Exh. 4. According to Ms. Belair, the Licensee admitted to the following in her written response: 1) purchasing tickets for the resident, including the \$50,000.00 winning ticket; 2) receiving the entire winning check of \$38,000.00; 3) depositing the entire winning check of \$38,000.00 in her bank account; and 4) withdrawing \$5,000.00 from her bank account and giving it to the resident. Investigator Belair informed the Board that she had verified the winnings were solely in the Licensee's name by checking the New Hampshire Lottery Commission's website. *See* Exh. 5. Board questioning also revealed that to the best of Ms. Belair's knowledge there was no legal declaration that the resident could not make his own financial decisions at the time of the incident. The Licensee had no questions for Ms. Belair.

Licensee

After Hearing Counsel closed his case-in-chief, Licensee testified on her own behalf. She explained that in early January of 2021 she started buying scratch tickets for the resident to do something nice for him during the COVID-19 State of Emergency. She testified that she had worked with him for a long time, viewed him as almost family, and explained that she knew she should not have done it but felt bad given the situation at the nursing home. She testified that she tried to talk to her unit manager about the issue when the resident kept wanting tickets, but the manager told her the resident can make his own decisions. She admitted to the Board that she was spending way too much money on the tickets and wanted to make it stop but did not know how. She confirmed that she had given the resident \$5,000.00 out of her bank account. She also confirmed that she had called Ms. Battis and admitted to all that had happened. She referred to the whole ordeal as a "bad situation that got way out of hand."

On cross-examination, the Licensee explained that Exhibit A, which is her bank account statement, does not represent all the times that she purchased lottery tickets with/for the resident between 01/21 and

06/21. She clarified that she bought the lottery tickets with cash as well about 50% of the time. She testified that she was buying the lottery tickets with frequency, every other day at times. The Licensee also contested the claim that she and the resident had any previous agreement as to what should happen with any winnings. She admitted she never actually thought they would win on a ticket. She also agreed that the resident did not force her to take the winnings and that she could have said “no”. She noted, however, that he had declined to take any of the money because of Medicaid. That is why she gave him the \$5,000.00. She described her behavior as against Salemhaven’s Professional Boundaries Policy and the situation as “out of control”.

On Board questioning, the Licensee explained that she had learned from this incident not to cross professional and personal boundaries. She admitted to treating the resident as family and she should not have. She agreed that she knew what she was doing was wrong but explained that the resident would not allow anyone else to care for him except her and Melissa Glasser. The Licensee also clarified during Board questioning that when she had confronted the unit manager about her concerns that she had not gotten into the specifics—that she was buying lottery tickets for the resident. She agreed that the unit manager would not have had the proper context to give her advice but claimed everyone knew what the issue was as the resident had stacks of lottery tickets in his room. She admitted that she did not tell any of her work superiors about buying lottery tickets for the resident until July of 2021. The Licensee also testified that she was not sure that she wanted to go back to work as an LNA but believed she now had better tools to assist her in learning about boundaries as she had started therapy a few months ago.

V. 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 witnesses, the Board finds, by a preponderance of the evidence, that the Licensee committed professional misconduct. In addition to the findings of facts and

rulings of law already made herein, the Board specifically finds the following facts and makes the following rulings of law based upon the evidence presented:

- 1) The Board finds, by a preponderance of the evidence, that between January of 2021 and June of 2021, the Licensee routinely bought New Hampshire lottery scratch tickets for a resident of Salemhaven, where she worked as an LNA and provided care for that resident.
- 2) The Board finds, by a preponderance of the evidence, that the money the Licensee used to buy the scratch tickets for the resident was predominantly hers.
- 3) The Board finds, by a preponderance of the evidence, that in June of 2021 the Licensee bought a New Hampshire lottery scratch ticket for the resident and herself that was a \$50,000.00 winning ticket.
- 4) The Board finds, by a preponderance of the evidence, that on 06/28/21 the Licensee brought the resident to the New Hampshire Lottery Commission with the intention of having the two of them claim the proceeds of the winning ticket equally, but the resident declined to take his share.
- 5) The Board finds, by a preponderance of the evidence, that on 06/28/21 the Licensee claimed and accepted from the New Hampshire Lottery Commission the full amount of proceeds from the winning ticket after taxes, which was approximately \$38,000.00.
- 6) The Board finds, by a preponderance of the evidence that the Licensee attempted to cash the check at two separate banks to provide half of the proceeds to the resident but neither bank would cash it because the amount was too large.
- 7) The Board finds, by a preponderance of the evidence, that the Licensee deposited the winning check into her own bank account and withdrew \$5,000.00 from it, which she gave to the resident, even after he had declined one-half of the winning proceeds after taxes.

- 8) The Board concludes the Licensee committed professional misconduct when, while working at Salemhaven, she engaged in a non-professional relationship and friendship with resident RD by buying lottery tickets for him between January of 2021 and June of 2021 and accepting the winning proceeds for a \$50,000.00 scratch ticket winner she and RD purchased in violation of RSA 326-B:37, II(e).
- 9) The Board concludes the Licensee committed professional misconduct when, while working at Salemhaven, she engaged in a non-professional relationship and friendship with resident RD by buying lottery tickets for him between January of 2021 and June of 2021 and accepting the winning proceeds for a \$50,000.00 scratch ticket winner she and RD purchased in violation of RSA 326-B:37, II(e);in violation of RSA 326-B:37, II(h)(1).
- 10) The Board concludes the Licensee committed professional misconduct when, while working at Salemhaven, she engaged in a non-professional relationship and friendship with resident RD by buying lottery tickets for him between January of 2021 and June of 2021 and accepting the winning proceeds for a \$50,000.00 scratch ticket winner she and RD purchased in violation of RSA 326-B:37, II(e) in violation of RSA 326-B:37, II(m).
- 11) Pursuant to RSA 326-b:37(III)(a), and upon a finding of misconduct under RSA 326-B:37, II, the Board **REPRIMANDS** the Licensee.
- 12) Pursuant to RSA 326-b:37(III)(c) and (d), and upon a finding of misconduct under RSA 326-B:37, II, the Board imposes the following additional discipline:
 - a. In addition to the educational requirements necessary for renewal of or reapplication for Licensee’s license, the Licensee shall participate in 8 credit hours of continuing education coursework in ethics and professional boundaries, focusing in part on topics that relate to the findings of misconduct herein. Within 6 months of the below signed date of this Order, the

Licensee shall furnish to the Board documentary evidence that she has successfully completed the coursework. Whether the course(s) the Licensee selects fulfill this requirement is in the discretion of the Board. Therefore, the Licensee is encouraged to present the Board with information on the course(s) she intends to take, so that it can make an advanced determination as to the whether the course(s) fulfills the requirement. The Board may delegate the authority to determine the appropriateness of the proposed course(s) to its Chair and/or Vice Chair.

- b. The Licensee shall, within 30 days of the below signed date of this order, participate in an assessment/evaluation conducted by New Hampshire Professionals Health Program (“NHPHP”). The Licensee shall then follow any recommendations made by NHPHP in relation to the assessment/evaluation. In taking this disciplinary action, the Board wants to ensure that the Licensee has the necessary tools to identify and address exploitative relationships in the workplace and how to appropriately handle them, as well as any other concerns NHPHP may note during the evaluation process.

13) In administering this discipline, the Board considered and weighted the factors enumerated in RSA 326-B:37(III) and Rule 402.04(g).

VI. CONCLUSION AND DECISION:

Pursuant to RSA 326-B:37, and Rule 402, the Board hereby makes the herein findings of professional misconduct. The Licensee is **REPRIMANDED** and subjected to further disciplinary action as stated herein.

DATED: 6/1/2022

_____/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