



Paul R. LePage
GOVERNOR

STATE OF MAINE
BOARD OF NURSING
158 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0158



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Myra A. Broadway
Executive Director of the Board

MYRA A. BROADWAY, J.D., M.S., R.N.
EXECUTIVE DIRECTOR

IN RE: JAY TODD MOHLER-AVERY
Cheshire, CT
License RN53343

DECISION & ORDER
FOR PRELIMINARY
REVOCATION

Complaint Nos. 2011-88 & 2012-263

INTRODUCTION

Pursuant to Title 32, Chapter 31, the Maine State Legislature endowed the Board with the power and duty to regulate the practice of nurses licensed by the Board, including issuing licenses and investigating complaints. Pursuant to 10 M.R.S. §8008, the Legislature provided that the sole purpose of the Board is to "protect the public health and welfare" and that "other goals or objectives may not supersede this purpose."

At its December 10-11, 2014 regularly scheduled meeting, the Maine State Board of Nursing reviewed the criminal convictions and June 26, 2014 disposition of Docket Nos. CR12-0663631, CR12-102238, and CR13-665475 in Connecticut Superior Court regarding Jay Todd Mohler-Avery.

FACTS

1. Jay Todd Mohler-Avery was licensed to practice as a registered professional nurse ("RN") in Maine by endorsement on February 12, 2007; said license expired on March 6, 2012.
2. On February 25, 2011, Complaint 2011-88 was initiated by the Board based upon notification from Licensee's nursing employer, Down East Community Hospital, Machias, Maine, of its decision to terminate Mr. Mohler-Avery's employment prior to the end of his 90-day probation period for failing to adhere to Down East's Code of Conduct. Specifically: 1) Licensee was counseled for ordering a thyroid blood test for a patient without physician's order; 2) Licensee was counseled regarding code of conduct and the need to be respectful and courteous at all times; and 3) Down East received several complaints from the Licensee's colleagues regarding his overstepping his role boundaries and writing down orders without physician initiation.
3. Following receipt of Mr. Mohler-Avery's written response on May 4, 2011, the Board notified Licensee by its correspondence dated June 7, 2011 that he would be scheduled to meet with the Board in an informal conference to discuss the matter. Multiple attempts to schedule Licensee were unsuccessful.
4. On December 19, 2012, Board Complaint 2012-263 was initiated by the Board based upon notification of pending charges against Mr. Mohler-Avery in Connecticut regarding conspiracy to commit first-degree sexual assault, attempted first-degree sexual assault, attempted risk of injury to a minor and conspiracy to commit risk of injury to a minor.
5. On December 14, 2012, Jay Todd Mohler-Avery voluntarily surrendered his licenses to practice as a Registered Nurse and Advance Practice Registered Nurse in the State of Connecticut. [Exhibit A]
6. On March 1, 2013, the Massachusetts Board of Registration in Nursing issued its Final Decision and Order by Default, revoking Jay Todd Mohler-Avery's right to renew his license to practice as a Registered Nurse in Massachusetts. [Exhibit B]



PRINTED ON RECYCLED PAPER

OFFICES LOCATED AT: 161 CAPITOL ST., AUGUSTA, ME
<http://www.maine.gov/boardofnursing/>

PHONE: (207) 287-1133

FAX: (207) 287-1149

7. On August 6, 2013, the Texas Board of Nursing issued its Order to revoke Jay Todd Mohler-Avery's Permanent Registered Nurse License Number 583665 to practice nursing in the State of Texas, applicable to licensure compact privileges. [Exhibit C]
8. On June 26, 2014, Jay Todd Mohler-Avery pled guilty to and was convicted of one count each of Sexual Assault in the First Degree and Risk of Injury to a Minor and two counts of Conspiracy to Commit Sexual Assault in the First Degree. He pled no contest to one count of Insurance Fraud. He was sentenced to 23 years in prison followed by 20 years of special parole. He is required to register with the Connecticut Sex Offender Registry for the remainder of his life and is subject to a standing criminal restraining order until 2068 with regard to the victim of a sexual assault case originally filed in Hartford Superior Court. Licensee is currently incarcerated in the State of Connecticut and is unable to testify before the Maine State Board of Nursing at a hearing to adjudicate the Board Complaints.

APPLICABLE LAW

9. Pursuant to 32 M.R.S. §2105-A (2), the Board may suspend or revoke a license pursuant to Title 5, Section 10004.
10. Pursuant to 5 M.R.S. §10004(1), an agency may revoke, suspend or refuse to renew any license without proceedings in conformity with subchapter IV or VI, when: [t]he decision to take that action rests solely upon a finding or conviction in court of any violation which by statute is expressly made grounds for revocation.
11. Pursuant to 32 M.R.S. §2105-A (2)(G), the Board may suspend or revoke a license when the grounds for discipline is a conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed or conviction of a crime for which incarceration for one year or more may be imposed.

CONCLUSIONS OF LAW

The Board has the authority to suspend or revoke Jay Todd Mohler-Avery's registered professional nurse license pursuant to 5 M.R.S. §10004(1) and 32 M.R.S. §2105-A (2)(G). The criminal court convictions on June 26, 2014 described in Paragraph 8 are grounds for discipline because Licensee was convicted of crimes that involve dishonesty and relate directly to the licensed practice of registered professional nursing. In addition, the felony convictions described in Paragraph 8 are criminal convictions for which incarceration for one year or more have been imposed.

In addition, the Board concluded, based upon the recent convictions and serious nature of the underlying criminal conduct, that Licensee's behavior fails to conform to legal and accepted standards of the nursing profession and the conviction of crimes in the State of Connecticut are substantially related to the qualifications, functions or duties of a registered professional nurse and that such conduct reflects adversely on the health and welfare of the public and that the Licensee has not demonstrated sufficient rehabilitation to warrant the public's trust.

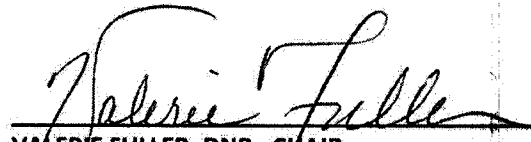
DECISION AND ORDER

A motion was made and seconded to immediately **REVOKE** Jay Todd Mohler-Avery's registered professional nurse license pursuant to 5 M.R.S. §10004(1) and 32 M.R.S. §2105-A(2)(G). By a unanimous vote of the Board, Jay Todd Mohler-Avery's registered professional nurse license is hereby revoked.

RECORD VOTE

Valerie Fuller, DNP	AFFIRMATIVE
Margaret Hourigan, RN, EdD	AFFIRMATIVE
Elaine Duguay, LPN	AFFIRMATIVE
Joanne Fortin, RN	AFFIRMATIVE
Peggy Soneson, RN	AFFIRMATIVE
Robin Brooks, Public Member	AFFIRMATIVE

DATED: 12/11/14


VALERIE FULLER, DNP - CHAIR
MAINE STATE BOARD OF NURSING

NOTICE OF APPEAL RIGHTS

You may appeal this preliminary decision by sending a signed written request for an adjudicatory hearing to the Board within thirty (30) days of your receipt of this Notice of Revocation. If you file a timely request for a hearing, it will be scheduled at a later date. If you fail to file a written request within thirty (30) days, the revocation will become final. At the adjudicatory hearing you will have the burden of proving to the Board that you have been sufficiently rehabilitated to warrant the public's trust.

All adjudicatory hearings are public and conducted pursuant to the Maine Administrative Procedures Act. At the hearing, you will have the right to present evidence and witnesses, cross-examine witnesses, and make arguments in relation to this preliminary order. You also have the right to be represented by legal counsel at your expense.

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
HEALTHCARE QUALITY & SAFETY BRANCH

Re: Jay. T. Mohler-Avery R.N., APRN
License numbers: R.N.: R48562, APRN: 004732

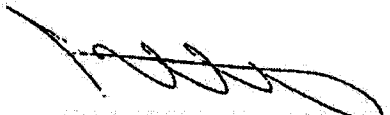
Petition No. 2012-1055 and 2012-1037

VOLUNTARY SURRENDER OF LICENSE AFFIDAVIT

Jay T. Mohler-Avery, being duly sworn, deposes and says:

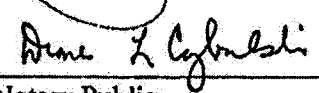
1. I am over the age of majority and understand the obligations of an oath.
2. I make this affidavit on the basis of personal knowledge.
3. I am licensed by the Department of Public Health (hereinafter "the Department") to practice as a Registered Nurse and as an Advanced Practice Registered Nurse. I presently hold license numbers R48562 and 004732
4. I hereby voluntarily surrender my license to practice as a Registered Nurse and as an Advance Practice Registered Nurse in the State of Connecticut.
5. I understand and agree that if I seek a new license or to reinstate my license at any time in the future, the allegations contained in Petition Numbers 2012-1055 and 2012-1037 shall be deemed true. I further understand that any such application must be made to the Department which shall have absolute discretion, after seeking the advice of the Connecticut Board of Examiners for Nursing (hereinafter "the Board"), as to whether said license shall be issued or reinstated and, if so, whether said license shall be subject to conditions. No reinstatement shall become effective until the Department seeks the advice of the Board.
6. I hereby waive any right to a hearing I may have regarding any request that my license be reinstated or that a new license be issued and also waive any right that I may have to appeal or otherwise challenge the disposition of any such request.
7. I understand and agree that this affidavit and the case file in Petition Numbers 2012-1055 and 2012-1037 are public documents, and I am executing this affidavit in settlement of the allegations contained in the above-referenced petition.
8. I understand that this surrender of my license is reportable to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank maintained by the United States Department of Health and Human Services and is public information.

9. I understand that this document has no effect unless and until it is executed by the Department; and that, upon execution, the Department will dismiss Petition Numbers 2012-1055 and 2012-1037.
10. I understand that I have the right to consult with an attorney prior to signing this affidavit.
11. I understand that the execution of this document has no bearing on any criminal liability without the written consent of the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau.
12. I understand that the purpose of this agreement is to resolve the pending matter against my license and is not intended to affect any claim of civil liability that might be brought against me.
13. If applicable, I agree to comply with the provision of Section 19a-14-44 Regulations Connecticut State Agencies.


Jay T. Mohler-Avery, R.N., APRN

Subscribed and sworn to before me this 14th day of December 2012.

DIANE Z. CYMBELI
NOTARY PUBLIC
MY COMMISSION EXPIRES 6/30/2015


Diane Z. Cymbeli
Notary Public
~~Commissioner of Superior Court~~

Accepted: Kathleen Boulware
~~Jennifer Filippone, Section Chief~~ Kathleen Boulware
Practitioner Licensing and Investigations PHSM
Healthcare Quality & Safety Branch

12-14-12
Date

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
HEALTHCARE QUALITY AND SAFETY BRANCH

In re: J. T. Mohler-Avery, A.P.R.N., R.N.

Petition No. 2012-1037 and 2012-1055

INTERIM CONSENT ORDER

WHEREAS, J.T. Mohler-Avery, A.P.R.N., R.N., of Vernon, Connecticut (hereinafter "respondent"), has been issued license numbers 004732 to practice as an advanced practice registered nurse and R48562 to practice as a registered nurse by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 378 of the General Statutes of Connecticut, as amended; and,

WHEREAS, the Department has received information regarding respondent's alleged misconduct toward patients in the course of his nursing practice.

WHEREAS, it will be necessary to conduct further investigation, and the parties wish to provide for the protection of the public during the interim.

NOW THEREFORE, pursuant to §19a-14 and 19a-17 of the General Statutes of Connecticut, the parties hereby stipulate to the following:

1. Respondent's license number 004732 to practice as an advanced practice registered nurse and license number R48562 to practice as a registered nurse shall be suspended until such time as this petition is resolved.

2. Respondent shall surrender his advanced practice registered nurse license number 004732 and his registered nurse license number R48562 to the Department immediately upon approval of this Interim Consent Order by the Department.
3. Respondent shall withdraw any pending applications for renewal of his license immediately upon approval of this Interim Consent Order by the Department, and shall not apply for renewal of his license until either the expiration of this Interim Consent Order or the dismissal of the pending complaint, whichever occurs first.
4. Respondent shall execute releases for his treatment records, as requested by the Department.
5. This stipulation shall not deprive respondent of his right to a hearing on the merits of this case, nor shall it be construed as an admission of any fact or waiver of any right to which respondent may be entitled, other than as specifically provided for herein.
6. This Interim Consent Order shall become effective on the day it is approved and entered by the Department.
7. Respondent permits a representative of the Department to present this Interim Consent Order and the factual basis for this Interim Consent Order to the Department. Respondent understands that the Department has complete and final discretion as to whether an executed Interim Consent Order is approved or accepted.
8. I understand and agree that this Interim Consent Order is a public document and shall be reported to the National Practitioner Data Bank and the Healthcare Integrity and Practitioner Data Bank maintained by the United States Department of Health and Human Services.
9. Respondent has the right to consult with an attorney prior to signing this document.

10. The execution of this document has no bearing on any criminal liability without the written consent of the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau.
11. This Interim Consent Order embodies the entire agreement of the parties with respect to this case. All previous communications or agreements regarding the subject matter of this interim consent order, whether oral or written, between the parties are superseded unless expressly incorporated herein or made a part hereof.
12. If applicable, I agree to comply with the provision of Section 19a-14-44 Regulations Connecticut State Agencies.

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I, J. T. Mohler-Avery, have read the above Interim Consent Order, and I agree to the terms set forth therein. I further declare the execution of this Interim Consent Order to be my free act and deed.



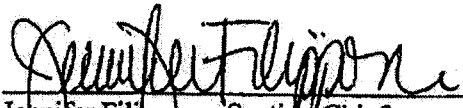
J. T. Mohler-Avery

Subscribed and sworn to before me this 6th day of November 2012.

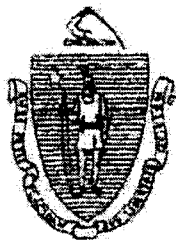


Notary Public or person authorized
by law to administer an oath or *David Tilles*
affirmation *Commissioner of the Superior Court*

The above Interim Consent Order having been presented to the duly appointed agent of the
Commissioner of the Department of Public Health on the 6th day of November
2012, it is hereby accepted and ordered.



Jennifer Filippone, Section Chief
Practitioner Licensing and Investigations
Healthcare Quality and Safety Branch



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JOHN W. POLANOWICZ
SECRETARY

LAUREN A. SMITH, MD, MPH
INTERIM COMMISSIONER

RULA HARB
EXECUTIVE DIRECTOR

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure

Board of Registration in Nursing
239 Causeway Street, Suite 500, 5th Floor, Boston,
MA 02114
617-973-0900

February 19, 2013

BY FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7012 0470 0001 3611 6469
Jay Todd Mohler-Avery
25 Mountain Street
Hartford, CT 06106

BY FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7012 0470 0001 3611 6476
Jay Todd Mohler-Avery
McDougall-Walker Correctional Institution
Walker Building
1153 East Street, South
Sutfield, CT 06080

RE: In the Matter of Jay Todd Mohler-Avery, R.N. License No. RN208798
Board of Registration in Nursing Docket No. NUR-2012-0276

Dear Mr. Mohler-Avery:

Enclosed is the *Final Decision and Order by Default ("Final Decision")* issued by the Board of Registration in Nursing ("Board") in connection with the above-referenced matter. The effective date of the Board's Order is ten (10) days from the date appearing on page 3 of the *Final Decision* ("Date Issued"). Your appeal rights are noted on page 3 of the *Final Decision*.

Sincerely,

Rula Harb, MSN, RN
Executive Director
Board of Registration in Nursing

Enc.

cc: Tara Provencal, Prosecuting Counsel

RECEIVED 2013-02-19-0900

STATE'S
EXHIBIT

B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN
NURSING

IN THE MATTER OF
JAY TODD MOHLER-AVERY
RN LICENSE NO. 208798
LICENSE EXPIRED 03/06/2012

DOCKET NO. NUR-2012-0276

FINAL DECISION AND ORDER BY DEFAULT

On December 6, 2012, the Board of Registration in Nursing ("Board") issued and duly served on Jay Todd Mohler-Avery ("Respondent"), an Order to Show Cause ("Show Cause Order")¹ related to a complaint filed regarding Respondent's license. In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order ("Answer") was to be submitted within 21 days of receipt of the Show Cause Order². The Show Cause Order also notified Respondent of the right to request a hearing on the allegations³, and that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Show Cause Order.⁴ Respondent was further notified that failure to submit an Answer within 21 days "shall result in the entry of default in the captioned matter" and, if defaulted, "the Board may enter a Final Decision and Order that assumes the truth of the allegations in the Show Cause Order and may revoke, suspend, or take other disciplinary action against [Respondent's] license. ...including any right to renew [Respondent's] license." A copy of the Show Cause Order is attached to this Final Decision and Order by Default and is incorporated herein by reference.

¹ Pursuant to 801 CMR 1.01(8)(a).

² In accordance with 801 CMR 1.01(8)(d)(2).

³ Pursuant to M.G.L. c. 112, s. 81.

⁴ Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

As of the date of this Final Decision and Order by Default, Respondent has failed to file either an Answer or a Request for Hearing.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Show Cause Order as required by M.G.L. c. 30A, s. 10, and sufficient notice of the issues involved to afford Respondent reasonable opportunity to prepare and present evidence and argument as required by M.G.L. c. 30A, s. 11(1). The Board has also notified Respondent of the obligation under 801 CMR 1.01(6)(d) to file an Answer to the Show Cause Order within 21 days of its receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by M.G.L. c. 30A, s. 10(2), the Board may make informal disposition of any adjudicatory proceeding by default. Upon default, the allegations of the complaint against Respondent are accepted as true. *Danca Corp. v. Raytheon Co.*, 28 Mass. App. Ct. 942, 943 (1990).

Based on the foregoing, the Board enters a default in the above-captioned matter and, consequently, the allegations in the Order to Show Cause are deemed to be true and Respondent has waived the right to be heard. In accordance with the Board's authority and statutory mandate, the Board orders as follows:

ORDER

Based on its Final Decision by Default, the Board Revokes Respondent's Right to Renew his license to practice as a Registered Nurse in Massachusetts, RN License No. 208798

If Respondent renews his license to practice as a Registered Nurse in Massachusetts before the Effective Date of this Final Decision and Order by Default, the Board Revokes said License, RN License No. 208798.

Respondent is hereby ordered to return any nursing license issued to him by the Board, whether current or expired, to the Board's office at 239 Causeway Street, Boston, Massachusetts 02114, by hand or by certified mail, within five (5) days of the Effective Date set forth below.

Respondent shall not practice as a Registered Nurse in Massachusetts on or after the Effective Date of this Order. "Practice as a Registered Nurse" includes, but is not limited to, seeking and accepting a paid or voluntary position as a Registered Nurse or in any way representing himself as a Registered Nurse in Massachusetts. The Board shall refer any evidence of unlicensed practice to appropriate law enforcement authorities for prosecution as provided by G.L. c. 112, §§ 65 and 80.

This Board can conceive of no circumstance under which it would reinstate Respondent's license to practice nursing.

The Board voted to adopt the within Final Decision at its meeting held on February 13, 2013, by the following vote: In favor: M. Beal, P. Gales, J. Killion, K. Gehly, B. Levin, C. Lundeen, A. Peckham, E. Richard Rothman. Opposed: None; Abstain: None; Absent: C. Simonian

The Board voted to adopt the within Final Order by Default at its meeting held on February 13, 2013, by the following vote: In favor: M. Beal, P. Gales, J. Killion, K. Gehly, B. Levin, C. Lundeen, A. Peckham, E. Richard Rothman. Opposed: None; Abstain: None; Absent: C. Simonian

EFFECTIVE DATE OF ORDER

This Final Decision and Order by Default becomes effective upon the tenth (10th) day from the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default to the Supreme Judicial Court within thirty (30) days of receipt of notice of this Final Decision pursuant to M.G.L. c. 112, § 64.

Board of Registration in Nursing

Date Issued: February 19, 2013

Rula Harb
Rula Harb, MSN, RN
Executive Director

Notified:

BY FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7012 0470 0001 3611 6469

Jay Todd Mohler-Avery
25 Mountain Street
Hartford, CT 06106

BY FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7012 0470 0001 3611 6476

Jay Todd Mohler-Avery
McDougall-Walker Correctional Institution
Walker Building
1153 East Street, South
Sutfield, CT 06080

BY HAND DELIVERY

Tarah Provencal, Prosecuting Counsel



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health

Division of Health Professions Licensure
239 Causeway Street, Suite 500, 5th Floor, Boston, MA 02114
(617) 973-0800
(617) 973-0988 TTY

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

LAUREN A. SMITH, MD, MPH
INTERIM COMMISSIONER

December 6, 2012

Jay Todd Mohler-Avery

25 Mountain Street

Hartford, CT 06106

7012 0470 0001 3526 7155

Via First Class Mail & Certified Mail No. 7012 0470 0001 3526 7155

Jay Todd Mohler-Avery

McDougall-Walker Correctional Institution

Walker Building

1153 East Street, South

Sutfield, CT 06080

7012 0470 0001 3526 7162

Via First Class Mail & Certified Mail No. 7012 0470 0001 3526 7162

RE: In the Matter of Jay Todd Mohler-Avery, RN License No. 208798
Board of Registration in Nursing, Docket No. NUR-2012-0276

Dear Mr. Mohler-Avery:

The Massachusetts Board of Registration in Nursing within the Department of Public Health, Division of Health Professions Licensure (Division), has completed its investigation of the above-listed complaint against your license to practice as a Registered Nurse. For the reasons set forth in the attached Order to Show Cause, the Board is proposing to suspend, revoke or impose other discipline against your license as a Registered Nurse (License No. RN208798).

The Order to Show Cause and any subsequent hearing are governed by Massachusetts General Laws Chapter 30A; the State Administrative Procedure Act, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 et. seq. You must submit an Answer to the Order to Show Cause and you have a right to request a hearing by filing a written request for a hearing, as specified in the Order to Show Cause.

Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the above-referenced matter. Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations therein and on any Board disciplinary action. Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice as a Registered Nurse in Massachusetts, including any right to renew your license.

The request for a hearing and your Answer must be filed with Tarah Provencal, Prosecuting Counsel at the following address:

Tarah Provencal
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, Suite 500, 5th Floor
Boston, Massachusetts 02114

If you are represented by an attorney in this matter, all communications should be made through your attorney.

You may contact me at (617) 973-0923 if you have any questions regarding this matter.

Sincerely,



Tarah Provencal
Prosecuting Counsel

Encl: Order to Show Cause
Certificate of Service

This is an important notice. Please have it translated.

Este é um aviso importante. Queira mandá-lo traduzir.

Este es un aviso importante. Sirvase mandarlo traducir.

ĐÂY LÀ MỘT BẢN THÔNG CÁO QUAN TRỌNG

XIN VUI LÒNG CHO DỊCH LẠI THÔNG CÁO ẤY

Ceci est important. Veuillez faire traduire.

本通知很重要。請將之譯成中文。

၂၈: နိဗ္ဗာန်သီလံ ဗုဒ္ဓိဗျူဟာတိပုပ္ဖိနိဗ္ဗာန်

ΠΡΟΣΟΧΗ: ΑΥΤΟ ΕΙΝΑΙ ΣΗΜΑΝΤΙΚΟ. ΠΑΡΑΚΑΛΩ ΜΕΤΑΦΡΑΣΤΕ

Questo è un 'avviso importante. Si pregadi farlo tradurre.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

In the Matter of
JAY TODD MOHLER-AVERY
RN License No. 208798
License Expired 03/06/2012

Docket No. NUR-2012-0276

ORDER TO SHOW CAUSE

Jay Todd Mohler-Avery, you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Nursing ("Board") should not suspend, revoke, or otherwise take action against your license to practice as a Registered Nurse in the Commonwealth of Massachusetts, License No. RN208798, or your right to renew such license, pursuant to Massachusetts General Laws Chapter 112 § 61 and Board regulations at 244 C.M.R. 9.03, Standards of Conduct for Nurses, based upon the following facts and allegations:

1. On or about February 10, 1995, the Board issued to you a license to engage in the practice of nursing as a Registered Nurse ("RN") in the Commonwealth of Massachusetts. Your license expired on March 6, 2012 and has not been renewed to date.
2. On or about October 28, 2012, while holding a right to renew your Massachusetts license to practice as a RN, you were arrested and charged with four different felony charges in Superior Court of Rockville, Connecticut. The four felony charges were for Conspiracy to Commit Sexual Assault First Degree, Conspiracy to Commit Risk of Injury to Child, Attempt to Commit Sexual Assault First Degree, and Attempt to Commit Risk of Injury to Child. You are currently in custody and your next court date is scheduled for December 14, 2012. A copy of the Docket No. TTD-CR12-0102238-T is attached as Exhibit A and incorporated into this Order to Show Cause by reference.
3. On or about November 6, 2012, while holding a right to renew your Massachusetts license to practice as a RN, you indefinitely surrendered your Connecticut RN license and Advanced Practice license when you signed and entered into an Interim Consent Order with the Connecticut Department of Public Health, Healthcare Quality and Safety Branch. A copy of the Interim Consent Order is attached as Exhibit B and incorporated into this Order to Show Cause by reference.

4. Your conduct, and the resulting discipline to your Connecticut nursing license, warrants disciplinary action by the Board against your license to practice as a RN pursuant to G.L. c. 112 § 61 for deceit, malpractice, and gross misconduct in the practice of the profession and for offenses against the laws of the Commonwealth relating thereto.
5. Your conduct, and the resulting discipline to your Connecticut nursing license, warrants disciplinary action by the Board against your license to practice as a RN pursuant to G.L. c. 112, § 74 for lack of the good moral character required for initial licensure and license renewal.
6. Your conduct, and the resulting discipline to your Connecticut nursing license, warrants disciplinary action by the Board against your license to practice as a RN pursuant to Board regulation 244 C.M.R. 9.03 for violation of Standards of Conduct for Nurses, namely:
 - a. 244 C.M.R. 9.03 (5) for failing to engage in the practice of nursing in accordance with accepted standards of practice; and
 - b. 244 C.M.R. 9.03 (47) for engaging in any other conduct that fails to conform to accepted standards of nursing practice or in any behavior that is likely to have an adverse effect upon the health, safety, or welfare of the public.
7. Your conduct, and the resulting discipline to your Connecticut nursing license, warrants disciplinary action by the Board against your license to practice as a RN pursuant to Massachusetts case law. See, *Anusavice v. Board of Registration in Dentistry*, 451 Mass. 786 (2008).
8. Your conduct, and the resulting discipline to your Connecticut nursing license, also constitutes unprofessional conduct and conduct that undermines public confidence in the integrity of the nursing profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

You have a right to an adjudicatory hearing ("hearing") on the allegations contained in the Order to Show Cause before the Board determines whether to suspend, revoke, or impose discipline against your license. G.L. c. 112 § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 C.M.R. 1.01 (6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written

notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing, to secure legal counsel or another representative to represent your interests, to call and examine witnesses, to cross-examine witnesses who testify against you, to testify on your own behalf, to introduce evidence, and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at your own expense. Pursuant to 80 C.M.R. 1.01 (10) (i)(1), upon motion, you "may be allowed to provide a public stenographer to transcribe the proceedings at [your] own expense upon terms offered by the Presiding Officer." Those terms may include a requirement that any copy of the transcript produced must be sent promptly upon completion and on an ongoing basis directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including but not limited to, the written transcript of the hearing is a public record and subject to the provisions of G.L. c. 4, § 7 and G.L. c. 66, § 10.

Your failure to submit an Answer to the Order to Show Cause within 21 days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter. Your failure to submit a written request for a hearing within 21 days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice as a Registered Nurse in the Commonwealth of Massachusetts, including any right to renew your license.

Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Tarah Provencal, Prosecutor at the following address:

Tarah Provencal, Esq.
Prosecutor
Department of Public Health
Office of the General Counsel
239 Causeway Street, Fifth Floor
Boston, MA 02114

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecutor. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at (617) 973-0923 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN NURSING,
Rula Harb, MSN, RN, Executive Director

By: *Tarah Provencal*
Tarah Provencal, Prosecutor
Department of Public Health

Date: December 6, 2012