

Overview of the Disciplinary Process Utilized by the Alabama Board of Nursing

**Satellite Conference and Live Webcast
Wednesday, June 10, 2009
2:00 - 4:00 p.m. Central Time**

Produced by the Alabama Department of Public Health
Video Communications and Distance Learning Division

Faculty

**Charlene Cotton, MSN, RN, ABN
Nurse Consultant
Alabama Board of Nursing**

**Alice Maples, BS, JD, LLM
General Counsel
Alabama Board of Nursing**

Important Notice

- **Nothing in this presentation is intended to serve as legal advice, nor should any part of this presentation be construed as or relied upon as legal advice**
- **Licensees are encouraged to seek individual counsel regarding questions related to particular facts and circumstances**

Introduction

- **Objectives of presentation**
- **Overview of presentation**

Objectives

- **Understand the purpose and function of the Nurse Practice Act**
- **List at least three components of the Nurse Practice Act**
- **Identify violations of the Alabama Nurse Practice Act**

Objectives

- **Recognize all violations to report to the Alabama Board of Nursing**
- **Know when to report a violation**
- **Be familiar with the disciplinary actions resulting from violations**

Purpose and Function of the Alabama Nurse Practice Act

- Enacted 1915, revised 2009
- Creates & defines Board of Nursing
- Requires license to practice or use professional title
 - Registered Nurse (1915)
 - Licensed Practical Nurse (1948-49)
 - Advanced Practice Titles
 - CRNA, CRNP, CNM, CNS (1995)

Components of the Alabama Nurse Practice Act

- Establishment of the Alabama Board of Nursing
- Authority & duties of the board
- Regulation of Nursing Education Program

Components of the Alabama Nurse Practice Act

- Examination and licensure of nurses
- Regulation of advanced practice nurses
- Disciplinary actions against licensees

Nurse Practice Act and ABN Administrative Code

- Definitions
- Standards of practice
- Disciplinary actions
- Mandatory reporting

Definitions Standards of Practice

- Accountability
 - Answerable or responsible for action
- Delegation
 - The act of authorizing a competent individual to perform acts supportive to registered nurses or licensed practical nurses in selected situations

Definitions Standards of Practice

- Responsibility
 - The charge to do something that is expected performance

Definitions Standards of Practice

- **Standardized Procedure**
 - Written policies and protocols establishing the permissible functions, activities, and level of supervision of RNs and LPNs within a licensed hospital setting beyond basic nursing educational preparation

Definitions Standards of Practice

- **Standardized Procedure**
 - Require(s) approval by the chief nursing administrator, chief medical officer, and chief executive officer as evidenced by each signature on the written policy(ies) and protocol(s)
 - Alabama Board of Nursing Administrative Code: §610-X-2-06

Definitions - Discipline

- **Alabama Board of Nursing
Administrative Code §610-X-8-01**
 - Letter of Closure
 - Letter from the Board that notifies the RN, LPN, or applicant for licensure that the case has been closed without discipline

Definitions - Discipline

- **Alabama Board of Nursing
Administrative Code §610-X-8-01**
 - Letter of Admonishment
 - Letter from the Board that addresses the areas of concern over the reported conduct & notifies the RN, LPN, or applicant for licensure that the case has been closed without discipline

Definitions - Discipline

- **Alabama Board of Nursing
Administrative Code §610-X-8-01**
 - Reprimand
 - Formal censure by the Board
 - Fine
 - Monetary penalty imposed by the Board

Definitions - Discipline

- **Alabama Board of Nursing
Administrative Code §610-X-8-01**
 - Probation
 - Monitored practice of nursing which permits the nurse to continue to practice nursing pursuant to specified conditions as set forth by the Board

Definitions - Discipline

- Alabama Board of Nursing
Administrative Code §610-X-8-01
 - Suspension
 - Temporary withdrawal of the license by Board action
 - Revocation
 - Withdrawal of the license by Board action

Definitions - Discipline

- Alabama Board of Nursing
Administrative Code §610-X-8-01
 - Voluntary Surrender
 - Voluntary relinquishment of a license that has the force and effect of revocation

Standards of Practice

- “The board may reprimand, fine, probate, suspend, revoke, or otherwise discipline any RN or LPN upon proof the person
 - Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Standards of Practice

- Failure to practice nursing in accordance with the standards of practice adopted by the Board”
 - Alabama Board of Nursing Administrative Code §610-X-8-.03(6)(b)

Overarching Standards of Practice

- 610-X-6.02 Conduct & Accountability
 - RNs and LPNs shall
 - Have knowledge & understanding of the laws & rules regulating nursing
 - Function within the legal scope of nursing practice

Overarching Standards of Practice

- Be responsible & accountable for the quality of nursing care delivered to patients based on & limited to scope of education, demonstrated competence, & nursing experience

Overarching Standards of Practice

- Obtain instruction & supervision as necessary when implementing new or unfamiliar nursing techniques or practices
- Accept individual responsibility & accountability for judgments, actions, & nursing competency

Overarching Standards of Practice

- Collaborate with other members of the health care team
- Practice without discrimination on the basis of age, race, religion, gender, national origin, sexual orientation, patient diagnosis, or disability

Overarching Standards of Practice

- Respect the dignity & rights of patients & their significant others including, but not limited to
 - Privacy
 - Protection of confidential information, unless disclosure is required by law
 - Freedom from exploitation of physical, mental, sexual, or financial boundaries

Overarching Standards of Practice

- Protection of real & personal property
- Accept individual responsibility & accountability for timely reporting of illegal, substandard, unethical, unsafe, or incompetent nursing practice directly to the Board of Nursing

Disciplinary Actions

- Code of Alabama 1975, §34-21-25 (as amended effective March 5, 2009)
 - The Board may also deny, revoke, or suspend any license issued by it or otherwise discipline a licensee upon proof of any of the following regarding the licensee:

Disciplinary Actions

- Is guilty of fraud or deceit in procuring or attempting to procure a license
- Has been convicted of a felony
- Is guilty of a crime involving moral turpitude or of gross immorality that would tend to bring reproach upon the nursing profession

Disciplinary Actions

- Is unfit or incompetent due to the use of alcohol, or is addicted to the use of habit-forming drugs to such an extent as to render him or her unsafe or unreliable as a licensee

Disciplinary Actions

- Is unable to practice nursing with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition

Disciplinary Actions

- Has been convicted of any violation of a federal or state law relating to controlled substances
- Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health

Disciplinary Actions

- Has willfully or repeatedly violated this article, as defined by board rules and regulations

What Does That Mean?

- The statute sets forth eight broad types of conduct that constitute grounds for disciplinary action against a licensee
- The Alabama Board of Nursing Administrative Code further defines those types of conduct, thus establishing clear expectations with regard to a nurse's conduct

Fraud in the Application Process

- Alabama Board of Nursing Administrative Code § 610-X-8-.03
 - Is guilty of fraud or deceit in procuring or attempting to procure a license by:

Fraud in the Application Process

- Filing false, forged or altered documents or credentials, including required continuing education documentation
- Misrepresenting or falsifying facts in applying for original licensure, renewal, reactivation, or reinstatement of license

Fraud in the Application Process

- Having another person appear for a licensing or certification examination

Criminal Activities

- Alabama Board of Nursing Administrative Code § 610-X-8-.03
 - Has been convicted of a felony offense

Criminal Activities

- Has been convicted of, or has entered a plea of guilt, regardless of court disposition, to a charged criminal act involving moral turpitude or of gross immorality that would tend to bring reproach upon the nursing profession
- Such criminal acts include, but are not limited to, offenses involving:

Criminal Activities

- Drugs
- Theft
- Lewdness
- Sexual misconduct
- Abuse
- Violence
- Fraud
- Any other conduct detrimental to the public's health, safety, or welfare

Criminal Activities

- Has been convicted of any violation of a federal or state law relating to controlled substances, including misdemeanor & felony offenses

Alcohol & Drug Addictions

- **Alabama Board of Nursing Administrative Code § 610-X-8-.03**
 - Is unfit or incompetent due to the use of alcohol, or is addicted to the use of habit-forming drugs to such an extent as to render the registered nurse or licensed practical nurse unsafe or unreliable that includes but is not limited to:

Alcohol & Drug Addictions

- **Testing Testing positive for alcohol and/or unauthorized mood-altering drugs**
- **Misappropriation or diversion of drugs from the workplace.**
- **Obtaining an unauthorized prescription by fraudulent means for self use**

Alcohol & Drug Addictions

- **A pattern of abuse or misuse of habit forming and/or mood-altering drugs or alcohol**
- **Impairment while on duty due to alcohol or the use of unauthorized or duly authorized prescription drugs**

Alcohol & Drug Addictions

- **Refusal to submit to drug screen for cause**
- **Submission of a diluted, adulterated, or substituted specimen for drug testing**

Alcohol & Drug Addictions

- **The use of alcohol or habit forming or mood altering drugs to the extent that medical or psychiatric treatment, rehabilitation, or counseling is medically determined or otherwise recommended by a legally authorized practitioner**

Unprofessional Conduct

- **Code of Alabama 1975, § 34-21-25 permits discipline if the licensee “is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health”**

Unprofessional Conduct – Standards & Scope of Practice

- Alabama Board of Nursing Administrative Code, § 610-X-8-.03
 - Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Unprofessional Conduct – Standards & Scope of Practice

- Failure to comply with the Alabama Nurse Practice Act and rules and regulations as well as all federal, state or local laws, rules or regulations applicable to the area of nursing practice

Unprofessional Conduct – Standards & Scope of Practice

- Failure to practice nursing in accordance with the standards of practice adopted by the Board
- Practice beyond the scope of practice as determined by, but not limited to:

Unprofessional Conduct – Standards & Scope of Practice

- Educational preparation
- License status
- Advanced practice approval
- Collaborative practice agreements
- State and federal statutes and regulations

Unprofessional Conduct – Standards & Scope of Practice

- State and national standards appropriate to the type of practice
- Nursing experience
- Standardized procedures

Unprofessional Conduct – Standards & Scope of Practice

- Knowledge, skills, and ability to manage risks and potential complications
- Required instruction and supervision

Scope of Practice Violation

- While functioning as a surgical scrub nurse, inserted trocar into abdomen of patient
 - Surgeon was not present

Scope of Practice Violation

- Inserted External Jugular with no standardized procedure approved for the facility

Scope of Practice Violation



Scope of Practice Violation

- Medications without physician order
 - Administered medication without order and then wrote order
 - Gave patient a placebo instead of ordered med
 - Performed sharp debridement on patient's heel

Scope of Practice Violation & Diversion/Theft

- Took IV Fluid (D5LR) home from hospital and administered to her 15-year-old daughter without involvement of MD
 - Daughter later airlifted to Pediatric ICU

Scope of Practice Violation & Diversion/Theft



Notes Regarding Patient Care Orders

- Administrative Code § 610-X-6-.09

Patient Care Orders & the Definition of Professional Nurse

- ...executing medical regimens including administering medications and treatments prescribed by a licensed or otherwise legally authorized physician or dentist

NPA § 34-21-1 (3a)

Patient Care Orders

- Administrative Code §610-X-6-.09
 - “Authorized prescriber”
 - Licensed physician or dentist
 - CRNP
 - CNM
 - LICENSED PA or SA
 - Lawful order

Patient Care Orders

- Administrative Code §610-X-6-.09
 - CRNPs & CNM are not authorized to order narcotic medications and other controlled substances

Verbal Orders

- Administrative Code §610-X-6-.09(2)
 - RN or LPN may receive verbal orders from an authorized prescriber relayed by
 - Another licensed or registered health care professional
 - CERTIFIED medical assistant
 - Implement standing orders at direction of authorized prescriber

Violation: Patient Care Orders & Scope of Practice

- Gave another employee an injection of Rocephin without an order from licensed prescriber

Patient Care Orders & Fraud

- Solicited MD orders for services that had already been provided without a MD order

FAQ

- Can I take orders from the Doctor's office manager who happens to be his wife and was a nurse?

FAQ

- We are being told that all orders have to be verbal if they have not been written by the MD (i.e. no more phone orders)
 - Is this correct?

Intravenous (IV) Therapy by Licensed Practical Nurses

- Administrative Code 610-X-6-.11

Prohibited IV Tasks for All LPNs

- Initiation of IV therapy in a neonate
- Administration of
 - Solutions requiring titration
 - Blood or blood components
 - Plasma volume expanders
 - GP-II-B-III-A inhibitors (platelet-aggregate inhibitors)
 - Hyperalimentation by routes other than peripheral

Prohibited IV Tasks for All LPNs

- Administration of
 - IV meds for procedural sedation or anesthesia
 - IV medications via push or bolus through a central line
 - IV push insulin or chemotherapeutic agents
 - Any other drugs deemed to be inappropriate by the facility

Prohibited IV Tasks for All LPNs

- Accessing or programming an implanted IV infusion pump
- Repair of a central venous route access device
- Performance of therapeutic phlebotomy

Prohibited IV Tasks for All LPNs

- Accessing a central venous route access device including but not limited to
 - Implanted ports
 - Lines used for hemodynamic monitoring

Restrictions or Limitations

- Include but not limited to
 - LPN must have at least one year's experience with IV therapy
 - Only IV push medications defined in application allowed to be administered by LPN

Restrictions or Limitations

- Include but not limited to
 - Administration of IV push medication **ONLY** through peripheral line
 - On-site supervision by RN any time IV push medication therapy performed by LPN

Unprofessional Conduct

- Judgment, assessment, intervention, & medication assessment
 - Alabama Board of Nursing Administrative Code § 610-X-8-.03
 - Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Unprofessional Conduct

- Failure to assess & evaluate patient's status
- Failure to institute nursing interventions that might be required to stabilize a patient's condition or to prevent complications

Unprofessional Conduct

- Failure to
 - Use appropriate nursing judgment
 - Administer medications & treatments in a responsible manner
 - Demonstrate competence in administering or carrying out patient care

Medication Administration

- 4 year old child would not take the Imodium
 - The nurse crushed medication and injected through his IV resulting in cellulitis

Medication Administration

- Administered Morphine 40mg IV push instead of ordered 4 mg



Medication Administration

- RN - licensed 6 months
 - ICU patient with pacemaker, on ventilator, Atrial Fibrillation with multifocal PVCs
 - MD ordered Solumedrol 90 mg, K-Phos 20mmol IV & Cordarone drip
 - Supervisor delivered medications to RN
 - Asked & was told nurse had never given K-phos

Medication Administration

- Supervisor explained vial contained total of 45 mmol, & the ordered 20 mmol was equal to 6.7 cc
- Nurse administered the *K-Phos by IV Push, instead of IV drip*
- Heart rate dropped from 90s to 40s
 - Ventricular fibrillation
 - Patient died

Documentation

- Alabama Board of Nursing Administrative Code § 610-X-8-.03
 - Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Documentation

- Failure to make entries, destroying or altering entries, charting before assessment or delivery of care, or making false entries in patient, employer, or employee records

Documentation

- Failure to timely, accurately, legibly, & completely report & document on appropriate records a patient's status, including signs & symptoms, responses, treatments, medications, other nursing care rendered, communication of pertinent information to other health team members, & unusual occurrences involving the patient

How Does the Nurse Record Pertinent Patient Data As Proof of the Quality of Care Provided?

- New rules specific to documentation are under development
 - Check the ABN website for proposed rule changes

Fraudulent Documentation

- PRE-CHARTED meds given via Nasogastric tube when the tube had been pulled out by the patient and not replaced
- PRE-CHARTED patient transferred to ICU @ 1AM
 - I&Os already totaled for 6AM, & assessments had already been charted for 3AM & 5AM

Fraudulent Documentation

- Documented wound care that had not been administered
 - On August 23 family showed supervisor dressing of patient's buttock which was dated August 20
 - Order was for the wound to be irrigated and dressing changed every shift

Documentation Violations

- Signed control drug record without actually counting the controlled drugs with a second nurse

Patient Safety, Supervision, and Delegation

- Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Patient Safety, Supervision, and Delegation

- Directing, assigning, or providing patient care in a manner that fails to take into consideration patient safety

Patient Safety, Supervision, and Delegation

- Assigning nursing functions to others who lack the educational preparation, license, credentials, competence, experience, knowledge, or physical, mental or emotional ability to perform the assigned functions

Patient Safety, Supervision, and Delegation

- Failure to provide adequate supervision, management, or training of individuals to whom nursing functions or responsibilities are delegated or assigned

Documentation, Improper Supervision, & Fraud

- Wrote orders in the medication record of patients when no order had been given by MD
- Directed other nurses to write orders that had not been given in order to cover up med errors

Improper Delegation

- Allowed CNA to perform nursing procedures on patients including flushing G tubes and changing foley catheters
- Delegated prescribed medications to unlicensed staff because residents were impatient

Specialized Delegation Rules

- School nurses
- SAIL program
- Alabama Department of Mental Health Residential Community Programs

– Administrative Code § 610-x-6-.06 & .07 & .15

Patient Abuse, Neglect, & Exploitation

- Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:
 - Gross negligence in the practice of nursing

Patient Abuse, Neglect, & Exploitation

- Abandoning or neglecting patients
 - A certified copy of the record of a state or federal agency that substantiated neglect of a patient shall be conclusive evidence of patient neglect

Patient Abuse, Neglect, & Exploitation

- Failure to safeguard the patient's dignity, right to privacy, and confidential health information unless disclosure is required by law

Patient Abuse, Neglect, & Exploitation

- Intentionally or negligently causing or permitting physical, sexual, emotional, or verbal abuse of patient, willfully harassing or intimidating patient
 - Certified copy of record of a state or federal agency substantiating patient abuse shall be conclusive evidence of abuse, harassment, or intimidation of patient

Patient Abuse, Neglect, & Exploitation

- Violating professional boundaries of the nurse-patient relationship that includes but is not limited to:
 - Sexual or inappropriate intimate conduct with a patient, patient's immediate family member(s) or significant other(s)

Patient Abuse, Neglect, & Exploitation

- Emotional or financial exploitation of the patient or the patient's immediate family member(s) or significant other(s)
- Inappropriate personal disclosure to a patient, or the patient's immediate family member(s) or significant other(s)

Abuse

- Example
 - Verbally abused and used profanity with a patient in an attempt to get the patient to return to the other side of the patient's semi-private room

Professional Boundary

- Engaged in conversations with patient which resulted in patient family's agreement to pay the costs of nurse's tuition
- Imposed religious beliefs on patient/resident

Professional Behavior, Privacy & Confidentiality, Professional Boundary

- While working in PACU, approached teenage patient recovering from surgery & inquired whether patient knew her daughter & her daughter's boyfriend
 - Patient made derogatory comment about the boyfriend

Professional Behavior, Privacy & Confidentiality, Professional Boundary

- Nurse subsequently communicated that comment to her daughter which ultimately resulted in patient being confronted by the boyfriend upon returning to school following surgery

Violation: Patient Rights Privacy & Confidentiality

- Obtained personal information from a resident's medical record, without authorization, for a resident he was not caring for

Violation: Patient Rights Privacy & Confidentiality

- Looking for correct DOB for father of his girlfriend (a CNA) because nurse had been claiming her parents (who were unaware) on his income taxes for years
 - His tax return had been rejected

Violation: Patient Rights Privacy & Confidentiality

- Failed to provide privacy during catheterization
- Failed to provide privacy during dressing change

Violation: Patient Rights Privacy & Confidentiality

- Male assistant in ER (who was also enrolled in nursing school) unnecessarily exposed & took visual liberties with a 23 year old female patient who had back, neck & left shoulder pain following a car accident

Violation: Patient Rights Privacy & Confidentiality

- Shared knowledge about a particular patient's medical condition with her women's church group

Interaction With Coworkers, Employers, Etc.

- Alabama Board of Nursing Administrative Code § 610-X-8-.03
 - Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Interaction With Coworkers, Employers, Etc.

- Exhibiting inappropriate or unprofessional conduct or behavior in the workplace
- Engaging in fraud, deceit or misrepresentation in seeking employment, practicing, or seeking to practice that includes but is not limited to:

Interaction With Coworkers, Employers, Etc.

- Alteration of a temporary permit, identification card or license
- Falsification of credentials
- Falsification of employment records

Interaction With Coworkers, Employers, Etc.

- Presenting oneself as a registered nurse, licensed practical nurse, or advanced practice nurse without Board approval
- Falsification of continuing education documents

Interaction With Coworkers, Employers, Etc.

- Commission of fraudulent acts in advertising, insurance, or in billing for services, that includes, but is not limited to:
 - Medicare or other federal government programs

Interaction With Coworkers, Employers, Etc.

- Medicaid or other state government programs
- Commercial insurance or health plan

Unprofessional Behavior & Conduct

- Took a 4 hour nap while on duty and charted on a L&D patient (39 wk gestation with failed induction)
 - Documented hourly assessments four times during this "nap" time
 - Called security employee at his home & told him she needed 4 hours of video tape to disappear

Unprofessional Behavior & Conduct

- Involved in altercation and assaulted PCT by slapping PCT in the face twice

Drug Use & Impairment & Theft at Work

- Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Drug Use & Impairment & Theft at Work

- Personal use of unauthorized or illegal drugs or substances or obtaining, furnishing or administering drugs or controlled substances to any person, except as directed by a legally authorized prescriber

Drug Use & Impairment & Theft at Work

- Appropriating anything of value, use or benefit, including but not limited to:
 - Any real or personal property of the patient, employer, or any other person or entity
 - Failing to take precautions to prevent such misappropriation

Drug Use & Impairment & Theft at Work

- Practicing while the mental or physical ability to practice is impaired by any mood-altering drugs or substances or by a physical, mental, or emotional disorder that renders the registered nurse or licensed practical nurse unable to perform with reasonable skill and safety

Responsibilities to the Board

- Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Responsibilities to the Board

- Aiding, abetting, or assisting an individual to violate or circumvent any law or rule intended to guide the conduct of a nurse or any other licensed health care provider

Responsibilities to the Board

- Failure to ensure verification of current Alabama licensure and credentials of nursing personnel for whom the nurse is administratively responsible
- Failure to report illegal, substandard, unethical, unsafe or incompetent nursing practices

Discipline in Another State

- Alabama Board of Nursing
Administrative Code § 610-X-8-.03
 - Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Discipline in Another State

- Having a license denied, conditionally issued, reprimanded, placed on probation, suspended, revoked, or voluntarily surrendered in another state, territory or country, or having been court-martialed or administratively discharged by a branch of the United States Armed Forces...

Discipline in Another State

- ...for any act or conduct which would constitute grounds for disciplinary action in this state
 - A certified copy of the record of the agency that took such action shall be conclusive evidence of the grounds for discipline

Diversion

- Nurse took a partial blister pack of Risperdal 0.25 mg tablets for use by a family member
- Obtained medication (Atenolol) from facility for personal use

Diversion

- Allowed herself to be given an injection of Phenergan (belonging to a patient) by a nurse coworker without MD order
- Shoe box in nurse's locker contained vials of meds, numerous pills, capsules, tablets & cards of meds that were discontinued and/or for patients who had been discharged and/or died

Mental and Physical Conditions and Drug Abuse

- Is unable to practice nursing with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition
 - This is a new provision effective March 5, 2009

Willful or Repeated Violations of the Nurse Practice Act

- As defined by rules and regulations
 - Failure to respond to official Board correspondence, including but not limited to:
 - Requests for information
 - Subpoenas
 - Notices

Willful or Repeated Violations of the Nurse Practice Act

- As defined by rules and regulations
 - Has willfully or repeatedly violated any provisions of a statute or rule that includes but is not limited to:
 - Practicing or seeking to practice professional or practical nursing without a current license or temporary permit

Willful or Repeated Violations of the Nurse Practice Act

- Impersonating an applicant for licensure or another licensed practitioner or permitting or allowing another person to use the nursing license or temporary permit
- Continued violation of statute or rule after notice by the Board

Willful or Repeated Violations of the Nurse Practice Act

- Failure to comply with any stipulated terms and conditions of any Board order or contract

Willful or Repeated Violations of the Nurse Practice Act

- As defined by rules and regulations
 - Failure of a RN or LPN who provides continuing education to comply with continuing education rules
 - Failure to repay scholarship funds awarded by the Board for post-baccalaureate study

Willful or Repeated Violations of the Nurse Practice Act

- Submitted payment of any fees or fines to the Board with a worthless check, invalid credit card, or by any other method that is not honored by the financial institution
- Poses a risk to public safety for any other reasons authorized by law

Mandatory Reporting

- “The registered nurse and licensed practical nurse shall. . .
- Accept individual responsibility and accountability for timely reporting of illegal, substandard, unethical, unsafe, or incompetent nursing practice directly to the Board of Nursing”
- Alabama Board of Nursing Administrative Code § 610-X-6-.02(10)

Mandatory Reporting

- “The Board may reprimand, fine, probate, suspend, revoke or otherwise discipline any registered nurse or licensed practical nurse upon proof that the person:
- Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

Mandatory Reporting

- Failure to report illegal, substandard, unethical, unsafe or incompetent nursing practices”
- Alabama Board of Nursing Administrative Code § 610-X-8-.03(6)(y)

Statistics

- Common complaints
- Common violations

Complaints vs. Discipline

- 1147 complaints received in FY 2007
- 541 nurses disciplined in FY 2007

FY 2007 Violations

- 541 nurses disciplined in fiscal year 2007
 - 337 cases were settled through informal disposition
 - 66 cases went to administrative hearings
 - 138 licensees chose to voluntarily surrender their licenses in the face of pending disciplinary action

Process of Discipline

- Complaint
- Investigation
- Formal charges
- Hearing
- Disposition
- Appeals

Complaints

- Code of Alabama 1975, § 34-21-25
 - Whenever a *written complaint* is made to the board that a person has committed any of the acts or come within any of the provisions enumerated in subsection (b), the board shall *investigate* the complaint and may *bring an action* in its own name to hear and determine the complaint

Complaints

- Written complaints
 - From coworkers, mandatory reporters, patients and patient families, board-generated, regulatory authorities
- Investigations
 - Complaints that state a claim on their face are referred to an ABN investigator

Complaints

- Actions
 - Brought in the name of ABN by executive officer

How Will You Know A Complaint Has Been Filed Against You?

- If a complaint states a possible violation of the Nurse Practice Act, then you will receive a NOTICE OF INVESTIGATION letter

Investigation

- **Alabama Board of Nursing**
Administrative Code § 610-X-8-.04
Investigation
 - Upon self-disclosure or receipt of a written complaint alleging that a registered nurse or licensed practical nurse has violated a statute or rule by committing...

Investigation

...one or more of the actions specified as grounds for disciplinary action, the Executive Officer shall provide for an investigation by Board staff to determine if there is sufficient evidence to warrant disciplinary proceedings

Investigation

- When an investigation discloses that disciplinary action is not warranted for the protection of the public health, safety and welfare, the investigative file shall be closed, provided that the matter may be reinvestigated at any time if circumstances so warrant

Investigation

- **Alabama Board of Nursing**
Administrative Code § 610-X-8-.05
Board Action Following Investigation
 - The Board or its authorized designee shall have the power to act on the report of the investigation as follows:

Investigation

- Dismiss complaint
- Send a letter of admonishment to the registered nurse or licensed practical nurse
- Commence disciplinary proceedings
- Accept voluntary surrender of a license

What Happens During An Investigation?

- Four investigators & two nurse consultants
- Investigator conducts interviews with witnesses, the licensee, and the complainant (if possible)
- Board subpoenas records from employers, hospitals, etc.
- Investigators prepare summary of case for review by Nurse Consultant

What Happens During An Investigation?

- Nurse Consultant looks at the conduct as found during the investigation to determine if, from a nursing perspective, the nurse did anything wrong
- Attorney reviews investigative reports and opinion of Nurse Consultant

Statement of Charges – What is Required?

- (AAPA) Code of Alabama 1975, § 41-22-12(b)
 - The notice shall include
 - A statement of the time, place, and nature of the hearing

Statement of Charges – What is Required?

- A statement of the legal authority & jurisdiction under which the hearing is being held
- A reference to the particular sections of the statutes and rules involved; and
- A short and plain statement of the matters asserted

How Will You Receive the Charges?

- Code of Alabama 1975, § 34-21-25
 - The hearing shall be held in Montgomery, Alabama. The person whose qualification is under consideration shall have not less than 20 days' written notice of the time and place of the initial hearing...

How Will You Receive the Charges?

... and the notice shall be accompanied by a copy of the complaint. The notice may be served upon the accused person by any sheriff of the State of Alabama. If the accused person is out of the state, evades service, or cannot be served in person...

How Will You Receive the Charges?

... then service may be made by mailing, by registered or certified mail, the notice and a copy of the complaint to the accused person at his or her last known post-office address in this state, and the return shall show that service has been made in this manner.

**The Hearing –
What Are Your Rights?**

- Code of Alabama 1975, § 34-21-25
 - At the hearing, the complainant, the person whose qualification is under consideration, and any other person permitted by the board, shall have the right to introduce all oral or written testimony, or both...

**The Hearing –
What Are Your Rights?**

... as the board deems relevant to the issues involved, and the right to be heard in person or by counsel, or both. The board may permit the complaint to be amended, but no amendment shall be permitted which is not germane to the charge or charges sought to be amended...

**The Hearing –
What Are Your Rights?**

... or which materially alters the nature of any offense charged. The board may determine all questions as to the sufficiency of the complaint, procedure, and admissibility and weight of evidence. If the person whose qualification...

**The Hearing –
What Are Your Rights?**

... is under consideration is absent, the hearing may proceed in his or her absence.
– Any accused person, complainant, or other party and the board may subpoena witnesses or pertinent records for the hearing, and those subpoenas...

**The Hearing –
What Are Your Rights?**

... may be served by any sheriff of the State of Alabama. Witnesses may be sworn by the president of the board or by the person discharging the duties of the president. Witnesses testifying at a hearing shall upon discharge as a witness be paid...

**The Hearing –
What Are Your Rights?**

... by the party requesting the subpoena an amount not to exceed the per diem expense allowed to Alabama state employees for in-state travel and the actual cost of transportation to and from the place of the hearing, not to exceed the mileage rate...

The Hearing – What Are Your Rights?

- ...allowed to Alabama state employees for in-state travel
- Evidence may also be taken by deposition, and the law and practice as to depositions in circuit courts shall be followed in all reasonable respects.

What Happens at a Hearing?

- The Board puts on it's evidence through witnesses and exhibits
 - Witnesses are subject to cross-examination by the licensee or his/her attorney

What Happens at a Hearing?

- The licensee or his/her attorney puts on his/her evidence through witnesses and exhibits
 - Witnesses are subject to cross-examination by the Board's attorney

Are Board Members Present at the Hearing?

- No
 - The Board members do not attend the hearings. A Hearing Officer hears the case. He then reviews the transcript and exhibits and issues a Recommended Findings of Fact & Conclusions of Law & a recommendation for discipline.

Are Board Members Present at the Hearing?

- The Board is given a copy of the Hearing Officer's Recommendation, transcript, & exhibits to review.
- The Board meets in executive session & votes on whether to accept, reject, or modify the Hearing Officer's Recommendation.

Disposition

- Code of Alabama 1975, § 34-21-25
 - If the accused person is found guilty of the charges, the board may refuse to issue a license, may revoke or suspend a license, or may otherwise discipline a licensee
 - A revoked license may be considered for reinstatement after one year in accordance with board rules

Possible Case Dispositions

- **Alabama Board of Nursing**
Administrative Code § 610-X-8-.09
Decisions of the Board
 - Based upon the evidence presented at the administrative hearing or pursuant to informal disposition the Board action may be one or more of the following:

Possible Case Dispositions

- Dismiss the complaint
- Reprimand the respondent
- Probate the respondent's license
- Suspend the respondent's license
- Revoke the respondent's license

Possible Case Dispositions

- Deny approval of the applicant to take the licensing examination or deny approval of the applicant for licensure by endorsement
- Deny renewal or reinstatement of a license
- Impose other sanctions or restrictions

Possible Case Dispositions

- The Board may levy a fine not to exceed \$1,000.00 per violation
- The decisions of the Board shall be in writing in the form of an Order, a copy of which shall be mailed or delivered to the respondent or the respondent's attorney

Possible Case Dispositions

- The decisions of the Board shall be subject to public dissemination
- Appeals are to the Circuit Court of Montgomery County, Montgomery, Alabama and are to be perfected in accordance with the Administrative Procedure Act

How Does the Board Implement It's Decision?

- The Board issues a Written Order, which is served on the Respondent by Certified Mail

Appeal of the Board's Order

- (NPA) Code of Alabama 1975, § 34-21-25
 - Any person whose license is ordered suspended or revoked may appeal to the circuit court or a court of like jurisdiction of Montgomery County, from any order of the board under this section, within 30 days from date of the decision of the board

Appeal of the Board's Order

- The trial of appeals shall be conducted in like manner, as nearly as may be, as provided for in the Alabama Administrative Procedure Act

Appeal of the Board's Order

- (NPA) Code of Alabama 1975, § 41-22-20
 - A person who has exhausted all administrative remedies available within the agency, other than rehearing, and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter

What Happens on Appeal?

- Appeal is to the Montgomery County Circuit Court
- A copy of the entire record is filed with the Court
- The Board's attorney and the licensee or his/her attorney write briefs and present oral argument regarding the case

What Happens on Appeal?

- The Court can affirm the decision, remand the case for further proceedings, or reverse or modify the decision, or grant other appropriate relief
 - Code of Alabama 1975, § 41-22-20(k)

What Happens on Appeal?

- The licensee or the Board may appeal the decision of the Circuit Court to the Alabama Court of Civil Appeals

How Does the Board Handle Large Volumes of Cases?

- **Alabama Board of Nursing
Administrative Code § 610-X-8-.08
Informal Disposition of Contested Cases**
 - Complaints or controversies may be considered & resolved by the Board or Board designee through alternative dispute resolution, informal conferences, meetings, or other informal means

How Does the Board Handle Large Volumes of Cases?

- Such shall be held without prejudice to the right of the Board thereafter to institute formal proceedings based upon the same or related material if circumstances so warrant

How Does the Board Handle Large Volumes of Cases?

- Informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing and as approved by the Board

How Does the Consent Order Process Work?

- **IF** your case is one that can be resolved through a Consent Order, you will be invited for an interview at the Board office with a nurse consultant or the chief investigator.
 - The nurse consultant or investigator will go over your conduct with you & you may be offered a consent order

How Does the Consent Order Process Work?

- You may read & sign the consent order at that time or take it with you to be returned (if you so choose) at a later date
- If you enter into the Consent Order, you will sign the Consent Order
 - However, the Consent Order does not become final unless and until it is approved by the Board

How Does the Consent Order Process Work?

- The Board can, & sometimes does, reject Consent Orders
- If you choose not to enter into the Consent Order, or if the Board rejects it, your case will be set for an administrative hearing
- Some cases cannot be resolved by a consent order & are set for an administrative hearing without a consent order being offered at all

Reviewing Consent Orders

- All proposed Consent Orders are subject to review & approval by the Board
- The Board can, & periodically does, reject the Consent Orders
 - In that case, the matter may go to an administrative hearing

Reviewing Consent Orders

- The Board may discuss the Consent Orders in executive session, but must vote on whether to accept them in an open meeting

Board Order of Disciplinary Action

- Board members vote on every Order to discipline a nurse's license
- Action of the Board of Nursing is public record
- You will be notified by US mail after the Board issues the order

Public Records of Disciplinary Action

- Board ordered discipline
- All records are public
- Disciplinary action is reported to NPDB and HIPDB
- Reports that go to NPDB and HIPDB may go to Office of Inspector General (OIG)

Complying with Board Orders

- Payment of fine within 30 days
- Required to notify current employer of disciplinary action
- Return ABN license card as ordered
- Provide documentation to the Board
 - Completion of Board-ordered continuing education
 - Other Board-mandated activities

Probation Monitoring

- Board ordered discipline with probation
- Must be employed in your licensed capacity to complete period of probation
- Time not employed in nursing doesn't count
- Notify Board when your job or employment changes

Practice Restrictions

- Practice restrictions apply to all nurses who are monitored by the Board of Nursing
 - You must have
 - Consistent supervision
 - Consistent work group
 - Work site monitor in addition to supervisor

Practice Restrictions

- You are not allowed to
 - Work alone or unsupervised
 - Work in supervisory position
 - Work > 80 hours in a 2 week pay period
 - Have access to or administer controlled substances for minimum of 6 months

Complying with Probation

- Submit reports to the Board
 - On schedule
 - Complete
- Employer Reports
- Meet with Board staff as directed
- Maintain active license
- Earn 24 contact hours of approved continuing education to meet renewal requirements

Addiction/Chemical Dependency

- Probation fine: \$1000
- Board approved treatment provider
- Compliance with treatment recommendations
- Monitoring for 5 years
 - Options to complete in 3 years of full compliance
- Aftercare meetings at least 1 year
- Individual counseling

Monitoring Requirements

- 12 step support group meetings
 - 3/week
- Monthly reports from nurse
- Quarterly reports from counselors, Aftercare counselors, employers
- Prescription verification for ALL medications
- Identify primary healthcare providers

Random Drug Screens

- Ordered for the duration of monitoring
- Any day
 - Monday-Saturday, 1-4 times/month
- Board contracts with lab service
- Go to a lab on “the list”
- Positive screens reviewed by medical review officer (MRO), employed by 3rd party administrator

Treatment Program

- **Determines when you return to work**
- **Severity of problems**
- **Level of recovery**
- **Support system**
- **Length of time away from nursing**
- **Cognitive deficits**
- **Decision making & judgment under normal circumstances, & under stress**

Completing Probation

- **Comply with all specifications in your Board order**
- **You will receive notice by US mail**
 - **Keep your address up to date in Board records**
- **Return the license card for probation**
- **Receive “Active” license card at your address of record**

Failure to Comply

- **Violation**
- **Statement of Charges**
- **Starts the disciplinary process all over again**
- **Consent order, or not**
- **Formal hearing**

Summary

- **You are entitled to Due Process before your license is disciplined**
- **Your license is not disciplined until the Board enters a final order disciplining you for your conduct**
- **The Board does not prevent you from working while your case is being investigated**