



Common Misconceptions About Professional Licensure

Being unaware of the realities of licensure can damage a nurse’s career, even permanently.

Although most health care professionals know that licensing boards can take disciplinary action against them for professional misconduct or gross negligence in clinical practice, nurses may not appreciate the true extent of authority the nursing boards maintain or the issues they address. This three-part series will discuss nursing disciplinary actions and provide tips for maintaining one’s license in good standing. Part 1 discusses misconceptions nurses commonly have about licensure. Part 2 will discuss common reasons boards of nursing conduct investigations and take disciplinary action. Part 3 will be a discussion of strategies for protecting your license.

In addition to successfully completing an accredited nursing program of study and passing the National Council Licensure Examination (known as NCLEX), to maintain a license in good standing a nurse must meet other requirements as determined by the individual state or territory. These requirements typically include good moral character, continuing clinical competence or continuing education, the absence of a criminal record, English proficiency, and compliance with specific provisions of the state’s nursing laws.

Many states have a specific statute, called a nurse practice act, that defines such things as the composition of the nursing board and the scope of its authority, the scope of nurses’ practice, definitions of professionalism and professional misconduct, conditions for nursing-program accreditation, minimum requirements for obtaining licensure in that jurisdiction, and specific rules and regulations for maintaining licenses in good standing, and the process involved in investigating complaints and taking disciplinary action. Some states don’t have a specific nurse practice act but embed the requirements in health, education, or business laws. (This article will refer to nursing laws collectively as nurse practice acts.)

Nurses are held responsible by boards of nursing for being familiar with the rules and regulations that govern their practice, and all nurses are advised to periodically review the laws and regulations, as well as any professional guidelines, advisory opinions, newsletters, practice alerts, or other nursing board



Illustration by Janet Hamlin.

publications for all states or territories in which they are licensed. Misinformation about licensure is common in the absence of such information.

MISCONCEPTION 1: NURSING BOARDS ARE NURSING ADVOCATES

There are 61 nursing boards in the United States, including all the states, the District of Columbia, and some territories. Some states have separate boards for



Table 1. Mandatory Reporting in States and Territories^a

State or territory	Reporting is mandatory	Reporting isn't mandatory
	Alabama	American Samoa
	Alaska	Arkansas
	Arizona	California (RNs)
	California (LVNs)	Colorado
	Florida	Connecticut
	Hawaii	Delaware
	Indiana	District of Columbia
	Iowa	Georgia (LPNs and RNs)
	Kansas	Idaho
	Kentucky	New York
	Maine	Northern Mariana Islands
	Maryland	Oregon
	Massachusetts	Pennsylvania
	Michigan	Rhode Island
	Minnesota	South Dakota
	Mississippi	Virgin islands
	Missouri	Wisconsin
	Montana	
	Nebraska	
	Nevada	
	New Hampshire	
	New Jersey	
	New Mexico	
	North Carolina	
	North Dakota	
	Ohio	
	Oklahoma	
	South Carolina	
	Tennessee	
	Texas	
	Utah	
	Vermont	
	Virginia	
	Washington	
	West Virginia (both LPNs and RNs)	
	Wyoming	

^aThese data are taken from the descriptions of disciplinary actions on the Web site of the National Council of State Boards of Nursing: www.ncsbn.org/2011_Discipline.pdf and are based on survey data that do not cover all states and territories.

LPNs and RNs, and Nebraska has a separate board for advanced practice nurses. (See the National Council of State Boards of Nursing [NCSBN] Web site, at www.ncsbn.org, including its resources regarding discipline, for more specifics on the individual boards mentioned in this article, which can change as states pass new legislation.) Many nurses mistakenly believe that their board of nursing functions as an advocate for the individual nurse or for the nursing profession. However, the individual states enact statutes,

frequently called administrative procedure acts, to create the regulatory agencies responsible for enforcing the laws. The administrative procedure acts determine the mission for those regulatory agencies. The mission of the nursing board, therefore, isn't to be advocates for nurses or the nursing profession, but rather to *protect the public*.

Because nurses care for vulnerable populations, the state that issues a nursing license has a social contract with the public to ensure that the licensee is qualified, competent, and ethical. In applying for licensure, an applicant should understand that the granting of a license gives the state the authority to take whatever disciplinary action it deems necessary against the licensee to honor that social contract.

Administrative procedure acts often mandate that the board of nursing investigate every complaint it receives, but each nursing board has its own procedures for processing those complaints. Complaints can come from many sources, including patients or families, employers, or coworkers, as well as through interagency reporting. Additionally, many nurse practice acts mandate self-reporting of certain violations and outline the licensee's obligations regarding the reporting of other providers. Of the 55 nursing boards that answered a survey regarding mandatory reporting, 37 answered that they mandate reporting of nursing practice act violations (see Table 1). A nursing board may also have the authority to open an investigation on its own, in addition to responding to an outside complaint.

If the complaint alleges a violation of the nurse practice act or regulations, the board will conduct a full investigation. Because privacy and confidentiality regulations differ by state, the nurse may not be permitted to read the actual complaint or even to know who lodged it. Unlike civil lawsuits, wherein defendants have the right to *discovery* of their adversary's evidence, in a nursing board investigation, the nurse may not have access to information the nursing board is using in making its determinations. Also unlike in civil lawsuits, the board may not have a time limit on taking action. To bring a civil lawsuit, a plaintiff must file the complaint by a statutorily determined deadline. Most states, however, allow the board to conduct investigations and take disciplinary action without such time restrictions.

Licensees don't have a Sixth Amendment right to a speedy resolution of nursing board complaints; that constitutional protection only applies to criminal trials and doesn't extend to administrative hearings. The resolution of a nursing board complaint may be a lengthy process, extending over months or even exceeding a year in some cases. The standard of proof required to impose disciplinary action against a nurse varies by state but isn't as rigorous as in criminal law,

which requires proof “beyond a reasonable doubt.” See Table 2 for a list describing the standards of proof employed in various states and territories.

Disciplinary actions are considered public information and nursing boards may deem it in the public’s best interest to publish them on the Internet, on the board’s Web site, or in newsletters. Disciplinary actions are also reported to data banks and may be reported to the state’s Office of the Medicaid Inspector General. These publications and reports may compromise a nurse’s employability even after the licensure matter has been resolved. The collateral consequences of the nursing board taking disciplinary action can effectively end one’s career even if the license has been restored to good standing.

Administrative procedure acts also permit a board of nursing to take emergency action, before conducting a hearing, when it believes that the licensee poses an imminent threat to public safety. As the NCSBN states (www.ncsbn.org/163.htm), boards of nursing are charged with *protecting the public*. “Their challenge is to weigh that responsibility with the right of an individual to practice a chosen profession. A nurse may be separated from practice if the [b]oard determines that this is necessary to protect the public.”

Finally, nursing boards may be authorized to charge the nurse for expenses related to the investigation. Table 3 shows some of the expenses a nurse may be responsible for.

MISCONCEPTION 2: PRIVATE CONDUCT ISN'T RELEVANT TO ONE'S PERFORMANCE IN A PROFESSIONAL CAPACITY

Nurses may believe that a board of nursing is concerned solely with clinical practice. However, in furtherance of a board of nursing’s mission to protect the public, a nursing board investigation can extend into arenas that nurses consider unrelated to their clinical performance as nurses. But their private conduct may well subject them to disciplinary action. Nurses must know the rules to which they are held as licensed professionals. Failure to reregister a license, practicing with an expired license, dishonesty in the application process, failure to notify the board of nursing of address or name changes within a required period, failure to wear an identification badge with one’s status displayed, and failure to meet continuing education requirements can all lead to nursing board investigations and disciplinary action.

Conduct that reflects questionable judgment, impairment, or lapses in moral character may suggest to the board that a nurse poses a potential threat to the health, safety, and welfare of the public. Driving under the influence or the use of recreational or illegal drugs may lead to discipline, even if such activities occur while the nurse is on vacation or out of state.

Table 2. Burdens of Evidence Required, According to Nursing Board^a

	Clear and convincing evidence	A preponderance of the evidence	Substantial evidence	Reasonable cause
State or territory	California Florida Kansas Mississippi Nebraska North Carolina Oklahoma South Dakota Virgin Islands Virginia Washington Wyoming	Alaska Arizona Colorado Connecticut Delaware Georgia Hawaii Idaho Indiana Iowa Kentucky Louisiana Maine Massachusetts Michigan Minnesota Missouri Montana Nevada New Hampshire New Jersey New York North Dakota Ohio Oregon Tennessee Texas Utah Vermont Washington West Virginia	Alabama Arkansas District of Columbia Illinois Maryland South Carolina Wisconsin	New Mexico Northern Mariana Islands Rhode Island

^aThese data are taken from the descriptions of disciplinary actions on the Web site of the National Council of State Boards of Nursing: www.ncsbn.org/2011_Discipline.pdf and are based on survey data that do not cover all states and territories.

Attendance problems related to alcohol or drug use may also lead to license discipline. Nursing boards may have the authority to compel a licensee to undergo and even pay for a substance abuse evaluation with a qualified expert the board has approved. This may be necessary to demonstrate to the board that the licensee is capable of safe practice, even in the absence of impaired-practice allegations. Currently the Northern Mariana Islands, the Virgin Islands, and almost all states can compel a nurse under investigation to undergo an evaluation for chemical dependency or physical or mental health problems when “probable cause” exists that a violation has occurred involving one or more of those elements.



Table 3. Nursing Board Expenses That Can Be Charged to the Nurse^a

	Monitoring or probation fees	Investigation fees	Legal fees
State or territory	Alabama Georgia Louisiana Nevada New Hampshire Kansas New Mexico North Dakota Northern Mariana Islands South Carolina West Virginia	California Florida Georgia Hawaii Idaho Louisiana Minnesota Nevada New Hampshire New Jersey New Mexico Oklahoma Pennsylvania South Carolina South Dakota Tennessee Washington West Virginia Wisconsin	California Florida Georgia Hawaii Indiana Iowa Kansas Louisiana Minnesota Nevada New Hampshire New Jersey New Mexico North Carolina Oklahoma South Carolina Tennessee Washington West Virginia Wisconsin

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Failure to make child support, alimony, or spousal support payments on time; file one's taxes; repay student loans; or pay one's creditors may create licensure problems for nurses. Unsatisfied judgments or judgment liens may be reported to the board and trigger an investigation. Nursing boards may also be concerned when nurses are accused of child or elder abuse in their homes or of violating restraining orders. Although none of these issues is directly related to clinical practice, they may provide evidence that concerns the board enough for an investigation to be initiated. The nurse may be required to attend a moral character hearing to maintain his or her license in good standing.

A nurse's moral character may be called into question if she or he is accused of criminal activity or lapses in integrity. Criminal charges unrelated to nursing practice may suggest to the board that the nurse poses a potential danger to the public. Some states require licensees to self-report all misdemeanors, felonies, and plea agreements within a certain period of time. That may be true even in cases of deferred adjudication. (In deferred adjudication, the defendant accepts a plea arrangement or pleads guilty, then meets certain requirements and may enter a probationary period. Upon successful completion of the requirements or probation,

the matter may be dismissed without a criminal conviction record; in some cases, the record will even be expunged.) Nurses who are arrested or charged with crimes, even misdemeanors or violations, should consult a licensure attorney before entering into deferred adjudication or plea arrangements. Criminal lawyers may not be aware of the collateral implications to one's license when negotiating these agreements.

There are some states in which such self-reporting isn't required but nurses must still disclose criminal charges upon licensure renewal. But that disclosure can lead to an investigation and nursing board action against the licensee. Currently, 52 nursing boards collect criminal background information on potential licensees. Boards of nursing obtain such information from sources other than a license application, including the National Clearinghouse of Information on Crime, the Federal Bureau of Investigation, state law enforcement authorities, private agencies, employers, and data banks. All felony convictions are an absolute bar to licensure in six jurisdictions: Florida, Arizona, Rhode Island, Guam, the Northern Mariana Islands, and American Samoa. Certain felony convictions are an absolute bar to licensure in American Samoa, Arkansas, Florida, Guam, Kansas, Louisiana, Massachusetts, Ohio, Oregon, Pennsylvania, Tennessee, Texas, and Utah.

The improper use of social media can trigger a nursing board investigation and subject the nurse to disciplinary action. Divulging protected health information, revealing confidences, privacy violations, defaming colleagues or employers, posting threats or lascivious photographs, or harassing or bullying someone online, even when done from one's home computer while off duty, can reflect poorly on the nurse's character and integrity and subject her or him to charges of ethics violations. Such activities may undermine a licensee's credibility and trustworthiness as a professional. The NCSBN conducted a survey in 2010 and found that 33 of 46 of the responding nursing boards had received complaints involving nurses' misuse of social networking sites. Twenty-six of those 33 had imposed disciplinary action on the nurses ranging from censure to suspension.

MISCONCEPTION 3: DISCIPLINARY ACTION TAKEN BY A STATE PERTAINS ONLY TO THAT STATE

It's important for nurses to understand that disciplinary action taken in one state can indeed have a negative effect on one's license in another. State nursing boards consider being disciplined in another jurisdiction professional misconduct, even if the infraction didn't occur in the state taking action against the nurse. As with criminal charges, self-reporting of out-of-state licensure actions may be required within

a certain time frame or at least upon license renewal. A state's administrative procedure act may permit the nursing board to conduct an investigation and impose disciplinary action against a licensee strictly on the basis of another state's having already done so. Again, there may be no statute of limitations, meaning that the board can take action against a nurse indefinitely, even for disciplinary actions that occurred years ago and have been fully resolved in that other state. Additionally, nursing boards may retain jurisdiction and the authority to impose disciplinary action regardless of whether the nurse has renewed the license in that state or has let that state's license lapse.

Boards of nursing participate in a computerized system provided by the NCSBN called Nursys (Nurse System). Nursys is a Web site containing nursing license and disciplinary information. When one state takes action against a nurse, the disciplinary action is entered into Nursys so that other jurisdictions can access the information. A nurse who has been disciplined in one state may receive notification months or even years later from other states in which she or he has been licensed that disciplinary action is being taken there as well. Application for licensure by endorsement in another state (sometimes referred to as reciprocity) subjects the applicant to the jurisdiction of the state to which the nurse is applying, and applicants may be denied licensure or be required to attend a hearing to determine whether a license should be granted.

Placement on one state's disqualified-provider list may make it difficult to obtain licensure and employment in another state.

When a licensee has been disciplined, the nursing board may report that discipline to other agencies or authorities. If the board posts the infraction and penalty on the Internet, other regulatory agencies can follow the postings and take action. The state health department, the Office of the Medicaid Inspector General, or the state's attorney general may be advised that disciplinary action was taken against a nurse by the board or discover the action through interagency communications. Such offices may then take action as well. The Office of the Medicaid Inspector General, for example, may place the nurse on its disqualified or excluded provider list. Once on this list, the nurse may not work for any employer that receives Medicaid reimbursement for nursing services. Similarly, the federal government may exclude the nurse from participation in the Medicare program. Although most nurses don't directly bill these programs, they may still be disqualified from

working for employers that do. Consequently, a nurse may be unable to secure employment, even if the license has been restored to good standing with the board of nursing. Placement on a disqualified-provider list may also make it difficult to obtain licensure and employment in another state.

Obtaining licensure in another field can also be difficult if a nursing license has been disciplined. Cosmetologists, barbers, architects, real estate agents, and many other non-health care fields require licenses to practice, and such licenses may not be issued if a nursing license was revoked, surrendered, or suspended.

MISCONCEPTION 4: LICENSURE IS A RIGHT

Although a license to practice a profession may be considered a *property interest* (citizens have the constitutionally protected right to enjoy their property; the government cannot take a person's property—in this case, a professional license that allows one to earn a living—without due process) to the person holding that license, the government issuing that license views the holding of that license to be a privilege. Rights are entitlements that are considered inherent and inalienable so they cannot be revoked, but privileges are granted by the state and are therefore conditional. As such, a nursing license may be restricted or revoked upon determination that the license holder poses a risk to the public.

Nurses don't have the *right* to practice nursing or to hold themselves out as nurses unless their nursing licenses are in good standing. A nurse may be separated from practice for a designated period of time, or even permanently, by licensure disciplinary actions. Should a nursing board believe a nurse has competency, ethics, or character problems, it may take whatever steps it deems necessary to protect the public it's in place to serve. Because the state can restrict or revoke one's *privilege* to practice a licensed profession, nurses must understand the regulations and standards to which they are held and by which they will be judged.

The next article in this series will discuss common reasons boards of nursing conduct investigations and take disciplinary action against nurses. ▼

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