

§2105-A. Disciplinary actions**1. Disciplinary proceedings and sanctions.**

[PL 1985, c. 724, §11 (RP).]

1-A. Disciplinary proceedings and sanctions. The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of rules adopted by the board. Investigation may include a hearing before the board to determine whether grounds exist for suspension, revocation or denial of a license, or as otherwise considered necessary to the fulfillment of its responsibilities under this chapter. The board may subpoena witnesses, records and documents, including records and documents maintained by a health care facility, in an investigation or hearing it conducts.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but, absent unusual circumstances justifying the delay, not later than 60 days from receipt of this information. The licensee shall respond within 30 days. The board shall share the licensee's response with the complainant, unless the board determines that it would be detrimental to the health of the complainant to obtain the response. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The complainant may attend the conference and may be accompanied by up to 2 individuals, including legal counsel. The conference must be conducted in executive session of the board or its subcommittee, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Before the board or its subcommittee decides what action to take at the conference or as a result of the conference, the board or its subcommittee shall give the complainant a reasonable opportunity to speak. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, other complaints in the licensee's record on which action was taken and disciplinary actions of the board with respect to that licensee.

When an individual applies for a license under this chapter, the board may investigate the professional record of that individual, including professional records that the individual may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

If the board or its subcommittee finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, the board or its subcommittee may take any of the following actions the board or its subcommittee considers appropriate:

A. Warn, censure or reprimand; [PL 1985, c. 724, §12 (NEW).]

B. With the consent of the licensee, enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office; [PL 1993, c. 600, Pt. A, §116 (AMD).]

C. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement that ensure protection of the public health and

safety and serve to rehabilitate or educate the licensee. These stipulations may be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office; [PL 1993, c. 600, Pt. A, §116 (AMD).]

D. If the board or its subcommittee concludes that modification or nonrenewal of the license is in order, hold an adjudicatory hearing in accordance with the provisions of Title 5, chapter 375, subchapter 4; or [PL 2013, c. 23, §1 (AMD).]

E. If the board or its subcommittee concludes that suspension or revocation of the license is in order, file a complaint in the District Court in accordance with Title 4, chapter 5. [PL 2001, c. 260, Pt. D, §2 (AMD).]

[PL 2013, c. 23, §1 (AMD).]

2. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [PL 1983, c. 378, §21 (NEW).]

B. Misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; [PL 2013, c. 105, §5 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or is foreseeably likely to result in the licensee performing the licensee's duties in a manner that endangers the health or safety of the licensee's patients; [PL 1993, c. 600, Pt. A, §116 (AMD).]

D. Aiding or abetting the practice of nursing by an individual not licensed under this chapter and who claims to be legally licensed; [PL 1993, c. 600, Pt. A, §116 (AMD).]

E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed; [PL 1993, c. 600, Pt. A, §116 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed; [PL 1993, c. 600, Pt. A, §116 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed or conviction of a crime for which incarceration for one year or more may be imposed; [PL 1993, c. 600, Pt. A, §116 (AMD).]

H. A violation of this chapter or a rule adopted by the board; [PL 2015, c. 488, §10 (AMD).]

I. Engaging in false, misleading or deceptive advertising; [PL 2019, c. 165, §5 (AMD).]

J. Failure to comply with the requirements of Title 22, section 7253; or [PL 2019, c. 165, §6 (AMD).]

K. A violation of section 2112. [PL 2019, c. 165, §7 (NEW).]
[PL 2019, c. 165, §§5-7 (AMD).]

3. Confidentiality of information. Reports, information or records provided to the board by a health care facility pursuant to this chapter are confidential insofar as the reports, information or records identify or permit identification of a patient, except that the board may disclose confidential information:

- A. In an adjudicatory hearing or informal conference before the board or in a subsequent formal proceeding to which the information is relevant; and [PL 1993, c. 600, Pt. A, §116 (AMD).]
- B. In a consent agreement or other written settlement when the information constitutes or pertains to the basis of board action. [PL 1993, c. 600, Pt. A, §116 (AMD).]

A copy of a report, information or record received by the board under this subsection must be provided to the licensee.

[PL 1993, c. 600, Pt. A, §116 (AMD).]

4. Authority to request mental and physical examinations. For the purposes of this section, by application for and acceptance of a license to practice, a nurse is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a nurse to submit to an examination whenever the board determines the nurse may be suffering from a mental illness that may be interfering with the competent practice of nursing or from the use of intoxicants or drugs to an extent that they are preventing the nurse from practicing nursing competently and with safety to patients. A nurse examined pursuant to an order of the board may not prevent the testimony of the examining individual or prevent the acceptance into evidence of the report of an examining individual in a proceeding under subsection 1-A. Failure to comply with an order of the board to submit to a mental or physical examination results in the immediate suspension of the license of the nurse by order of the District Court until the nurse submits to the examination.

[PL 2009, c. 47, §2 (NEW).]

5. Nurse health program. The board may establish protocols for the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocols must include the committee's reporting information the board considers appropriate regarding reports received, contracts or investigations made and the disposition of each report, as long as the committee is not required to disclose any personally identifiable information. The protocols may not prohibit an impaired nurse from seeking alternative forms of treatment.

The board may contract with other agencies, individuals, firms or associations for the conduct and operation of a nurse health program operated by a professional review committee as that term is defined in Title 24, section 2502, subsection 4-A.

[PL 2009, c. 47, §3 (NEW).]

SECTION HISTORY

PL 1983, c. 378, §21 (NEW). PL 1983, c. 769, §§1,2 (AMD). PL 1985, c. 724, §§11,12 (AMD). PL 1993, c. 600, §A116 (AMD). PL 1999, c. 547, §B62 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2001, c. 260, §D2 (AMD). PL 2009, c. 47, §§2, 3 (AMD). PL 2013, c. 23, §1 (AMD). PL 2013, c. 105, §5 (AMD). PL 2015, c. 488, §§10-12 (AMD). PL 2019, c. 165, §§5-7 (AMD).

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