

BEFORE THE BOARD OF NURSING
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2015-NUR-LIC-946 REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 1051-2017
TREATMENT OF THE LICENSE OF)	
ELAINE CALUORI,)	FINDINGS OF FACT;
Registered Nurse, License No. 14976.)	CONCLUSIONS OF LAW; AND
)	RECOMMENDED ORDER
)	

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I. INTRODUCTION

On October 5, 2016, the Department’s Office of Legal Services issued a Notice of Proposed Board Action and Opportunity for Hearing (Notice), serving a copy on former legal counsel for Elaine Caluori (Caluori), registered nurse (RN). In the Notice, the Department asserted that Caluori’s actions as a nurse toward two patients constituted unprofessional conduct justifying disciplinary proceedings.

Caluori requested an administrative hearing to contest the proposed disciplinary action against her nursing license, and the Department transferred the matter to the Office of Administrative Hearings (OAH) for the purpose of conducting the administrative hearing and issuing a recommended order for the Adjudication Panel of the Montana Board of Nursing (Adjudication Panel) to consider.

On January 25, 2017, the OAH issued a Notice of Hearing and Telephone Conference. On February 9, 2017, the Hearing Officer held a pre-hearing telephone conference. Kevin Maki, agency legal counsel, represented the Department. Caluori was not available at the telephone number of record and did not participate in the pre-hearing telephone conference. The Hearing Officer set the schedule in the contested case and issued a Scheduling Order on February 10, 2017.

On May 22, 2017, the Department filed a Status Report and Request for Telephonic Status Conference with the Hearing Officer, based on communications between the parties. On May 25, 2017, the Hearing Officer held a telephone conference with Maki and Caluori both appearing. At the telephone conference, the parties agreed to reschedule the administrative hearing, and the Hearing Officer issued an Order Rescheduling Hearing on May 31, 2017. The Department filed a Motion for Witness Testimony by Videoconference at Administrative Hearing on July 3, 2017; the Hearing Officer granted the Department’s motion allowing certain

Department witnesses to testify by video during the final pre-hearing telephone conference conducted on July 17, 2017.

On July 25, 2017, the Hearing Officer convened the administrative hearing in Helena. Maki represented the Department. Caluori represented herself. During the hearing, the Department moved for the admission of several exhibits. With no objections from Caluori, the Hearing Officer admitted the Department's following exhibits: Nos. 1 (a - b), 3(c), 4 (a - b), 5 (a - d), 7 (a - b), 8, and 11 (a - i). The Hearing Officer admitted Exhibits Nos. 7 - 8 under seal. Caluori offered no exhibits for admission into the record. Caluori, Amber Carpenter, T.J. Hunt, Heidi Kaufman, and Heidi Blossom all testified in person. Karrie Rich, Doris Fischer, Beth Beringer, and Joseph Ninete testified by video.

II. FINDINGS OF FACT

1. The Montana Board of Nursing (Board) initially issued Elaine Caluori a registered nurse (RN) license in 1983. Hr. Tr. at 68:14-19. Caluori's Montana nursing license is presently expired. Id. at 68:20-69:2.

2. Caluori previously held nursing licenses in Florida and Colorado. Hr. Tr. at 69:9-20. In 2004, the Colorado Board of Nursing (Colorado Board) revoked Caluori's nursing license in that state after holding a disciplinary hearing by default in Case No. NB-2004-001 and entering conclusions of law that Caluori was subject to discipline because she: "failed to document to whom and when she had given Percocet that she had withdrawn from the Pyxis automated medication system"; and "diverted Percocet intended for thirteen patients from her place of employment." Ex. No. 1.

3. On June 16, 2015, the Board's Screening Panel summarily suspended Caluori's Montana nursing license in Docket No. CC-05-294-NUR after making the following findings:

On or about April 14, 2005, the Montana Board of Nursing (Board) received information from the Department of Health and Human Services Office of the Inspector General that Licensee had been contacted to inform her that due to her license revocation in Colorado she might no longer be eligible for Medicare/Medicaid reimbursements. At that time, Licensee requested the OIG not inform Montana of the Colorado license suspension.

Upon learning this information, the Board sought copies of the Colorado action and determined that Licensee's license had been revoked for suspicion of drug diversion. The allegations contained in the Colorado revocation were

substantially similar to those contained in the Montana action pending against Licensee.

In both cases, Licensee was alleged to have made numerous withdrawals from the Pyxis automated drug control system. Licensee admitted in her correspondence with the Colorado board that she was dismissed from her position because of her “problems” with the Pyxis system and that there was a suspicion that she was diverting drugs. Licensee was terminated from her position in Montana because the Pyxis records did not conform to the medication administration documentation.

At the time of the investigation into the complaint against Licensee, Montana was unaware of the Colorado revocation. When asked to describe her education and work history, Licensee failed to tell Montana Board of Nursing’s investigator she had ever been licensed or worked in Colorado. In fact, she adamantly denied ever having had a substance abuse problem.

As in Montana, Colorado requires that licensees provide the board office with a current address. Licensee failed to do so when she left Colorado although she was aware that her termination was based upon suspicions that she was diverting narcotics.

Licensee has deceived the Montana Board by failing to be straightforward and honest in her communications. She failed to reveal her work history in Colorado. She failed to reveal she had previous allegations concerning drug diversion while in Colorado. She failed to reveal her Colorado license was revoked. This is all information which Licensee knew or should have known.

The likelihood that Licensee has an on-going problem with drug diversion as well as Licensee’s failure to be candid with the Board raises concerns that she is unsafe to practice nursing. . . .

Ex. No. 2.

4. The Board reinstated Caluori’s Montana nursing license on October 19, 2006, placing it on probation for a period of one year. Ex. No. 3(c).

5. In approximately August 2014, Caluori began working at the Missoula Health and Rehabilitation Center (MH&RC) in the facility’s skilled nursing unit. Hr. Tr. at 81:8-19. In addition to providing skilled nursing care to some patients, MH&RC also has an assisted living unit for other patients. Id. at 18:16-20. In skilled nursing care, staff provides 24-hour care because patients are not able to live

on their own. *Id.* at 18:25-19:4. In assisted living, patients receive help with their medications and with other tasks, including housekeeping. *Id.* at 19:5-9.

6. MH&RC provides care to “a lot” of patients with mental health concerns and focuses on providing rehabilitation to place patients in “normal living situations.” *Hr. Tr.* at 18:3-9.

7. On July 22, 2014, A.C. was admitted to MH&RC’s assisted living unit. *Ex. No. 8; Hr. Tr.* at 21:16-21. A.C. was in his 70’s, and experienced multiple physical and mental health issues. *Ex. No. 8; Hr. Tr.* at 53:19-24. Although Caluori primarily worked in the skilled nursing unit at MH&RC, she did provide nursing care to A.C. on occasion when working an evening shift at the facility. *Hr. Tr.* at 86:15-87:7.

8. On one occasion during a nursing shift, Caluori asked a fellow nurse, Doris Fischer (Fischer), about A.C.’s “financials” and where his money came from. *Hr. Tr.* at 23:13-18.

9. MH&RC staff members observed A.C. following Caluori around the facility during her nursing shifts, and waiting for her in the facility’s parking lot. *Hr. Tr.* at 23:1-8, 43:2-13. A.C. told Fischer that he “loved” Caluori and that she was his “girlfriend.” *Id.* at 24:3-17. A.C. also referred to Caluori as his “girlfriend” when speaking to MH&RC’s Executive Director, Karrie Rich (Rich), and the facility’s physical therapist, Beth Beringer (Beringer). *Id.* at 43:2-13, 63:12-17.

10. Rich contacted law enforcement “several times” after Caluori reported that she was afraid of A.C.’s behavior. *Hr. Tr.* at 43:2-13. However, when law enforcement officers arrived, Caluori “backed out of the situation and did not want to press charges.” *Id.* When Rich asked Caluori why A.C. followed her around the facility, Caluori responded that he was “delusional.” *Id.* at 43:14-16.

11. Caluori told Beringer she was afraid of A.C., and that he would try to find her and talk to her at the end of her shift. *Hr. Tr.* at 64:23-65:3. However, Beringer observed Caluori and A.C. visiting together for “several minutes” while Caluori took a smoke break, and Caluori did not appear uncomfortable in his presence. *Id.* at 65:4-22.

12. On February 16, 2015, D.P. was admitted to MH&RC’s skilled nursing unit. *Ex. No. 7(a); Hr. Tr.* at 25:8-10. D.P. was in his 40’s, and experienced multiple physical and mental health issues. *Ex. No. 7.* Caluori provided nursing care to D.P. during his stay at MH&RC. *Hr. Tr.* at 25:11-15.

13. On July 17, 2015, MH&RC discharged A.C. from its facility. Ex. No. 8. Prior to A.C.'s discharge, he was threatened by D.P. and told to leave Caluori alone. Hr. Tr. at 43:23-44:7. As a result of the incident, Rich prohibited D.P. from entering the assisted living unit of the facility, where A.C. lived, and Caluori was moved to work a different hall of the facility so A.C. could not see her. Id. at 44:20-45:6.

14. D.P. told Fischer that he was in a relationship with Caluori, referred to Caluori as his "fiancée," and said he purchased a ring for Caluori that he implied was an engagement ring. Hr. Tr. 26:5-23. When Fischer asked Caluori about D.P.'s statements, Caluori claimed he was "delusional." Id. at 26:24-27:3. D.P. referred to Caluori as his "girlfriend" when talking to Beringer and explained he and Caluori were planning to get married in Las Vegas during the Fourth of July weekend. Id. at 64:9-19.

15. At hearing, Caluori acknowledged that D.P. wanted to marry her, but claimed she "diffused that." Hr. Tr. at 105:1-6.

16. On "several" occasions, Fischer observed Caluori and D.P. leaving the MH&RC parking lot together in D.P.'s vehicle after Caluori's nursing shifts ended. Hr. Tr. at 28:4-10. One morning Fischer arrived at MH&RC for her nursing shift beginning at 6:00 a.m. and observed Caluori and D.P. returning to the facility parking lot together in D.P.'s vehicle, with Caluori driving. Id. at 28:14-29:3.

17. Rich observed D.P. standing at Caluori's medication cart "a lot" during her nursing shifts, and counseled Caluori "several" times about setting boundaries with D.P. Hr. Tr. at 54:1-13. Eventually, Rich placed Caluori on "an opposite hall as him to try to set that boundary." Id. at 54:4-13.

18. During D.P.'s stay at MH&RC, he approached Rich upset and requested personal belongings back that he had previously given to Caluori, including two sun dresses, a cell phone, and a laptop or an iPad. Hr. Tr. at 54:17-23. D.P. informed Rich at the time that he was in a "sexual relationship" with Caluori and believed they were going to get married. Id. at 55:3-17. When confronted by Rich about accepting gifts from D.P., Caluori explained the gifts were still in her vehicle, located at a local auto body shop. Id. at 56:3-18. Rich and another staff member drove Caluori to her vehicle at the local auto body shop, but the gifts from D.P. were not inside her vehicle. Id. Later, Caluori's son picked her up at MH&RC and returned the gifts except for the two sun dresses. Id. When Rich received the gifts back from Caluori, they were "open" and "used." Id. at 57:8-12.

19. MH&RC terminated Caluori's employment in the fall of 2015 (September or October) based on her receipt of gifts from D.P. and continued

interactions with the patient. Hr. Tr. at 57:8-24. After MH&RC terminated Caluori's employment, D.P. "became very disgruntled with the staff, he threatened the staff stating he would be the next massive shooter." Id. at 45:11-19.

20. Caluori denied to Rich that she ever engaged in a personal relationship with D.P. Hr. Tr. at 58:21-24. During Caluori's employment with MH&RC, Fischer instructed Caluori to "not lead" D.P. on because Caluori appeared to take a "special interest in him." Id. at 30:7-15, 32:21-33:6. Caluori did not discourage D.P. from "being around her cart" or tell him "No I'm not interested in you." Id. at 33:1-6.

21. MH&RC prohibits its employees from accepting gifts from patients or engaging in personal relationships with patients. Hr. Tr. at 32:310, 38:11-23. MH&RC staff members were told not to give patients their phone numbers. Id. at 38:11-23.

22. Department investigator T.J. Hunt (Hunt) interviewed Caluori on April 22, 2016, and again on April 26, 2016, recording both interviews with her knowledge and consent. Ex. No. 4; Hr. Tr. at 160:1-5. During the first interview, Caluori offered several varied statements as to whether she spoke to D.P. by telephone, and the extent of their telephone conversations. When asked to describe her relationship with D.P., Caluori stated: "He was a resident that I was taking care of, and I was his nurse, and that was it." Ex. No. 4(a) (Tr. at 23:6-9). Caluori acknowledged D.P. called her by telephone, "But that was after he had left. His family got ahold of me. But while I was there, I did not have a relationship with him." Id. at 23:21-25. When pressed by Hunt about speaking to D.P. by telephone before he was discharged from MH&RC, Caluori responded: "He called - the phone - my phone number has been given out to other people." Id. at 26:10-20. Later during the interview, Caluori stated she "probably" called D.P. just once while she was still working at MH&RC "in response to his call." Id. at 29:1-13. When explaining the number of times she spoke to D.P. by telephone, Caluori stated: "I knew that this - that was not appropriate, so that was just a handful of times...Four or six times, seven, I'm not sure." Id. at 35:17-25.

23. During Caluori's April 22, 2016 interview with Hunt, she also denied having any contact with D.P. outside of MH&RC when she worked there. Ex. No. 4(a) (Tr. at 30:10-17). Caluori then initially denied going to a park with D.P. on the evening of June 25 (2015), before stating:

- A. He was talking about - like I said, I guess, he was just talking about how much he wanted to get out of there, and that if I would help. And then I would get off, and he was, you know - and I was just talking to him, sir. That was it.

Q. So you guys were just talking -
A. Yes.
Q. -- in the car?
A. Yes, that was it.
Q. Was this reported to anybody, like on your next shift or -
A. No, I should have, no.
Q. Was it documented anywhere?
A. No.
Q. Or just, you know, contact (unintelligible) -
A. I was off the clock, and he wanted to talk. And I said, you know, very persistently, I just wanted to make sure that he would be okay. And I said, "You cannot be in your truck like this, you cannot be driving like this."
Q: Uh-huh.
A. And that was it.
Q. Right. What would the reason for your car still being at the facility then?
A. He wanted to talk. And so then he would turn on the vehicle, and he said, "Let's go down the road. And I said, "[D.P.], I cannot do this."
Q. Uh-huh.
A. I said, "You don't have no driver's license. You need to come back."
Q. Uh-huh.
A. And so that was it. And he just was just - I wanted to contact his family, contact somebody, and then he went in, and he was okay, and that was it.
Q. Okay. So he was saying, "Hey, get in my truck, let's go?" Okay.
A. No, I just sat there, and he was talking. And then he says, "You know, can we go down the road and talk somewhere?" And I said, "well, this is not appropriate."
Q. Uh-huh.
A. So we did, and he just sat there and talked. There was no romance. Nothing. He sat and talked to me regarding how much he wanted out of the facility.
Q. Uh-huh.
A. And I said, "I cannot help you."
Q. Uh-huh. Okay. Did you travel with him in his truck to the - to that location, then?
A. I was in the truck, yeah.

Id. at 38:9-40:7.

24. Approximately one hour after Caluori's interview with Hunt ended on April 22, 2016, she began leaving Hunt voicemail messages. Hr. Tr. at 161:9-17. Caluori's first voicemail message to Hunt requested that he call her back. Ex. No. 5(a). In Caluori's second voicemail message to Hunt at 12:10 p.m., she stated:

I just wanted to tell you that I want to be completely honest. Yes I did fall in like with [D.P.]. I did not conduct anything on the premises that was wrong. But what I did wrong was corresponding with him on the phone frequently like you said. I texted him once regarding him leaving. Yes, we were at Greenough Park talking about what he wanted to do and how much he cared about me and, I knew - I knew what I was doing was wrong. Please call me, I just want to maintain my nurse's license, I really do. I made a mistake.

Ex. No. 5(b).

25. At 1:19 p.m., Caluori left Hunt a third voicemail message, stating:

I am so sorry about this morning. I'm embarrassed, and I'm ashamed of myself for lying. I just want to let you know, and I know you're not recording this - but it can be recorded again - I maintained my integrity while I was there at Missoula Health and Rehab - nothing occurred on that unit. But yes, I did fall in like with [D.P.]. For the gifts that were there, they were returned. Um, yes we maintained a relationship - a friendship relationship - outside of the facility after he's been discharged. I'm sorry about lying. I'm so ashamed of myself for doing that. Um, I don't know what else to say. Yes, there were calls that he made to me and that I made to him while he was there. . .

. . .The situation in Greenough Park - yes, we were there. After work, I clocked out, left my car there - he was in his car there. He asked me if he could talk to me. And he wanted to go talk to me. And yes we did, at Greenough Park. The police did show up, and they just saw us standing there - talking - and that's how that evolved. Anything else, I have done nothing wrong. Except for falling in like with somebody. So please forgive me because I don't make a good li...(unintelligible). So Mr. Hunt, please understand - I am sorry and please give me a call back.

Ex. No. 5(c).

26. Caluori then left multiple voicemail messages on April 22, 2016 for Hunt's supervisor, Amber Carpenter (Carpenter). In the first voicemail, Caluori stated she "just wanted to speak the truth," and that she did not share "truthfully" during the interview with Hunt. Caluori then explained:

Regarding [D.P.], um, I returned his gifts, yes I did, but we did have - we care about each other and, so that's the line that I crossed. And, during the interview with T.J. Hunt, I wasn't truthful, but I know that honesty is the best policy, and I wish that you would call me back. . .

. . . I wanna save my nurse's license. I mean, it was wrong - yes, um, so please call me back. . .

Ex No. 5(d).

In a second voicemail message to Carpenter, Caluori stated:

I spoke to T.J. Hunt and I just wanted to speak very clear and honest. I mean, at the time - I'm ashamed of myself - and I would like to speak the truth completely, and because I'm not a very good liar. And I think that the interview went very poorly. Um, I just wanted to share with you that while I was at Missoula Health and Rehab I did not conduct any misappropriation or any bad business there. But yes, [D.P.] and I - we formed a friendship that I should've not formed while I was there. We spoke on the phone numerous times, and I should've said yes to Mr. Hunt and I did not. I'm completely ashamed of myself that I did not tell the truth because the truth only sets you free. . .

. . . I wish that you would call me back because I don't want to lose my license over falling in like with somebody that I should've not fallen in like with. . .

Id.

27. On April 26, 2016, Hunt interviewed Caluori a second time to address the new and conflicting information she provided in voicemail messages left for Hunt and Carpenter. Ex. No. 4(a). However, after previously admitting that she and D.P. left MH&RC together in D.P.'s vehicle (on June 25, 2015) and traveled to Greenough Park, Caluori stated the following:

Q. Okay. So can you tell me what happened at the park with you and [D.P.] last summer?

A. You know, that timeline was way past. I wasn't there, and he wasn't there, so no comment.

Q. Okay. At Greenough Park.

A. I used to live up Greenough -

Q. Uh-huh.

A. --as a kid, so that is all I have to say.

- Q. Okay. So you are - so that whole thing never happened?
A. No.

Ex. No. 4(a) (Tr. at 70:15-25).

- Q. . . . Just tell me, from start to finish, you got in [D.P.'s] truck, and you went to the park near the facility, and I believe it was Greenough Park, and the Missoula Police Department spoke to you two.
A. No, that is not true, no.
Q. Okay. So you know, I'm just kind of recalling in my own mind here -
A. No. I know at the time I was surprised by all the things that you said to me, and I'm just sitting there going - I'm thinking of timelines and I'm going nope.
Q. Okay. So that never happened. You never got in the truck and tried to calm him down, correct, is that what you're trying to say?
A. Correct.

Id. at 72:1-16.

28. Hunt subpoenaed Caluori's telephone records. Hr. Tr. at 142:20-143:2, 144:1-8. After receiving the responsive telephone records from Verizon in a Microsoft Excel spreadsheet, Hunt used the filter function in Microsoft Excel to view specific telephone numbers he was searching for. Id. at 144:9-14, 148:2-5, 149:4-15. Hunt obtained two telephone numbers used by D.P. - one from MH&RC's records and one from searching the Lexis-Nexis data base. Id. at 146:12-23. Hunt obtained one telephone number used by A.C., which Hunt confirmed with A.C.'s son. Id. at 147:3-13. After applying the filter to Caluori's telephone records and searching for communications between Caluori's telephone number and those used by A.C. and D.P., Hunt discovered that:

- a. from June 1, 2015 to March 1, 2016, D.P. called Caluori's telephone number from his two telephone numbers a total of 678 times and texted her 82 times. Ex. No. 11(d)-(f).
- b. from June 1, 2015 to March 2, 2016, Caluori called D.P.'s two telephone numbers a total of 832 times and texted him 136 times. Id. at (a)-(c).
- c. On July 21, 2015, D.P. called Caluori and the telephone call lasted approximately 103 minutes. Id. at (e).
- d. from March 4, 2015 to August 10, 2015, A.C. called Caluori's telephone number 610 times. Id. at (h).

e. from March 4, 2015 to August 11, 2015, Caluori called A.C.'s telephone number 99 times. Id. at (g).

29. Caluori's telephone records clearly demonstrate that Caluori's statements to Hunt during the Department's investigation, about the frequency of her contacts with A.C. and D.P. and when the contacts began, were untruthful and misleading. Caluori communicated with both A.C. and D.P. while they were patients at MH&RC and while she provided nursing care to them. Her communications with D.P. continued after he was discharged from the facility and her employment was terminated.

30. Caluori's testimony at hearing was inconsistent and, at times, incoherent and evasive. Caluori first testified that she never left MH&RC with D.P., and that she never mentioned visiting Greenough Park in her voicemail messages to Hunt. Hr. Tr. at 109:7-22, 112:12-23. Caluori then offered a new version of events by claiming she left work on June 25, 2015 and drove through Greenough Park on her way home when she noticed D.P.'s vehicle parked and pulled over to talk to him. Id. at 113:2-11. When asked whether she had "contact" with a police officer in the park, Caluori stated:

- Q. Did you have any contact with a Police Officer when you were in the park?
- A. What do you mean by a Police Officer?
- Q. Did you talk to a Police Officer when you were in the Park that evening?
- A. Anyhow, what I recall is they pulled by, and they checked to see if he was okay, is what I'm looking at. It has been a long time ago. They pulled up and checked to see if he had a valid I guess license plate.
- Q. And who's "they," Ms. Caluori?
- A. It was a police car that pulled up. They just make rounds through there.

Id. at 114:8-20.

31. Caluori gave different explanations to Hunt as to whether she was in Greenough Park, but claimed she did so after speaking to "counsel," who told her she needed to have an attorney present with her before the Board and to "deny." Hr. Tr. at 118:5-119:10.

32. Caluori testified that she never stayed at a hotel with D.P. when he was a patient and she was a nurse at MH&RC. Hr. Tr. at 123:1-4. However, Hunt testified that D.P. acknowledged, during a recorded interview, that he stayed with Caluori at the My Place Hotel near the Reserve Street exit in Missoula while he was

living at MH&RC. *Id.* at 173:16-174:8. Caluori also answered “no” when asked whether she has “ever had a personal relationship with D.P.,” despite later testifying that D.P. drove to New Mexico to see her and stayed with her after she moved from Montana. *Id.* at 124:10-125:4. Given that D.P. knew Caluori was in New Mexico and the distance he traveled to be with her, it is more likely that he and Caluori were continuing to carry on some sort of a relationship after she moved away.

33. Throughout this case, Caluori has attempted to minimize her communications and interactions with A.C. and D.P. She describes her telephone contact with A.C. and D.P. by claiming she does not know how D.P. obtained her telephone number, and that she talked to D.P. by telephone “Just to see how he was doing, how his mental status was.” *Hr. Tr.* at 103:9-21, 105:7-21. However, Caluori’s telephone records demonstrate she called both patients frequently, often spoke to them for several minutes, and that the telephone calls persisted after the nurse-patient relationship terminated.

34. Caluori offered false statements to Hunt during the Department’s investigation, and testified falsely at hearing as to the nature and extent of her interactions with patients A.C. and D.P. In the voicemail messages Caluori left for Hunt and Carpenter, she laid bare her motivations for making false statements - to protect her nursing license. *Ex. No. 5.* Therefore, the totality of Caluori’s testimony regarding her interactions with A.C. and D.P. cannot be trusted and is given no weight when evaluating the evidence offered. However, her testimony regarding the standard for nursing practice is credible.

35. After practicing nursing for 33 years, Caluori considers herself to be a “well rounded nurse.” *Hr. Tr.* at 81:20-82:3. She has experience working in skilled nursing care, hospitals, and with elder and mental health patients. *Id.* at 82:4-8.

36. As part of the obligations of holding a nursing license in multiple states, Caluori has obtained continuing education (CE) over the years and remains current in meeting those requirements. *Hr. Tr.* at 82:9-12. To this end, Caluori believes she understands the appropriate standards of nursing, and testified that from her experience practicing nursing in Colorado, Florida, Montana, and New Mexico (under her Montana license), the standard of practice and professionalism within nursing is the same or similar in each state. *Id.* at 82:13-83:12.

37. According to Caluori, it is not appropriate for a nurse to engage in a personal relationship with a patient - romantically or as a friendship - and there is potential for harm if an experienced nurse crosses boundaries with a patient. *Hr. Tr.* at 83:13-84:10. Caluori also believes it is not appropriate for a nurse to have regular contact with a patient outside of a facility, including telephone communications.

Id. at 84:11-24. Further, Caluori testified that it is not appropriate for a nurse to accept gifts from a patient. Id. at 85:7-9.

38. Caluori's testimony regarding the generally accepted standards of nursing practice are largely supported by the testimony of Heidi Blossom (Blossom), the Department's expert witness. Blossom holds an RN and a master's degree in nursing education. Id. at 180:12-17. Blossom has been licensed to practice nursing in Montana for 12 years and has experience working in a hospital setting, clinic setting, case management, and was an adjunct professor of nursing at Carroll College for five years. Id. at 180:25-181:11. Blossom also provides education outreach for the Board as a subcontractor. Id. at 182:4-15. Given Blossom's experience as a nurse and a nursing instructor, she is qualified to speak to the standards of practice of nursing, including professional boundaries that exist for nurses.

39. The role of the nurse is to provide care for a patient - not take advantage of them. Hr. Tr. at 183:5-14. Patients are vulnerable when they are ill, and a nurse must treat them with respect and dignity. Id. A code of ethics has existed in the nursing profession since 1950, and the standards are taught in nursing school and can be found in all journals and articles on nursing ethics. Id. at 183:15-25. According to the standards of professional boundaries in nursing, a nurse should not have a relationship with a patient - romantically or as a friendship - because of the vulnerability of the patient and the opportunity for manipulation. Id. at 184:6-185:12.

40. A nurse cannot accept a gift from a patient. Hr. Tr. at 185:13-20. A nurse should notify his or her supervisor if a patient offers a gift, and it is a nurse's responsibility to maintain professional boundaries with a patient. Id. at 185:21-186:1, 187:6-12.

41. Under the generally accepted standards of nursing practice, it is not appropriate for a nurse to: engage in a friendship or romantic relationship with a patient; interact with a patient in any capacity beyond the nurse-patient relationship; or accept gifts from a patient.

42. Caluori interacted with A.C. and D.P. in ways that are outside of the nurse-patient relationship. Caluori engaged in frequent telephone contact with A.C. outside of MH&RC during a time when she was providing nursing care to him, and caused him to believe they were in a relationship. Caluori then began engaging in frequent telephone contact with D.P. outside of MH&RC during a time when she was providing nursing care to him, and caused him to believe they were in a relationship. Caluori accepted gifts from D.P.; left MH&RC on multiple occasions with D.P., including on the evening of June 25, 2015; and shared a hotel room with

D.P. one weekend while he was a MH&RC patient. At some point, D.P. and A.C. had an altercation over Caluori, and D.P. was eventually discharged from MH&RC because he threatened staff members over Caluori. Caluori then continued to have regular telephone contact with D.P., and D.P. visited her in New Mexico when she moved away.

43. Caluori provided false and misleading information to Department investigator Hunt throughout his investigation.

44. The Board may consider previous disciplinary actions when imposing sanctions, as well as the severity of the offense, whether patient harm occurred, and the sanction requirements stated in Mont. Code Ann. § 37-1-312(2). Hr. Tr. at 198:13-200:17.

45. According to Caluori, she believes it is a serious offense when a nurse is not truthful before the Board. Hr. Tr. 222:9-13.

46. Caluori has a history of unprofessional conduct, including providing false or misleading information to the Department. Caluori misled the Department during its investigation in Docket No. CC-05-294-NUR, including concealing the fact that her Colorado nursing license existed and was revoked, and by requesting that the OIG not contact Montana. Further, she has continued to provide false and misleading information to the Department during its investigation into this case, and presented false testimony at hearing.

47. Caluori was previously suspended by the Board in Docket No. CC-05-294-NUR, and appears to lack rehabilitation at present time regarding her trustworthiness and veracity before the Board.

III. CONCLUSIONS OF LAW

1. The Board has subject matter jurisdiction and legal authority to bring this contested case under Mont. Code Ann. §§ 37-1-131, 37-1-136, 37-1-307, 37-1-309, 37-1-312, and Title 37, chapter 8.

2. The Board's licensees renew on a biennial basis - on or before December 31 of even-numbered years. Admin. R. Mont. 24.101.413(5)(t). Failure to timely renew a license causes it to lapse, then expire 45 days later. Mont. Code Ann. § 37-1-141. A licensee who practices nursing after a license has expired is considered to be practicing without a license. *Id.*

3. For disciplinary purposes, the Board retains jurisdiction over the license for two years after lapse. Mont. Code Ann. § 37-1-141.

4. The Department bears the burden of proving by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Ulrich v. State ex rel. Board of Funeral Service, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

5. The Hearing Officer may use his or her experience, technical competence, and specialized knowledge in evaluating the evidence. Durbin v. Ross, 276 Mont. 463, 476-77, 916 P.2d 758, 766 (1996); Mont. Code Ann. § 2-4-612(7).

6. Pursuant to Mont. R. Evid. 803(1), (3), testimony offered at hearing regarding the present sense impressions and then-existing mental, emotional, or physical conditions of A.C. and D.P. is admissible.

7. Pursuant to Mont. Code Ann. § 26-1-303(3), a witness false in one part of testimony is to be distrusted in others. Therefore, Caluori's testimony regarding her interactions with A.C. and D.P. is given no weight when evaluating the complete record.

8. The Department proved, by a preponderance of the evidence, that Caluori committed unprofessional conduct. Mont. Code Ann. § 37-1-316 and Admin. R. Mont. 24.159.2301.

9. Caluori's failure to follow the generally accepted standards of nursing practice in adhering to the norms of the nurse-patient relationship, as stated above in Finding of Fact 42, constitute unprofessional conduct under: Mont. Code Ann. § 37-1-316(18) ("conduct that does not meet the generally accepted standards of practice. . .") and Admin. R. Mont. 24.159.2301(2)(a) ("failing to utilize appropriate judgment in administering safe nursing practice based upon the level of nursing for which the individual is licensed"), (c) ("failing to follow policies or procedures defined in the practice situation to safeguard patient care"), (k) ("intentionally committing any act that adversely affects the physical or psychosocial welfare of the patient"). Caluori presented untruthful and misleading information to the Department during its investigation into her conduct, constituting unprofessional conduct as defined by Admin. R. Mont. 24.159.2301(2)(t) ("failing to participate and cooperate in a Department of Labor and Industry investigation").

10. Upon a decision that a licensee has violated Title 37, chapter 1, part 3 of the Mont. Code Ann. or is unable to practice with reasonable skill and safety due to a

physical or mental condition, the Board may issue an order imposing sanctions, including license revocation. Mont. Code Ann. § 37-1-312. “To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee.” Id.

11. Discipline of Caluori’s Montana nursing license is appropriate in this contested case pursuant to Mont. Code Ann. § 37-1-312. Imposing substantial sanctions is necessary in this contested case to protect and compensate the public, as well as to reflect the severity of Caluori’s conduct.

12. Caluori’s inappropriate relationships with A.C. and D.P. harmed both patients, as demonstrated by the conflict that occurred between the two, as well as D.P.’s discharge from MH&RC. Given that the Board previously suspended Caluori’s Montana nursing license for providing false and misleading information to the Department’s investigator, the depths to which she went to cover up her inappropriate conduct, revocation is the appropriate sanction to ensure the public is protected. Caluori has demonstrated in this case that she is not rehabilitated as to warrant the public’s trust.

IV. RECOMMENDED ORDER

Based on the foregoing findings of fact and conclusions of law, the Hearing Officer recommends the Board issue an order:

1. Revoking Caluori’s Montana nursing license.
2. Ordering Caluori to surrender her Montana nursing license within 24 hours of receiving notification of the revocation. Mont. Code Ann. § 37-1-312(4).
3. Prohibiting Caluori from petitioning the Board for reinstatement before the passage of five years from the date of its order.

DATED this 19th day of October, 2017.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM
DAVID A. SCRIMM
Hearing Officer

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.