

REVOCACTION, SUSPENSION, OR DENIAL OF LICENSE**§ 90-171.37. Revocation, suspension, or denial of licensure.**

The Board shall initiate an investigation upon receipt of information about any practice that might violate any provision of this Article or any rule or regulation promulgated by the Board. In accordance with the provisions of Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license to practice nursing in North Carolina or deny any application for licensure if the Board determines that the nurse or applicant:

- (1) Has given false information or has withheld material information from the Board in procuring or attempting to procure a license to practice nursing;
- (2) Has been convicted of or pleaded guilty or nolo contendere to any crime which indicates that the nurse is unfit or incompetent to practice nursing or that the nurse has deceived or defrauded the public;
- (3) Has a mental or physical disability or uses any drug to a degree that interferes with his or her fitness to practice nursing;
- (4) Engages in conduct that endangers the public health;
- (5) Is unfit or incompetent to practice nursing by reason of deliberate or negligent acts or omissions regardless of whether actual injury to the patient is established;
- (6) Engages in conduct that deceives, defrauds, or harms the public in the course of professional activities or services;
- (7) Has violated any provision of this Article; or
- (8) Has willfully violated any rules enacted by the Board.

The Board may take any of the actions specified above in this section when a registered nurse approved to perform medical acts has violated rules governing the performance of medical acts by a registered nurse; provided this shall not interfere with the authority of the North Carolina Medical Board to enforce rules and regulations governing the performance of medical acts by a registered nurse.

The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the nurse or applicant can reasonably be expected to safely and properly practice nursing.

(1981, c. 360, s. 1; c. 852, s. 3; 1987, c. 827, s. 1; 1991, c. 643, s. 4; 1991 (Reg. Sess., 1992), c. 1030, s. 22; 1995, c. 94, s. 29.)

Effect of Amendments. - The 1995 amendment, effective May 22, 1995, substituted "North Carolina Medical Board" for "Board of Medical Examiners" in the second paragraph.

Legal Periodicals. - For note, "Nurse Malpractice in North Carolina: The Standard of Care," see 65 N.C.L. Rev. 579 (1987).

CASE NOTES

One isolated act can meet the definition of "conduct" as used in subdivision (4) of this section. *Cafiero v. North Carolina Bd. of Nursing*, 102 N.C. App. 610, 403 S.E.2d 582 (1991).

Application to Single Act. - Petitioner's argument that subdivision (4) of this section was not intended to apply to a single act of negligence overlooks the fact that a single act may have very serious consequences. A single act may endanger health or even life. Petitioner's inference from the use of the present tense in subdivision (4) of this section that a sanction is permissible only if the violation is continuing at the time of the hearing would lead to absurd results, and the language of a statute will be interpreted so as to avoid an absurd consequence. *Cafiero v. North Carolina Bd. of Nursing*, 102 N.C. App. 610, 403 S.E.2d 582 (1991).

Cited in *Dailey v. North Carolina State Bd. of Dental Exmrs.*, 309 N.C. 710, 309 S.E.2d 219 (1983).

21-36.0217. Revocation, Suspension, or Denial of License

(a) The definitions contained in G.S. 90-171.20 and G.S. 150B-2 (01), (2), (2b), (3), (4), (5), (8), (8a), and (8b) are incorporated by reference within this Rule according to G.S. 150B-21.6. In addition, the following definitions apply:

(1) "Investigation" means a careful and detailed exploration of the events and circumstances related to reported information in an effort to determine if there is a violation of any provisions of this Act or any rule promulgated by the Board.

(2) "Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve as procedural officer for contested cases.

(3) "Prosecuting Attorney" means the attorney retained by the Board of Nursing to prepare and prosecute contested cases.

(b) A nursing license which has been forfeited under G.S. 15A-1331A may not be reinstated until the licensee has successfully complied with the court's requirements, has petitioned the Board for reinstatement, has appeared before the Licensure Committee, and has had reinstatement approved. The license may initially be reinstated with restrictions.

(c) Behaviors and activities which may result in disciplinary action by the Board include, but are not limited to, the following:

(1) drug or alcohol abuse;

(2) violence-related crime;

(3) illegally obtaining, possessing or distributing drugs or alcohol for personal or other use, or other violations of G.S. 90-86 to 90-113.8;

(4) commission of any crime which undermines the public trust;

(5) failure to make available to another health care professional any client information crucial to the safety of the client's health care;

(6) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;

(7) practicing or offering to practice beyond the scope permitted by law;

(8) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;

(9) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a

person's life or health is in danger;

(10) abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuation of such care;

(11) harassing, abusing, or intimidating a client either physically or verbally;

(12) failure to maintain an accurate record for each client which records all pertinent health care information as defined in Rule .0224(f)(2) or .0225(f)(2);

(13) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;

(14) exercising undue influence on the client, including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;

(15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;

(16) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;

(17) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law;

(18) guaranteeing that a cure will result from the performance of professional services;

(19) altering a license by changing the expiration date, certification number, or any other information appearing on the license;

(20) using a license which has been altered;

(21) permitting or allowing another person to use his or her license for the purpose of nursing;

(22) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure;

(23) violating any term of probation, condition, or limitation imposed on the licensee by the Board;

(24) accepting responsibility for client care while impaired by alcohol or other pharmacological agents;

(25) falsifying a client's record or the controlled substance records of the agency; or

(26) inappropriately kissing, fondling, touching or engaging in any other activities of a sexual nature with a client while responsible for the care of that individual.

(d) When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The licensee may request a hearing. At the hearing the issues will be limited to:

(1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;

(2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice Act; and

(3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(e) Before the North Carolina Board of Nursing makes a final decision in any contested case, the person, applicant or licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of Article 3A, Chapter 150B of the North Carolina General Statutes.

(1) The Paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for the North Carolina Board of Nursing.

(2) The following general statutes, rules, and

procedures apply and are adopted by reference within this Rule according to G.S. 150B-21.6, unless another specific statute or rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36 .0224 -.0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for Superior and District Court.

(3) Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or his attorney who prepares the document and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed nurse the nursing license certificate number shall appear on all correspondence with the Board of Nursing.

(f) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive director of the Board pursuant to G.S. 90-171.23(b) (3). Such a finding shall be incorporated with the order of the Board of Nursing and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced in a timely manner.

(g) The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation, by authorized Board staff, of a written or verbal complaint and review with legal counsel or prosecuting attorney or Executive Director.

(1) Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on behalf of the Board of Nursing to the licensee who is the subject of the complaint.

(A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(B) The Letter of Charges serves as the Board's formal notification to the licensee that an allegation of possible violation(s) of the Nursing Practice Act has been initiated.

(C) The Letter of Charges does not in and of itself constitute a contested case.

(2) The Letter of Charges shall include the following:

(A) a short and plain statement of the factual allegations;

(B) a citation of the relevant sections of the statutes or rules involved;

(C) notification that a settlement conference shall be scheduled upon request;

(D) explanation of the procedure used to govern the settlement conference;

(E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, an administrative hearing shall be scheduled; and

(F) if applicable, and in accordance with Board-adopted policy, an offer of voluntary surrender or reprimand also may be included in specified types of alleged violations of the Nursing Practice Act.

(3) A case becomes a contested case after the licensee, person, or applicant disputes the allegations contained in the Letter of Charges, requests an administrative hearing, or refuses to accept a settlement offer extended by the Board of Nursing.

(h) No Board member shall discuss with any party the merits of any case pending before the Board of Nursing. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself from any participation with the majority of the Board of Nursing hearing the case.

(i) A settlement conference, if requested by the licensee, is held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.

(1) The conference shall be held in the offices of the Board of Nursing, unless another site is designated by

mutual agreement of all involved parties.

(2) All parties shall attend or be represented at the settlement conference. The parties shall be prepared to discuss the alleged violations and the incidents on which these are based.

(3) Prior to the commencement of the settlement conference, a form shall be signed by the licensee which invalidates all previous offers made to the licensee by the Board.

(4) At the conclusion of the day during which the settlement conference is held, a form shall be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:

(A) if a settlement is reached, the Board of Nursing shall forward a written settlement agreement continuing all conditions of the settlement to the other party(ies); or

(B) if a settlement cannot be reached, the case shall proceed to a formal administrative hearing.

(j) Disposition may be made of any contested case or an issue in a contested case by stipulation, agreement, or consent order at any time prior to or during the hearing of a contested case.

(k) The Board of Nursing shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The notice shall include:

(1) Acknowledgment of service, or attempted service, of the Letter of Charges in compliance with Paragraph (f) of this Rule;

(2) Date, time, and place of the hearing;

(3) Notification of the right of a party to represent himself or to be represented by an attorney;

(4) A statement that, pursuant to Paragraph (m) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;

(5) A statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing;

(6) A statement advising the licensee that a list of all witnesses for the licensee should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and

(7) A statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.

(l) Prehearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

(1) The prehearing conference shall be conducted in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all parties.

(2) The prehearing conference shall be an informal proceeding and shall be conducted by a Board-designated administrative law counsel.

(3) All agreements, stipulations, amendments, or other matters resulting from the prehearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.

(m) Pre-hearing conferences or administrative hearings conducted before a majority of Board members shall be held in Wake County or, by mutual consent in another location when a majority of the Board has convened in that location for the purpose of conducting business. For those proceedings conducted by an Administrative Law Judge the venue shall be determined in accordance with 6. 5. 150B-38(e). All hearings conducted by the Board of Nursing shall be open to the public.

(n) The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a licensee, in preparation for, or in

the conduct of, a contested case.

(1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.

(2) Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall include the following:

(A) the full name and home or business address of all persons to be subpoenaed:
and

(B) the identification, with specificity, of any documents or information being sought.

(3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.

(4) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.

(o) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Prehearing motions shall be heard at a prehearing conference or at the contested case hearing prior to the commencement of testimony. The designated administrative law counsel shall hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

(p) Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance must be in writing and received in the office of the Board of Nursing no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the

ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the Hearing Officer of the Board. All other motions for continuance shall be ruled on by the majority of the Board members or Administrative Law Judge sitting at hearing.

(q) All hearings by the Board of Nursing shall be conducted by a majority of members of the Board of Nursing, except as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at the hearing. The Board of Nursing shall designate an administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.

(1) When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of Article 3A, Chapter 150B and 21 NCAC 36.0217 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.

(2) In the event that any party or attorney or other representative of a party engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.

(3) During a bearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Board of Nursing and the designated administrative law counsel shall receive the additional testimony. In the event that new members of the Board or a different administrative law counsel must participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt

of the additional testimony.

(r) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. Chapter 8C shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

(1) Sworn affidavits may be introduced by mutual agreement from all parties.

(2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.

(s) Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are available upon request from the Board of Nursing and shall be supplied at a reasonable cost.

Authority G.S. 14-208.5; 15A-1331-A; 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 90-401; 150B-3(c); 150B-11; 150B-14; 150B-38 through 150B-42;

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