

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

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**BOARD OF NURSING**

**In Re: Rebecca Martel,  
RN Lic. # 077395-21  
APRN Lic. # 077395-23**

Docket No.: NUR 22-018

**FINAL DECISION AND  
ORDER – 08/25/22**

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**I. ATTENDEES**

Samantha O'Neill, Board Chair  
Joni Menard, Vice Chair  
Melissa Tuttle, Board Member  
Matthew Kitsis, Board Member  
Maureen Murtaugh, Board Member  
Melissa Underhill, Board Member  
Wendy Stanley Jones, Board Member  
Michele Melanson-Schmitt, Board Member  
Attorney Michael Haley, DOJ Board Counsel  
Attorney Sheri Phillips, DOJ Board Counsel  
Ashley Czechowicz, OPLC Board Administrator  
Attorney Marissa Schuetz, OPLC Hearing Counsel  
Attorney Nikolas K. Frye, OPLC Hearings Examiner and Presiding Officer  
Attorney John Garrigan, OPLC Chief Prosecutor (Observing)  
Attorney Michael Porter, OPLC Investigations Bureau Chief (Witness)

**II. CASE SUMMARY/PROCEDURAL HISTORY**

On or about 05/30/22, 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 Brian Mockler, a New Hampshire pharmacist employed at Wal-Mart Pharmacy in Epping, NH, alleging Rebecca Martel, RN and APRN (“Licensee”) had self-prescribed a CII stimulant by writing a prescription to herself and attempting to fill it at the Wal-Mart in Epping, NH. On 06/13/22, after multiple attempts to speak with the Licensee about this matter and obtain a Preliminary Agreement Not

to Practice (“PANP”), OPLC Enforcement received a written response from Licensee in which she admitted to writing prescriptions for herself for controlled substances on multiple occasions and would not agree to a PANP. On 06/14/22, the Board voted to suspend Licensee’s license on an emergency basis pursuant to RSA 541-A:30(III), RSA 326-B:37(IV), and N.H. Code Admin. R., Title Nur 402.03(a) ("Rules"). After multiple continuances at the request of the Licensee, the Board held an adjudicatory hearing in this matter on 08/25/22. 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 Hearing Counsel, numbered as follows:

1. Complaint by Brian Mockler, dated 05/30/22
2. Emails between Michael Porter and Licensee with attachments, dated 06/10/22 – 06/13/22
3. Response Letter from Licensee, with attachments, dated 06/13/22
4. Prescription from Walmart Pharmacy, dated 05/05/22
5. Certificate of Formation for Confyde PLLC and Lixir LLC

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

- A. New Hampshire Prescription Drug Monitoring Program Patient Report for Licensee for 06/20/21 – 06/20/22
- B. Labcorp 06/20/22 Drug Screen Appointment Confirmation for Licensee
- C. Email Confirmation of ADHD Medication Management Appointment with Dr. Hubber scheduled for 06/22/22 at 5:30 PM for Licensee

c. Sworn testimony was received from:

1. Michael Porter, OPLC Investigations Bureau Chief

All exhibits were admitted into evidence as full exhibits after the Presiding Officer determined they were material and relevant.<sup>1</sup>

### **IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED**

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<sup>1</sup> Although the Licensee failed to appear, the exhibits she filed appeared relevant and material on their face and there was no objection to their introduction.

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 she provided to the Board, which was delivered and signed for by the Licensee. 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 and RSA 326-B:37, IV. 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. The Notice of Hearing was also sent to the Licensee's address by first class mail and to the email she has on file with the Board. The matter was also rescheduled on two separate occasions at the request of the Licensee—first on 06/21/22 and then again on 07/25/22. The Licensee's requests were made through the email address to which the Notice of Hearing was sent. Likewise, the Orders of Continuance were delivered to the Licensee at the email address she has continuously used to communicate with the Board Administrator and Hearing Counsel during this proceeding, including to request the continuances. Hearing Counsel represented that she had received no further correspondence from the Licensee after the Licensee's request for a second continuance, despite sending her the witness and exhibit list and exhibits in this matter pursuant to the Notice of Hearing and Board Rule 207.07.

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).**

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. The sole issue before the Board was “[w]hether or not the Licensee's license should be suspended pending a full disciplinary adjudicatory hearing in this matter because she presents an imminent threat to the public health, safety or welfare, where, while self-employed at Confyde, PLLC in East Kingston, NH, she wrote and obtained multiple prescriptions for herself for controlled substances since February of 2022.” NOH at II(d)(1). Based upon the evidence presented at the hearing, the Board finds the following facts.

Though currently suspended, the Licensee is licensed in New Hampshire as a Registered Nurse (“RN”) and Advanced Practice Registered Nurse with respective license numbers 077395-21 and 077395-23. Exh. 1. On 05/30/22, OPLC Enforcement received a complaint regarding the Licensee from Brian Mockler, who is a pharmacist at Walmart Pharmacy in Epping, New Hampshire. *Id.* The complaint alleges the Licensee had self-prescribed a class II scheduled stimulant by writing a prescription for herself and attempting to fill it at the Walmart in Epping, New Hampshire. *Id.* It also claims Dr. Mockler checked the prescription drug monitoring program, which revealed the Licensee had filled similar self-prescriptions three other times at two other pharmacies. *Id.* According to the complaint, Dr. Mockler then called the Licensee and left a message. *Id.*

At the hearing, Michael Porter first testified that he is the OPLC Investigations Bureau Chief that was assigned to investigate the complaint against the Licensee.<sup>2</sup> He then summarized the allegations contained in the complaint and when it was received by OPLC. He stated that after he received the complaint, he sent the Licensee an email explaining the nature of the complaint and requesting that she sign a Preliminary Agreement Not to Practice (“PANP”) by a date and time certain. His testimony revealed that he contacted her at least five times to procure a signed PANP but was unsuccessful. *See also* Exh. 2.<sup>3</sup> Nonetheless, as Investigator Porter testified, he did receive a detailed response from the Licensee in relation to the allegations contained in the complaint, which is marked as Exhibit 3. In summarizing her response, Investigator Porter noted that she admitted to at least four dates where she prescribed controlled stimulants for herself. Investigator Porter explained and Exhibit 3 shows that the Licensee claimed she was unaware that she could not self-prescribe medications in New Hampshire. Exh. 3. According to his testimony, the response also says she was evaluated by a psychologist in October 2021, who recommended she see a psychiatrist for medication management for her issues. He stated that the Licensee communicated she began writing prescriptions for herself at this recommendation.

Exhibit 3 is the Licensee’s response and mirrors much of Investigator Porter’s testimony about it. It shows she declined to sign the PANP and admitted to prescribing schedule II medications for herself on 02/08/22, 03/16/22, 04/07/22, and 05/30/22, as well as obtaining schedule II medications for herself on 02/08/22, 03/16/22, and 04/07/22. Exh. 3. It identifies the controlled medications she prescribed for herself as being Methylphenidate HCl ER and Vyvanse. *Id.* The exhibit also confirms conversations and communication Licensee has had in relation to this matter with Dr. Mockler, DEA Diversion Investigator Erin Radebaugh, and OPLC Enforcement. *Id.* In addition, it explains that she prescribed the medications

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<sup>2</sup> The Board took administrative notice of his training and work experience as well as the general process for receiving and investigating complaints.

<sup>3</sup> In addition to emails, he also indicated he attempted to reach her by telephone.

for herself and took them to treat a diagnosed disorder that her psychologist had recommended she address with the assistance of a psychiatrist. *Id.* The Licensee also stated in her response that “the care of her patients was never compromised or impaired by my taking these medications.” *Id.* In the Licensee’s 06/13/22 cover email to Investigator Porter submitted with her response, she states she declined signing a PANP because she had not had the ability to review it with an attorney and was “confident that my agreement not to practice would not serve the best interests of the public.”<sup>4</sup> *Id.*

Investigator Porter’s testimony next shifted to additional investigation OPLC Enforcement had taken since the Board emergently suspended the Licensee’s license. He testified that on 06/16/22 Kaitlyn Simoneau, OPLC Pharmacy Inspector, served a notice of inspection on the Walmart Pharmacy in Epping, where the Licensee had sent the prescription referenced in the complaint. *See also* Exh. 4. As part of her inspection, she obtained a copy of the prescription the Licensee wrote for herself for Vyvanse on 05/30/22. Investigator Porter explained this prescription is contained in Exhibit 4. He clarified that OPLC has been able to confirm that the Licensee has filled at least four prescriptions for herself, but the investigation remains ongoing.

Hearing Counsel had also submitted Exhibit 5 which are copies of a 09/17/21 Certificate of Formation for Confyde PLLC, the Licensee’s 09/15/21 ARNP-NP-Family License, and an 08/06/21 Certificate of Formation for Lixir, LLC. On both Certificates of Formation, the Licensee is listed as the Manager/Member of the formed LLCs. Both companies are listed as offices for health care in some form with a principal place of business that matches the Licensee’s home address on file with the Board.

Lastly, the Licensee filed three exhibits, which the Board admits as full exhibits, despite her failure to appear. Exhibit A is a New Hampshire Prescription Drug Monitoring Program Patient report for the Licensee from 06/20/21 through 06/20/22. It shows she prescribed controlled medications for herself that

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<sup>4</sup> The Board takes administrative notice that at the request of the Licensee, it continued this matter on two separate occasions to allow the Licensee time to first prepare for the hearing and then retain counsel.

were sold on 04/08/22, 03/16/22, and 02/14/22. The Exhibit also shows that those sold medications relate to prescriptions the Licensee wrote for herself on 02/09/22, 03/16/22, and 04/07/22. *Compare* with Exh. 3. Exhibit B is a confirmation for a drug screen appointment for the Licensee at labcorp on 06/20/22, dated 06/19/22. Similarly, Exhibit C is an 06/18/22 Online Appointment reminder for the Licensee for a psychiatrist appointment to occur on 06/22/22.

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

After reviewing all the evidence, and accounting for the presentation and demeanor of all the witnesses, the Board finds, by a preponderance of the evidence, that Hearing Counsel has met its burden of proof. The Board finds the Licensee is a APRN who has worked as a solo practitioner and prescribed schedule II controlled substances for herself on multiple occasions. On three of those occasions, she also took the prescribed medications. The Board finds that this conduct places the Licensee, any of her potential patients, and others at risk of imminent harm. Based on the evidence presented, the Board concludes the Licensee practicing as an RN and APRN poses an imminent danger to public health, safety, or welfare. RSA 326-B:37. The Board further concludes the evidence presented shows that the imminent danger to public health, safety, or welfare outweighs the Licensee's interests in continuing to practice as both an RN and APRN, pending conclusion of this disciplinary matter. N.H. Admin. R. Ann., Title Plc 206.07(e)(2).

Given Investigator Porter's testimony that the investigation into the Licensee's alleged conduct remains ongoing, OPLC Enforcement shall ensure that the Board can render a decision about how to proceed in this matter in accordance with the timelines provided in Plc 206.07(i).

**VI. CONCLUSION AND DECISION:**

Pursuant to RSA 326-B:27(IV), Rule 402.03, the Board hereby upholds its emergency suspension of Rebecca Martel's licenses as an RN and APRN, pending a full adjudicatory disciplinary hearing in this matter. Given their investigation remains ongoing, OPLC Enforcement shall ensure that the Board can

render a decision about how to proceed in this disciplinary matter in accordance with the timelines provided in Plc 206.07(i). In the interim, on or before 09/25/22, the parties shall provide the Board Administrator with dates and times of availability for a prehearing conference to occur within 60 days of the signed date of this order.

DATED: 8/26/2022

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