

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

BOARD OF NURSING

**In Re: Melissa Hendrick,
LPN License # LPN086106
Georgia Compact License**

Docket No.: 2022-NUR-0033

**FINAL DECISION AND
ORDER – 11/17/22**

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
Dwayne Thibeault, Board Member
Michele Melanson-Schmitt, Board Member
Attorney Lauren Warner, OPLC 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
Karen Belair, OPLC Investigator and as Witness

II. CASE SUMMARY/PROCEDURAL HISTORY

On 06/28/19, the Board of Nursing (“Board”) received a complaint alleging that Melissa Hendrick (“Licensee”) had provided MAS Medical Staffing with a forged Physician Statement for a pre-employment physical. The OPLC Division of Enforcement investigated the complaint on behalf of the Board and additionally learned that in 2021 the Licensee had signed a “Stipulation and Final Agency Order” with the Colorado State Nursing Board in relation to allegations she was impaired while working in Colorado as an LPN and was suspended on 10/25/21 for not complying with the order. After

investigation, the Board voted on 08/25/22 to commence an adjudicative/disciplinary proceeding in this matter. A Notice of Adjudicative Hearing followed, and the Board then held the adjudicatory hearing on 11/17/22 at 11:00 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. 06/27/19 Complaint filed by MAS
2. 04/18/22 Interview Report MAS
3. 05/15/22 Interview Report Licensee
4. 08/04/22 Report of Investigation
5. 11/04/22 Addendum to Report of Investigation
6. Employment File from MAS Medical Staffing
7. Email from Concentra Confirming no Crystal Johnson, NP
8. Nursys Confirmation Report with OH and CO actions against Licensee
9. NH My License Office Report

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

A. None.

b. Testimony was received from:

1. Karen Belair, OPLC Investigator (called by Hearing Counsel, through offer of proof)

All exhibits were admitted into evidence as full exhibits after the Presiding Officer determined they were material and relevant. The witness swore to the offer of proof under oath.

IV. PRELIMINARY MATTERS

The Licensee failed to appear for the hearing, which was available via in-person. 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 on 10/04/22 at the last known address she provided to the Board, as well as another on file. Both receipts were returned signed. 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. The Notice of Hearing was also sent to the Licensee's addresses on file with the Board by first class mail and to the email she has on file with the Board. Hearing Counsel represented that she had received no correspondence from the Licensee, despite sending her an appearance, the witness and exhibit list, and exhibits 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).**

V. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED

Hearing Counsel bears the burden of proof by a preponderance of the evidence with respect to Issue Presented II.c.1, while the Licensee bears the burden of proof by a preponderance of the evidence with respect to Issue Presented II.c.2 and 3. Rule 207.10. To present her case, Hearing Counsel provided an offer of proof supported by the sworn testimony of Karen Belair, the OPLC Investigator assigned to

this case and Exhibits 1 through 9. Based upon the evidence presented at the hearing, the Board finds the following facts.

The Board's file reflects that the Licensee is actively licensed as a Licensed Practical Nurse ("LPN") in New Hampshire, with license number LPN086106.¹ On or about 06/21/19, the Board received a complaint from MAS Medical Staffing ("MAS") alleging the Licensee had "handed in an alleged forged Physician Statement for pre employment [sic] physical. MAS called the facility to verify the information and [sic] facility stated that there is no Crystal Johnson that works there. [sic] Facility claims that Melissa [Licensee] came in however declined the physical. [sic] Actual form is enclosed." Exh. 1., HC 001-002. The complaint also contained the Physician Statement of 06/17/19 that the Licensee had provided to MAS with the alleged forged signature. *See Id.* at HC 003.

Ms. Belair began investigating the complaint in April of 2022 by contacting the complainant. Investigator Belair learned that the complainant had concerns about the Physician Statement submitted by the Licensee because they were typically signed by a physician and the one submitted by the Licensee was purportedly signed by a nurse practitioner. The complainant further told her that it had contacted the facility where the Licensee allegedly obtained a Physician Statement and learned that the Licensee had appeared on 06/17/19, had her labs drawn, but then declined the physical. The facility also told the Licensee that no one named Crystal Johnson worked there. *See* Exh. 2 HC 004-005.² Investigator Belair followed-up her conversation with the complainant by contacting the Licensee. According to Investigator Belair's Interview Report dated 05/15/22, the Licensee stated "she never would have forged that physician statement." Exh. 3 HC 007. Investigator Belair also obtained the Agreement for Assignment of MAS

¹ She is licensed in Georgia, but under the compact is able to practice in New Hampshire.

² An email from corporate counsel for the facility confirms that the facility has no record of a Crystal Johnson working there. Exh. 4, HC 0010 and Exh. 7 HC 026.

Employee signed by the Licensee on 06/10/19, as well as other related paperwork. The paperwork documents the Licensee's intent to work for MAS in the state of New Hampshire commencing in the summer of 2019.

In furtherance of her investigation, Investigator Belair also obtained information through Nursys, Exh. 8, which shows that she has an unencumbered multi-state license through the state of Georgia, but has voluntarily surrendered her multi-state licensure privilege in the state of Colorado and later Ohio (as reciprocal discipline. *Id.* 8 HC033. The underlying misconduct stems from the Licensee failing to comply with a settlement agreement by appearing to work while impaired.

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 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 additionally finds and concludes as follows:

- 1) The Board concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(d). In drawing this conclusion, the Board specifically finds, by a preponderance of the evidence, that the Licensee provided MAS Medical Staffing a forged Physician Statement for a pre-employment physical in relation to her contract with the Glencliff Home in Glencliff, New Hampshire in 2019 in order to fraudulently obtain work in New Hampshire as an LPN.
- 2) The Board concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(e). In drawing this conclusion, the Board specifically finds, by a preponderance of the evidence, that the Licensee provided MAS Medical Staffing a forged Physician Statement

for a pre-employment physical in relation to her contract with the Glencliff Home in Glencliff, New Hampshire in 2019 in order to fraudulently obtain work in New Hampshire as an LPN.

- 3) The Board concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(h). In drawing this conclusion, the Board specifically finds, by a preponderance of the evidence, that the Licensee provided MAS Medical Staffing a forged Physician Statement for a pre-employment physical in relation to her contract with the Glencliff Home in Glencliff, New Hampshire in 2019 in order to fraudulently obtain work in New Hampshire as an LPN.
- 4) The Board concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(m). In drawing this conclusion, the Board specifically finds, by a preponderance of the evidence, that the Licensee provided MAS Medical Staffing a forged Physician Statement for a pre-employment physical in relation to her contract with the Glencliff Home in Glencliff, New Hampshire in 2019 in order to fraudulently obtain work in New Hampshire as an LPN.
- 5) The Board concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(q)(2) (*See* Rule 402.04(b)(11)). In drawing this conclusion, the Board specifically finds, by a preponderance of the evidence, that the Licensee provided MAS Medical Staffing a forged Physician Statement for a pre-employment physical in relation to her contract with the Glencliff Home in Glencliff, New Hampshire in 2019 in order to fraudulently obtain work in New Hampshire as an LPN.
- 6) The Board concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(f) (*See* Rule 402.04(c)(4)). In drawing this conclusion, the Board specifically finds that the Licensee failed to meet her burden of proof and the evidence establishes that she

received reciprocal discipline in the states of Colorado and Ohio on her multi-state privilege for conduct that this Board could impose discipline. *See, i.e.* RSA 326-B:37, II(h), (k), (l), and/or (p).

- 7) The Board concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(r) (*See* Rule 402.04(c)(4)). In drawing this conclusion, the Board specifically finds that the Licensee failed to meet her burden of proof and the evidence establishes that she received reciprocal discipline in the states of Colorado and Ohio on her multi-state privilege for conduct that this Board could impose discipline. *See, i.e.* RSA 326-B:37, II(h), (k), (l), and/or (p).
- 8) The Board concludes that the evidence is insufficient to establish that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(q)(3). In drawing this conclusion, the Board specifically finds that there was no evidence presented on this issue.
- 9) Pursuant to RSA 326-b:37(III)(a), and upon a finding of misconduct under RSA 326-B:37, II, the Board **REVOKES** the Licensee's multi-state privilege to practice in New Hampshire.
- 10) In administering this discipline, the Board considered and weighed 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' multi-state privilege to practice in New Hampshire is **REVOKED**.

DATED: 11/22/2022

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