

Nursing Disciplinary Process in Tennessee

SURBER, ASHER, SURBER & MOUSHON, PLLC

Garrett E. Asher

220 Athens Way, Suite 480

Nashville, Tennessee 37228

615-997-1914

gasher@tennlawfirm.com

www.tennlawfirm.com

About the Author:

Garrett E. Asher is a founding member of the Nashville law firm of Surber, Asher, Surber & Moushon, PLLC where he practices in general litigation, with an emphasis on professional negligence. Mr. Asher also spends much of his professional practice defending health care providers in disciplinary actions initiated by the Tennessee Department of Health. Mr. Asher has a background in health care practice, having been licensed as a Registered Nurse in Tennessee. Mr. Asher has had articles published in the *Tennessee Law Review*, *Litigation Letter*, *Nursing Management* and *OR Nurse*. He is a member of the Tennessee (past chair, Litigation Section) Bar Association and the American Association of Nurse Attorneys. Mr. Asher has been elected as a Fellow of the Nashville Bar Association. Mr. Asher earned his B.S. degree in Nursing from Tennessee State University; and his J.D. degree, *magna cum laude*, from the University of Tennessee Knoxville, where he was *Order of the Coif*.

Mr. Asher remains involved in the health care community. During law school, he worked as a Registered Nurse at a psychiatric hospital in the Knoxville area. He spends a large part of his practice working with health care providers in defense of malpractice claims and disciplinary matters. Mr. Asher has been active with the Tennessee Nurses Association and served as a member of its Health Policy Committee.

A native of Nashville, Mr. Asher resides in the city with his wife, Elizabeth, and two children. He has served as Vice President of West End Synagogue and on the Board of Trustees of Akiva School. He presently serves as a Board member of Renewed (The Eating Disorders Coalition of Tennessee). He volunteers for and has chaired Davidson County's Teen Court Program. Mr. Asher is a marathoner, cyclist, and triathlete. He has completed multiple long distance races, including an Ironman Triathlon.

Mr. Asher can be contacted by e-mail at: gasher@tennlawfirm.com.

About the Firm:

Surber, Asher, Surber & Moushon, PLLC is a general civil practice law firm based in Nashville, Davidson County, Tennessee. Because we are

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located in Middle Tennessee, we are able to, and frequently do, represent clients throughout the entire state. The Firm represents a broad range of clients, including individuals, large and small corporations, business entities, insurance companies, and medical groups. Primary practice areas include medical malpractice and professional liability defense, insurance, tort and personal injury, contracts, products liability, condemnation, civil rights, employment, workers' compensation, healthcare, public utilities, domestic and family law, banking, business, wills and estate planning, probate law, criminal defense, and others.

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Foreword

The primary intent of this handbook is to provide you with the information process in case you are ever required to appear before the Tennessee Board of Nursing.

Anyone faced with a complaint against her or his license, and in turn, her or his livelihood, is experiencing a great deal of emotional stress - anger, guilt, fear and helplessness. These highly charged emotions can consume and overwhelm a usually thoughtful, careful person. The sections of this handbook are designed to help you develop a careful strategy in order to make an appropriate and timely response.

PLEASE NOTE: THE STATUTES, REGULATIONS, AND POLICIES THAT EFFECT THE BOARD OF NURSING AND DISCIPLINE CHANGE OVER TIME. CERTAIN CHANGES MAY NOT BE REFLECTED IN THIS BROCHURE. THIS DOCUMENT SHOULD NOT BE USED AS AN AUTHORITATIVE SOURCE AND IS TO BE USED FOR GENERAL INFORMATION PURPOSES ONLY.

Overview

The best defense against a disciplinary action is preventing the need for discipline in the first place. One can do this by staying current in your nursing practice. Every nurse should review Tennessee's Nurse Practice Act and be aware of other laws and rules that govern nursing practice. Every nurse needs to be familiar with:

- The Statutory Provisions of the Nurse Practice Act, Tennessee Code Annotated § 63-7-101, et seq.
(<https://www.tn.gov/health/health-program-areas/health-professional-boards/nursing-board/nursing-board/statutes-and-rules.html>)
- The Rules and Regulations of the Tennessee Board of Nursing, 1000-01 through 1000-05
(<http://publications.tnsosfiles.com/rules/1000/1000.htm>)
- The Policies of the Tennessee Board of Nursing
(https://www.tn.gov/content/dam/tn/health/documents/Position_Statement_Booklet.pdf)
- Nurse License Compact Law
(https://www.tn.gov/content/dam/tn/health/healthprofboards/medicaalexaminers/Nursing%20eNLC%20Final%20Rules%20adopted%20121217_2%20.pdf)
- Rules on Fraud and Abuse

Ignorance of these laws is not an adequate defense in a disciplinary action. Every nurse has the responsibility to be aware of changes in the laws that may impact practice. To view the most recent version of the laws and rules, access the general Board of Nursing website (www.health.state.tn.us/boards/nursing). Do not rely on outdated printed materials.

It is also the nurse's responsibility to keep abreast of legislative changes that may impact practice. The Tennessee Nurses Association helps members by providing information on the TNA

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website as well as through multiple publications and resources. The TNA website address is: www.tnaonline.org.

In several studies of disciplinary action, nurses seem to be most vulnerable for violating the Nurse Practice Act when they are new to their position or practice setting. All nurses must have an adequate orientation and must be prepared to take on new responsibilities. Nurses are also responsible for keeping their knowledge and skills up to date.

Being involved in disciplinary action before the Board of Nursing can result in dire consequences that are personal, professional, and financial. We hope that the information presented in this handbook will educate nurses about the Nurse Practice Act and prevent the distressing process of disciplinary action.

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Introduction

This document gives nurses a description of the disciplinary process used by the Tennessee Board of Nursing. The purpose of the Board of Nursing is to establish, monitor and enforce licensing, consistent standards of practice, continuing competency and discipline of registered nurses, licensed practical nurses, and advanced practice nurses in Tennessee. Rules, policies, and protocols developed by the Board of Nursing promote the delivery of quality health care to the residents of Tennessee.

The eleven members of the Board of Nursing include nine registered nurses or advanced practice nurses, one licensed practical nurse, and one community member who is not a nurse and is not associated with the health care industry. The Governor appoints members to serve staggered four year terms.

The Board of Nursing, on its website, describes itself as follows:

The Board of Nursing was created in 1911 by an act of the State Legislature and signed into law by former Governor Ben W. Hooper. The board's mission is to safeguard the health, safety and welfare of Tennesseans by requiring that all who practice nursing within this state are qualified and licensed to practice.

Board responsibilities center around three broad functions—licensure, education and practice. The board grants licenses to licensed practical nurses, registered nurses and advanced practice nurses (certificate) who meet the requirements of the statutes and rules. Only graduates of approved schools of nursing are eligible to take the National Council Licensure Examination (NCLEX), which is required for licensure.

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The board prescribes the minimum curriculum for all nursing programs on ground, online, distance or via other electronic means and annually approves schools of nursing meeting board standards. New schools undergo an approval process including a survey of the program. Schools not meeting standards are investigated and the board is

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authorized to place the school on conditional approval or close the program if standards are not met.

The board interprets the statutes and administrative rules to determine the appropriate standards of practice in an effort to ensure the highest professional conduct. The board issues private advisory opinions to licensees on request. The board causes the investigation of nurses alleged to have violated the law and rules and is responsible to discipline the license of and/or imposes civil penalties on those found guilty.

Nurses may view the Board of Nursing as an advocate for nursing. In reality, the Board of Nursing's primary role is to protect the public from unsafe nursing practice. The legal basis for licensure rests on the government's responsibility to protect the public. The laws and rules of nursing practice define and limit the practice of nursing. The laws and rules define "unprofessional conduct." Nurses need to have an understanding of the role of the Board of Nursing and be able to act accordingly if involved in disciplinary action.

A license, because it is granted based on conditions, is not a permanent right. Relatively few nurses have complaints of poor nursing practice resulting in disciplinary action on their license. However, on occasion, a nurse may violate a provision of the laws and/or rules simply out of lack of knowledge. All nurses need to know their rights and responsibilities when presented with allegations from the Board of Nursing.

Grounds for Disciplinary Action

Rules of the Tennessee Board of Nursing describe the Standards of Nursing Conduct or Practice. The standards are very broad. A nurse can be disciplined for "unprofessional conduct, and negligence, habits or other cause." The Board defines what can subject a nurse to discipline in the Rules. These areas are as follows:

1. Unprofessional conduct, unfitness, or incompetency by reasons of negligence, habits or other causes, as those terms are used in the statute, is defined as, but not limited to, the following:
 - (a) Intentionally or negligently causing physical or emotional injury to a patient;
 - (b) Failure to maintain a record for each patient which accurately reflects the nursing problems and interventions for the patient and/or failure to maintain a record for each patient which accurately reflects the name and title of the nurse providing care;
 - (c) Abandoning or neglecting a patient requiring nursing care;
 - (d) Making false or materially incorrect, inconsistent or unintelligible entries in any patient records or in the records of any health care facility, school, institution or other work place location pertaining to the obtaining, possessing or administration of any controlled substance as defined in the Federal Controlled Substances Act;
 - (e) Unauthorized use or removal of narcotics, drugs, supplies, or equipment from any health care facility, school, institution or other work place location;

- (f) The use of any intoxicating beverage or the illegal use of any narcotic or dangerous drug while on duty in any health care facility, school, institution, or other work place location;
- (g) Being under the influence of alcoholic beverages, or under the influence of drugs which impair judgment while on duty in any health care facility, school, institution or other work place location;
- (h) Impersonating another license practitioner;
- (i) Permitting or allowing another person to use his or her license for the purpose of nursing the sick or afflicted for compensation;
- (j) Revocation, suspension, probation or other discipline of a license to practice nursing by another state for any act or omission which would constitute grounds for the revocation, suspension, probation or other discipline of a license in this state;
- (k) Practicing practical nursing in this state on a lapsed (state) license or beyond the period of a valid temporary permit;
- (l) Assigning unqualified persons to perform functions of license persons or delegating nursing care functions and tasks and/or responsibilities to others contrary to the Nurse Practice Act or rules and regulations to the detriment of patient safety;
- (m) Failing to supervise persons to whom nursing functions are delegated or assigned;
- (n) Aiding, abetting, assisting or hiring an individual to violate or circumvent any law or duty

- promulgated rule intended to guide the conduct of a nurse or any other licensed health care provider;
- (o) Exercising undue influence on the patient including the promotion of 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;
 - (p) Discriminating in the rendering of nursing services as it relates to race, age, sex, religion, national origin, or the condition of the patient;
 - (q) Violating confidentiality of information or knowledge concerning the patient, except when required to do so by a court of law;
 - (r) Failing to take appropriate action in safeguarding the patient from incompetent health care practices;
 - (s) Failing to report, through proper channels, facts known to the individual regarding incompetent, unethical or illegal practice of any health care provider;
 - (t) Practicing practical nursing in a manner inconsistent with T.C.A. § 63-7-108;
 - (u) Performing nursing techniques or procedures without proper education and practice; and
 - (v) Engaging in acts of dishonesty which relate to the practice of nursing.

Essentially, based on the Rules, the Board of Nursing has the authority to discipline a nurse for any reason. The most frequent areas of discipline involve drugs, patient neglect, and causing harm to a patient.

The Board of Nursing will hold a nurse to the highest standard of care in treating a patient and going about her or his duties. The

Board will not accept the excuse of "I was too busy" or "I had too many patients" or "I did not know." In the eyes of the Board, there is no difference between the standard that should be practiced by an LPN or RN.

CASE STUDY

Practice Beyond Scope

Jennifer, a 20-year old experience labor and delivery RN, was called in to the hospital at 0300 due to an increase in patients. She was assigned to a patient in early labor who was scared and writhing all over the bed. The previous nurse had tried to start an IV twice, without success. Since the IV had been ordered by the physician, Jennifer felt that it was imperative to get the IV started. She decided that if she could get the patient calmed down, she would have a better chance of placing the IV. Without an order, Jenifer gave the patient an IM dose of pain medication, and successfully placed the IV. An hour later the physician came into the hospital and became very upset when it was discovered that the patient had been given medication without an order. Disciplinary action was taken against Jennifer's license for practice beyond the scope of practice as defined by law.

Standards of Nursing Competence

Standards of nursing competence or practice are defined in the Board of Nursing Rules. The Board, in promulgating these Rules, has stated: "The Board believes that the individual nurse is responsible for maintaining and demonstrating competence in the practice role." The Board applies the concept that each individual, upon entering the practice of nursing, assumes a measure of responsibility and public trust and the corresponding obligation to adhere to the standards of nursing practice. The Board requires all nurses to document evidence of competence in their current practice role. That means charting is paramount.

The standards of nursing conduct or practice are as follows:

(1) Standards of Nursing Practice for the Licensed Practical Nurse.

(a) Standards Related to the Licensed Practical Nurse's Contribution to and Responsibility for the Nursing Process - The Licensed Practical Nurse shall:

1. Contribute to the nursing assessment by collecting, reporting and recording objective and subjective data in an accurate and timely manner;
2. Participate in the development of the plan of care/action in consultation with a Registered Nurse;
3. Participate in the assisting and giving of safe direct care.
4. Participate in the assisting and giving of safe direct care;
5. Seek resources for patients/clients with cultural, physical or language barriers;
6. Contribute to the evaluation of the responses of individuals or groups to nursing interventions and participate in revising the plan of care where appropriate; and

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7. Communicate accurately in writing and orally with recipients of nursing care and other professionals.
- (b) Standards Relating to the Licensed Practical Nurse's Responsibilities as a Member of the Health Team - The Licensed Practical Nurse shall:
1. Integrate knowledge of the statutes and regulations governing nursing and function within the legal and ethical boundaries of practical nursing practice;
 2. Demonstrate personal responsibility for individual nursing actions and currency of competence;
 3. Consult with Registered Nurses and/or other health team members and seek guidance as necessary;
 4. Identify practice abilities and limitations and obtain instruction and supervision as necessary when implementing essential functions of the practice role;
 5. Report unsafe practice and unsafe practice conditions to recognized legal authorities and to the Board where appropriate;
 6. Conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference, national origin, language, handicap, or disease;
 7. Demonstrate respect for the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems;
 8. Protect confidential information, unless obligated by law to disclose such information;
 9. Demonstrate respect for the property of clients, family, significant others, and the employer;

10. Participate in activities designed to improve health care delivery in any setting; and

11. Exhibit ethical behavior.

CASE STUDY

Patient Abuse

Nurse Sally is an LPN working at a nursing home. Nurse Sally and some of her co-workers do not get along. Nurse decided she would get back at some of her co-workers who had posted mean things about her on the bulletin board.

On a day when the offending co-workers were working on the shift immediately after Nurse Sally, Nurse Sally gave all of her patients laxatives. She did this to cause multiple patients to have bowel movements so that the co-workers on the next shift would have to clean them up. In Nurse Sally's mind, all of the patients had laxatives as PRN medications, so there was nothing wrong with giving them.

Nurse Sally was reported to the Board for her actions. The filed charges against Nurse Salle, asserting that her giving laxatives to all the patients for the express purpose of causing bowel movements so the next shift would have to clean them up was abuse of the patients. None of the patients suffered any harm; however, misuse of medications could cause harm.

Nurse Sally was found to have committed abuse. She was placed on the fraud and abuse exclusionary list. She lost her license and never will be allowed to practice nursing again.

Violation of Standards of Nursing Practice

The Board of Nursing disciplines nurses for the acts, practices, or omissions that are inconsistent with generally accepted standards of nursing conduct or practice. Examples of such conduct are:

1. Nursing process
 - a. Failing to assess and evaluate client status, failing to provide nursing intervention as necessary;
 - b. Failing to report or document;
 - c. Making inaccurate or unreadable entries in records regarding medications, treatments;
 - d. Failing to give medications and/or treatments according to policies and procedures or **to properly record medication wastage**;
 - e. Causing or contributing to abuse of the client.
2. Delegation and Supervision
 - a. Delegation to unqualified personnel, either by scope of practice, competence, or knowledge;
 - b. Failing to supervise personnel to whom nursing tasks were delegated.
3. Failing to adhere to standards, including:
 - a. Performing nursing procedures without appropriate knowledge or education, failure to obtain proper instruction;
 - b. Violating confidentiality of client information;
 - c. Writing prescriptions without authority.
4. Other violations:
 - a. Taking medications, supplies, or personal items from the work setting for personal use;

- b. Practicing nursing while impaired by any mental, physical, or emotional condition;
- c. Abandoning clients by leaving assignment without transferring responsibilities to appropriate personnel;
- d. Practicing nursing while impaired by drugs or alcohol;
- e. Conviction of physical or sexual abuse while practicing nursing.

Any of these violations will give the Board of Nursing the authority to take action against the nurse's license.

DRUG TESTS

A nurse **MUST** submit to a drug test if requested by an employer or potential employer. **Refusing a test creates the automatic presumption that the test will be positive.** Employers are required to report refusal or failure of a drug screen to the Board. (Employers have the option not to report to the Board if the nurse voluntarily reports to and enrolls in the Tennessee Professional Assistance Program; however, most employers still report.) The Board usually will suspend a nurse's license for refusing a drug screen or failing the screen. Generally, the only way to avoid an active suspension is to enroll in and maintain the advocacy of the profession's advocacy program. For nurses, this program is the Tennessee Professional Assistance Program (TNPAP). Tenn. Code Ann. § 63-1-126.

CASE STUDY

Abuse of Patient

Jackie, an LPN who has been working in a nursing home for a number of years, found herself working the night shift. She was assigned fifteen patients, all of whom required medications. One of the nursing aids called in sick, and they were short handed. As you can guess, Nurse Jackie was very busy.

Ms. Smith, a patient with early dementia, had been a resident at the nursing home for a lengthy period of time. Nurse Jackie and this patient had a very good relationship. The patient, however, was very demanding and would come out of her room frequently during the night. Nurse Jackie would have to redirect her back into the room.

Nurse Jackie was having a difficult time attending to all of her patients as well as Ms. Smith. To keep Ms. Smith from leaving her room, Nurse Jackie took a washcloth and wedged it underneath Ms. Smith's door to her room. This prevented Ms. Smith from leaving her room and coming out into the hallway.

At the end of the shift, Nurse Jackie removed the folded washcloth and opened Ms. Smith's door. Ms. Smith was sound asleep. There were no injuries, falls, or any other problems with Ms. Smith.

One of the nursing aides who was working that night got angry at Nurse Jackie because Nurse Jackie insisted that the aide attend to patients instead of going outside to smoke. The aide had seen the washcloth wedged under the door and reported Nurse Jackie to the Nursing Administrator for doing that. The Nursing Administrator told Nurse Jackie that it was improper that it was improper for her to wedge the door shut and fired her. The Nursing Administrator also reported Nurse Jackie to the Board of Nursing.

The Board of Nursing filed charges against Nurse Jackie asserting that she abused the patient by locking her in her room. The Board considered this action to be comparable to imprisoning the patient. The Board, during the hearing, chastised the nurse and would not listen to any excuses about being busy otherwise. The Board told Nurse Jackie she should have refused to accept so many patients if that were causing her a problem.

The Board placed Nurse Jackie on probation. Luckily, the Board did not consider the incident to be abuse for purposes of exclusion.

Disciplinary Process

It is recommended that, whenever a nurse is contacted by anyone at the Board of Nursing, whether an attorney or an investigator, the nurse retain counsel experienced with these type matters. There are many traps and pitfalls during the disciplinary process. Formal discipline will affect the nurse's livelihood. It should be taken very seriously. One would not treat a serious medical condition without going to the doctor. The nurse should view the discipline process in the same way and should consult an attorney.

REPORTS/COMPLAINTS

The Board of Nursing receives reports from several sources: patients, other health care professionals, employers, self reporting and other state agencies conducting investigations.

INVESTIGATION

When the Board receives a complaint, it initiates an investigation. It does this by assigning an investigator to review records and interview witnesses. The investigator can have a medical background, but not all of them do.

At this stage, the complaint is strictly confidential. The nurse often is not even aware that a complaint has been made or that there is an investigation.

After the investigator has reviewed the records and spoken with the complainant and witnesses, the investigator will speak with the nurse. Sometimes this is by phone. For more serious complaints, the investigator will meet with the nurse in person. Even when the nurse is being interviewed by the investigator, the identity of the complainant is privileged. The nurse is not entitled to review anything obtained by the investigator. The nurse should consult with an attorney prior to meeting with the investigator.

Once the investigator has completed the reviews and interviews, she or he will prepare a report. This report will be sent to the Board of Nursing Consultant and the Board of Nursing Executive Director for review and determination if discipline is warranted.

INFORMAL DISCIPLINE

If the Nursing Board Consultant and/or Executive Director believe no discipline is warranted, they will close the file on the matter. Generally, the nurse will receive a letter that the file has been closed.

There are occasions when the nurse consultant and/or executive director believe no discipline is warranted; however, that the nurse needs to be provided with a warning. This level of discipline is called a “letter of warning.” It is private and confidential. It does not become public. The Executive Director will send a letter to the nurse setting forth the concerns and warning not to let it happen again. Because the letter of warning is not an official discipline, the nurse does not have any rights to appeal it.

FORMAL DISCIPLINE

The category of formal discipline is more serious than the letter of warning. This level of discipline can incur fines, costs related to investigation and attorney fees, probation, suspension and revocation. As part of formal discipline, the Board can require that a nurse attend additional schooling.

Because formal discipline carries with it severe penalties, the nurse is provided with additional rights. Nurses are given an opportunity

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to contest that she or he should be subject to discipline. This process is called a “contested case hearing.” There are procedures in the Rules and Regulations that provide for an orderly process of a contested case. A nurse should never participate in a contested case hearing without an attorney. The contested case hearing essentially is a trial. The Board of Nursing acts as the jury. Rules of evidence apply. These are highly technical. An attorney experienced in these matters is essential.

The Board of Nursing has wide discretion as to types of formal discipline in can assess. Disciplinary actions used by the Board of Nursing include:

Public Reprimand: similar to a letter of warning, but instead of it being private, it is published on the Tennessee Licensure Verification Database under the Nurse’s practitioner profile

Probation: the nurse's license is limited for a defined period and terms to be completed are listed in the agreed order.

Suspension: the nurse's license is not valid for a defined time period and the nurse must meet the terms defined in the order before requesting the Board of Nursing to reinstate the license.

Summary Suspension: the nurse's license is not valid for a defined time period and may not practice until further order.

Revocation: the nurse's license is removed, and the nurse may not practice in the state of Tennessee; however, after a period of time, the nurse can reapply for licensure.

Revocation with Recommendation of Permanence: the nurse's license is removed and the nurse may not practice in the state of Tennessee; while the nurse can reapply, the presumption is that the license will not be granted again.

Conditions placed on the nurse's license can be addressed as fulfilling a knowledge deficit, such as attending a medication course or a course on proper restraint technique. Other conditions may affect the ability to practice such as working under the direct supervision of another Registered Nurse, not being able to work as a charge nurse, or not being able to give narcotic medications. These

conditions can significantly impact the nurse's employment. The conditions placed on the nurse's license cannot be taken lightly and must be followed exactly. Further disciplinary action could result if the terms are not met. Fines are also set for violations and must be paid in a timely manner. If not, further action could be taken on the nurse's license and could result in the fine being forwarded to a collection agency.

Whatever disciplinary action is taken against the nurse's license, the action is recorded in the license file at the Department of Health and remains there permanently. This information is available for public disclosure. It is posted on the nurse's profile on the Department of Health website and can be accessed by anyone.

INITIATION OF PROCEEDINGS

If the Board Consultant and Executive Director believe discipline is warranted, they will assign the case to an attorney from the Office of General Counsel of Tennessee. An attorney from the Office of General Counsel essentially is the attorney for the Tennessee Department of Health assigned to the Board of Nursing. This attorney will meet with the Board Consultant and will develop recommended discipline, based on prior board actions. The attorney then will prepare what is called a "Consent Order." The Consent Order is an official document that sets forth the allegations against the nurse and the discipline. The attorney for the Board of Nursing will send this Consent Order to the nurse and ask the nurse to agree to it. If the nurse agrees to it, the Board of Nursing on most occasions will endorse the Order and it becomes effective. The nurse then will have to do whatever discipline is set forth in the Order.

A Consent Order, just like any other Order issued by the Board, is public. It has the force of law. The Order will be placed on the nurse's practitioner profile. The Order also will be submitted to a national database accessible by other states and future employers. **Never, ever, ever** enter into a Consent Order without reviewing the Order with an attorney experienced in these types of matters. Even though a discipline seems minimal, the wording of the Order can

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cause problems for the nurse down the line. Often, an attorney who has worked with the Board of Nursing in the past can negotiate better wording that will be less harmful to the nurse.

Once a Consent Order is entered, it is extremely difficult to change.

NOTICE OF CHARGES AND CONTESTED CASE

If the nurse does not enter into a Consent Order, the lawyer for the Board of Nursing will file with the Department of Health a document titled “Notice of Charges.’ The Notice of Charges formally opens an adversarial proceeding between the nurse and the Board of Nursing. The Notice of Charges will contain all the allegations against the nurse. It is the Notice of Charges that initiates the contested case hearing. As stated above, the contested case hearing essentially is a trial in which the Board of Nursing serves as the jury.

Do not ever represent yourself in a contested case hearing. It is never a good idea to represent yourself in a contested case hearing. All of the rules that apply to trials are applicable in the contested case stage. In addition, if the nurse wants to appeal whatever is given as discipline during the contested case phase, a proper record must be made. Without the knowledge on how to do this, the record inevitably will be incomplete.

APPEAL FROM CONTESTED CASE

If a nurse wants to appeal what was done by the Board of Nursing in the contested case hearing, the nurse can appeal to the Chancery Court in Nashville. The Chancery Court judge, called a Chancellor, will review the entire record from the contested case hearing. The Chancellor will not listen to any additional evidence unless there is good cause for this. Accordingly, most of the time, the review is based on what transpired during the contested case hearing.

There is not a jury who will review the case in Chancery Court. It is one judge who will decide everything. The Chancellor is required to be deferential to the Board decision. The standard of review

requires that the Board must have applied the law erroneously or that there was no evidence whatsoever that could support the ruling. This is a difficult burden for the nurse to prove.

APPEALS FROM CHANCERY COURT

The nurse is entitled to one appeal from the Chancery Court decision. That appeal is to the Tennessee Court of Appeals. The Tennessee Court of Appeals is a three-judge panel that will hear arguments as to why the Chancellor should be reversed. Once again, what the Court of Appeals reviews is only what transpired during the contested case and Chancery proceedings. No new evidence will be allowed.

There is no absolute right for an appeal beyond the Tennessee Court of Appeals. The Tennessee Supreme Court does have authority to review a Court of Appeals decision, but the nurse would have to seek permission for the review. The Tennessee Supreme Court rarely grants permission to appeal.

UNITED STATES SUPREME COURT

An appeal to the United States Supreme Court is not possible. While theoretically one can try to appeal a decision from a Tennessee court regarding licensure, there must be some type of federal constitutional violation asserted. It would be extremely difficult, if not impossible, to have the United States Supreme Court review a case.

EARLY SETTLEMENT

Often, during the course of a disciplinary proceeding, settlement can occur. There is a mechanism in the rules for the Tennessee Board of Nursing that allows a “screening panel,” a panel of three nurses, to review the investigator’s report, meet with the nurse and recommend some type of discipline. The nurse can accept the recommendation or can move forward with the contested case.

The screening panel is a good mechanism to resolve discipline cases. It gives the nurse a chance to explain what transpired outside of the formal contested case hearing. The nurse does not have to accept what is recommended by the screening panel. The screening panel, though, might recommend a type of discipline acceptable to the nurse. It further is possible that the screening panel may recommend no discipline at all. The Board of Nursing generally accepts the screening panel recommendation.

Medicare Exclusion

The Office of Inspector General of the United States has the authority to prevent anyone from working in a facility or for a health care practice that accepts Medicare funds. This is any hospital, nursing home, home health agency or physician's office. If the office of Inspector General places a nurse on the exclusion list, the nurse essentially cannot practice anywhere.

There are two types of exclusions that the government utilizes: mandatory exclusions and permissive exclusions.

Mandatory exclusions result automatically in being placed on the exclusion list. There is no discretion at all. Reasons for being placed on the mandatory exclusion are:

1. Conviction of a Medicare related crime;
2. Conviction related to patient abuse or neglect;
3. Felony conviction relating to health care fraud; and
4. Felony conviction relating to controlled substance.

A permissive exclusion gives the Office of Inspector General the ability to place a nurse on the exclusion list. Unfortunately, there are not specific guidelines as to what results in the placement of a nurse on the exclusion list under the permissive exclusions. Any order of the Board of Nursing is reviewed by the Office of Inspector General, so the wording of the order needs to be as benign as possible so as not to trigger any of the permissive exclusion bases. Areas that can lead to a permissive exclusion are:

1. Misdemeanor conviction relating to health care fraud;

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2. Conviction leading to fraud in non-health care programs;
3. Conviction relating to obstruction of an investigation;
4. Misdemeanor conviction relating to controlled substance;
5. License revocation or suspension;
6. Exclusion or suspension under a federal or state health care program;
7. Claims for excessive charges, unnecessary services or services which fail to meet professionally recognized standards of health care;
8. Fraud or kick back;
9. Default on health education loan or scholarship obligations; and
10. Failure to meet statutory obligations of practitioners and providers to provide medically necessary services meeting professionally recognized standards of health care.

The Office of Inspector General is getting more and more aggressive with placing persons on the exclusion list. The most frequent reason for placement on the list is conviction of a crime related to controlled substances. There also have been reports of placement on the exclusion list for multiple convictions of driving under the influence.

Tennessee Abuse Registry

The Tennessee Department of Health is required by state law and federal regulations to maintain a registry of persons who have abused, neglected, or misappropriated personal property of a person who is under the age of 18 or who, by reason of advanced age or other physical or mental condition is vulnerable to abuse, neglect or misappropriation of property.

Tennessee aggressively investigates persons who are accused of abuse of a minor or the elderly/disabled. If a person is placed on the abuse registry, they cannot work in health care. The state will sanction a licensed health care entity for hiring a person listed on the abuse registry.

If charges are lodged against a nurse for abuse, the nurse is entitled to due process under the contested case hearing. The process is similar to any other disciplinary proceeding. Instead of the case being before the Board of Nursing, it will be tried before an Administrative Law Judge.

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CASE STUDY

Medication Error

Nurse Jim works at a large hospital. Nurse Jim works the 3:00 p.m. to 11:00 p.m. shift on a general medical floor.

An elderly patient had multiple medications she was receiving. Nurse Jim gave these medications pursuant to what was listed on the MAR. One of the medications on the MAR was a medication Jim did not recognize.

In the drawer for that patient, all of the medications listed on the MAR were present. There was one drug that did not match the exact name of the medication on the MAR, but it appeared to Jim as if it were a generic form of the drug. Jim administered that medication for three straight evenings.

The medication Jim gave to the patient turned out to be different from the one that was ordered. The pharmacist made an error and placed the wrong drug in the patient's drawer. The patient lapsed into a coma and died. Nurse Jim was reported to the Board for giving the wrong drug and causing the patient's death.

Nurse Jim was suspended from the practice of nursing for a year. After suspension, he would be on probation for another three years. Nurse Jim was also fined \$5,000.00.

The Board told Nurse Jim that he should review every medication he gives to a patient in the PDR or similar text to ensure that what he is passing is correct. The Board held Nurse Jim completely responsible for the death of the patient.

Failure to Pay Student Loans

There is a Tennessee statutory provision that requires suspension of a nursing license if the nurse has not paid student loans or is otherwise in default. Once the institution certifies that the nurse is in default on the student loan, the suspension of the license is automatic. The appeal must be taken to the certifying institution, not the Board of Nursing.

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Conclusion and Helpful Hints

The potential for discipline is always present. Unfortunately, even nurses with the best intentions can become involved in the process. The best way to avoid trouble is to think before acting. Often, nurses are overworked and have to move quickly. Nurses become overwhelmed. Sometimes, taking a pause with a deep breath will give a nurse time to think before acting in a way that can be detrimental to the patient and end up with a report to the Board.

Another way to avoid potential problems is to treat everyone as you would like someone to treat you or a close relative. If you treat your patients and co-workers with respect, there will be no reason for anyone to report you or complain about you. A little compassion goes a long way.

Do not assume that someone else has done their job correctly. We often will assume that, because someone on a prior shift had done something, it must be all right to do. Do not simply go along with that assumption. Always follow the employer's policies, whether or not others are doing so. In addition, if you have a bad feeling about something, do not do it.

Last, stay out of trouble. Obey the law. Arrests for minor offenses can lead to suspension or revocation of your nursing license.

It is advised, if you do become in the disciplinary process, to retain counsel. This can be a very expensive endeavor. Not having counsel, however, can lead to a worse outcome. Most malpractice insurance policies for nurses contain a provision that will reimburse a nurse for attorney's fees if the nurse does become involved a disciplinary proceeding. A good organization from which you can obtain insurance is Nurses Service Organization. Its website is: www.nso.com. For a relative inexpensive policy, you can be provided with some peace of mind.