

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

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**BOARD OF NURSING**

**NOTICE OF PREHEARING CONFERENCE AND ADJUDICATIVE HEARING**

**In Re: Melissa Kimball (aka Colvin), RN  
RN Lic. # 092199-21**

Docket No.: 24-NUR-044

Date of Prehearing Conference:

**01/09/2025 @ 11:00 AM**

Date of Adjudicative Hearing:

**01/23/2025 @ 9:30 AM**

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**I. CASE SUMMARY/PROCEDURAL HISTORY:**

On 12/07/2023, the Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”), received a complaint alleging Melissa Kimball (aka Colvin), RN (“Respondent”) was impaired at work. On 08/22/2024, the Board reviewed a “Report of Investigation” dated 08/13/2024 and subsequently voted to initiate a disciplinary proceeding pursuant to RSA 310:10. This Notice of Hearing follows.

**II. ORDERS:**

(a) Pursuant to RSA 310:10, X and N.H. Code Admin. R. Plc 206.06(a) (“Rules”), the Board hereby notifies the parties that the Board has scheduled an **adjudicative hearing** for:

**Date: 01/23/2025**

**Time: 9:30 am**

**Place: OPLC, 7 Eagle Square, Concord, NH 03301. If you require reasonable accommodations, a translator, or wish to participate remotely (Rule 206.08(f)), you may file a motion with the Board.**

Please advise if this hearing is anticipated to last longer than 2 hours by filing a motion explaining with particularity the necessity for the additional time.

(b) **STATUTORY AUTHORITY:** This adjudicative/disciplinary hearing shall be conducted pursuant to RSA 310:10 and Rule 206.06 et seq. To the extent that the Plc rules do not address an

issue of policy or procedures, the Board shall rely upon RSA 326-B, RSA 541-A, RSA 310, and N.H. Admin. R. Ann., Title Jus, Part 800.

(c) ISSUES PRESENTED: Pursuant to Rule 206.06(b)(3), the issues to be considered at the hearing in this matter are as follows:

- (1) Whether the Respondent engaged in professional misconduct pursuant to RSA 326-B:37, II *et seq.* and/or Nur 402.04 *et. seq* as alleged in the “Report of Investigation” dated 08/13/2024 and incorporated by reference herein.
- (2) If a finding of misconduct is made pursuant to RSA 326-B:37, II, and/or Nur 402.04, what if any disciplinary action the Board should take in accordance with RSA 310:12.

(d) PRESIDING OFFICER: Pursuant to RSA 310:10, IV, V, and VI and Rule 206.03 *et seq.*, an individual employed as Administrative Law Judge with the New Hampshire Office of Professional Licensure & Certification shall act as the presiding officer in this proceeding with the authority to do, among other things, the following: preside, regulate and control the course of a hearing; issue oaths or affirmations to witnesses; rule on questions of law and other procedural matters; issue final orders based on factual findings of the Board; issue subpoenas; hold prehearing conferences; render legal opinions; and make conclusions of law.

(e) HEARING COUNSEL/ADMINISTRATIVE PROSECUTOR: Pursuant to RSA 310:10, III, the Chief Prosecutor, OPLC Division of Enforcement, 7 Eagle Square, Concord, N.H., 03301 (or his/her designee) shall serve as Hearing Counsel to represent the public interest.

(f) ATTORNEYS: Pursuant to RSA 310:10, XI and Rule 206.06(b)(10), each party has the right to have an attorney represent them at the party’s own expense.

(g) VOLUNTARY EXCHANGE OF DOCUMENTS: Pursuant to Rule 206.18, the parties shall attempt to agree among themselves concerning the mutual exchange of relevant information. If these efforts prove unsuccessful, upon motion, discovery shall be further ordered when the parties cannot adequately address said issues voluntarily.

(h) MOTIONS: Pursuant to Rule 206.12, parties shall file any motions or other requested relief in this matter with the Presiding Officer’s Office, and provide a copy to the other parties. Unless good cause exists, all motions shall be filed at least ten (10) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief.

(i) OBJECTIONS: Pursuant to Rule 206.12(d), any responses or objections to motions or other requested relief shall be filed in similar fashion within ten (10) days of receipt of such motion or other requested relief.

(j) EXHIBITS: Pursuant to Rule 206.18(d), parties shall provide a final witness list, including a brief summary of their testimony, a list of proposed exhibits, and a copy of any proposed exhibits to the Presiding Officer’s Office and the other parties no later than fourteen (14) days prior to the

hearing. Respondent's exhibits shall be pre-marked for identification with capital letters; Hearing Counsel's exhibits shall be pre-marked for identification with Arabic numerals.

(k) MAILING ADDRESS FOR THE PRESIDING OFFICER'S OFFICE: Pursuant to Rule 206.10(a), any and all petitions, motions, pleadings, proposed exhibits, or other documents shall be filed with the Presiding Officer:

Thomas Pappas, Jr., Hearings Clerk  
The Presiding Officer's Office  
7 Eagle Square  
Concord NH 03301  
[hearingsclerk@oplcnh.gov](mailto:hearingsclerk@oplcnh.gov)

(l) COMMUNICATIONS WITH THE BOARD AND PRESIDING OFFICER: Routine procedural inquiries may be made by contacting Thomas Pappas, Jr. Any other communications with the Board or Presiding Officer must be in writing and filed as provided above. *Ex parte* communications (meaning "without the other party present and/or included") with the Presiding Officer and/or Board are specifically forbidden by law. *See, i.e.*, Rule 206.10(b) and RSA 541-A:36.

(m) EMAIL COMMUNICATIONS: The parties and the Presiding Officer's Office have the option to agree to exchange e-mail addresses and the parties may agree that e-mail service of any and all documents going forward may be considered in compliance with Rule 206.11(a)(3) and 206.11(b)(3).

(n) CONTINUANCES: Pursuant to Rule 206.16, if you are unable to appear at any scheduled hearing, you must request a continuance from the Presiding Officer in writing and it shall be granted if the Presiding Officer determines that a continuance would assist in resolving the matter fairly under Rule 206.16(b).

**(o) INTERVENTION: COMPLAINANT IS HEREBY NOTIFIED OF ITS RIGHT TO PETITION FOR INTERVENTION PURSUANT TO RULE 206.14. ANY FILED PETITION SHOULD STATE WITH PARTICULARITY: 1) THE PETITIONER'S INTEREST IN THE SUBJECT MATTER OF THE HEARING; 2) WHY THE INTERESTS OF THE EXISTING PARTICIPANTS AND THE ORDERLY AND PROMPT CONDUCT OF THE PROCEEDING WOULD NOT BE IMPAIRED BY ALLOWING THE PETITIONER TO INTERVENE; AND 3) ANY OTHER REASONS WHY THE PETITIONER SHOULD BE PERMITTED TO INTERVENE. THE INTERVENING PARTY SHALL CONTEMPORANEOUSLY COPY ALL PARTIES ON THE FILED PLEADING PURSUANT TO RULE 206.11. COMPLAINANT SHALL FILE ANY SUCH QUALIFYING PETITION TO INTERVENE NO LATER THAN THREE DAYS PRIOR TO THE FINAL HEARING.**

**(p) NON-ATTENDANCE AT HEARING: PURSUANT TO RULE 206.25, THE FAILURE OF A PARTY TO APPEAR AT THE TIME/PLACE SPECIFIED ABOVE MAY RESULT IN THE HEARING BEING HELD IN ABSENTIA (WITHOUT THAT**

**PARTY PRESENT) AND THE BOARD MAY ISSUE A FINAL DECISION WITHOUT FURTHER NOTICE OR OPPORTUNITY TO BE HEARD.**

(q) **PREHEARING CONFERENCE:** Pursuant to RSA 310:10, VI and Plc 206.06(b)(6), a non-public Prehearing Conference in this matter is hereby scheduled for **01/09/2025 at 11:00 AM** via **Zoom**. The link is available here: <https://us02web.zoom.us/j/81367034702?pwd=b3pxWjU3eHJpaUowRG5iWkdGNUNZQT09>. The specific issue to be addressed at the prehearing conference are as follows:

- (1) The distribution of exhibits and written testimony, if any, to the participants;
- (2) Opportunities and procedures for simplification of the issues;
- (3) Possible amendments to the pleadings;
- (4) Opportunities and procedures for settlement;
- (5) Possible admissions of fact and authentication of documents to avoid unnecessary proof;
- (6) Possible limitations on the number of witnesses and possible limitations on the scheduling of witnesses;
- (7) Possible changes to the standard procedures that would otherwise govern the proceeding; and

(r) (8) Other matters that might contribute to the prompt and orderly conduct of the proceeding.

(s) **RECORDING:** A recording of the hearings shall be taken and preserved. Each participant has the right to have the board provide a certified shorthand court reporter at the participant's expense and notify all participants that any such request be submitted in writing at least 10 days prior to the proceeding, as provided in RSA 541-A:31, III(f).

(t) **FINDINGS OF FACT:** Pursuant to RSA 310:10, VII: Boards shall be the triers of fact in all disciplinary and non-disciplinary proceedings. If, based upon the Board's findings of fact, the Presiding Officer concludes the Licensee has committed professional misconduct, the Board shall determine what if any sanctions to impose. *See* RSA 310:12.

(u) All prior consistent orders remain in full force and effect.

DATED: 11/8/2024

\_\_\_\_\_/s/ Shane D. Goulet, Esq.\_\_\_\_\_  
Shane D. Goulet, Esq., Administrative Law Judge  
Presiding Officer  
New Hampshire Office of  
Professional Licensure & Certification

7 Eagle Square  
Concord, NH 03301



Lindsey B. Courtney, J.D.  
Executive Director

Jessica F. Kallipolites, Esq.  
Director

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**New Hampshire Board of Nursing  
Concord, NH 03301**

**PRIVILEGED AND CONFIDENTIAL**

**Complaint #:** 2023-NUR-Colvin-1720 AND 2024-NUR-Colvin-0746  
**Licensee:** Melissa Colvin  
**License Number:** RN # 092199-21 Issued: August 25, 2023 - Expires: August 31, 2025  
**Investigator:** Michelle Sousa, Investigator, OPLC-Division of Enforcement  
**Date of Report:** August 13, 2024

**REPORT OF INVESTIGATION**

**I. Origin and Nature of Allegations**

On December 7, 2023, the OPLC-Enforcement Division (“Enforcement”) received a complaint against Melissa Colvin (“Respondent”) from Anonymous at Genesis Center Lebanon (“Facility”). Then on July 26, 2024, an additional complaint was received from Lisa Daniels, DON (“DON”) at the Facility.

The first complaint stated that the Respondent appeared to be impaired at work and the second complaint stated that the Respondent sent a text message to the DON advising that she had to leave, around the same time they discovered that some of the controlled substances were missing from the med cart. The Facility required the Respondent to return for a urine drug test, however, she never returned. This appears to be in violation of RSA Chapter 326-B and administrative rules governing the practice of Nursing in the State of New Hampshire.

**II. Sources of Information**

- Complaint filed by Anonymous on December 7, 2023.

- Complaint filed by DON on July 26, 2024.
- Supporting documentation from the Facility, including:
  - Investigation notes and email correspondence
  - Witness Statement from MNA, Randy Cavanaugh (“MNA”)
  - Written Warning for LPN, Caccious Bradford (“LPN”)
  - Copies of text messages between the Respondent and the DON
  - Copy of the Respondent’s Termination Letter
- Lebanon PD “Call for Service” Record
- Copy of Respondent’s Subpoena to Appear

### **III. Results of Investigation**

1. The initial complaint received in December 2023, stated that the Respondent appeared to be impaired on the job. In the initial complaint, Anonymous stated that on numerous occasions they observed the Respondent at work with pinpoint pupils, having difficulty keeping her eyes open and falling asleep at the nurse’s station. Anonymous stated that these concerns were dismissed as the Respondent being “flaky” or as side effects of prescription medication.
2. Documentation provided by the Facility shows the following timeline for July 18, 2024:
  - a. At approximately 5:30am, the DON picked up the Respondent at the Respondent’s apartment. The Respondent was scheduled to work a 12-hour shift, assigned to do skin checks, wound rounds and other tasks.
  - b. At approximately 6:00am, the Respondent asked the LPN for his keys to the med room so that she could get supplies. *[Note: The med cart keys are on the same keychain as the keys for the med room and the med cart was left unsupervised.]*
  - c. At approximately 6:30am, the MNA observed the Respondent coming out of the med room.
  - d. At approximately 7:00am, the LPN, preparing to end his shift, completed a narcotic count on the med cart with the incoming shift LPN, Samantha Bond (“Bond”) and discovered that 5 tablets of 5mg Oxycodone and 9 tablets of 25mg Lyrica were missing. *[Note: The above medications were contained in 2 separate blister packs located right next to each other in the cart.]*
  - e. At approximately 7:45am, the LPN notified the DON and Administrator of the missing medication.
  - f. At approximately 8:00am, the DON did an audit of the med cart and confirmed what the LPN reported.

- g. At approximately 8:30am, the Administrator and DON started paging and calling the Respondent and were notified that she was seen exiting the building around 7:00am.
- h. At approximately 8:45am, the Administrator called the Lebanon PD. When Officer Snow arrived, he interviewed the LPN and MNA. During his interview, the MNA advised the Officer that he saw the Respondent exiting the med room at approximately 6:30am. The LPN did admit to leaving his med cart unsupervised while the keys were in the Respondent's possession. The Officer informed the Administrator that when he called the Respondent, she denied ever requesting or receiving the keys for the med cart.

Copies of text messages between the Respondent and the DON beginning at 7:19am on July 18, 2024 state,

*(Respondent) "I had to leave my brother is here"*

*(DON) "No you need to see me right now please" "Where are you??"*

*"Call me?"*

*(Respondent) "So sorry my brother showed up at work and we are having it out right now he's screaming at me"*

*(DON) "I need you to call me asap."*

On the morning of July 18, 2024, the Respondent left the Facility without permission to do so. Per Facility policy concerning drug diversion, the DON requested that all staff involved complete a drug test. The LPN, MNA and Bond, all complied and passed. The Respondent was called and asked to return to the Facility as soon as possible to submit urine for a drug test, which she agreed to do between 3:30 and 4:00pm but she never returned.

On July 18, 2024, the MNA submitted a written statement that he saw the Respondent coming out of the med room shortly after he arrived at 6:10am, then at approximately 7:00am, he saw the Respondent come up the hall to the office, grab her bag and coffee and walk off the floor. The LPN was written up for relinquishing his med cart keys, and although the Respondent had no disciplinary action prior to this incident, on July 23, 2024, the Respondent was mailed a termination letter for violating company policy.

The Respondent's date of hire was May 30, 2023 and she was employed as a full-time floor nurse. Additional information provided by the DON states:

- The Respondent self-admitted to having a history of drinking.
- The Respondent reported to management that her mother passed away on July 14, 2024.
- The Respondent reported to the DON that her husband broke things off with her on the night of July 17, 2024.



3. Seeking a copy of the police report, Enforcement spoke with Lebanon Police Officer, Nathan Snow on July 31, 2024. He stated that this was an on-going investigation but that he initially spoke with the Respondent on the phone and she denied ever having the keys to the med room or even entering the med room that morning. She has since refused to report in-person for an interview. He provided his incident report as #24L-662-OF.
4. Unable to reach the Respondent by phone, as her number is no longer in service, on July 31, 2024, Enforcement sent the Respondent a Subpoena to appear for an interview on August 6, 2024 at 10:00am. The Subpoena was sent via email and by certified mail. The Respondent did not contact Enforcement or appear for her interview.

#### **IV. Licensee Response**

The Respondent has not contacted Enforcement or submitted any response to the complaint.

#### **V. Statutory Claims**

The Board could impose discipline pursuant to the following:

##### **RSA 326-B:37 Disciplinary Action; Misconduct. –**

II. The board may discipline a licensee or applicant for any one or a combination of the following grounds:

(e) Unethical conduct including but not limited to conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health or safety of a client. Actual injury need not be established.

(g) Conduct including but not limited to failure or inability to perform nursing or nursing assistant practice as defined in this chapter, with reasonable skill and safety.

(h) Unprofessional conduct including but not limited to:

(1) A departure from or failure to conform to nursing standards, including improper management of client records.

(k) Any nursing practice that may create unnecessary danger to a client's life, health, or safety. Actual injury to a client need not be established.

(m) Actions or conduct that include, but are not limited to, falsifying reports, client documentation, agency records, or other essential health documents, failure to cooperate with a lawful investigation conducted by the board, failure to maintain professional

boundaries with clients or family members, use of excessive force upon or mistreatment or abuse of any client, engaging in sexual conduct with a client, touching a client in a sexual manner, requesting or offering sexual favors or language or behaviors suggestive of same, or threatening or violent behavior in the workplace.

(n) Diversion or attempts to divert drugs or controlled substances.

(p) Other drug-related actions or conduct that include but are not limited to:

(1) Use of any controlled substance or any drug or device or alcoholic beverages to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use may impair his or her ability to conduct with safety to the public the practice of nursing.

#### **NUR 402.04 Disciplinary Sanctions.**

(b) In addition to the acts described in RSA 326-B: 37, II, the following shall also be considered acts of misconduct or dishonesty for any person licensed under RSA 326-B:

(2) Leaving an assignment from the acute care, long term care, home care or community setting, without notifying the appropriate authority, whereby such departure endangers the health, safety, and welfare of those individuals entrusted to the licensee's care;

(6) Physical, mental and/or verbal abuse, battery, exploitation, harassment, or neglect of individuals;

#### **VI. Recommendation and Conclusion**

**Adjudication for Reckless Conduct** – Based on the NCSBN Board Action Pathway, while it does not appear that the Respondent's actions were intended to deliberately harm a patient, she abandoned her residents by leaving the Facility without authorization and it appears as though she stole multiple controlled substances, then attempted to conceal her theft by lying. In addition to this, the Respondent failed to cooperate with a lawful investigation by the Facility, Lebanon PD and Enforcement.

Based on the findings, it appears as though the Respondent violated RSA 326-B:37 and NUR 402.04:

1. Abandoned her residents by leaving the Facility without authorization.
2. Stole multiple controlled substances from the Facility's med cart.
3. Attempted to conceal her theft of the controlled substances by lying to the Facility and the Lebanon Police Officer when she claimed she never even had the keys to access the med room or med cart, however, there are 2 witnesses that refute her claim (the LPN stated he loaned the Respondent his keys and the MNA stated he saw the Respondent exiting the med room).

4. Failed to cooperate with the Facility's investigation when she never returned for a drug screening and then had the service turned off on her phone.
5. Failed to cooperate with the Lebanon PD investigation when she refused to report in-person for an interview and had the service turned off on her phone.
6. Failed to cooperate with a lawful investigation by Enforcement when she ignored a Subpoena to Appear for an interview.