

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

BOARD OF NURSING

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

Docket No.: 2022-NUR-0018

**FINAL DECISION AND
ORDER – 12/09/22**

I. ATTENDEES

Samantha O'Neill, Board Chair
Melissa Tuttle, Board Member
Melissa Underhill, Board Member
Matthew Kitsis, Board Member
Maureen Murtaugh, Board Member
Michele Melanson-Schmitt, Board Member
Wendy Stanley Jones, Board Member
Attorney Lauren Warner, OPLC Board Counsel
Jeanne Webber, OPLC Board Administrator
Ashley Czechowicz, OPLC Board Administrator
Attorney Nikolas K. Frye, OPLC Hearings Examiner and Presiding Officer
Attorney Marissa Schuetz, OPLC Hearing Counsel
Rebecca Martel, Licensee
Michael Porter, Esq., OPLC Investigation Bureau Chief and 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"). The emergency suspension was affirmed at a hearing held on 08/25/22. A Notice of Adjudicative Hearing followed, and the Board then held the adjudicatory hearing on 12/09/22 at 12:30 PM EST. 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. 05/30/22 Complaint
2. 06/13/22 Response from Licensee
3. 05/05/22 Prescription from Walmart Pharmacy
4. PDMP Report for Licensee as patient 06/20/21 – 06/20/22
5. Memorandum of Interview
6. Voluntary Surrender
7. Email Chains Regarding Requests for Continuance **REDACTED**
8. Recording of Interview
9. 02/08/22 Prescription from Walgreen Pharmacy
10. 03/16/22 Prescription from Rite Aid Pharmacy
11. 04/07/22 Prescription from Rite Aid Pharmacy

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

- A. Transcript of Interview
- B. Resume of Licensee
- C. Medical Record from Mental Health Practice **EXCLUDED¹**

b. Sworn testimony was received from:

1. Michael Porter, OPLC Bureau Chief Investigator (called by Hearing Counsel)
2. Licensee (called by Licensee)

IV. PRELIMINARY MATTERS

¹ Never filed with the Board Administrator. Excluded as untimely under Rule 207.07.

Through prehearing conferences and pleadings, the determination on the admissibility of each parties' exhibits was already determined by the Presiding Officer. Hearing Counsel's Exhibits 1-11 were fully admitted. Licensee's Exhibits A-B were fully admitted. Before commencing the hearing, the Licensee was also instructed on her right against self-incrimination under the federal and state constitutions.

V. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED

Hearing Counsel bears the burden of proof by a preponderance of the evidence. Rule 207.10. To present her case, Hearing Counsel provided Exhibits 1 through 11 and testimony from OPLC Bureau Chief Investigator, Michael Porter. The Licensee presented Exhibits A and B, as well as her own testimony. Based upon the evidence presented at the hearing, the Board finds the following facts.

HEARING COUNSEL'S CASE-IN-CHIEF:

Michael Porter

The Board's file reflects that the Licensee was actively licensed as an RN and APRN in New Hampshire, with respective license numbers 077395-21 and 077395-23 at the time of the alleged conduct. The first witness to testify was Michael Porter, who opened by explaining he is the OPLC Division of Enforcement ("Division") Bureau Chief Investigator and was assigned to investigate this matter. According to Investigator Porter's testimony, his investigation began when the Division received a complaint against the Licensee filed by Dr. Brian Mockler, pharmacist, alleging the Licensee had written a prescription for herself for a controlled substance. *See also* Exh. 1. Although Investigator Porter did not recall which pharmacy Dr. Mockler worked at when he filed the complaint, Exhibit 1 shows he was employed at the Walmart in Epping, New Hampshire, Exh. 1, HC001, as does Exhibit 3, which contains the prescription the Licensee was alleged to have written for herself. *See* Exh. 3 at HC021. Investigator Porter testified that he unsuccessfully attempted to obtain a preliminary agreement not to practice from

the Licensee. *See also* Exh. 2. The Board’s record reflects that when he was unable to obtain an agreement not to practice, he petitioned for and obtained an emergency suspension of the Licensee’s license from the Board. Investigator Porter’s investigation showed the Licensee had written other prescriptions for controlled substances for herself aside from the Walmart prescription. Exhibit 4 is the 06/20/22 patient report for the Licensee, showing which prescriptions she has obtained in the year 2022. It shows that 3 prescriptions for controlled substances prescribed by, filled for, and paid for the Licensee. *See also* Exhs. 9, 10 and 11. The Licensee also confirmed obtaining these prescriptions in her response to the complaint. *See* Exh.2 at HC008-0018.

Investigator Porter next turn to an interview he conducted with the Licensee on 11/07/22— after she had been emergently suspended by the Board. *See also* Exh. 8 and Exh. A. According to his testimony, during the interview the Licensee admitted to writing four prescriptions for herself for controlled substances, as well as a prescription for controlled substances for her adult daughter. Investigator Porter also learned during this interview that the Licensee had written a prescription for her mother who is in a long-term care facility in Massachusetts, but cross examination and Board questioning later clarified that it was not for a controlled substance. Attorney Porter’s direct examination also revealed that the Licensee conveyed to him during this interview that she did not believe she was then currently capable of practicing as an RN or APRN due to her anxiety.

LICENSEE’S CASE-IN-CHIEF:

Licensee

The Licensee’s testimony confirmed that she had self-prescribed on multiple occasions. She described her behavior as “unacceptable” and “poor judgment” and vowed to have “higher standards in the future”. The Licensee explained that her conduct was related to her anxiety, which she was attempting to self-treat. According to her testimony, she has since sought treatment for her anxiety from a

psychologist and psychiatric nurse practitioner. She was frank in admitting she was not currently taking her prescribed medication but indicated this was because she had concerns that she would be violating terms related to her DEA license. According to the Licensee, the medication she is currently prescribed is a controlled substance and she is not supposed to possess controlled substances. She stated she intends to have her treatment provider prescribe new medications for her anxiety that are not controlled substances.

The Licensee then turned to explaining why she had filed a voluntary surrender with the Board with the disciplinary proceeding still outstanding. *See* Exh. 6. She stated she understood that the voluntary surrender would not resolve the disciplinary matter, and she offered it as a means of showing cooperation and remorse. *See also* Exh. 6. She claimed she has not practiced as a nurse practitioner or registered nurse in any state since February of 2021. On cross examination, she acknowledged she completed her coursework as an APRN in spring of 2021 and held multiple licenses as an APRN and RN in other states. Board questioning revealed the Licensee does not believe herself currently capable of working as a APRN. She expressed uncertainty about her ability to practice safely as an RN, but ultimately concluded “I am probably capable of working as an RN.” The Licensee also stated that she had previously worked as a registered nurse for 15 years without any complaints or discipline. She noted she has provided positive contributions in the fields of skilled rehabilitation and long-term care and no actual harm had resulted from her alleged actions.

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

After reviewing all the evidence, drawing all reasonable inferences therefrom, and accounting for the demeanor and credibility of the witnesses, 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 finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(e) when, she prescribed controlled substances for herself on 02/09/22, 03/16/22, 04/07/22, and 05/30/22 and filled, purchased, and used controlled substances she had prescribed for herself on 02/09/22, 03/16/22, and 04/07/22.
- 2) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(h)(1) when, she prescribed controlled substances for herself on 02/09/22, 03/16/22, 04/07/22, and 05/30/22 and filled, purchased, and used controlled substances she had prescribed for herself on 02/09/22, 03/16/22, and 04/07/22.
- 3) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(k) when, she prescribed controlled substances for herself on 02/09/22, 03/16/22, 04/07/22, and 05/30/22 and filled, purchased, and used controlled substances she had prescribed for herself on 02/09/22, 03/16/22, and 04/07/22.
- 4) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(p)(1) when, she prescribed controlled substances for herself on 02/09/22, 03/16/22, 04/07/22, and 05/30/22 and filled, purchased, and used controlled substances she had prescribed for herself on 02/09/22, 03/16/22, and 04/07/22.
- 5) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(q)(2) (*see* Rules 402.04(10) and/or (17), and Rule 501.04(a)) when, she prescribed controlled substances for herself on 02/09/22, 03/16/22, 04/07/22, and 05/30/22 and filled, purchased, and used controlled substances she had prescribed for herself on 02/09/22, 03/16/22, and 04/07/22.

- 6) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(q)(3) when, she prescribed controlled substances for herself on 02/09/22, 03/16/22, 04/07/22, and 05/30/22.
- 7) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(e) when, she prescribed a controlled substances for her adult daughter and a non-controlled substance for her mother in non-emergent situations.
- 8) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(h)(1) when, she prescribed a controlled substances for her adult daughter and a non-controlled substance for her mother in non-emergent situations.
- 9) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(k) when, she prescribed a controlled substances for her adult daughter and a non-controlled substance for her mother in non-emergent situations.
- 10) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(p)(1) when, she prescribed a controlled substances for her adult daughter and a non-controlled substance for her mother in non-emergent situations.
- 11) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(q)(2)) (*see* Rules 402.04(10) and/or (17), and Rule 501.04(a)) when, she prescribed a controlled substances for her adult daughter and a non-controlled substance for her mother in non-emergent situations.
- 12) The Board finds and concludes that the Licensee committed professional misconduct, as that term is defined at RSA 326-B:37, II(q)(3) when, she prescribed a controlled substances for her adult daughter and a non-controlled substance for her mother in non-emergent situations.

13) Pursuant to RSA 326-b:37(III)(b), and upon a finding of misconduct under RSA 326-B:37, II, the Board **REVOKES** the Licensee’s license to practice as an APRN in New Hampshire.

14) Pursuant to RSA 326-b:37(III), and upon a finding of misconduct under RSA 326-B:37, II, the Board hereby accepts the Licensee’s voluntary surrender of her license to practice as an RN in New Hampshire is sufficient discipline in this matter.

15) In administering this discipline, the Board considered and weighed the factors enumerated in RSA 326-B:37(III) and Rule 402.04(g). The Board gave significant weight to the factors contained in 402.04(g)(1), (6), and (7) in determining that revocation of the APRN license was appropriate given the professional misconduct involved. In rendering its decision to accept the voluntary surrender as appropriate discipline in relation to the RN license, the Board placed significant emphasis on the factors contained in 402.04(g)(2), (4), and (6). The Board also wishes to express that the discipline does not foreclose the possibility of the Licensee reapplying for licensure at a later time with the understanding that the Licensee would be subject to a show cause hearing to consider 1) her disciplinary history, 2) what steps she has taken to address the underlying issues that resulted in her committing professional misconduct, and 3) whether she is to practice in New Hampshire.

VII. ORDERS:

Pursuant to RSA 326-B:37, and Rule 402, the Board hereby makes the herein findings of professional misconduct. The Board **ACCEPTS** the Licensee’s voluntary surrender of her RN license as sufficient discipline in this matter and **REVOKES** her APRN license.

DATED: 12/19/2022

_____/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