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, hearing and proceedings concerning:
   (i) Actions relating to an application for a license including granting or denying; or
   (ii) Alleged violations of the NPA or the Board Rules.

(b) Determine and administer appropriate disciplinary action against an applicant or licensee.

Section 2. Definitions.

(a) “Abandonment” means the termination of a client relationship, with or without the client's knowledge, without making arrangements for appropriate continuation of care.

(b) “Abuse” means any behavior that is designed to control and 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 matrix process matters.

(d) “Application Review Matrix” means guidelines which provide delegated Board staff authority to recommend issuance of a license or certificate with a notice of warning, or forward to an Application Review Committee for additional review.

(e) “Complainant” means the person(s), organization or agency who initiates 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 which provide delegated Board staff authority to pursue summary suspension, or recommend dismissal of a complaint, issuance of a notice of warning or letter of reprimand to a licensee based upon certain criteria.

(h) “License” means a license, certificate, recognition, permit or prescriptive authority issued by the Board.
(j) **“Licensee”** means an APRN, RN, LPN or CNA that holds a license, certificate, recognition, permit or prescriptive authority issued by the Board.

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

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

(i) Insufficient observation; the failure to provide adequate assessment and intervention directly or indirectly through inadequate supervision;

(ii) Failure to intervene when a client condition warrants intervention;

(iii) Inappropriate delegation or assignment of care to an unqualified care giver; and

(iv) Accepting assignments beyond level of competency or scope of practice.

Section 3. **Grounds for Discipline.**

(a) **Disciplinary Action.** The Board may take disciplinary action or refuse to issue or renew a license for one (1) or more of the following acts or conduct:

   (i) Inability to function with reasonable skill and safety for the following reasons, including but not limited to:

      (A) Physical or mental disability;

      (B) Lack of nursing competence;

      (C) Substance abuse/dependency;

      (D) Client abandonment;

      (E) Client abuse, including, but not limited to: physical, verbal, mental, emotional, financial or sexual abuse;

      (F) Fraud or deceit, including, but not limited to: prescription fraud, falsification of a medical record, omission of required information or submission of false information;

      (G) Client neglect;

      (H) Violation of client boundaries, including sexual boundaries or entering into financial transactions with clients;

      (I) Performance of unsafe client care; or

      (J) Violation of privacy or confidentiality in any form including: written, verbal or technological;
(ii) Misappropriation of client property or property belonging to a hospital, medical clinic or facility providing care to a client;

(iii) Criminal felony conviction;

(iv) Criminal misdemeanor conviction relating to and impacting the ability to practice nursing or the CNA role;

(v) Drug diversion for self or others;

(vi) Distribution, sale, unauthorized use, illegal possession or manufacturing of controlled/illicit drugs;

(vii) Failure to comply with reasonable requests from the Board including, but not limited to, failing to:

(A) Answer the administrative complaint;

(B) Respond to request for explanation for failure to disclose required information; or

(C) Cooperate in the investigation;

(D) Failure to comply with a term, condition or obligation of a Board order;

(viii) Failure to conform to the standards of acceptable and prevailing APRN practice, nursing practice or the CNA role, in which case actual injury need not be established;

(ix) Failure to appropriately supervise;

(x) With respect to APRNs, failure to supervise or to monitor the performance of acts by any individual working under the direction of the APRN; or

(xi) Practicing without a valid license.

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

(i) Accepting remuneration for providing nursing services while holding a volunteer nurse license;

(ii) Practicing outside the premises of a nonprofit health care facility in the State;

(iii) Providing care to persons other than low income uninsured; or

(iv) Engaging in practice outside the scope of the volunteer nurse license in the State.


(a) Application Review and Investigation. In application matters:
(i) Every applicant bears the burden of satisfying license requirements;

(ii) Every application for a license issued by the Board is subject to investigation to determine whether the requirements set forth in the NPA and Board Rules are satisfied; and

(iii) Every application that reveals information which merits further investigation shall be assigned to the ARC.

(b) Application Review Committee Action. Following investigation, the ARC may recommend:

(i) A license be issued, renewed, reactivated or reinstated;

(ii) A license be issued, renewed, reactivated or reinstated subject to conditions, restrictions, or other disciplinary action;

(iii) Approval of a settlement agreement, which may include the issuance, renewal, reactivation 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 which warrant the issuance or denial of a license subject to conditions, restrictions, or other disciplinary action;

(B) A statement of the nature of the actions which warrant the issuance or denial of a license subject to conditions, restrictions, or other disciplinary action and a citation to the applicable statutory provisions in the NPA or the Board Rules; 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.

(iii) Failure of the applicant to pursue proceedings related to the application after requesting a hearing may result in dismissal.

Section 5. 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. The Board may initiate complaints.

(ii) Complaints shall be investigated by the DC or the Board staff.

(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 hold an expedited meeting at its earliest convenience to consider the petition. The Board may accept or reject the petition for voluntary surrender and may consider whether the licensee is under investigation.

(c) Disciplinary Committee Action. Following investigation, 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, non-renewal, suspension, voluntary surrender, other discipline or a combination thereof;

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

(v) Summary suspension.

Section 6. Summary Suspension.

(a) Recommendation. If the DC recommends summary suspension, the Board shall conduct an expedited hearing 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 hearing 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 hearing may result in default.

(c) **Notice of Expedited Hearing.** Upon confirmation of the date and time of the expedited hearing, the DC shall notify the licensee in writing of the date and time of the hearing.

(d) **Default.** The Board may enter an order of default in any summary suspension where the licensee or the licensee’s representative has not provided an answer to the complaint and not appeared at the expedited hearing.

**Section 7. 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 that 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 8. 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 which 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 9. 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 10. 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, the statutory provisions and/or the 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, the statutory provisions and/or the 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 11. 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 12. Dismissal or Default.**

(a) **Dismissal.** The Board may enter an order of dismissal based on the allegations contained in the recommendation to deny in any case 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 13. 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 14. Burden and Standard of Proof.**

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

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

**Section 15. Board Decision and Order.**

(a) **Board Action.** The Board may resolve an application matter, 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 or reinstate a license;

(B) Issue, renew, reactivate or reinstate a license with conditions, restrictions, or other disciplinary action;

(C) Deny a license, renewal, reactivation or reinstatement;
(D) Dismiss the complaint or Petition due to lack of clear and convincing evidence;

(E) Issue a Notice of Warning; or

(F) Impose a reprimand, conditions, restrictions, non-renewal, 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; and

(iii) May be published in a regular publication of the Board and on the Board’s website.

Section 16. **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.