

CHAPTER 8

PROCEDURE FOR APPLICATION, LICENSURE, AND DISCIPLINARY MATTERS

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to:

- (a) Conduct investigations, hearings, and proceedings concerning:
 - (i) Actions relating to an application for initial licensure, renewal, relicensure, or reinstatement of a license;
 - (ii) Petitions for modification of conditions or restrictions imposed upon a license; or
 - (iii) Alleged violations of the NPA, Board Rules, or both.
- (b) Determine and administer appropriate disciplinary action against an applicant or licensee.

Section 2. Definitions.

- (a) "Abandon" means to terminate a client relationship, with or without the client's knowledge, without making arrangements for appropriate continuation of care.
- (b) "Abuse" means any behavior designed to control or subjugate another human being through the use of fear, humiliation, or assault, either verbal or physical.
- (c) "ARC" means Application Review Committee. The Application Review Committee may be comprised of:
 - (i) At least one (1) Board member; or
 - (ii) Executive Director in application review matrix process matters.
- (d) "Application Review Matrix" means guidelines that delegate limited authority to Board staff to recommend issuance of a license, issuance of a license with a notice of warning, or forward an application matter to an ARC for additional review and recommendation.
- (e) "Complainant" means the person(s), organization, or agency who files a complaint.
- (f) "DC" means Disciplinary Committee. The Disciplinary Committee may be comprised of:
 - (i) At least one (1) Board member; or
 - (ii) Executive Director in discipline matrix process matters.
- (g) "Discipline Decision Matrix" means guidelines that delegate limited authority to

Board staff to pursue summary suspension, recommend dismissal of a complaint, recommend issuance of a notice of warning, or forward a licensure or disciplinary matter to a DC for additional review and recommendation.

(h) “License” means a license, certificate, recognition, permit, or prescriptive authority issued by the Board or a privilege to practice from a multistate license issued by another compact state.

(j) “Licensee” means an APRN, RN, LPN, or CNA who holds a valid license, certificate, recognition, permit, or prescriptive authority issued by the Board or a privilege to practice from a multistate license issued by another compact state.

(k) “Misappropriation of client property” means negligently or deliberately taking, misusing, exploiting, using, or selling money or property belonging to another, without consent, whether temporarily or permanently.

(l) “Neglect” means the failure to provide necessary goods, services, care, or attention and may include:

- (i) Insufficient observation;
- (ii) Failure to provide adequate assessment and intervention directly or indirectly through inadequate supervision;
- (iii) Failure to intervene when a client condition warrants intervention;
- (iv) Inappropriate delegation or assignment of care to an unqualified care giver; or
- (v) Accepting assignments beyond level of competency or scope of practice.

Section 3. Grounds for Discipline or Denial of License.

(a) Disciplinary Action. The Board may take disciplinary action or refuse to issue, renew, relicense, or reinstate a license for one (1) or more of the following acts or conduct, upon proof the licensee or applicant:

- (i) Was impaired with the intent of practicing nursing or nurse assisting due to:
 - (A) Physical or mental disability;
 - (B) Lack of nursing competence;
 - (C) Substance abuse; or
 - (D) Substance dependency.
- (ii) Was under the influence of alcohol, drugs, substances, or chemicals with

the intent of practicing nursing or nurse assisting;

(iii) Has abused a client or member of a vulnerable population, including, but not limited to: physical, verbal, mental, emotional, financial, or sexual abuse;

(iv) Has engaged in sexual misconduct as defined in Wyoming Statute 33-1-118(b)(ii);

(v) Has neglected a client or member of a vulnerable population;

(vi) Has abandoned a client;

(vii) Has distributed, sold, or used without authorization, illegally possessed, or manufactured controlled or illicit drugs;

(viii) Has diverted drugs or medications for self or others;

(ix) Has interfered with a client's plan of care;

(x) Has performed unsafe client care;

(xi) Has violated client boundaries including, but not limited to: sexual boundaries or entering into financial transactions with clients;

(xii) Has misappropriated client property;

(xiii) Has misappropriated property belonging to a hospital, medical clinic, or facility providing care to a client;

(xiv) Has violated the privacy or confidentiality of a client in any form including, but not limited to: written, verbal, or technological;

(xv) Has failed to appropriately supervise;

(xvi) Has improperly delegated a nursing task;

(xvii) With respect to APRNs, has failed to supervise or monitor the performance of acts by an individual working under the direction of the APRN; or

(xviii) Has aided another licensee in practicing beyond the scope of the nurse's license or experience.

(b) Volunteer Nurse Discipline. In addition to those acts identified in subsection (a), the Board may take disciplinary action against a volunteer nurse, upon proof the volunteer nurse:

(i) Has accepted monetary compensation for providing nursing services while holding a volunteer nurse license;

(ii) Has practiced outside the premises of a nonprofit health care facility in the

State;

- (iii) Has provided care to persons other than low income uninsured; or
- (iv) Has engaged in practice outside the scope of the volunteer nurse license in the State.

Section 4. Application Review and Investigation Process.

- (a) Application Review and Investigation. In application matters:
 - (i) Every applicant bears the burden of satisfying licensure requirements; and
 - (ii) After an applicant has demonstrated that he or she meets the requirements for licensure, the burden shifts to the ARC to prove there are justifiable grounds for denying the license or certificate.
- (b) Application Review Committee Action. The ARC may recommend:
 - (i) A license be issued, renewed, reactivated, relicensed, or reinstated;
 - (ii) A license be issued, renewed, reactivated, relicensed, or reinstated subject to conditions, restrictions, or other disciplinary action;
 - (iii) Approval of a settlement agreement, which may include the issuance, renewal, reactivation, relicensure, or reinstatement of a license with the imposition of a reprimand, conditions, restrictions, suspension, other discipline or a combination thereof; or
 - (iv) Denial of the application.
- (c) Notice of Intent to Recommend Approval Subject to Conditions, Restrictions, Other Disciplinary Action or Denial of License.
 - (i) The ARC shall notify the applicant of its intent to recommend:
 - (A) Approval of the license subject to conditions, restrictions, or other disciplinary action; or
 - (B) Denial of the application.
 - (ii) The Notice of Intent shall contain:
 - (A) A brief description of the facts or conduct that warrant denial or issuance of a license subject to conditions, restrictions, or other disciplinary action;
 - (B) A statement of the nature of the actions that warrant denial or issuance of a license subject to conditions, restrictions, or other disciplinary action and a citation to the applicable statutory provisions in the NPA, Board Rules, or both; and

(C) Notice of the right to a hearing if a written request is received by the Board office within thirty (30) days of the date of mailing the Notice of Intent.

(d) Applicant's Request for Hearing.

(i) The applicant may request a hearing if the ARC recommends:

(A) Approval of the license subject to conditions, restrictions, or other disciplinary action; or

(B) Denial of the application.

(ii) The applicant shall submit a written request for hearing to the Board office within thirty (30) days of the date of the Notice of Intent.

(e) Applicant's Failure to Request a Hearing. If the applicant fails to timely request a hearing of the ARC's recommendation, the Board shall set a hearing.

(f) An applicant shall not be permitted to withdraw an application in lieu of discipline.

Section 5. Petition for Modification of Conditions or Restrictions.

(a) Petition for Modification of Conditions or Restrictions.

(i) A licensee may petition the Board for modification of the conditions or restrictions imposed upon their license.

(ii) A licensee shall submit a petition for modification to the Board office in writing, which shall include documentation demonstrating compliance with the Board order, the modification is consistent with their treatment plan, and the modification is sufficient to ensure the public is adequately protected.

(iii) A petition for modification shall be reviewed by the DC.

(b) Disciplinary Committee Action

(i) If the DC agrees with the requested modification, the parties may file a stipulated motion with the Board.

(ii) If the DC does not agree with the requested modification, the DC shall notify the licensee of its intent to recommend denial of the petition.

(c) Board Consideration.

(i) The Board shall consider the petition at its earliest convenience. The Board may accept or reject the petition for modification and shall consider the petition and the DC's recommendation or stipulated motion.

Section 6. Complaint Review and Investigation Process.

(a) Complaint Review and Investigation.

(i) Complaints shall be submitted to the Board upon the form provided by the Board and contain the name, address, and signature of the person making the complaint. Board staff may initiate complaints.

(ii) Complaints shall be investigated by Board staff on behalf of the DC.

(iii) DC may meet informally with the licensee.

(b) Voluntary Surrender. A licensee may petition the Board, in writing, to voluntarily surrender their license. The Board shall consider the petition at its earliest convenience. The Board may accept or reject the petition for voluntary surrender and may consider whether the licensee is under investigation.

(c) Disciplinary Committee Action. The DC may recommend:

(i) Dismissal of the complaint;

(ii) Issuance of a notice of warning;

(iii) Approval of a settlement agreement, which may include a reprimand, conditions, restrictions, suspension, voluntary surrender, other discipline, or a combination thereof;

(iv) Disciplinary action, which may include a reprimand, conditions, restrictions, suspension, revocation, other discipline, or a combination thereof; or

(v) Summary suspension.

Section 7. Summary Suspension.

(a) Recommendation. If the DC recommends summary suspension, the Board shall conduct an expedited proceeding to determine whether the licensee's continued practice presents a clear and imminent danger to public health, safety or welfare.

(b) Notice of Intent to Recommend Summary Suspension.

(i) The DC shall notify the licensee of its intent to recommend summary suspension;

(ii) The Notice of Intent shall contain:

(A) Copy of the complaint;

(B) Notice that an expedited summary suspension proceeding shall be set at the earliest opportunity a quorum of Board members may be assembled; and

(C) Statement that failure to answer the complaint or appear at the proceeding may result in default.

(c) Notice of Expedited Proceeding. Upon confirmation of the date and time of the expedited proceeding, Board staff shall notify the licensee in writing of the date and time of the proceeding.

(d) Scope of Expedited Proceeding.

(i) Summary Suspension proceedings shall not be governed by Section 26 Office of Administrative Hearings rules concerning contested case proceedings incorporated by reference in Chapter 1.

(ii) The expedited proceeding shall be limited to a presentation of the evidence the DC believes warrants summary suspension.

(iii) The Board shall order summary suspension if it concludes probable cause exists that the licensee's continued practice presents a clear and imminent danger to public health, safety or welfare. The Board shall incorporate a finding to that effect in an order granting summary suspension.

Section 8. Evaluations.

(a) Evaluations. In cases where the physical or mental condition or competence of an applicant or licensee is at issue, the ARC or DC may request the applicant or licensee submit to an evaluation. Such evaluations may include, but are not limited to: psychological, psychiatric, substance abuse, fitness for duty or competency. Such evaluations shall be conducted by a qualified provider selected or approved by the ARC or DC and at the sole expense of the applicant or licensee. In selecting a qualified provider, the ARC or DC shall consider the provider's credentials.

(b) Request. The request for an evaluation shall provide the following:

- (i) Reasonable notice to the applicant or licensee to be evaluated;
- (ii) The time, place, manner, conditions, and scope of evaluation; and
- (iii) Identification of the person(s) who will perform the evaluation.

(c) Report. The ARC or DC shall receive the provider's written report, which shall include:

- (i) Findings, identification, and results of all tests or instruments employed;
- (ii) Reports of any prior evaluations of the same, similar or other relevant condition revealed to or known by the provider, with consideration of prior medical or mental history including treatment; and
- (iii) Diagnoses and conclusions, which shall include a determination of

competency or fitness to practice safely.

Section 9. Formal Proceedings for Disciplinary Action.

(a) Notice of Intent to Recommend Disciplinary Action.

(i) The DC shall notify the licensee of its intent to recommend disciplinary action.

(ii) The Notice of Intent shall:

(A) Include a brief description of the facts or conduct that warrant the intended action; and

(B) Provide the licensee an opportunity to show compliance or respond to allegations for disciplinary action within fifteen (15) days of the date of the mailing.

(b) Informal Conference. The licensee may request an informal conference with the DC to provide any additional information or to resolve an administrative complaint without a hearing.

Section 10. Petition. The DC shall initiate formal proceedings for disciplinary action by serving a Petition to the last known address of the licensee by certified mail, by regular mail, by electronic mail to the e-mail address indicated to be the preferred method of communication, or by personal service at least thirty (30) days prior to the date set for hearing.

Section 11. Notice of Hearing.

(a) Hearing. Upon receipt of a written request for hearing from an applicant or commencement of formal proceedings for disciplinary action against a licensee, the Board shall conduct a hearing. The Board shall serve a Notice of Hearing on the applicant or licensee.

(b) Notice of Hearing. The Notice of Hearing shall contain:

(i) The name and last known address of the applicant or licensee;

(ii) A brief statement of the matters asserted:

(A) In application matters, the recommendation to deny the application, the facts upon which the recommendation to deny is based, and the statutory provisions or Board Rules the applicant is alleged to have violated; or

(B) In discipline matters, the nature of the Petition, the facts upon which the Petition is based, and the statutory provisions or Board Rules the licensee is alleged to have violated;

(iii) The time, place, and nature of the hearing;

(iv) The legal authority and jurisdiction; and

(v) A statement indicating:

(A) The applicant's failure to appear at a noticed hearing or pursue proceedings may result in a dismissal; or

(B) The licensee's failure to answer the allegations contained in the Petition within twenty (20) days of the date of mailing and failure to appear at a noticed hearing may result in a default judgment.

Section 12. Lawful Service. There shall be a presumption of lawful service of a Notice of Intent, Petition and Notice of Hearing or any other communication required by these Board Rules if sent to the last known address of the applicant or licensee by certified mail, by regular mail, by electronic mail to the e-mail address indicated to be the preferred method of communication or by personal service.

Section 13. Dismissal or Default.

(a) Dismissal. The Board may dismiss an application where the applicant or the applicant's representative has not appeared at a noticed hearing or pursued proceedings.

(b) Default. The Board may enter an order of default judgment based on the allegations contained in the Petition in any case where the licensee or the licensee's representative has not answered the allegations contained in the Petition and has not appeared at a noticed hearing.

Section 14. Contested Case Hearing. The hearing officer shall preside over the contested case hearing, which shall be conducted pursuant to the WAPA and the Office of Administrative Hearings rules concerning contested case proceedings incorporated by reference in Chapter 1.

Section 15. Burden and Standard of Proof.

(a) Application Matters. The applicant shall bear the burden, to prove by a preponderance of evidence, they meet the qualifications for licensure. The burden shall shift to the ARC, to prove by clear and convincing evidence, applicant should be denied a license. The burden shall shift to the applicant to persuade the Board the ARC's grounds for denial are insufficient.

(b) Petition for Modification Matters. The licensee shall bear the burden to prove by a preponderance of evidence that the petition for modification of conditions should be granted.

(c) Discipline Matters. The DC shall bear the burden to prove by clear and convincing evidence a licensee violated the Act, Board Rules, or both.

Section 16. Board Decision and Order.

(a) Board Action. The Board may resolve an application matter, administrative complaint, or Petition by:

- (i) Approving the recommendations of the ARC or DC; or
- (ii) Conducting a contested case hearing. Following the hearing and deliberation of all evidence admitted at a contested case hearing, the Board may:
 - (A) Issue, renew, reactivate, relicense, or reinstate a license;
 - (B) Issue, renew, reactivate, relicense, or reinstate a license with conditions, restrictions, or other disciplinary action;
 - (C) Deny a license, renewal, reactivation, relicensure, or reinstatement;
 - (D) Approve or deny a petition;
 - (E) Dismiss the complaint or Petition due to lack of clear and convincing evidence;
 - (F) Issue a notice of warning; or
 - (G) Impose a reprimand, conditions, restrictions, suspension, revocation, other discipline, or a combination thereof.
- (b) Board Order. The Board shall issue a written decision, which:
 - (i) Shall be sent to the applicant, licensee, or their representative by certified mail or regular mail;
 - (ii) Shall be deemed a public record and be available for inspection and dissemination in accordance with all federal and state laws.

Section 17. Judicial Review.

- (a) Appeals from decisions of the Board are governed by the WAPA and Wyoming Rules of Appellate Procedure.
- (b) Costs of transcripts and any reasonable cost assessed by the Board regarding the record on appeal shall be borne by the party making the appeal.