

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

BOARD OF NURSING

**In Re: Kathryn Peterson,
Applicant for RN Reinstatement
License #: RN 079167-21**

Docket No.: 2022-NUR-0046

**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
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

II. CASE SUMMARY/PROCEDURAL HISTORY

On or about 01/1/22, the Office of Professional Licensure and Certification (“OPLC”) received a completed temporary RN application through reinstatement from Kathryn Peterson (“Applicant”) on behalf of the New Hampshire Board of Nursing (“Board”). On 10/27/22, due to concerns about the Applicant’s disciplinary history in New Hampshire and in other states, as well as an apparent criminal background, the Board voted to commence a show cause hearing. The purpose of the hearing is to obtain clarification on the past disciplinary action and criminal background, the Licensee’s status, and determine if the Applicant meets the qualifications for licensure as an RN through reinstatement. A Notice of

Adjudicative Hearing followed, and the Board then held the adjudicatory hearing on 12/09/22 at 2:30 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. VT Current Licensure Status
2. NH Voluntary Surrender- 2019
3. VT Voluntary Indefinite Suspension- 2019
4. VT Summary Suspension - 2019

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

A. None.

b. Testimony was received from:

A. Not applicable, the Applicant failed to appear.

IV. PRELIMINARY MATTERS

The Applicant failed to appear for the hearing, which was available via in-person and Zoom. The Board took administrative notice of its file in this matter. The Board's file shows the Board Administrator mailed the Applicant a notice of hearing via certified mail, return receipt requested on 11/16/22 at the last known address she provided to the Board. 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. Although the certified mailing had not yet been picked up by the Licensee, the notice of hearing was also sent to the Applicant's addresses on file with the Board by first class mail and to the email she has on file with the Board. According to the Board Administrator, the regular mail was not returned. Hearing Counsel represented that she had an email exchange with the Applicant shortly after the notice of hearing issued, which appeared to indicate her intent to participate in the hearing. Hearing Counsel confirmed that the email address the Board Administrator had sent the notice of hearing to was the same one the Applicant used to

communicate with Hearing Counsel. The Presiding Officer also notes that the Applicant failed to appear for the Prehearing Conference scheduled in this matter for 12/07/22 at 9:00 AM EST via Zoom. The notice for this prehearing conference was included in the notice of hearing.

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 Applicant] ... 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 finds its record and Hearing Counsel’s offer of proof demonstrate that the Board took “additional reasonable steps” to provide notice to the Applicant. *See Id.* For these reasons, the Presiding Officer recommended to the Board that it move forward with the hearing *in absentia* (without the Applicant 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

The Applicant bears the burden of proof by a preponderance of the evidence with respect to Issue Presented II.d.1, while Hearing Counsel bears the burden of proof by clear and convincing evidence with respect to Issue Presented II.d.2. Issue Presented II.d.1 states: **“Disciplinary History:** Whether the Applicant can establish, by a preponderance of the evidence, that she is eligible for licensure as an RN through reinstatement pursuant to RSA 326-B:16, RSA 326-B:23, and Rules 401.01, 401.02, and 401.03, by demonstrating sufficient evidence of good professional character, where she has past disciplinary

action in New Hampshire and other jurisdictions.” NOH at II.d.1. The Applicant provided no additional documentation in advance of the hearing, aside from the materials previously submitted with her application and upon which the Board had initially determined it desired to notice this application for a hearing. The Board accepted the Applicant’s previously submitted application materials as a full exhibit. Because there was no need to move forward on Issue II.d.2, the Board did not fully admit Hearing Counsel’s exhibits. No witnesses testified.

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

After reviewing all the evidence and drawing all reasonable inferences therefrom, the Board finds the Applicant has failed to meet her burden of proof by a preponderance of the evidence that she is qualified for licensure despite her past disciplinary action in New Hampshire and other jurisdictions. The facts are straightforward: the Applicant failed to appear for the hearing or provide any additional documentation upon which the Board could determine that she was qualified for licensure, despite the Board’s concerns with her past disciplinary history. Her application for licensure is therefore denied.

VI. ORDER AND DECISION:

Pursuant to RSAs 326-B:16, 17, and 23, and Rules 300 et seq., the Board hereby DENIES Kathryn Peterson’s application for RN reinstatement.

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