

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

BOARD OF NURSING

**In Re: Kendal Smith
Applicant for Licensed Nursing Assistant**

Docket No.: 25-NUR-016

**NOTICE OF RSA 332-G:10
ADJUDICATIVE HEARING ON
APPLICATION -
02/27/2025 @ 11:00 AM**

I. CASE SUMMARY/PROCEDURAL HISTORY:

On 1/23/2025 the New Hampshire Board of Nursing (“Board”) received a completed application for licensure as a licensed nursing assistant from Kendal Smith (“Applicant”). After reviewing the application at its 1/23/2025 regular meeting, the Board determined it needed further clarification before it could determine whether the Applicant’s criminal record will disqualify her from obtaining state recognition as a licensed nursing assistant. The Board therefore recommended an adjudicative proceeding. This Notice of RSA 332-G:10 Adjudicative Hearing on Application 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 **RSA 332-G:10 adjudicative hearing on application** for:

Date: 02/27/2025

Time: 11:00 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.

MULTIPLE HEARINGS ARE SCHEDULED AT THIS TIME. PLEASE ALLOT (1.5) HOURS OF YOUR TIME.

Please advise if this hearing is anticipated to last longer than 30 minutes by filing a motion explaining with particularity the necessity for the additional time.

(b) **STATUTORY AUTHORITY:** This adjudicative hearing shall be conducted pursuant to RSA 332-G:10, RSA 310:11, 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, pursuant to RSA 332-G:10, the Applicant's criminal record disqualifies her from obtaining state recognition because it includes a conviction and the Board has (a) considered the nature of the crime, and any information provided as to the current circumstances of the convicted person, including but not limited to their rehabilitation, completion of the criminal sentence, amount of time that has passed since the conviction or release, testimonials, employment history and employment aspirations; and determined, by clear and convincing evidence: (1) the conviction has a substantial and direct relationship to the occupation, trade, vocation, profession, or business for which the person has applied for or obtained state recognition; and (2) disqualifying the individual or suspending or revoking the state recognition based upon that conviction serves the purpose of protecting public safety.

(d) **PRESIDING OFFICER:** Pursuant to RSA 310:11, III 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.

(e) **ATTORNEYS:** Pursuant to RSA 310:11, IV and Rule 206.06(b)(10), each party has the right to have an attorney represent them at the party's own expense.

(f) **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.

(g) **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.

(h) **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.

(i) **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.

(j) 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@oplc.nh.gov

(k) 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.

(l) 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).

(m) 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).

(n) **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 HEARING.**

(o) **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.

- (p) RECORDING: A recording of the hearings shall be taken and preserved.
- (q) PUBLIC HEARING: Pursuant to RSA 310:11, V: Licensing proceedings shall be open to the public in accordance with RSA 91-A, which allows the Board to hold nonpublic sessions for the types of matters listed in RSA 91-A:3, II.
- (r) **CRIMINAL RECORD REQUIRED: IF YOU HAVE NOT ALREADY DONE SO, PURSUANT TO RSA 332-G:10, II, YOU ARE REQUIRED TO SUBMIT A CERTIFIED COPY OF YOUR CRIMINAL RECORD OR AUTHORIZE THE BOARD OR COMMISSION TO OBTAIN YOUR RECORD. THIS MATTER MAY BE DISMISSED OR CONTINUED IF THE BOARD DOES NOT HAVE A CERTIFIED COPY OF YOUR CRIMINAL RECORD BY THE TIME OF THE HEARING.**
- (s) All prior consistent orders remain in full force and effect.

DATED: 2/11/2025

_____/s/ Cassandra A. Brown, Esq._____
Cassandra A. Brown, Esq.
Administrative Law Judge
Presiding Officer
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301