

RULES AND REGULATIONS
OF THE
MAINE STATE BOARD OF NURSING

CHAPTER 4



AS AMENDED
2015

The RULES AND REGULATIONS OF THE MAINE STATE BOARD OF NURSING are adopted and amended as authorized by Title 32, Maine Revised Statutes, Chapter 31, Section 2153(1) - Powers and Duties of the Board.

FILED IN ACCORDANCE WITH REQUIREMENTS OF THE MAINE ADMINISTRATIVE PROCEDURE ACT.

Chapter 4 DISCIPLINARY ACTION AND VIOLATIONS OF LAW

SUMMARY: This chapter lists the legal grounds for action against a license; explains the procedure for initiating disciplinary action; describes disciplinary proceedings and sanctions; states the authority of the Administrative Court, following a formal hearing, to revoke or suspend a licensee; lists the violations of law over which the District Court and the Superior Court shall have jurisdiction for prosecution; and defines unprofessional conduct.

1. Disciplinary Action

A. Grounds for Discipline

- (1) 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;
- (2) 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;
- (3) A professional diagnosis of a mental or physical condition which has resulted or may result in the licensee performing his duties in a manner which endangers the health or safety of his patients;
- (4) Aiding or abetting the practice of nursing by a person not duly licensed under this chapter and who represents himself to be so;
- (5) Incompetency in the practice for which he is licensed. A licensee shall be deemed incompetent in the practice if the licensee has:
 - a. Engaged in conduct which 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
 - b. Engaged in conduct which evidences a lack of knowledge, or inability to apply principles or skills to carry out the practice for which he is licensed;
- (6) Unprofessional conduct. A licensee shall be deemed to have engaged in unprofessional conduct if he violates any standard of professional behavior which has been established in the practice for which the licensee is licensed;
- (7) Subject to the limitations of Title 5, chapter 341, conviction of a crime which involves dishonesty or false statement or which relates directly to the practice for which the licensee is licensed, or conviction of any crime for which incarceration for one year or more may be imposed;
- (8) Any violation of this chapter or any rule adopted by the Board of Nursing; or
- (9) Engaging in false, misleading or deceptive advertising.

B. Initiation of Action

- (1) Complaints or charges shall be investigated by the Board of Nursing on its own motion, or upon receipt of a written complaint filed with the Board.
- (2) The licensee shall be notified of the content of a complaint filed against the licensee as soon as possible, but no later than within 60 days of the receipt of the information.
- (3) The licensee shall respond to the Board of Nursing within 30 days. If the response is satisfactory to the Board of Nursing and, in the opinion of the Board, the complaint does not merit further action, the matter may be dismissed.

C. Disciplinary Proceedings and Sanctions

- (1) If the Board of Nursing determines that further action is warranted, the Board may request an informal conference with the licensee. Such conference shall be held in executive session unless otherwise requested by the licensee.
- (2) If the Board of Nursing finds that the factual basis of the complaint is true, the Board may take any of the following actions it deems appropriate:
 - a. enter into a consent agreement with the licensee, or
 - b. accept the voluntary surrender of license, or
 - c. hold an adjudicatory hearing for modification or nonrenewal of license, or
 - d. file a complaint in the Administrative Court for suspension or revocation of license.

2. Violations of the Law

- A. It shall be a misdemeanor for any person, including any corporation, association or individual to:
- (1) sell or fraudulently obtain or furnish any nursing diploma, license, renewal or record or aid or abet therein, or
 - (2) practice nursing as defined in Title 32, Maine Revised Statutes, Chapter 31, under cover of any diploma, license or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation, or
 - (3) practice professional nursing or practical nursing as defined by Title 32, Maine Revised Statutes, Chapter 31, unless duly licensed to do so under such chapter, or
 - (4) use in connection with his or her name any designation tending to imply that he or she is a licensed registered nurse or a licensed practical nurse unless duly licensed so to practice under Title 32, Maine Revised Statutes, Chapter 31, or
 - (5) practice professional nursing or practical nursing during the time his or her license shall be suspended or revoked, or

(6) otherwise violate any provisions of Title 32, Maine Revised Statutes, Chapter 31.

B. The District Court shall have original and concurrent jurisdiction with the Superior Court over all prosecutions for the violations listed above. Such misdemeanors are prosecuted by the county attorney and are punishable by a fine or imprisonment, as specified in the law.

3. Definition of Unprofessional Conduct

Nursing behavior which fails to conform to legal standards and accepted standards of the nursing profession, and which could reflect adversely on the health and welfare of the public shall constitute unprofessional conduct and shall include, but not be limited to, the following:

- A. Performing acts beyond the authorized scope of the level of nursing for which the individual is license;
- B. Assuming duties and responsibilities within the practice of nursing without adequate preparation or when competency has not been maintained;
- C. Performing new nursing techniques or procedures without proper education and practice;
- D. Assigning unqualified persons to perform functions of licensed nurses or delegating nursing care or nursing responsibilities to others contrary to the Law Regulating The Practice of Nursing (32, MRSA, Chapter 31) and the Rules and Regulations of the Board of Nursing and/or to the detriment of patient safety;
- E. Failing to supervise persons to whom nursing functions have been delegated;
- F. Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient;
- G. Abandoning or neglecting a patient requiring nursing care;

Abandonment of a patient is the termination of the nurse/patient relationship without the patient's consent or without first making arrangements for continuation of required nursing care by others. Reasonable notification or request for alternative care of a patient to an attending physician or to a staff supervisor prior to termination of the relationship is sufficient to permit such termination. Further, refusal to accept an employment assignment or refusal to accept a nurse/patient relationship is not considered abandonment. The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse.

- H. Intentionally or negligently causing physical or emotional injury to a patient;
- I. Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status;
- J. Violating the confidentiality of information or knowledge concerning the patient;
- K. Inaccurate recording, falsifying or altering a patient or health care provider record;

- L. Exercising undue influence on the patient including the promotion or sale of services, goods, appliances or drugs in such a manner as to exploit the patient for financial gain of the nurse or of a third party;
- M. Aiding, abetting or assisting an individual to violate or circumvent any law or duly promulgated rule and regulation intended to guide the conduct of a nurse or other health care provider;
- N. Practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological or mental impediment;
- O. Practicing nursing when physical or mental ability to practice is impaired by alcohol or drugs;
- P. Diverting drugs, supplies or property of patients or health care provider;
- Q. Possessing, obtaining, furnishing or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs;
- R. Allowing another person to use one's nursing license or authorization for practice for any person;
- S. Impersonating another licensed practitioner;
- T. Impersonating any applicant, or acting as proxy for the applicant, in any nurse licensure examination.
- U. Engaging in behavior that exceeds professional boundaries including, but not limited to, sexual misconduct.

4. Sexual Misconduct

- A. **Sexual Misconduct with a Patient.** A nurse shall not engage in sexual or romantic behavior with or towards a patient.
- B. **Sexual Misconduct with a Former Patient.** A nurse shall not exploit the knowledge, trust or influence gained from a prior nurse/patient relationship to pursue, engage in or maintain a sexual or romantic relationship with a former patient.

Factors to be considered when determining whether there has been a violation under this section, include, but are not limited to, the following:

- (1) the amount of time that has passed since termination of the nurse/patient relationship;
- (2) the nature of the patient's health problems and the nursing services provided;
- (3) the length of time that the nurse/patient relationship existed;
- (4) the circumstances of termination;

- (5) the extent to which the patient confided personal or private information to the nurse;
 - (6) the degree of the patient's dependence and vulnerability;
 - (7) whether the nurse suggested or invited, through statements or acts, a post-termination relationship;
- C. Sexual Misconduct with Persons Related to the Patient. A nurse shall not engage in sexual or romantic behavior with members of the patient's family or with other persons with whom the patient maintains a close personal relationship when there is a foreseeable risk that the relationship could cause harm to or exploitation of the patient.
- D. Patient consent. The nurse is always and solely responsible for establishing and maintaining professional boundaries. Therefore, patient consent to or initiation of sexual or romantic behavior is not a defense under these rules.

STATUTORY AUTHORITY: 32 MRSA, Section 2153-A. 1. and Section 2105-A

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