

Disciplinary Policy

Licensing/Certification with Immediate Disciplinary Sanctions

The Oregon State Board of Nursing, in keeping with its mission to protect the public health, safety and welfare, believes it is important to take a position regarding how it will evaluate applicants for licensure and certification to ensure that those who are granted licensure and certification are able to safely practice nursing or perform the duties of a nursing assistant.

The Board's position applies to applicants (examination and endorsement) for certification as a Certified Nursing Assistant, Certified Medication Aide, licensure as a Licensed Practical Nurse or Registered Nurse, or certification as an advanced practitioner of nursing as a Nurse Practitioner, Certified Registered Nurse Anesthetist or Clinical Nurse Specialist (all hereafter referred to as "nurse/nursing assistant").

The title of this policy implies that it addresses evaluation of applicants to determine fitness for licensure and certification in regards to all areas of conduct. The Board has adopted other policies which specifically address sexual misconduct, theft, deception, lying and other conduct which the Board must evaluate in determining fitness for licensure or certification. The conduct which has not, to date, been addressed is drug and alcohol abuse or dependence and conviction of crimes related to drug and alcohol abuse or dependence. The majority of this policy for discipline focuses on drug and alcohol abuse and dependence but may apply in other situations related to applicant conduct which have not otherwise been addressed.

The Board acknowledges its responsibility to thoroughly evaluate both the credentials and conduct of applicants for licensure and certification. The Board believes that licensure following nursing education and examination and certification following nursing assistant training and examination is not a right, but a privilege. This belief accentuates the Board's responsibility to screen applicants for licensure and certification to ensure they are capable of preserving the health, safety and welfare of patients for whom they provide care. All applicants for licensure/certification who indicate recovery from substance abuse or dependence will be required to have a current evaluation from a qualified drug and alcohol counselor for an assessment of the applicant's status in recovery and its impact on the applicant. The Board will send a letter to the evaluator asking specific questions to assure that the Board's concerns are addressed during the evaluation process. Letters of reference from others who can attest to changes in the applicant as a result of active recovery would be useful information in the process of screening applicants for licensure/certification.

The Board adopts the following assumptions as the basis for its position:

- 1) Patients* under the care of a nurse or nursing assistant are vulnerable by virtue of illness or injury, and the dependent nature of the nurse/nursing assistant-patient relationship.
- 2) Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled and immobilized.
- 3) Nurses and nursing assistants frequently provide care in private homes and home-like settings without direct supervision.
- 4) Because individuals in society as a whole have drug and alcohol problems, it is reasonable to expect that applicants for licensure and certification as nurses and nursing assistants may come to the Board with active drug or alcohol use, abuse, or dependence which may affect their ability to safely practice nursing or perform the duties of a nursing assistant.
- 5) Nurses and nursing assistants who abuse or are dependent on substances and whose judgement may be impaired while caring for patients are at risk for harming patients.
- 6) Substance abuse and substance dependence are conditions with different diagnostic criteria and therefore should be considered separately in terms of eligibility for licensure/certification.
- 7) The diagnosis of substance abuse does not, in the absence of other factors such as a recommendation for treatment, prevent a person from safely practicing as a nurse/nursing assistant.

- 8) The diseases of substance abuse and dependence are treatable diseases and nurses/nursing assistants in active recovery may be able to safely provide care to vulnerable patients. Recovery is a process of learning new behaviors, attitudes and life style which takes time after initial treatment to assure that the person is in a stable state of recovery.
- 9) An applicant for licensure/certification who applies for licensure/certification through interstate endorsement and who can demonstrate that he/she has a record of ability to function safely as a nurse/nursing assistant should be permitted the opportunity for licensure/certification despite a diagnosis of substance abuse or substance dependence.
- 10) An applicant for initial licensure/certification by examination, who has never been licensed or certified in another jurisdiction, and who has a diagnosis of substance abuse or substance dependence with a recommendation for treatment may be required to demonstrate a period of sobriety before being permitted to care for vulnerable patients.

*The terms “resident” or “client” are often used in place of “patient” in health care facilities. In this document, the term “patient” includes all of these terms.

High Risk Factors

The Board believes that the following factors, if present alone or in combination, place an applicant at high risk for ability to safely care for patients. As a result, an applicant at high risk will be advised to either reapply for licensure or certification when these factors have been resolved or bears the burden of presenting evidence sufficient to prove to the satisfaction of the Board that the applicant is not impaired and does not present a high risk to safely care for patients. If the applicant wishes to proceed with his/her application and fails to present sufficient evidence to satisfy the Board that the applicant is not impaired and safe to practice, the Board will serve a Notice of Proposed Denial of Licensure or Certification. After receiving such notice, the applicant may exercise his/her rights for a hearing as provided in the Administrative Procedures Act.

The applicant for licensure or certification is at high risk if one or more of the following apply. The applicant has:

- ◆ The diagnosis of substance dependence.
- ◆ A history of substance abuse/dependence which began in latency or early adolescence and continued into adulthood before successful treatment.
- ◆ A history of substance abuse/dependence for the majority of the person’s life.
- ◆ The diagnosis of substance abuse with a recommendation for treatment.
- ◆ Made application for licensure /certification by examination and has not been licensed or certified in another state.
- ◆ Sobriety of less than two years.
- ◆ Not completed the level of treatment as recommended by a drug and alcohol evaluator, but chose another kind of treatment instead.
- ◆ Completed the intensive portion of a treatment program and failed to complete the recommended aftercare.
- ◆ Dropped out of a treatment program but claims to attend 12 step meetings.
- ◆ Refused to attend or does not attend treatment.
- ◆ Never successfully completed treatment.
- ◆ Admitted to an occasional drink or use, thinks he/she can “control it” (following a diagnosis of substance dependence).
- ◆ Relapsed or engaged in relapse behavior without immediately seeking intervention.
- ◆ Demonstrated other addictive behaviors which have not been treated.
- ◆ A dual diagnosis which has not been treated (treatment should be by a psychiatrist).
- ◆ Drug and alcohol related arrests/convictions both before and after treatment.

- ◆ Current court-ordered probation.
- ◆ Has not completed court-ordered restitution or community service.
- ◆ A current disciplinary sanction in another state, for any reason, unless the nurse has not had the opportunity to participate in the equivalent of the Nurse Monitoring Program.
- ◆ A history of sexual misconduct (refer to Board policy on sexual misconduct).
- ◆ Been the subject of removal of parental rights.
- ◆ Other conduct or conditions that the Board finds to constitute a high risk factor.

The more factors listed above that apply to the applicant, the more the applicant is at high risk for ability to safely care for patients.

Moderate Risk Factors

The Board believes that applicants who have the following factors require monitoring by the Board to assure that the health, safety and welfare of patients is preserved. The Board proposes to monitor nursing assistant applicants with the following factors by placing them on probation with specific terms and conditions until such time that the Board is satisfied they are able to safely perform the duties of a nursing assistant with no further monitoring by the Board. The applicant will be offered a Stipulation for Probation. Registered Nurse, Licensed Practical Nurse and advanced practice applicants will be offered entrance into the Nurse Monitoring Program, if the applicant meets the criteria for entrance into that program. If the applicant is unwilling to be monitored by the Board, a Notice of Proposed Disciplinary Action, which contains the applicable range of sanctions, will be issued to the applicant who may exercise his/her rights to a hearing as provided in the Administrative Procedures Act.

The applicant for licensure or certification is at moderate risk if one or more of the following apply. The applicant has:

- ◆ The diagnosis of substance abuse or dependence with a recommendation for treatment.
- ◆ Has a history of substance abuse/dependence which did not occupy the majority of the person's life.
- ◆ Made application for licensure/certification by examination, has evidence of treatment and a significant period (18-24 months or more) of documented sobriety.
- ◆ Made application for licensure/certification by interstate endorsement, has had treatment for substance abuse or dependence and a favorable practice record in another state.
- ◆ Made application for licensure/certification by either examination or endorsement and has a diagnosis of substance abuse with no treatment recommendations but a recommendation for random drug testing for a period of time.
- ◆ Enrolled in several treatment programs before successful completion.
- ◆ Relapsed or engaged in relapse behaviors, sought intervention immediately and is being or has been treated.
- ◆ Demonstrated other addictive behaviors and is being or has been treated.
- ◆ A dual diagnosis which is being successfully treated by a psychiatrist.
- ◆ Drug and alcohol related convictions, all of which occurred before treatment.
- ◆ Completed all, or is close to completing all court requirements related to convictions.
- ◆ Had a disciplinary sanction (for any reason) in another state, recently resolved.
- ◆ Had parental rights removed for drug and alcohol abuse, resolved since treatment.

Low Risk Factors

The Board believes that applicants who have the following factors and are otherwise judged to be fit to practice nursing or perform the duties of a nursing assistant should be issued a license or certificate without monitoring or any other intervention by the Board.

The applicant for licensure or certification is at low risk if one or more of the following apply. The applicant has:

- ◆ The diagnosis of substance abuse with recommendation for drug/alcohol education but no recommendation for treatment.
- ◆ Made application for licensure/certification either by examination or by interstate endorsement.
- ◆ The diagnosis of substance abuse or dependence, evidence of treatment and sobriety of five or more years.
- ◆ Completed a treatment program and all aftercare recommendations.
- ◆ Demonstrated life style changes – friends, priorities, activities, etc.
- ◆ A support system and uses it – friends, sponsor, family.
- ◆ Articulated life changes and attitudes as a result of treatment and sobriety.
- ◆ A strong and active program of recovery.
- ◆ Expressed remorse for acts committed while drinking/using and behavior is consistent with verbal expressions of remorse.
- ◆ Sought immediate intervention if concerned about relapse behavior.
- ◆ Had no further drug and alcohol related arrests or convictions since treatment.
- ◆ Past disciplinary sanctions in another state which have been resolved for at least three years with no further problems.

The Board recognizes that individuals who are already licensed or certified by the Board may also come to the Board's attention because of drug or alcohol problems. The Board is more willing to place those already licensed or certified in a program of monitoring, either on probation or in the Nurse Monitoring Program, whichever applies, provided the person has completed treatment specific for drug and alcohol abuse and is committed to a program of recovery.

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