

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." (1986. c. 135).

Rules and regulations of the Board list thirty-five (35) specific acts that constitute grounds for discipline.

WHO CAN FILE A COMPLAINT?

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. 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.

HOW DO I FILE A COMPLAINT?

Complaints may be filed by any individual and may be initiated in writing or by phone. All such contacts are immediately referred to the Executive Director or the Associate Executive Director who shall act as agent(s) for the Board. An official Complaint form is provided to the individual making the complaint, if appropriate. An Agent for the Board reviews the written complaint upon receipt.

Once a complaint is made the information becomes the property of the Board and may not be withdrawn. If the allegations are not true, the complaint may be dismissed by the Board.

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 OFTEN IS DISCIPLINARY ACTION TAKEN BY THE BOARD?

Between July 1, 2012 and June 30, 2015, a total of 484 complaints or information received has 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 or is currently pending by the Board against approximately 70% of those licensees against whom complaints have been filed.

The Board maintains approximately 8,000 active licensees. This number changes on a daily basis as individuals are added who pass the licensure examination for the first time and are licensed and the number decreases as individuals retire, move out of state, or for other reasons do not keep their license active.

HOW IS A COMPLAINT INVESTIGATED?

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, shall be 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 will be investigated provided that sufficient information is available to investigate and support the complaint. Complaints are preferred in writing but can also be taken over the phone. A Complaint Form is available on the Board's website.

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. Patient identifying information is redacted to protect patient privacy on any

patient records sent from the Board office during the course of the investigation.

HOW ARE COMPLAINTS EVALUATED?

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.

Issues which are employment in nature (quitting without notice, notifying the supervisor that he/she is refusing to work overtime without endangering patient safety, etc.) are not within the Board's jurisdiction. Also, for example, the Board does not expect that every individual uncomplicated medication error be reported to us. An employer or individual can contact the Board at any time with questions as to what should be reported to the Board and what may be acceptable to be handled at the facility level

WHAT IF THE LICENSEE ADMITS 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 of the committee or by mail. The Disciplinary Review Committee may accept the Consent Agreement, request revision of the Consent Agreement or reject the Consent Agreement. If the Consent Agreement is rejected by the Disciplinary Review Committee a date is set for a formal hearing

WHAT IF THE LICENSEE DENIES THE ALLEGATIONS?

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 and accompanying 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 BE IMPOSED?

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:

- a) revocation of the license,
- b) acceptance of voluntary surrender of the license,
- c) suspension of the license for a specified period of time,
- d) 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,
- e) reprimand/Public Censure, and/or
- f) assessment of fines and administrative fees

Disciplinary actions taken by the Board through Final Order 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 Board Newsletter, to the National Council of State Boards of Nursing, NURSYS 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 are also 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, any disciplinary action taken while licensed as an LPN shall be reported to the RN Board at the time that he/she makes application to that entity.

HOW WILL I KNOW THE STATUS OF MY COMPLAINT?

You will be contacted initially within a few days of receipt of the complaint if any portion of the information is unclear or if additional information is needed. You will receive a copy of the order of the Board that occurs as a result of a hearing or through entry into a Consent Agreement. The average length of time it takes to resolve a complaint is approximately 60 days from receipt of the complaint to entry of the final order. 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 hearing is necessary to resolve the complaint you will likely be called as a witness in the matter. A final order, when a hearing is necessary, can take as long as a year.

You may also check on the status of a case at any time by contacting the Board office.

**HAVE QUESTIONS?
CALL THE BOARD OFFICE
TOLL FREE AT 877 558-5767
OR 304-558-3572
OR VISIT THE BOARD'S WEBSITE AT
[HTTP://WWW.LPNBOARD.STATE.WV.US](http://www.lpnboard.state.wv.us)**

WEST VIRGINIA STATE BOARD OF EXAMINERS FOR LICENSED PRACTICAL NURSES

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COMPLAINTS AGAINST LICENSEES

A Public Informational Brochure
Describing the Process



PLEASE READ THIS INFORMATION CAREFULLY AND
RETAIN THIS BROCHURE FOR FUTURE REFERENCE

A COMPLETE COPY OF THE RULES AND REGULATIONS THAT APPLY TO THE DISCIPLINARY ACTION BY THE BOARD CAN BE FOUND ON THE BOARD'S WEBSITE UNDER "OUR GOALS AND SERVICES", "DISCIPLINE."

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