

The Investigative Process

The mission of the North Carolina Board of Nursing (NCBON) is to protect the public by regulating the practice of nursing.

North Carolina is a mandatory reporting state. Any person who has reasonable cause to suspect misconduct or incapacity of a nurse or who has reasonable cause to suspect that a nurse has violated the Nursing Practice Act (NPA) (law) shall report the relevant facts to the Board. The complainant is immune from criminal or civil liability for reporting concerns if the report was made in good faith (G.S. 90-171.47). Complaints may come from employers, co-workers, law enforcement, patients, relatives, other agencies, self reports, or made anonymously to the Board. Not all complaints reported to the Board are grounds for discipline by the Board.

The Board of Nursing takes all complaints about nurses seriously.

When the Board receives a complaint, the first step is to determine whether or not the reported allegation(s) violate existing laws (NPA) or regulations (North Carolina Administrative Code Rules) that govern a nurse's practice. By statute, the Executive Director is authorized to obtain nursing and patient files to investigate the complaint. The NC Board of Nursing has jurisdiction over licensed nurses and has no authority over employment/workplace issues, concerns about work hours, or co-worker conflicts.

Jurisdictional complaints are assigned to a Certified Investigator employed by the Board. The NCBON provides "due process" to a nurse by notifying him/her of the investigation, of the allegation(s), of his/her rights in the investigative process, and of the investigator's contact information. In rare circumstances, notification may be withheld if in doing so would impede the investigation.

The Investigator begins collecting evidence from a number of sources which may include witness interviews and document reviews/audits. The Investigator's role is to collect and report facts in a fair and impartial manner. A nurse is afforded the opportunity to respond to the allegations made

against him/her and to offer evidence to be considered. A nurse may provide this information by participating in an interview and he/she may also be asked to submit a written statement.

If a nurse wishes to review the documents collected as evidence, he/she may come to the Board office (by appointment), as these documents will not be copied or made available prior to the conclusion of the investigation and the issuance of formal charges.

A nurse has the right to decline participation in the investigation and to have no contact with the Investigator; however, if a nurse declines participation, decisions will be based on the evidence collected. Failure to respond will not deter the Board from making a determination based on the facts available.

The process used to investigate and act on a complaint may vary depending upon the seriousness of the allegation(s) and the timeliness of the complaint. Investigations take time to complete. It may take a number of weeks to months depending upon the complexity and seriousness of the alleged conduct, the ability to locate witnesses, and the response time for record requests.

Can a nurse under investigation work while the investigation is being conducted?

The ability to work as a nurse is unrestricted during the investigation, as long as his/her license remains active and the nurse's continued practice poses no risk to the public. If the alleged violation poses a substantial threat to the public, the license is flagged on our website to alert prospective employers that the Board is conducting an investigation. A nurse's license to practice may be immediately suspended (Emergency Summary Suspension) if it is determined that the public health, safety and welfare of the public may be jeopardized by continued practice of a nurse.

Should an Attorney be Retained?

One of a nurse's rights in this process is the right to retain an Attorney. If a nurse elects to retain an Attorney, the nurse will be responsible for ensuring that their Attorney provides the Investigator with a Letter of Representation. The nurse is responsible for all attorney fees.

What if a nurse is working in NC on a Multistate License?

If a complaint is filed related to an incident that occurs in NC, while a nurse is working on a multistate license from another compact state, the NCBON will investigate the complaint in regards to the nurse's Privilege to Practice in NC. The home state of nurse will be notified and may impose a sanction on the nurse's license to practice.

Complaint Resolutions

If, after investigation, there is insufficient proof (unable to meet required legal standard of clear and convincing evidence) to substantiate a violation of the NPA, the case will be dismissed with **No Action**.

The Board may issue an informal **Letter of Concern/non-disciplinary warning** if there is cause for concern but there is not clear and convincing evidence to substantiate a violation(s). This letter may also include a suggestion for remedial course(s) that might be helpful for the nurse in learning how to improve his/her practice. Course work would be voluntary and not mandated by the Board.

An offer of a **Non-disciplinary Consent Order (NDCO)** is issued in cases where the nurse acknowledges his/her action/inaction in the reported matter is a violation of Nursing law/rules and it is agreed that his/her continued practice without restrictions would pose no threat to public safety. This resolution imposes a mandatory educational remedy (primarily on-line computer based course(s)) as a means of protecting the public and helping a nurse to improve and maintain safe practice.

If indicated, an offer to enter into one of the Board's Drug Intervention/Monitoring programs may be made. For more information regarding these programs, visit the NCBON's website at www.ncbon.com

Disciplinary Actions of the Board are public sanctions on the license/privilege to practice nursing that are imposed when there is clear and convincing evidence of a violation(s) of the NPA which may pose a risk to the public.

An offer to expedite settlement of a case in which there is clear and convincing evidence of a violation(s) that would result in disciplinary sanction may be made through a **Published Consent Order (PCO)**. A PCO may include some form of required remedial education, either instructor led course(s) or on-line computer based course(s) and one a combination of the following sanctions:

- ❖ **Reprimand** – Formal discipline that expresses notice of a violation but does not restrict the nurse's continued practice.
- ❖ **Probation** – restrictions placed on a nurse's practice through monitoring for a prescribed period of time. Possible restrictions on work setting and/or hours of work, and/or screening requirements may be included.
- ❖ **Stayed Suspension** – withholds suspension of a license as long as the nurse complies with the Board Order.
- ❖ **Suspension** – restricts a nurse from practicing nursing for a specified time.
- ❖ **Voluntary Surrender** of license – A nurse may decide to voluntarily waive his/her rights to judicial review and relinquish his/her right to practice nursing for an indefinite period of time (no less than 1 year).
- ❖ **Revocation** -the right to practice nursing is revoked (withdrawn) for a specified period of time (more than five years).

What if Notices or Final Orders are not received by a nurse?

The Board is required to send orders for resolution to a nurse's address of record by restricted certified mail. By law, a nurse is required to notify the Board of address changes. If notification cannot be accomplished through mail service, notice may occur by publication in a newspaper of general circulation in the county of a nurse's last-known address.

Disciplinary Action is a public record and as required by law is reported to the following entities:

- ❖ **NURSYS®– State Board of Nursing linked national databank. Any adverse action on a nurse's license may affect a nurse's ability to practice in another state**
- ❖ **National Practitioner Data Bank (NPDB)**
- ❖ **Office of the Inspector General (OIG)**
- ❖ **NCBON website**
- ❖ **Any other state/jurisdiction in which the licensee is or has been licensed**

Dispute Resolution Process

If a nurse disputes the allegation(s) of violation(s) of the NPA/Rules and/or declines the resolution offer, he/she may request to meet with the Board for either a Settlement Committee Meeting or request that the matter be referred for an Administrative Hearing.

A **Settlement Committee** is an informal public meeting with members of the NCBON, who review the case and provide the licensee the opportunity to present any mitigating circumstances addressing why a lesser sanction other than the one offered may be appropriate. An offer (which may be the same sanction, a greater sanction, or a lesser sanction than previously offered may be made to a nurse in an attempt to settle the matter. A Settlement Fee of \$300.00/hr is assessed if a settlement is reached. If a settlement is not reached, no fee is assessed, and the matter is referred for an Administrative Hearing.

An **Administrative Hearing** is a formal public forum (much like a court room setting) where members of the NCBON receives evidence, witnesses are heard through sworn testimony and the Board makes a decision of appropriate sanction based on the information presented. If the licensee is found in violation of the NPA/Rules in this forum, there is an hourly fee (\$300/hr) associated with this option.

Summary Action

If a nurse holds a current North Carolina nursing license and has received discipline action against his/her license or privilege to practice in another state, the NCBON will review the facts and apply its own state laws to determine the appropriate action that should be taken against the nurse's NC license.

Reference

"Board of Nursing Complaint Process: Investigation to Resolution", a video produced by National Council of State Boards of Nursing is also available for viewing at <https://www.ncsbn.org>



Mission Statement

The mission of the North Carolina Board of Nursing is to protect the public by regulating the practice of nursing

North Carolina Board of Nursing

4516 Lake Boone Trail

P. O. Box 2129

Raleigh, NC 27602

919-782-3211

Fax: 919-781-9461

www.ncbon.com

A Guide to the North Carolina Board of Nursing's Investigative Process



Developed for the Licensed Nurse by Board Staff