

UH OH, THE BOARD OF NURSING CALLED... COMPLAINT REPORTING AND RESOLUTION



Objective

The purpose of the article is to provide information about commonly reported issues which result in findings of violations of the Nursing Practice Act. This understanding will enhance the nurse's knowledge and facilitate safe practice.

Introduction

The mission of the North Carolina Board of Nursing is to protect the public by regulating the practice of nursing. One aspect of public protection is the investigation of complaints involving licensed nurses. The Board receives complaints from either employers or members of the public, which may include coworkers, law enforcement agencies, other regulatory agencies, and self-reported occurrences. The allegations most commonly reported to the Board are discussed in this article, with the goal that licensed nurses will expand their knowledge concerning nursing regulation and in turn, enhance their practice by recognizing and avoiding potentially risky behaviors. Many nurses may have witnessed or been involved in scenarios similar to those described at some point in their practice.

The laws which govern nursing practice in North Carolina are collectively referred to as the Nursing Practice Act or NPA. The NPA addresses a variety of NC Board of Nursing (Board) duties and responsibilities including approval of nursing education programs, nursing licensure, licensure endorsement from other states, components of practice for

both the RN and LPN, Board composition, and disciplinary standards. Revisions to the NPA are passed by the NC General Assembly and enacted into law. The North Carolina Administrative Code (NCAC) includes rules which govern nursing practice and provide more specific details than the NPA. When licensed nurses are found violation of the NPA, the applicable laws and rules alleged to have been violated are clearly specified.

Complaints

North Carolina is a mandatory reporting state. Anyone with reasonable cause to suspect that a violation of the NPA has occurred is required to report the allegations to the Board. While the Board accepts anonymous complaints, the ability to effectively investigate allegations when a complainant cannot be contacted may be impeded and the complainant does not receive feedback concerning the outcome of the case.

The majority of the complaints filed with the Board come from employers. Upon receipt of a complaint, the information is first reviewed to ensure that the Board has jurisdiction over the matter. In cases where the Board does not have jurisdiction, no action will be possible. Such a complaint may be referred to another agency if appropriate.

Complaint Trends

A review of complaint data between 2010 and the first half of 2013 reveals that practice-related incidents represented the largest percentage of reported violations to the Board, followed by conduct issues and drug-related violations. For complaints received during 2010, just under half involved practice violations, primarily documentation errors and scope of practice issues. The data show similar results between 2011 and the first six months of 2013, with one

exception: treatment and medication errors and scope of practice issues were reported more than documentation errors in 2011. Documentation errors include both the failure to document appropriate information and deliberate false entries. Drug-related violations include driving while impaired (DWI), drug diversion, positive drug screens, and impairment while on duty. Conduct issues include those behaviors where the licensed nurse has made choices that contributed to the error or violation, such as criminal charges, theft, fraud, and inappropriate verbal or physical interaction with a patient. The Board participates in the National Council of State Boards of Nursing (NCSBN) Taxonomy of Error, Root Cause Analysis and Practice Responsibility Project referred to as TERCAP. The purpose of TERCAP is to identify factors which lead to or contribute to practice breakdown. North Carolina is one of 22 states participating in this project (NCBON Nursing Bulletin, Winter 2012). Data submitted by the NC Board since early 2011, shows that the majority of nurses reported for practice violations were employed in the setting where the practice breakdown occurred fewer than two years. Over one-half of the nurses had been previously disciplined by their employer for a practice issue. Consistent with national statistics, the most significant factor identified in NC practice breakdown was professional responsibility/patient advocacy. Sixty percent of nurses reported from all participating states had been previously disciplined by an employer or terminated and in 55% of the cases involving practice breakdown, the nurse had been employed in the setting less than two years. (Zhong and Thomas, 2012). Over one third of the NC practice cases reported since 2011 resulted in disciplinary action against the nurse.

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North Carolina Board of Nursing Complaint Evaluation Tool

In 2008, the NCBON Complaint Evaluation Tool (CET) was developed to assist employers in determining which incidents should be reported to the Board. The CET is based on the Just Culture model, used as a methodology in assessing errors (Burhans, Chastain & George, 2012). In a Just Culture, the behavioral choices of the individual and level of risk are emphasized rather than the outcome of the error (Burhans, Chastain & George, 2012). The goal of the Just Culture model is to improve patient safety by establishing a system of shared accountability between

the individual and the system. The CET is scored based on five criteria: prior counseling or warnings for practice issues; knowledge level and experience; adherence to facility policies; standards or orders; conscious choice or decision making; and level of accountability.

The Just Culture premise is that everyone makes mistakes at some point, ranging from accidental errors, to at risk shortcuts, to reckless behavior. With the use of the CET, many factors including the identification of any system issues, are taken into consideration, rather than merely blaming the nurse who may have committed the error. A nurse's decision

making and choices are assessed as part of the investigation. The Board expects that nurse managers and leaders will utilize the CET to assist them in evaluating events and in making decisions about reporting to the Board. Conduct events such as theft, fraud, drug diversion, impairment on duty, sexual misconduct, physical/mental impairment, and confidentiality and boundary violations MUST be reported to the Board. Thus, the CET is not appropriate for use in assessing these types of incidents. During an investigation, Board staff also use the CET to evaluate the reported event. The Board's website (www.ncbon.com) provides CET resources for the employer determining the

need to report.

Investigations

If the Board complaint reviewer determines that the reported allegations, if proven true, would constitute a violation of the NPA, the case is opened and assigned to a staff member for investigation. In almost all cases, the licensed nurse is contacted during the investigation and offered an interview opportunity to respond to the allegations. The employer is contacted to verify reported information and to obtain additional information or supporting documentation as needed. Depending on the length of tenure at the place of employment, a former employer may also be contacted to determine if there has been a pattern of similar concerns. In certain cases, witness accounts are important and witnesses are interviewed by Board staff.

The timeframe for case investigation and resolution depends upon the allegation(s), how many interviews are conducted, how much evidence is collected and reviewed, and the responsiveness of involved parties to

Board staff contacts and requests. An investigation can take as little as a week or as long as several months. If the alleged violation poses a potential risk or threat to the public during this period, the license is flagged on the Board's website to alert prospective employers of the investigation.

Commonly Reported Practice Allegations

Common allegations fall into the categories of practice, conduct, and criminal convictions. Some of the practice allegations most frequently reported to the Board include:

- abandonment
- neglect
- documentation issues
- inappropriate delegation or supervision
- exceeding scope of practice
- unsafe practice/failure to maintain minimum standards
- withholding crucial information

Abandonment

Joanne, a home care nurse, is assigned to a pediatric private duty case and decides to leave the patient's home to run a quick errand

while the patient is asleep. The patient's parent, who works from home, is in the home but unaware that the nurse has left. The nurse informed the patient's teenage sibling that she was leaving, but not the parent. This would be considered abandonment as the teenage sibling was not a caregiver for the child and the nurse did not arrange for the continuation of care for the patient.

Abandonment complaints are more commonly reported by long term care facilities and home care agencies than acute care settings. More nurses were reported for abandonment in the initial six months of 2013 than in either 2011 or 2012. Cases of abandonment frequently involve the licensed nurse leaving an assignment early, either with or without an attempt to notify their supervisor, or leaving the assignment temporarily, as in leaving the unit or premises without proper notification. Once a nurse accepts an assignment, there is an obligation to fulfill the duty until another nurse receives report and accepts the assignment. Failure to report to work, failure to accept an assignment, refusal to work overtime, or failure to give proper notice of resignation are not considered examples of abandonment and would be more appropriately dealt with as employment policy infractions. The Board has issued two related Position Statements on Staffing and Patient Safety and Accepting an Assignment, which can be found on the Board's website at www.ncbon.com.

Neglect

A patient undergoes a minor outpatient procedure and is transferred to the recovery area for monitoring. John, the assigned nurse, does not adequately monitor the patient's vital signs and pulse oximetry readings. Another nurse observes that the patient's pulse oximetry has dropped dangerously low requiring immediate intervention. Would you consider this as an example of neglect? Yes, the nurse neglected to appropriately monitor, assess, and intervene.

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When the term neglect is mentioned, a common thought is that a patient has been left alone and uncared for. However, neglect significantly indicates the failure to do something or fulfill a responsibility. Nurses are reported for neglect for incidents such as not administering medications, not performing assessments or interventions such as dressing changes, sleeping on duty, and failure to make home visits in the home health setting. For nurses working in the home setting, failure to make assigned visits and sleeping on duty are the most prevalent allegations of neglect reported to the Board. In the long term care setting, neglect to administer medications is frequently reported. The failure to recognize a change in a patient's condition and respond appropriately is also considered neglect, including the failure to initiate CPR in a patient without a "Do Not Resuscitate" order.

Documentation Errors

Joyce, a nurse working in a long term care facility, is assigned to the same hall that she has worked for past six months, basically taking care of the same group of patients. Her Saturday evening shift is particularly busy because of short staffing. She decides to sign off all of her meds in the medication administration record during her 4 p.m. rounds in order to save time. She figures that she can always go back and circle a medication if a patient refuses. Would you think of this as a documentation error? Yes, the Board does not consider this practice to be a safe or appropriate documentation practice.

Documentation allegations range from pre-documentation practices, such as documenting at the beginning of a shift or prior to performing the action, up to deliberate falsification of records. Omissions in documentation are also problematic. Since 2011, the Board has received more complaints regarding documentation errors from long term care providers than the acute care setting. The most commonly reported documentation complaints from long term care providers address pre-documentation of

tasks, including medication administration, or errors resulting from the nurse completing documentation only at the end of the shift. The timeliness of entries into the medical record is important and can be a critical component of ensuring continuity of care. During investigation, consideration is given regarding whether the documentation, or lack thereof, resulted in a change or potential change in the client's care or treatment plan. Timely and accurate documentation is an essential aspect of care delivery.

Delegation

During report, Jeremy, the oncoming day shift nurse, is informed that a patient is experiencing swallowing difficulties and is awaiting evaluation by the physician. The patient requires a Nurse Aide to assist with feeding. Jeremy doesn't alter the assignment based on the information about the patient's swallowing problems. The Nurse Aide feeds the patient as usual and the patient aspirates and develops pneumonia. Should the nurse have altered the plan of care, particularly considering what tasks were delegated to the Nurse Aide? Yes, it was inappropriate for the nurse to delegate assistance with feeding to the Nurse Aide without further evaluation of the patient.

Delegation allegations involve licensed nurses delegating to unlicensed assistive personnel (UAP). The RN and LPN are ultimately accountable for both the decision to delegate and the supervision of delegated tasks in accordance with their legally designated scope of practice. On its website at www.ncbon.com, the Board provides a Decision Tree for Delegation to UAP to aid nurses in delegation and decision making. All delegation requirements specified in the decision tree are derived from the NPA and NCAC and must be met before tasks are delegated to UAP (including Nurse Aides I and II). In addition, the five criteria of appropriate delegation include: right task, right person, right circumstances, right directions and communications, and right supervision and evaluation.

Scope of Practice

Justine is the nurse assigned to a patient exhibiting signs of anxiety and agitation. The patient had a physician's order for Ativan 1 mg IV every six hours as needed, which replaced a previous order for Ativan 2 mg. Justine administers 2mg because she thought the 1 mg dose would not be as effective. She did not contact the physician and receive a new order for the 2 mg dose. Did this nurse exceed her scope of practice? Yes, this would be an example of exceeding one's scope of practice.

Matters involving scope of practice allegations typically arise when a nurse administers a medication that was not ordered; administers a different dose than what was ordered; or when a treatment or intervention is implemented or withheld without a physician's order. Additionally, nurses may be reported for practicing outside their scope when they perform activities, skills, or treatments that are not approved by their facility, approved only in certain settings, or approved only for nurses with specific qualifications. Scope of practice for RNs and LPNs is defined in the NPA and NCAC. For example, scope of practice violations for LPNs often include serving in a nursing managerial role, supervising RNs, or assuming responsibility for validating clinical staff competency. These responsibilities are beyond the legal LPN scope and are only appropriate for an RN. It is important for licensed nurses to recognize that because their scope of practice is legally defined, employers, physicians, and others cannot ever expand that scope. Scope of practice may, however, be limited by employer policy and procedure.

Failure to Report

A Nurse Aide reports to Joseph, the nurse, that she is unable to obtain a blood glucose reading from a patient because the patient's sugar is too high. The nurse checks the patient's sugar and cannot obtain a reading either. The nurse administers the patient's scheduled dose of insulin along with sliding scale insulin and



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decides to recheck the patient later in the shift. By the time the nurse reassesses the patient, the patient is confused and is vomiting. The nurse faxes a note to the physician's office so the physician will see it first thing the following morning. Did the nurse appropriately report the abnormal finding? No, as there was no direct communication with the physician regarding the change in patient condition.

Failure to report crucial healthcare information arises as an allegation when a nurse does not report changes in a patient's condition to others with a need to know, such as charge nurse, physician, oncoming shift nurse, or nursing supervisor. The Board investigation explores whether or not the patient's care and treatment were impacted or modified based on the information that was withheld. Simply

leaving a voice mail for a physician or leaving a note on a chart does not in and of itself, meet the nurse's requirement for reporting a change in the patient's condition.

Commonly Reported Conduct Allegations

The conduct allegations most frequently reported to the Board include:

- drug related issues, including DWI charges
- impairment on duty
- theft
- boundary violations
- breach of confidentiality and inappropriate access to patient information

Drug Related Issues

A unit manager identifies that a nurse is administering more hydromorphone than her coworkers and begins further review of the nurse's practice. The manager also finds a high number of cancelled narcotic transactions, unwitnessed wastes, and several examples where the pain assessment indicated the patient was pain free immediately before the nurse administered hydromorphone. These are some examples of behaviors which could be indicative of drug diversion.

Drug diversion is defined as the unauthorized taking of a prescription medication for self or for other use. Allegations involving DWI charges and drug diversion are among the most frequently reported problems reported to the Board of Nursing and drug diversion is typically reported more by hospitals and long term care providers. Criminal charges related to drug or alcohol use can be grounds for action against a nurse's license.

Nurses can also be cited for documentation discrepancies related to controlled substances if their



documentation does not reflect proper handling of controlled substances. Examples include delayed or unwitnessed narcotic wasting, medications pulled but not documented as administered, delayed administration after medication was pulled, and pain assessment documentation does not support that the patient needed the medication.

Impairment on duty may be alleged due to the nurse being under the influence of drugs or alcohol, including medications legitimately prescribed for the nurse. Impairment can also result from a physical or mental condition, illness or disorder, or even fatigue, which renders the nurse unfit for duty.

Allegations of fraudulently obtaining prescriptions and of positive drug screens are also reportable to the Board and can result in disciplinary action. The Board offers programs for nurses with a chemical dependency which allow the nurse to gradually return to work in certain settings with close supervision while being monitored by the Board.

Boundary Violations

A pediatric nurse has become emotionally attached to a patient and family undergoing an extended hospitalization period. The nurse begins to purchase little gifts for the patient because she feels sorry for the child. The nurse decides to arrange a play date and bring her children to the hospital to visit the patient because her children are close in age to the patient. Would you consider this an appropriate and professional act? This would be considered a violation of nurse/patient boundaries and would be reportable to the Board.

Boundary violations range from something as simple as purchasing groceries for a patient up to dating a patient. The professional relationship that a nurse has with a patient becomes strained when the nurse begins to do special things for a particular patient that he or she would not do for other patients. Likewise, the nurse may be the recipient of a favor from the patient or patient's family. When the

nurse begins to volunteer to have extra assignments with a particular patient or make special arrangements to spend more time with a patient, this can be the beginning of a slippery slope destructive to the nurse-patient relationship. If a nurse begins to discuss matters of a more personal nature with a patient that he or she would not want colleagues to know about, this also could signal a boundary concern. Certainly, most nurses are aware that romantic and intimate relationships with a patient are considered unacceptable, but the less egregious situations such as "friending" on social media sites, are often not recognized by nurses as a boundary violation.

Confidentiality Issues

A nurse posts a picture on social media of a patient care room and writes about her day with the patient who is dying from colon cancer. The patient's face cannot be seen in the picture, however, other personal items in the room are visible. The nurse has information on the social media site about where she works. A hospital staff member who lives in the patient's neighborhood views the post and realizes that their neighbor might be the colon cancer patient, although it is impossible to confirm. Would this be a confidentiality violation? If you answered yes, you are correct. There is enough information in the picture and on the posting which could allow the patient to be identified.

Patient confidentiality violations arise when the nurse accesses a patient's medical record information for purposes other than a legitimate need for information to provide care and when information is inappropriately shared. The Board's investigation considers the intent or purpose for the nurse accessing the information, as well as what was done with the information. Appropriate uses of social media have to be taken into consideration as well. Nurses who post seemingly vague information about their patients or work may find themselves being reported to the Board for breaching patient confidentiality. When posting something online or sending

information, including pictures, via text message or email, the nurse should always ask themselves if the information would be appropriate to discuss verbally in the open with people not associated with the direct care of a patient.

Non-reportable Allegations

Issues beyond the Board's jurisdiction are non-reportable. Nevertheless, the Board occasionally receives questions concerning the following:

- resignation without notice, no call/no show, attendance issues
- rudeness toward patient or staff
- nodding or momentary unintentional falling asleep
- refusal to accept an assignment
- failure to follow facility policy unless there is also a violation of the NPA

These concerns do not constitute a violation of nursing law and rules. They can be most appropriately addressed through employer policies and procedures.

Case Resolution

Cases are resolved through various means. Some nurses may be ordered to participate in remedial coursework either online or with one-on-one meetings with a Board-approved instructor. This may be appropriate for some documentation errors and for those exceeding scope to a minor degree. In contrast, investigations involving drug diversion and impairment more frequently result in discipline against the license, which may include some level of license suspension. Nurses may have probationary conditions placed on their license for a defined period of time, which allow the nurse to continue in or return to practice while being closely supervised by a registered nurse in a structured environment. Typically a nurse working under probationary conditions would not be allowed to practice in a setting where there is no direct supervision or limited resources, such as home care or on a night shift in a long term care facility.

During the investigation, a nurse's

license to practice is not usually affected. However, in certain situations where there may be some risk to the public, a license is flagged during the investigation to alert future employers that there is a significant matter under investigation by the Board. Whenever the license is flagged for a pending investigation and when discipline is issued, the Board is required to report such information to national databanks, including NURSYS, which is maintained by the National Council of State Boards of Nursing. Once a nurse has received disciplinary action, their licensure status will reflect the history of disciplinary action for an indefinite period of time.

What Does this Mean for Me?

How does a nurse protect his or her license to practice and ensure the delivery of safe and competent care?

Laws and rules vary from state to state. Nurses are legally responsible to not only be familiar with the Nursing Practice Act, Administrative Code Rules, components of practice, position statements, and other state requirements, but also to understand the impact of these on their practice. Particularly when moving into a new state the nurse must seek out resources to ensure that he or she knows and understands the nursing regulations and policies that apply. The NC Board's website has a wealth of resources, including continuing education opportunities for nurses seeking to enhance their knowledge and practice.

Additionally, nurses must be well informed regarding specific protocols and procedures established by their employer. Even when changing departments within a facility, the nurse is responsible to know and understand the changes applicable in the new practice setting. A facility may choose to restrict a nurse's scope of practice by not allowing the nurse to perform certain tasks, even

when those tasks would be allowed by the Nursing Practice Act. An employer, physician, or other professional may not ever, however, expand a nurse's scope of practice.

So, to avoid that telephone call from the Board, practice your profession in a thoughtful, safe manner. If in doubt about any component of practice or employer expectation, seek resources and ask questions to clarify your appropriate legal scope and responsibilities. But, if that call comes from the Board, respond immediately and follow up timely with requests for information and documentation. Board staff will inform you about the process and about your rights and responsibilities during an investigation.

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INSTRUCTIONS

Read the article and on-line reference documents (if applicable). There is not a test requirement, although reading for comprehension and self-assessment of knowledge is encouraged.

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