

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

BOARD OF NURSING

**In Re: Lee Ann Griggs, RN
RN Lic. # 044076-21**

Docket No.: 2022-NUR-028

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

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
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 Nikolas K. Frye, OPLC Hearings Examiner and Presiding Officer
Attorney John Garrigan, OPLC Chief Prosecutor, Hearing Counsel
Attorney Michael Porter, OPLC Investigations Bureau Chief (Witness)

II. CASE SUMMARY/PROCEDURAL HISTORY

On 08/16/22, the Office of Professional Licensure and Certification, Division of Enforcement (OPLC Enforcement) received, on behalf of the Board of Nursing (“Board”), a complaint alleging Lee Ann Griggs (“Licensee”) was intoxicated while working as a registered nurse (“RN”) at Merrill Gardens, LLC and failed to provide residents medication. After reviewing a Verified Petition of Emergency Suspension of Licensure Pursuant to RSA 326-b:37, IV and hearing from Michael Porter, Investigations Bureau Chief at OPLC Enforcement, the Board voted at an emergency meeting held on 08/19/22 to

suspend the Licensee's license on an emergency basis pursuant RSA 541-A:30(III), RSA 326-B:37(IV), and N.H. Code Admin. R., Title Nur 402.03(a) ("Rules"). The Board held an adjudicatory hearing in this matter on 08/25/22, and this Final Decision and Order on the emergency suspension of the Licensee's license 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. Email Correspondence from Robert Fowler, on 08/16/22 and 08/22/22
2. Michael Porter's Verified Petition of Emergency Suspension of Licensure Pursuant to RSA 326-b:37, IV, dated 08/19/22
3. Newmarket Police Department Reports, dated 08/13/22
4. Licensee's 04/16/99 Settlement Agreement with the Board
5. 12/20/00 Board Letter of Notification and Conditions of Reinstatement
6. Licensee's 09/27/06 Voluntary Surrender of License to the Board
7. 09/25/07 Board Letter of Notification and Conditions of Reinstatement
8. 07/20/18 Order on Motion to Life Disciplinary Sanctions

b. No Exhibits were filed by the Licensee.

c. Sworn testimony was received from:

1. Michael Porter, OPLC Investigations Bureau Chief¹

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

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 she provided to the Board. The Notice of Hearing contains the date, time, and location

¹ The anticipated testimony was presented through an offer of proof given by Hearing Counsel. Michael Porter was sworn in under oath and asked to correct any misstatement.

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. Hearing Counsel represented that neither he nor Michael Porter had received any correspondence from the Licensee before or after the Notice of Hearing was issued despite multiple attempts to communicate with her.

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 adjudicatory hearing in this matter because she presents an imminent threat to the public health, safety or

welfare, where she was allegedly intoxicated while working and failed to provide residents medication recently and has a history of Board action related to substances.” 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”) with license number 044076-21. Exh. 2. On 08/22/22, OPLC Enforcement received an emailed complaint regarding the Licensee from Robert Fowler, who is the Director of Nursing at Merrill Gardens LLC-New Hampshire in Lee, New Hampshire. Exh. 1. The complaint alleges that on 08/13/22 the Licensee had come to her place of work, the Pines of Newmarket (“Nursing Home”), impaired and had drunk throughout the day from what appeared to be a bottle of vitamin water, which facility staff later identified as containing alcohol. *Id.* The complaint also explains that during the Licensee’s shift that day many medications were not given out and some residents consequently missed doses. *Id.* A subsequent email from the complainant sent on 08/22/22 states that according to the Nursing Home’s Electronic Medical Record (“EMR”), every active resident missed medications. *Id.*

In response to OPLC Enforcement receiving the complaint, Michael Porter, OPLC Investigations Bureau Chief attempted to contact the Licensee on multiple occasions between 08/16/22 and 08/19/22. Exh. 2. He also spoke with the complainant, who confirmed the details of the complaint and provided more detail. *Id.* The Complainant explained that he spoke with the Licensee on 08/13/22, “who informed him that she had an injury due to dog sitting and when she took the dog for a walk the dog pulled too hard and the [Licensee] was in pain which is why she was acting in the manner she was.” *Id.* at par. 10. According to Investigator Porter, the Complainant told him that he left the Nursing Home and was recalled to it that same day, only this time a Newmarket Police Officer was present and the Licensee “appeared to be in worse shape than ... earlier.” *Id.* The complainant additionally told Investigator Porter that the police were apparently involved because when the Licensee had returned to the Nursing Home from a trip to a

store, she had parked partially on the pavement and partially on the grass and her car had substantial damage on one side. *Id.* OPLC obtained Newmarket Police Department records related to the incident which show that the caller believed the Licensee was under the influence as she had left the Nursing Home and returned with damage to her vehicle. *Id. and* Exh 3. The narrative from Patrol Officer Taylor Sheehan of the Newmarket Police Department states “[Licensee] did appear to be intoxicated but denied crashing her vehicle into anything. I advised her not to drive her vehicle home...” Exh. 3 at pg. 1.

The Board was also presented with 1) a 04/16/99 disciplinary Settlement Agreement it previously approved and which involves the Licensee; 2) 12/26/20 letter from the Board informing the Licensee her license is reinstated; 3) a 09/27/06 Voluntary Surrender Agreement in Board Docket #06-0814-0074, which involves the Licensee; 4) a 09/25/07 Letter reinstating the Licensee’s RN License; and 5) a 07/20/18 Order on Motion to Lift Disciplinary Sanctions. *See* Exhs. 4-8. Read in conjunction with each other, these documents detail that the Licensee has a disciplinary history with the Board related to substance use issues. Hearing Counsel’s offer of proof summarized Exhibits 1 through 8.

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 central facts are straightforward—the Licensee has a history of Board action relating to substance use issues and is alleged to have recently been intoxicated while at work, during which time many/most medications were not given out during her shift and residents of Merrill Gardens, LLC missed medication doses. The Board finds that this conduct places the Licensee, her patients and potential patients, and others at risk of imminent harm. Based on the evidence presented, the Board concludes the Licensee practicing as an RN 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 an RN, pending conclusion of this disciplinary matter. N.H. Admin. R. Ann., Title Plc 206.07(e)(2).

Given Hearing Counsel's representation 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 Lee Ann Grigg's license as an RN, pending a full adjudicatory disciplinary hearing in this matter. Given the 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 09/30/22, 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: 9/1/2022

_____/s/ Nikolas K. Frye, Esq. _____
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