

Reciprocal Enforcement and Other Collateral Issues With Licensure Discipline

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ABSTRACT

While the fear of liability is generally related to malpractice lawsuits, for nurses, including nurse practitioners (NPs), the greater risk is in licensure discipline. Unlike physicians, NPs are more likely to be disciplined by their board of nursing than they are to be sued in malpractice.¹ In addition, licensure discipline can be more consequential than malpractice lawsuits, because licensing boards have the authority to temporarily, or even permanently, separate an NP from practice. Because punitive action by a nursing board can create other problems, it is important to understand the potential effects of having one's license disciplined.

Keywords: administrative agencies, collateral consequences, discipline, exclusion, license, misconceptions, National Practitioner Data Bank, reciprocal enforcement, regulation

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INTRODUCTION

Nurse practitioners (NPs) who are investigated by their licensing boards should be represented by competent counsel so they can make informed decisions at all stages of the investigation. What may seem like a simple matter or a reasonable settlement offer can be deceptively complicated and lead to critical career damage. Having a skilled attorney with experience in licensure defense can prepare the NP for the collateral consequences of licensure discipline.

COMMON MISUNDERSTANDINGS

The authority to practice varies from state to state and NPs often have misperceptions related to disciplinary matters. For example, as an NP, you may believe that:

- A nursing license provides a person with a *right* to practice.
- Letting a license lapse or expire removes the state board's ability to discipline that license.
- There is a statute of limitations after which the state board can no longer discipline a license.
- Discipline by a nursing board is contained within a single state.

- The nursing board will provide you with all of the information you need to decide whether to accept a settlement offer or proceed to a hearing. All of these beliefs are based on misinformation or incomplete information.

A nursing license provides a person with a right to practice. The mission of the nursing board is not to serve as an advocate for the nursing profession or for an individual NP, but to protect the public. As such, one's ability to practice can be superseded by public safety and the nursing board will suspend or revoke a NP's license when separation from practice is thought to be in the public interest. The NP does hold a legitimate claim of entitlement in his or her professional license referred to as a property interest. This means that license cannot be taken away without procedural due process.² An NP who is subject to licensure discipline must be given notice, and an opportunity to be heard before the license can be suspended or revoked. But it *can* be suspended or revoked. A fundamental right, on the other hand, is inalienable, meaning it is constitutionally protected. A professional license, therefore, is a revocable privilege, not a fundamental right.

Letting a license lapse or expire removes the state board's ability to discipline that license. The authority of the nursing board is determined by the legislature of the state. The Nurse Practice Act or other statutes determine the length of time a nursing board maintains authority over a licensee. Some statutes specifically state that the nursing board retains jurisdiction over inactive or expired licenses. When a state grants a professional license to a person it is representing to the public that the holder of that license has met the educational and moral character requirements necessary to practice the profession. This "contract" with the public does not necessarily expire because the license has not been renewed. A license is granted for the lifetime of the licensee. The license must be re-registered periodically for the licensee to continue practicing, but, because it is a lifetime license, the state that granted the license can maintain jurisdiction over the licensee for purposes of the license after the registration period has lapsed. This means a license can be disciplined even if it has expired.

There is a statute of limitations after which the state board can no longer discipline a license. Unlike medical malpractice or other civil litigation, nursing boards are regulatory agencies that function under administrative rules. Because their mission is to protect the public, they are not subject to a statute of limitations. If the board becomes aware of a concern, complaint, or report, it can have the authority and an obligation to investigate and prosecute the licensee regardless of any statute of limitations that would apply to a civil or criminal case.

Discipline by a nursing board is contained within a single state. Nursing boards consider it professional misconduct to have been disciplined in another jurisdiction. Punitive action taken against an NP's license in one state frequently results in disciplinary action being taken in any and all other states in which the NP has ever been granted a license. This is referred to as reciprocal discipline. Although no misconduct occurred in States B or C, and although the NP's licenses in States B and C expired years ago, States B and C may still discipline those licenses simply because State A has imposed disciplinary action.

The nursing board will provide you with all of the information you need to decide whether to accept a settlement offer or proceed to a hearing. Nursing board investigators

and prosecutors typically are not nurses or NPs. Their expertise is in investigating and prosecuting allegations of professional misconduct, not in advising NPs of career implications related to licensure discipline. It is not the board of nursing's role to consider or protect the NP's best interests; it is the board's role to enforce regulations aimed at ensuring public safety. A disciplinary procedure is an adversarial process and the NP needs to be represented by an advocate who can explain the risks, benefits, alternatives, and costs of accepting a settlement offer or of proceeding to a hearing.

COLLATERAL ISSUES

Disciplinary action by the nursing board can and does lead to other problems. In deciding whether or not to proceed to a hearing, it is important to consider the potential for and significance of those consequences.

Reciprocal Enforcement

As previously discussed, licensure discipline in one state can cause licensure discipline in other states, even in states in which the license has expired or is inactive. If an NP holds other licenses, such as an RN or LPN license, discipline on the NP license can cause licensure discipline on those licenses as well. In addition, other professional licenses can be subject to discipline, even those not related to nursing.

National Practitioner Data Bank

The National Practitioner Data Bank (NPDB) is a national repository containing information on "medical malpractice payments and certain adverse actions related to health care practitioners, entities, providers, and suppliers."³ Health care practitioners who have had disciplinary action taken on their professional licenses are reported to the NPDB. Although the NPDB reports are confidential and not available to the public, they are available to organizations that make "licensing, credentialing, privileging, or employment decisions."³ NPs who are listed in the NPDB can have difficulty obtaining employment, privileges, or collaborative practice agreements with physicians.

Exclusion Lists

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