

BEFORE THE BOARD OF NURSING  
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2014-NUR-LIC-941 REGARDING:

|                                      |   |                    |
|--------------------------------------|---|--------------------|
| THE PROPOSED DISCIPLINARY            | ) | Case No. 1674-2015 |
| TREATMENT OF THE LICENSE OF          | ) |                    |
| PAMELA L. CALDWELL,                  | ) |                    |
| Registered Nurse, License No. 46776. | ) |                    |
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**PROPOSED FINDINGS OF FACT; PROPOSED CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER OF DEFAULT**

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**I. PROCEDURAL BACKGROUND AND PROPOSED FINDINGS OF FACT**

1. On October 21, 2014, the Screening Panel of the Montana Board of Nursing (Screening Panel) found reasonable cause to believe Pamela L. Caldwell committed unprofessional conduct justifying disciplinary proceedings. Ms. Caldwell is licensed by the Montana Board of Nursing (Board) as a registered nurse (RN), holding license number 46776, which is presently expired.

2. On January 16, 2015, the Montana Department of Labor and Industry (Department) served a Notice of Proposed Board Action and Opportunity for Hearing (Notice) on Ms. Caldwell by certified mail at her address on record with the Board. The Notice apprised Ms. Caldwell of the facts and violations asserted by the Department, as well as her opportunity to request a hearing to contest the case within 20 days of receiving the Notice.

3. The Notice was not claimed by Ms. Caldwell, prompting the Department to email a copy of the Notice to her on February 9, 2015. Ms. Caldwell responded by emailing a request for a hearing to contest the case on February 25, 2015.

4. On March 5, 2015, this tribunal issued a Notice of Hearing and Telephone Conference, set for March 20, 2015, at 10:00 a.m., MDT. The parties were informed a hearing schedule would be set without a party's participation if the party did not attend the conference, and failure to appear for any conference or obey orders issued by the Hearing Officer could result in sanctions against the party, including entry of default, dismissal of an appeal, imposition of liability, or other appropriate sanctions.

5. On March 19, 2015, the Department served its First Set of Combined Discovery Requests, including Requests for Admissions, on Ms. Caldwell at her address on record with the Board.

6. On March 20, 2015, the Hearing Officer held the telephonic pre-hearing conference. Agency counsel, Kevin Maki, represented the Department. Ms. Caldwell was not available at her telephone number of record and a hearing was set in her absence for June 18, 2015.

7. Following the pre-hearing conference, Ms. Caldwell contacted Mr. Maki by telephone and consented in a March 20, 2015 email to receiving service from the Department by email. The Department then emailed its discovery requests to Ms. Caldwell on March 20, 2015.

8. On March 23, 2015, the Hearing Officer issued a Scheduling Order setting the date of the hearing and other case deadlines, including May 8, 2015 for the parties to complete all discovery and June 8, 2015 for the parties to file and exchange pre-hearing disclosures.

9. On May 5, 2015, the Department filed its Motion to Compel Discovery after Ms. Caldwell failed to respond at all to its discovery requests or attempts to contact her.

10. On May 20, 2015, the Department filed its Motion for Leave to Request Telephonic Status Conference and Order to Show Cause after Ms. Caldwell did not respond to discovery requests, the Department's Motion to Compel Discovery, or additional attempts to contact her by telephone and electronic mail.

11. The Department filed its pre-hearing disclosures on June 8, 2015, as required by the Hearing Officer's March 23, 2015 Scheduling Order. Ms. Caldwell did not file any pre-hearing disclosures.

12. On June 8, 2015, the Hearing Officer issued an Order on Motions and Order to Show Cause, by which he granted the Department's Motion to Compel Discovery and set a June 12, 2015 telephonic status conference for 9:00 a.m., MDT, for Ms. Caldwell to show cause why she should not be defaulted for failing to respond to discovery requests, motions, or orders of this tribunal.

13. The Hearing Officer held a telephonic status conference on June 12, 2015. Mr. Maki appeared on behalf of the Department. The conference was delayed five additional minutes to allow Ms. Caldwell the opportunity to appear. The conference was reconvened at approximately 9:10 a.m., MDT, and proceeded in Ms. Caldwell's

absence. Ms. Caldwell has not contacted this tribunal or otherwise responded to show cause.

## II. PROPOSED CONCLUSIONS OF LAW

1. A board responsible for licensing a professional or occupational licensee retains jurisdiction for disciplinary purposes over the licensee for two years after the license lapses. Mont. Code Ann. § 37-1-141. Ms. Caldwell's RN license is expired, and the Board therefore retains jurisdiction for two years from the date of the lapse.

2. The proposed disciplinary treatment of the RN license of Ms. Caldwell is a contested case proceeding subject to the Montana Administrative Procedure Act (MAPA). Mont. Code Ann. § 37-1-310. Under MAPA, a contested case may be decided by informal disposition, including default, unless otherwise precluded by law. Mont. Code Ann. § 2-4-603(1)(a). Nothing in Title 2 or Title 37 of the Montana Code Annotated prohibits imposition of a default where a party fails to comport with any facet of a scheduling order, including responding to discovery requests and motions filed by the Department, then failing to respond to this tribunal's order to appear and show cause at a conference to discuss that failure.

3. The Department has adopted the model rules proposed by the Montana Attorney General, which state in pertinent part, "[i]n a contested case, if a party does not appear to contest an intended agency action, the agency may enter a default order. If a default is entered, pursuant to Mont. Code Ann. § 2-4-623, the order must be in writing and include findings of fact and conclusions of law." Admin. R. Mont. 1-3-213(1), 24-2-101(1).

4. Ms. Caldwell has been on notice since the March 23, 2015 Scheduling Order and each subsequent order of this tribunal that default could result from her failure to appear or otherwise comply. Ms. Caldwell has not taken any steps to comport with the Scheduling Order or the Order on Motions and Order to Show Cause. Nor has Ms. Caldwell contacted this tribunal or demonstrated she continues to contest the case.

5. The Montana Rules of Civil Procedure govern all contested case proceedings under Title 37 of the Montana Code Annotated. Mont. Code Ann. § 37-1-310; Admin. R. Mont. 1-3-217, 24-2-101. Pursuant to the rules on discovery, a party shall respond to discovery requests within 30 days of service. Mont. R. Civ. P. 26, 33-34, 36. Failure to respond to discovery and a court order compelling a response could result in taking facts as established, rendering a default judgment against the disobedient party, or other actions. Mont. R. Civ. P. 37(2).

6. A party's failure to respond to a request for admission served during discovery results in that matter are deemed admitted. Mont. R. Civ. P. 36(a)(3). Therefore, the Department's Request for Admission No. 1 asking Ms. Caldwell to admit the truth and accuracy of each factual assertion set forth in the Department's Notice is hereby deemed admitted.

### III. RECOMMENDED ORDER

It is hereby recommended that the Board enter a Final Order by Default against Ms. Caldwell on the issue of whether she committed unprofessional conduct under Mont. Code Ann. § 37-1-316(4) and (18) and Admin. R. Mont. 24.159.2301(2)(a), (c), and (h), and impose any sanctions authorized by law. Mont. Code Ann. §§ 37-1-309(3), 37-1-312.

DATED this 17th day of June, 2015.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

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

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.