

OVERVIEW OF THE DISCIPLINARY PROCESS

The West Virginia State Board of Examiners for Licensed Practical Nurses is authorized by law to revoke, suspend or otherwise discipline licensees who are guilty of violations of the law governing practical nursing. The law establishing the West Virginia State Board of Examiners for Licensed Practical Nurses was enacted by the Legislature as a means of protecting the public health, safety and welfare. Utilizing the various mechanisms in law to remove or restrict the practice of licenses who have engaged in activities with potential for endangering the health, safety and welfare of the public is an essential component of the functions of the Board.

WHY DID I GET REPORTED?

All licensed health care professionals, including LPNs are required to report any other health care professional who they believe is behaving in an illegal, unethical or incompetent manner. The primary source for reports about activities that might be in violation of law for LPNS is employing agencies. Individuals who are aware of activities that are a violation and who fail to report this action to the appropriate licensing board are considered to be in violation of the law themselves and can have disciplinary action taken against their license as well.

Anyone may file a complaint if they believe a licensed practical nurse has violated the law or provided substandard care. Complaints are received from consumers, their families, other members of the health care industry, law enforcement agencies, and health care facilities.

WHAT SHOULD I DO NOW?

The initial step taken by the Board in investigating a complaint is to notify a licensee by certified mail that a complaint has been filed. The licensee against whom a complaint is filed is provided with copies of the complaint and other evidence against them, and is given an opportunity to respond in person or in writing to the allegations. The licensee is also advised of their due process rights and the option to have an attorney act on their behalf.

Be certain to pick up all certified mail from the Board. If a response is requested by the Board please respond within the identified time frame, usually 14 days. If you are unable to meet this deadline please contact the Board office. The law requires that you comply with all requests from the Board during the course of the investigation. The Board's Legislative Rules, 10 CSR 2, 12.1.e.26. states that grounds for disciplinary action include "impeded or obstructed an investigation by the board

by failing to comply or respond to requests for action or information, whether such failure is intentional or merely negligent."

If the allegations are not true that information should become clear during the investigation. Any pending charges will be dropped if there is no evidence to support the complaint. In the event disciplinary action is taken, you are required to comply with all terms and conditions imposed by the Board. Failure to comply may result in additional disciplinary action against your license.

You or your attorney may contact the Board office at any time to check on the status of the investigation, or discuss proposed disciplinary action or compliance with action taken by the Board.

WHAT ARE THE GROUNDS FOR DISCIPLINE?

The West Virginia State Board of Examiners for Licensed Practical Nurses is authorized by the West Virginia Legislature "...to refuse to admit an applicant for the licensure examination and also... to revoke or suspend any license to practice practical nursing issued by the board or to otherwise discipline a licensee upon satisfactory proof that the person: (1) is guilty of fraud or deceit in procuring or attempting to procure a license.; or (2) is convicted of a felony; or (3) is habitually intemperate or is addicted to the use of habit-forming drugs; or (4) is mentally incompetent; or (5) is guilty of professional misconduct as defined by the board; or (6) who practices or attempts to practice without a license or who willfully or repeatedly violates any of the provision of this article." Rules and regulations of the Board list thirty-five (35) specific acts that constitute grounds for discipline.

DOES THE BOARD RECEIVE A LOT OF COMPLAINTS?

Between July 1, 2012, and June 30, 2015, a total of 484 complaints or information received have resulted in investigation. Of that number approximately 20 % of the complaints have been dropped following evaluation of the evidence, and about 10% of the individuals have allowed their license to lapse so cease to be a threat to the public. Disciplinary action, including revocation, suspension, probation with terms and fines has been levied Board against approximately 70% of those licensees against whom complaints have been filed. The board is authorized by law to act on issues related to licensure only. When a complaint is filed and an investigation reveals that the event does not relate to licensure, the licensee is notified that the case is closed and that a violation of the licensing law was not identified.

The Board maintains between 8,000 and 8,200 active licensees. This number changes daily as individuals are added who pass the licensure examination for the first

time or endorse in from another state, and the number decreases as individuals retire, move, or for other reasons do not keep an active license.

WHAT ARE THE MOST COMMON COMPLAINTS?

The most common complaints received fall into four categories.

- 1) working on a lapsed license or failure to comply with continuing education requirements
- 2) conviction of a felony or misdemeanor with a relationship to the practice of practical nursing
- 3) activities relating to inappropriate use or abuse of alcohol or improper use, diversion or misappropriation of illegal or prescription drugs and
- 4) violation relating to nursing practice including but not limited to failing to administer medications or perform treatments as ordered

Practice related violations comprise the largest percentage of complaints against licensees and are most frequently related to failure to administer medications or treatments or errors related to medications or treatments, false documentation, abandonment, inappropriate assignment of nursing duties, and/or failure to follow facility policies.

HOW ARE COMPLAINTS INVESTIGATED?

When a complaint is received an investigative contact is made within a few days of receipt of a complaint with the individual making the complaint to discuss the contents and circumstances, as well as to request supporting documentation if needed. Supporting documentation, not provided upon request, is subpoenaed. A subpoena may be executed by the Executive Director or Chairperson of the Board. Other investigative activities, such as interview of witnesses, may also be conducted by an agent of the Board. Anonymous complaints are investigated provided that sufficient information is available to investigate the complaint.

WHAT HAPPENS AFTER THE INVESTIGATION?

An Agent for the Board evaluates the complaint and/or available information to determine specific violations of law involved and to determine if additional investigation is needed. The Agent for the Board may recommend that a case be closed if probable cause for further action is not identified. Cases recommended for closure due to lack of probable cause shall be reported to the Disciplinary Review Committee. The committee may approve closure of the case or direct staff to proceed with further investigation, or a hearing on the matter.

If, after investigation and review of the evidence by the Disciplinary Review Committee of the Board, probable cause is not identified, the licensee is notified in writing that the case against them has been dropped.

WHAT IF I ADMIT TO ALLEGATIONS IN THE COMPLAINT?

If, after investigation, probable cause is identified an Agent for the Board may negotiate terms of a Consent Agreement with a licensee in uncontested cases. An uncontested case means that the licensee does not deny the facts revealed in the investigation.

If the licensee accepts terms of a Consent Agreement, materials including the complaint, supporting documents and response by the licensee and the Consent Agreement are provided to the Disciplinary Review Committee. This may be done at a regular meeting or by mail. The Disciplinary Review Committee may accept the Consent Agreement, request revision of the Agreement or reject the Agreement.

WHAT IF I DENY THE ALLEGATIONS IN THE COMPLAINT?

If the licensee denies the findings after investigation, and refuses to enter into a Consent Agreement with the Board, the matter is set for formal hearing. The Board may subpoena witnesses and documents in support of its position regarding the complaint. The licensee may also request that subpoenas be issued for witnesses and documents supporting their position. The hearing is held before a hearing officer or members of the Board.

The Board makes a determination on the matter based on the facts, evidence submitted, testimony (as provided through a transcript of the hearing), and the experience and judgment of the Board members as they relate to applicable statutes and rules and regulations of the Board.

Findings of Fact, Conclusions of Law, and Decision and Order of the Board on the matter are formulated and issued. The licensee and his/her attorney of record, if any, are provided with a copy of the decision, findings and conclusions.

The decision of the Board is final unless reversed, vacated or modified upon judicial review. WV Code §29-5-4(g) provides: Licensee has thirty (30) days to file an appeal in Circuit Court.

WHAT PENALTIES MAY THE BOARD IMPOSE?

The purpose of disciplinary action is to attempt to assure that the public is protected against actions by the nurse that are illegal, unethical or incompetent and could,

therefore be harmful to a client's health, safety or welfare. Members of the Board and their agents work with licensees, when possible, to develop corrective action for a violation which provides adequate protection for the client while imposing the least restrictive penalty for the licensee. The purpose of discipline is not punishment, it is protection.

The Board may impose a variety of penalties for violations through Consent Agreement with the licensee or by Order of the Board following hearing. Those penalties include:

1. revocation of the license,
2. acceptance of voluntary surrender of the license
3. suspension of the license for a specified period of time
4. placement of the license on probation which might include terms such as closer supervision, completion of specific educational requirements, drug screening, counseling or other terms as appropriate.
5. reprimand/public censure, and/or
6. assessment of fines and administrative fees (Minimum administrative fee for preparation of a Consent Agreement is \$100.00. Minimum charge for a hearing is \$200.00 per hour if the Board prevails.)

Disciplinary actions taken by the Board through Final Order following hearing or through Consent Agreement are public information. The fact that disciplinary action has been taken against a license is stated on the Board's web site under that individual's specific licensure information. Disciplinary actions are reported in the LPN Newsletter, to the National Council of State Boards of Nursing, NURSIS Data Base and to other states where the licensee holds a license. Actions are also reported to the National Practitioner Data Bank (NPDB) for query by employers as required by Federal law. Revocations, suspensions, and voluntary surrenders may also be reported to the Office of the Inspector General which may result in the nurse being excluded from employment in facilities which accept funds from Medicare/Medicaid. Also, should the individual pursue licensure as a registered nurse, information regarding any disciplinary action taken while licensed as an LPN will be reported to the RN Board at the time that he/she makes application to that entity.

HOW LONG WILL IT TAKE TO RESOLVE THIS COMPLAINT?

It takes approximately 60 days from receipt of a complaint to final disposition. It is possible, however, for a Consent Agreement to be completed in as little as 30 days or as long as 180 days. If a formal hearing is held the time frame is expanded and the complete process could take up to a year.

**HAVE QUESTIONS?
CALL THE BOARD OFFICE
TOLL FREE AT 1- 877- 558-LPNS**

WEST VIRGINIA STATE BOARD OF EXAMINERS FOR LICENSED PRACTICAL NURSES

**101 Dee Drive, Suite 100
Charleston, WV 25311-1688
Fax: (304) 558-4367**

Email: lpnboard@state.wv.us

DISCIPLINARY PROCEDURES

**An Informational Brochure
For Licensees Against
Whom a Complaint has been Filed**



Revised 9/2015