

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

BOARD OF NURSING

**In Re: Felicia LeBrun,
LNA Lic. #055250-24**

Docket No.: 2022-NUR-015

**ORDER ON EMERGENCY LICENSE
SUSPENSION HEARING- 06/07/22**

I. ATTENDEES:

Samantha O'Neill, Board Chair
Joni Menard, Vice Chair
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
Felicia LeBrun, Licensee (unrepresented)
Attorney Nikolas K. Frye, OPLC Hearings Examiner and Presiding Officer
Attorney John Garrigan, OPLC Chief Prosecutor and Hearing Counsel
Dr. Molly Rossignol, NHPHP

II. CASE SUMMARY/PROCEDURAL HISTORY:

On or about 05/12/22, the Office of Professional Licensure and Certification (“OPLC”) received, on behalf of the New Hampshire Board of Nursing (“Board”), a letter from New Hampshire Professionals Health Program (“NHPHP”) alleging that Felicia LeBrun (“Licensee”) had violated terms of her substance use monitoring agreement, which was implemented pursuant to the terms of Board disciplinary action taken against the Licensee on or about 02/27/20. The alleged concerns were that Licensee 1) is actively seeking employment and has not, pursuant to the terms of the monitoring agreement, provided any

information in relation to same to NHPHP; 2) recently admitted to using alcohol and had a positive drug screen; and 3) has missed at least one of her random drug tests. On 05/26/22, after learning of the information, 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 Board held the hearing on the emergency license suspension on 06/08/22. This 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, labeled as follows:

1. 02/28/20 Decision and Order, *In re* Felicia LeBrun, LNA, NUR 20-0206-0613-NA
2. 03/20/20 NHPHP Monitoring Agreement- Board of Nursing Mandated with Felicia LeBrun (revised 03/24/21) **SEALED**
3. 04/19/22 Letter from NHPHP to the Board of Nursing, RE: Felicia LeBrun **SEALED**
4. 05/12/22 Letter from NHPHP to the Board of Nursing, RE: Felicia LeBrun **SEALED**

B. Exhibits were submitted by the Licensee, labeled as follows:

- A. 06/03/22 Letter from REACH at YWCA in relation to Felicia LeBrun **SEALED**
- B. 06/06/22 Letter from Families in Transition **SEALED**

C. Sworn testimony was received from the following witnesses:

1. Dr. Molly Rossignol, NHPHP (called by Hearing Counsel)
2. Felicia LeBrun, Licensee (called by Licensee)

VI. PRELIMINARY MATTERS:

The Presiding Officer reviewed Exhibits 1 through 4 and A through B with the parties. Neither party had an objection to their relevance, and materiality; claimed any were unduly repetitious; or invoked a privilege with respect to admissibility. The parties requested that Exhibits 2 through 4 and Exhibits A and B be sealed pursuant to RSA 326-B-a, IV. The request was granted, given the matter involves Licensee's participation in NHPHP. The parties request that the testimony of the matter also be sealed was granted, given it addresses Licensee's participation in NHPHP.

IV. CONDUCT OF HEARING AND EVIDENCE PRESENTED:

The Board's inquiry at this hearing is narrow. Pursuant to Rule 207.10, Hearing Counsel has the burden of proving, by a preponderance of the evidence, that the Licensee being licensed pending full adjudication of this matter poses an imminent danger to public health, safety, or welfare. RSA 326-B:37, IV. The credible evidence presented at the hearing allows the Board to find the following facts.

The Licensee is actively licensed in New Hampshire as a Licensed Nursing Assistant (“LNA”) with license number #055250-24. Exhibit 1 shows that on 02/27/20 the Board made a finding of professional misconduct against the Licensee based in part upon its determination that the Licensee had sold and used illicit substances on multiple occasions. As part of the disciplinary sanctions the Board levied in relation to the finding of professional misconduct, the Licensee was required to participate in NHPHP and sign a Monitoring Agreement. The Licensee was also suspended “until the Board makes a final decision to lift the suspension after review of recommendations of the alternative Recovery Monitoring Program (NHPHP) and with Respondent’s adherence to the treatment plan.” Exh. 1. After a hearing on 02/25/21, the Licensee was eventually reinstated but remained subject to the terms of her Monitoring Agreement. Although the Monitoring Agreement was subsequently revised on 03/24/21, Exh. 2, Dr. Molly Rossignol’s testimony elucidated that the revision did not alter any of the requirements of the original agreement and it is still in effect.

As noted above, Hearing Counsel’s sole witness was Dr. Molly Rossignol. She began her testimony by explaining she has been the Medical Director at NHPHP since 02/01/21. She stated NHPHP helps individuals who have medical health issues that affect cognitive ability, mental health issues, and substance use disorders. She testified most of the individuals NHPHP works with suffer from substance use disorders, and NHPHP helps by assisting them with maintaining recovery and having success in their professional careers. She explained that in her role as Medical Director, she works with the Licensee, who

has been a participant in the program since 2020. Dr. Rossignol further testified that since she began her work at NHPHP, she has monitored Licensee pursuant to the terms of the Monitoring Agreement, Exh. 2. Exhibits 1 through 4 elucidate that the Monitoring Agreement was intended to address the Licensee's substance use.

Dr. Rossignol's testimony then shifted to discussing the components of an NHPHP Monitoring Agreement. She provided a laundry list of things NHPHP participants are required to do under the terms of the Monitoring Agreement, including but not limited to random urine testing, maintaining a connection with a health care provider, maintaining a release for NHPHP for the participant's health care provider, addiction and mental health treatment, monthly meetings, monthly self-reports, and quarterly worksite monitoring reports.¹ Dr. Rossignol explained that the typical term of the Monitoring Agreement is 5 years, but that a relapse can lead to the 5-year monitoring period restarting.² Her testimony also revealed that NHPHP follows the Federation of State Physician Health Programs Guidelines in determining how to treat violations of the Monitoring Agreement. These guidelines consider some areas of violation as being "soft" (meaning they would not be reported to the Board) and others as "hard", (meaning they would typically be reported to the Board).

In terms of the Licensee, Dr. Rossignol testified there had been some "soft" violations, but the focus of her concern was on the "hard" violations she had reported in her letters to the Board dated 04/19/22 and 05/12/22. The "hard" violations that concerned Dr. Rossignol most were the Licensee testing positive for an illicit substance on 02/07/22 and an admission by the Licensee that she had used alcohol in the recent past. Dr. Rossignol explained that rarely, if ever, would an individual test positive for the illicit substance in question due to incidental exposure. Additionally, Dr. Rossignol testified that by the

¹ Exhibit 2 reflects these same requirements, as well as others.

² Exhibit 2 contains this provision.

time she sent her May 2022 letter to the Board, the Licensee had terminated the release that allowed NHPHP to communicate with her health care provider about Licensee. In addition to the “hard” and “soft” violations of the Monitoring Agreement, Dr. Rossignol’s testimony also addressed the fact that she had encountered signs that the Licensee was actively looking for clinical work after being asked not to do so. For example, Dr. Rossignol recalled a telephone call she had received asking for a reference for Licensee. Additionally, a counselor of Licensee had told Dr. Rossignol that Licensee had made a statement that Licensee “should get a job and not tell them [NHPHP].”

Dr. Rossignol also provided testimony that acknowledged positive steps the Licensee had taken with respect to the violations and clarified that although the Licensee had removed her primary care release for NHPHP, she started taking substance screenings at other facilities, which NHPHP could review. Nonetheless, Dr. Rossignol explained that she remained concerned with the Licensee’s behavior, given the violations of the Monitoring Agreement and trust issues tied to her apparent reversal of an agreement not to seek clinical employment. Dr. Rossignol expressed uncertainty as to whether Licensee would seek and find work in a clinical setting, which she believed would put the public at risk.

During cross examination, Dr. Rossignol acknowledged there was no illicit substance shown in either of the drug screens occurring before and after the positive screen Licensee had in February of 2022. Likewise, she agreed that the drug screens Licensee takes show levels of substances (not just a positive screen), and that the Licensee had never tested positive for alcohol. Board questioning revealed that the Licensee had two jobs in a clinical setting in April 2022, the Licensee now has a job as a mental health technician that does not require licensing, and it is unusual for a Licensee to pull a medical release to share information when enrolled in NHPHP.

After Dr. Rossignol was excused as a witness, the Licensee testified on her own behalf. She first provided details around the allegation that she had admitted to drinking alcohol. She stated that she never

admitted to using alcohol and explained that she went to a casino to participate in a celebration of life ceremony for her mother and stepmother, who had passed away in March of 2022.³ The Licensee's testimony expressed the significant toll that the loss of her mother and stepmother has had on her recently, including in relation to following through on the "extra stuff" associated with NHPHP.

The Licensee also denied any substance use and does not know why she tested positive. She testified that Dr. Rossignol "fights" with her about everything she says. The Licensee also relayed that her former healthcare provider did not feel comfortable working with Dr. Rossignol and NHPHP. She stated that she asked NHPHP what she could do to address their concern that she was using substances. Her testimony also revealed that she wants to pursue the MNA and the YWCA will support her in that; however, her LNA license has to be in good standing. The Licensee closed her direct testimony by telling the Board she wants to do the right thing and she does not think she is being treated fairly by NHPHP or that the system is just.

Upon cross examination, the Licensee revealed what supports she has in place outside of NHPHP. She is involved with the YWCA, who she speaks with at least weekly, and Families in Transition. She also identified her stepsister and her child as family support. She acknowledged that she terminated the release between NHPHP and her provider. She stated she did this because she is looking for a new provider, as her current one had indicated they could not give NHPHP all it requested. Board questioning also revealed the Licensee had read the Monitoring Agreement and understood its terms. She again denied substance use and reiterated that she was going through a lot because of her mother's death. She reaffirmed that she had not drank and stated the last time she used any substance was 11/21/19. The Licensee acknowledged that if the Monitoring Agreement were extended another 5-years, she would continue in the program to keep her license in good standing, but she felt it was unjust. After further

³ Board questioning later revealed the mother passed away in January of 2022.

inquiry by the Board, she indicated she could work through the “fairness” issue she has with NHPHP. The Licensee explained that she had no fear of relapse, was strong in her sobriety, and knows when to reach out. She stated she will be strong for her son. She testified that before her mother passed away, she was completing most requirements in the Monitoring Agreement.

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. Pursuant to Rule 402.03, Hearing Counsel has shown that Licensee's license should remain suspended on an emergency basis, pending disciplinary adjudication. The central facts in this matter are clear: 1) the Licensee has a substance use history, which she is receiving assistance for through NHPHP pursuant to Board Order, *see* Exhs. 1-4 and testimony of Dr. Rossignol and Licensee; and 2) the Licensee has recently violated the terms of her NHPHP Monitoring Agreement in multiple ways, including but not limited to testing positive for an illicit substance and terminating the release between her healthcare provider and NHPHP. *See* Exhs. 2-4 and testimony of Dr. Rossignol. Taken together, these facts demonstrate that the Licensee is an “imminent danger to public health, safety, or welfare”, RSA 326-B:37, IV, such that her license to practice should remain suspended pending a full disciplinary hearing. As Dr. Rossignol testified, for someone with a substance use disorder, the purpose of NHPHP is to provide assistance in maintaining sobriety so that they can achieve success in their careers. Likewise, the Board has the Licensee participate in NHPHP to ensure she receives the assistance she needs so that she can safely serve the public as an LNA. By failing to follow the terms of the Monitoring Agreement as discussed herein, the Licensee has removed the safeguards the Board instituted to protect the public. While the Board expresses its deepest sympathies to the Licensee for losing her mother and stepmother

recently, it has a duty to protect the public pursuant to RSA 326-B:1. The Licensee shall remain in compliance with NHPHP's Monitoring Agreement moving forward.

VI. CONCLUSION AND DECISION:

Pursuant to RSA 326-B:27(IV), Rule 402.03, the Board hereby upholds its emergency suspension of Felicia LeBrun's license as an LNA, pending a full adjudicatory disciplinary hearing in this matter. A Notice of Adjudicative Hearing with an appropriate date/time shall follow.

DATED: 6/13/2022

_____/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
Office: 603-271-3825