

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals
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Department of Public Health

Petitioner

Docket No: PHNA-24-0350

v.

Mackenzie Bowes

Date: June 17, 2025

Respondent

Summary of Decision

The Department of Public Health is granted summary decision; the Respondent's name is to be placed in the nurse aide registry because she admitted to sufficient facts in a related criminal prosecution involving misappropriation of a client's property.

DECISION

This matter involves an appeal by Mackenzie Bowes, a Certified Nursing Aide, from a notice of agency action issued by the Department of Public Health (DPH) charging her with misappropriating residents' property without consent. Ms. Bowes was charged criminally as well. She subsequently admitted to sufficient facts to support a finding of guilt on one count of misdemeanor larceny under \$1,200.

DPH has now moved for summary decision based on the outcome of the criminal case. It attached three exhibits to its motion. I have added the notice of agency action as a fourth exhibit. (Exs. A – D.) Ms. Bowes opposed the motion. She attached six exhibits to her opposition. I have added Ms. Bowes' appeal as her seventh exhibit. (Exs. 1 – 7.) The exhibits are listed in an appendix.

Statement of Undisputed Facts

The following facts are beyond dispute. See 801 CMR § 1.01(7)(h.)

1. On December 9, 2021, DPH received a complaint from Overlook Masonic Health Center in Charlton, Massachusetts, reporting that Certified Nurse Aide (CNA) Mackenzie Bowes had misappropriated valuables from four residents. The facility conducted an internal investigation and determined from work logs that Ms. Bowes was the only one that was working on the floor during each of the instances of theft. The Health Center suspended Ms. Bowes and contacted the police. (Exs. B and C.)
2. DPH's investigation substantiated several specific instances of misappropriation. These were the theft of \$50 in cash from one resident, a ring from a second resident, a necklace from a third, and another ring from a fourth. (Ex. B.)
3. Ms. Bowes acknowledged one theft in her appeal. She stated:

During my time [working at the Overlook Masonic Health Center] I was in an extremely horrible domestic relationship. It proceeded to get worse when he was spending my money faster than I could make it. I stupidly took money from a resident. When you are worried for your life and well being you do stupid things. I knew what I was doing was wrong and I went to the police station myself to let them know what I had done.

(Ex. 7.)
4. Criminal charges followed. On May 6, 2022, a complaint was filed in Dudley District Court under Docket No. 2264CR001139, charging Ms. Bowes with ten theft-related counts, including multiple felonies. On March 3, 2023, she entered into a plea agreement in which she admitted to sufficient facts to warrant a finding of guilty on one count of misdemeanor larceny under \$1,200. The court imposed six months of unsupervised probation that ended on September 7, 2023, after which Ms. Bowes' case was dismissed. (Exs. A and 2.)

5. Based on her court admission and DPH's investigative findings, DPH informed Ms. Bowes that her name would be added to the Nurse Aide Registry for misappropriation, as required by both Massachusetts General Law Chapter 111, Section 72J, and federal law under 42 U.S.C. § 1396r(e)(2)(B). (Ex. D.)
6. Ms. Bowes filed a timely appeal. (Ex. 7.) She later submitted a reference from LPN Kelly Christo, the clinical nurse manager at the Overlook Masonic Health Center. Nurse Christo stated that Ms. Bowes:

showed strong skills in attending to patients' needs, ensuring their comfort, and maintaining a positive and supportive environment. She is proficient in handling the daily responsibilities of patient care, including assisting with activities of daily living.

One of Mackenzie's strongest strengths is her compassion for the residents, as well as her ability to be a team player, contributing to a cohesive efficient working environment.

(Ex. 1.)
7. In December 2022, Ms. Bowes obtained an abuse prevention order against the individual she had been living with in 2021. (Ex. 3.) He was charged criminally with violation of an abuse prevention order, vandalizing property, and larceny under \$1,200. He was tried in 2023 and sentenced to two and one-half years in prison. (Exs. 4 – 6.)

Discussion

The issue at hand is whether DPH may list CNA Mackenzie Bowes on the Nurse Aide Registry for misappropriation because of her admission to sufficient facts that would support a finding of guilt on one count of misdemeanor larceny under \$1,200. DPH has moved for summary decision and hence must prove that there are no genuine issues of material fact and that it is entitled by law to a decision in its favor. 801 CMR 1.01(7)(h).

Under Massachusetts General Laws (M.G.L.) c. 111, § 72J, DPH must maintain a Nurse Aide Registry listing all individuals certified to work as nursing assistants. DPH must enter into

that registry any substantiated findings of abuse, neglect, mistreatment, or misappropriation of a resident's property. Misappropriation is defined under 105 CMR 155.003 as the "deliberate misplacement, exploitation, or wrongful temporary or permanent use of a patient's or resident's belongings or money without such patient's or resident's consent." *Id.* Federal and state law require only that DPH base its decision concerning misappropriation on "specific documented findings." 42 U.S.C. § 1396r(e)(2)(B) and M.G.L. c. 111, § 72J. Those findings need not be connected to a criminal charge but, if they are, then DPH regulations require placement on the nurse aide registry of a nurse who has made an "admission to facts sufficient to support a guilty finding made in a court of law by such individual accused of . . . misappropriation of patient or resident property." 105 CMR 155.016(C)(4).

Here, Ms. Bowes admitted in Dudley District Court to sufficient facts to support a charge of misdemeanor larceny under \$1,200. By admitting to sufficient facts on the one theft charge, Ms. Bowes admitted that the prosecution had sufficient evidence to convict her of one count of misdemeanor larceny if the case went to trial. Such a finding documented by a court is a "specific documented finding" that the federal and state statutes call for. Ms. Bowes' admission to sufficient facts related to a misappropriation from a resident thus "requires the resolution of this appeal in [DPH's] favor." *Department of Public Health v. Roche*, PHNA-11-103, at *3 (Mass. Div of Admin. Law App., Sep. 7, 2011). Thus, I grant summary decision to DPH.

The consequence of the specific finding of misappropriation by Ms. Bowes is that "no facility, home health agency, homemaker agency or hospice program shall hire or employ an individual if such individual has . . . admitted sufficient facts to support a guilty finding of . . . misappropriation of patient or resident property in a court of law." 105 C.M.R. 155.010(E)(4).

DPH regulations allow it to impose alternative sanctions on nurse aides found to have committed abuse, neglect, mistreatment, or misappropriation of patient or resident property. 105

CMR 155.015. In misappropriation cases when the criminal court has placed the person involved on probation, the Department has often placed that person on probation of the same length as the criminal court did. *See, e.g. Department of Public Health v. Pard*, PHET-15-548 (Mass. Div. of Admin. Law App., Mar. 30, 2018).

Despite Ms. Bowes's admission to a theft from a resident, she has presented evidence that might have led the Department to agree to a lesser sanction. Although she was charged with ten theft-related crimes including multiple felonies, the district court agreed to resolve her case by having her admitted to sufficient facts as to only one misdemeanor. The court placed her on unsupervised probation for just six months, after which all charges were dismissed. Her claim that her actions were in response to threats from an abuser is bolstered by the order of protection she obtained against this man and the two and one-half years he was sentenced to prison for violating that order.

DPH has not, so far, decided to resolve this matter with a lesser sanction. Ms. Bowes points out that its regulations allow the Department, after a hearing in which a finding that a nurse aide's name should be placed on the Nurse Aide Registry, to allow that nurse aide to petition DPH after one year requesting removal from the Nurse Aide Registry. 105 CMR 155.014(G).

Unfortunately for Ms. Bowes, this provision applies only to neglect findings, not misappropriation.

Unless the Department decides to reconsider, Ms. Bowes has limited recourse. The regulations governing the nurse aide registry provide that the registry may contain "a brief statement by the accused nurse aide... disputing the findings, if such individual chooses to provide such statement." 105 C.M.R. § 155.016(C)(2). I am aware of instances in which other nurse aides have placed brief statements denying alleged abuse and explaining their reasons for settling. *See,*

e.g., Department of Public Health v. Nankap-Shimi, PHNA-13-177 (Mass. Div. of Admin. Law App., Aug. 28, 2014). I urge Ms. Bowes to avail herself of this opportunity.

I also note that the theft happened in 2021. I urge DPH, now that it is years later, to consider allowing Ms. Bowes to reapply for a nurse aide certification.

Conclusion

The Department of Public Health is granted summary decision. The Department of Public Health may now enter on the Nurse Aide Registry a finding that Mackenzie Bowes misappropriated a client's property, based on her admission to sufficient facts involving this charge in a criminal proceeding.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

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First Administrative Magistrate

Notice sent to:

Ryan Gibbons, Esq.

Mackenzie Bowes

APPENDIX

Department of Public Health Exhibits

- A. Bowes criminal docket
- B. DPH Investigative Report
- C. Overlook Health & Rehabilitation Center memorandum to Bowes
- D. Notice of Agency Action

Mackenzie Bowes Exhibits

- 1. Reference for Bowes from Kelly Cristo
- 2. Bowes Order of Probation Conditions
- 3. Abuse Prevention Order
- 4. August 11, 2023 letter to Bowes from DA Victim/Witness Advocate
- 5. January 10, 2024 letter to Bowes from Parole Board
- 6. January 11, 2024 letter to Bowes from DA Victim/Witness Advocate
- 7. Bowes' appeal