

NURSING LICENSURE: DISCIPLINARY PROCESS AND PROCEDURES



The Kentucky Board of Nursing protects public health and welfare by development and enforcement of state laws governing the safe practice of nursing.

Kentucky Board of Nursing

In order to protect the public, the General Assembly of Kentucky mandates that the practice of nursing be regulated and controlled according to the Kentucky Nursing Laws and regulations of the Kentucky Board of Nursing (KBN). The purpose of KBN is to assure that safe and effective nursing care is provided for the citizens of Kentucky. If a violation of the Kentucky Nursing Laws is alleged, the matter is referred to KBN for investigation and resolution.

How does a nurse come to the attention of the Board?

Kentucky has a law [KRS 314.031(4)] which requires any nurse, employer of nurses, or any person having knowledge of a nurse acting in a manner inconsistent with the practice of nursing to report such actions to KBN. Complaints are submitted by health care facilities, co-workers, patients, family members, self-reports, law enforcement, other boards of nursing, anonymously, and other administrative agencies. KBN can also initiate an investigation by entering an administrative complaint. The following are examples of administrative complaints: failure to obtain the required continuing education competency requirements; practicing nursing without a license(s); falsifying an application for licensure; submitting a bad debit transaction or check to KBN for licensure; and failure to report convictions.

What constitutes a violation of the Kentucky Nursing Laws [KRS 314.091(1)]?

- ◆ Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;
- ◆ Has been convicted of a felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty. Conviction means, but is not limited to pleading no contest, entering an Alford plea, or entering a guilty plea pursuant to a pretrial diversion order;
- ◆ Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;
- ◆ Has negligently or willfully acted in a manner inconsistent with the practice

of nursing;

- ◆ Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;
- ◆ Abuses use of controlled substances, prescription medications, illegal substances, or alcohol;
- ◆ Has misused or misappropriated any drugs placed in the custody of the nurse for administration, or for use of others;
- ◆ Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on essential records;
- ◆ Has a license, privilege, or credential to practice as a nurse disciplined by another jurisdiction;
- ◆ Has violated any provisions of this chapter;
- ◆ Has failed to cooperate with KBN's investigation;
- ◆ Has violated any lawful order or directive previously entered by the Board;
- ◆ Has been listed on the nurse aide abuse registry;
- ◆ Has violated patient confidentiality, except as authorized by law;
- ◆ Has violated any administrative regulation promulgated by the Board;
- ◆ Used or possessed a Schedule I controlled substance; or
- ◆ Has used or been impaired as a consequence of the use of alcohol or drugs while practicing as a nurse.

What happens when a complaint is entered against a nurse?

If there is evidence of a possible violation of the Kentucky Nursing Laws, KBN will initiate an investigation. The nurse is sent a Notice of Complaint Letter, a copy of the complaint, and an Official Response Form to the address of

record with the Board which must be returned to KBN within thirty (30) days upon receipt of the letter. The nursing law requires all nurses to maintain a current mailing address with KBN. The nurse may be ordered to obtain a substance use disorder, mental health, neuropsychological, and/or physical evaluation, which must be completed and returned to KBN within thirty (30) days. After the Board receives the nurse's response and evaluation (if applicable), the nurse is notified when an investigator is assigned to the case.

If the nurse's license is current, she/he is allowed to maintain employment in Kentucky during the investigation. An employer verifying the license is told the current status of the license and that an investigation is pending. No other information about the investigation is shared at this time. The employer may submit a written request to KBN to be notified of the final outcome.

An immediate temporary suspension of the nurse's license can be issued for the following reasons: if an immediate danger or threat to the public is identified, failure to obtain a Board ordered evaluation, failure to submit sufficient funds for the renewal of the nursing license, or failure to pay taxes.

What is the investigative process?

The investigative meeting is an informal, fact gathering meeting between the nurse and investigative staff held at the Board office. This gives the nurse an opportunity to review the information related to the case, and discuss the allegations made in the complaint. KBN staff will explain the disciplinary process and possible Board outcomes. The nurse has the right to be represented by an attorney. KBN's prosecuting attorney will usually be present if an attorney accompanies the nurse.

After a thorough investigation, the case may be presented to KBN's Credentials Review Panel for direction. The panel is composed of four (4) Board members that meet monthly to review information and direct Board staff on case resolutions.

If the investigation reveals a violation of nursing law occurred, a proposed settlement is offered to the nurse in the form of a Consent Decree or Agreed Order. If the nurse accepts the proposed settlement, the document is forwarded to KBN's executive director for approval on behalf of the full Board.

What is the administrative hearing process?

If the nurse chooses not to respond to the allegations or accept the proposed settlement, KBN's prosecuting attorney prepares the Notice of Charges and Notice of Intent to Request a Hearing (NOC/NIRH). This document formally charges the nurse with specific violations of the Kentucky Nursing Laws and advises the nurse of the factual basis of the charges.

The nurse must submit a written/typed answer to the Board no later than twenty (20) days after receipt of the NOC/NIRH. If the nurse fails to file an answer, an order for default may be issued. If the nurse submits an answer, a pre-hearing conference is scheduled.

A pre-hearing conference is a meeting between the nurse and her/his attorney, if applicable, the investigator, the prosecuting attorney, and the hearing officer to discuss preliminary matters prior to the actual hearing date. If requested, the hearing officer can issue subpoenas for witnesses to testify on behalf of the nurse. The nurse may participate in the pre-hearing conference via telephone, if requested. Failure to comply with any stage of the administrative hearing process may result in the issuance of a default order. When a default order is issued, the nurse is found guilty of the charges and forfeits the right to a hearing.

A hearing officer presides over the hearing. The hearing panel consists of two (2) Board members. A court stenographer is also present. All hearings are open to the public. Evidence is presented by KBN's prosecuting attorney and the nurse and her/his attorney, if applicable. At the conclusion of the hearing, the panel goes into closed session to deliberate the case. The proposed recommendations are not verbally announced at that time. Within sixty (60) days following receipt of the transcript, the hearing officer drafts and mails the proposed decision to the nurse and her/his attorney, if applicable. The nurse has fifteen (15) days following receipt of the proposed decision to respond in writing with any objections. The proposed decision and objections, if any, then go to the full Board at the next scheduled Board meeting. The Board reviews the proposed decision and any objections in closed session and may make modifications to the document. A vote is taken in open session and the decision becomes final at that point. If the nurse does not agree with the final decision, an appeal must be filed with the Jefferson Circuit Court within thirty (30) days from the date the written decision was entered. The presiding judge reviews the transcript and pleadings and issues a ruling.

How are complaints resolved?

Dismissal

The complaint is dismissed for lack of evidence.

Letter of Concern

A letter is mailed to the nurse expressing the Board's concern regarding her/his actions. This is not disciplinary action.

Consent Decree

An agreement between the nurse and KBN issued as a result of a non-willful violation. A civil penalty is imposed. This is not formal disciplinary action. Some examples are: working on a lapsed license; failure to meet continuing education competency requirements; or falsification of an application.

Agreed Order

An agreement between the nurse and KBN that a violation of the Kentucky Nursing Laws occurred and specifying terms/conditions to impose on the nurse. This is formal disciplinary action.

Hearing

This is a formal procedure in which the case is presented to the KBN hearing panel for determination. The nurse shall bear the costs of the hearing officer fee, hearing expert fee, court stenographer fee, and the cost of the Board hired expert witness, if applicable, if found guilty of a least one (1) of the charges.

What are the possible actions that can be taken against a nurse's license?

Reprimand

A reprimand may not affect the nurse's ability to practice. It imposes a civil penalty, additional continuing education, and/or possible drug screening.

Limitation/Probation

The nurse continues to practice nursing subject to certain conditions as determined by KBN. Restrictions may include: the area in which the nurse is allowed to practice; practicing with supervision; and/or having limited or no access to narcotics or other medications. Probation may include: meetings with KBN staff; random drug/alcohol screens; substance abuse treatment; and employer reports.

Voluntary Surrender

The nurse agrees to surrender the license for a period of time with terms to be met for reinstatement.

Suspension

The nurse loses the right to practice nursing for a specific amount of time. The Board's order will specify conditions that must be met prior to reinstatement of the license which may include: a substance use disorder, mental health, neuropsychological, and/or physical evaluation; counseling reports; random drug/alcohol screens; and letters of recommendation. A hearing may be required to consider reinstatement of a license.

Reinstatement Denied

Reinstatement of a lapsed/suspended license can be denied by KBN until specific conditions are met.

Licensure Denied

The applicant is denied licensure in the state of Kentucky.

Revocation

The nurse loses the ability to practice nursing in the state of Kentucky. A nurse may reapply for a license after the period of time specified by the Board's Order. The nurse is required to retake and successfully pass the National Council Licensure Examination.

A civil penalty shall be imposed on all the above actions. The Board can issue a civil penalty up to ten thousand dollars (\$10,000).

All final KBN disciplinary actions are subject to the Kentucky Open Records Act; reported to the National Council of State Boards of Nursing Data Bank; Office of the Inspector General if certain criterion is met; any other state or federal agency as required by law; and is published in the Board's newsletter. Copies are available to the public.

This material is intended as an overview
and is not meant to supplant the actual statutes or regulations.
Further information may be obtained by contacting the
Investigation Branch staff
at the Board of Nursing office.

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