

## Disciplinary Policy

# Disciplinary Sanctions For Sexual Misconduct

The Oregon State Board of Nursing, in keeping with its mission to protect the public health, safety and welfare, believes it is imperative to take a strong position regarding the licensure and certification of individuals who engage in sexual misconduct towards patients or in the workplace, who have been convicted of sexual misconduct, or whose sexual misconduct outside the workplace may affect the ability to safely care for patients.

The Board's position applies to Certified Nursing Assistants, Certified Medication Aides, Licensed Practical Nurses, Registered Nurse, Nurse Practitioners, Certified Registered Nurse Anesthetists and applicants for licensure or certification (all hereafter referred to as "nurse/nursing assistant").

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

- 1) Patients\* under the care of a nurse/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 or immobilized.
- 3) Nurses and nursing assistants are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients. Nurses/nursing assistants may also care for these patients without direct supervision.
- 4) There are appropriate boundaries in the nurse/nursing assistant-patient relationship which nurses and nursing assistants must clearly understand and be trusted not to cross.
- 5) Sexual misconduct towards patients or in the workplace raises serious questions regarding the individual's ability to provide safe, competent care to vulnerable patients.
- 6) Sexual misconduct which occurs outside of the workplace, including conviction of a crime, may raise questions as to whether that same misconduct will be repeated in the workplace and therefore affects the ability of the nurse or nursing assistant to safely provide patient care.

\* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document, "patient" includes all of these terms.

### Crimes Related To Sexual Misconduct

The Board understands that it may not rely solely on the conviction of a crime to deny, suspend or revoke a license or certificate. However, evidence of the conduct which is the basis for the conviction may be of concern to the Board.

Crimes of sexual misconduct which involve abuse of a minor or a vulnerable person or taking advantage of another person are grounds for denial of an initial application for licensure or certification or revocation of the license or certificate. The length of time between the conviction and the application for licensure or certification is not a factor due to the high recidivism rate for sex offenders, lack of empirical evidence regarding the success of treatment and the fact that many victims do not report that a sexual offense has been committed against them. Crimes which disqualify an individual for licensure or certification include Rape, Sodomy, Sexual Abuse, Contributing to the Sexual Delinquency of a Minor and other crimes related to children.

There are other sexual misconduct crimes which do not involve children or taking advantage of another person. There are also crimes which involve conduct between consenting adults. These crimes are considered by the Board to be of a serious nature but not necessarily a disqualification from licensure or certification. Conviction of these crimes will be considered on an individual basis in regards to the circumstances

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surrounding the crime and may require an evaluation by a health care professional who has expertise in evaluating sexual offenders.

### **Sexual Misconduct Toward Patients**

Sexual misconduct toward patients is never acceptable. Conduct such as rape, sex disguised as treatment (unnecessary or prolonged pelvic/breast exams or touching intimate body parts when the touch is not necessary for care) and "sneaky sex" (surreptitious touch, voyeurism or exposing the patient's body when not necessary) are grounds for denial or revocation of licensure and certification.

Other sexual misconduct such as consensual sex, sexual harassment of a patient, verbal interaction of a sexual nature or a romantic-like relationship with a patient are unacceptable but not necessarily a disqualification from licensure or certification. These cases will be considered on an individual basis and may be disciplined at the level of a Reprimand or may be warned following a thorough investigation. Subsequent conduct of a similar nature indicates a pattern and may require a higher level of disciplinary sanction. The Board believes that employers of nurses and nursing assistants have a responsibility to discourage this conduct and take measures to ensure that patients are not subjected to this conduct.

Consensual sex between a licensed nurse whose relationship with the patient is that of a mental health therapist is serious and not acceptable to the Board. The nature of the therapist nurse-patient relationship places the patient in a vulnerable position and raises the question of ability for true consensual sex on the part of the patient. This conduct is grounds for denial or revocation of licensure.

### **Sexual Misconduct in the Workplace - Not Toward Patients**

The Board's mission is protection of the public. The Board is not charged with protecting nurse or nursing assistant coworkers and therefore believes that sexual misconduct in the workplace is the responsibility of the employer. If sexual misconduct in the workplace occurs in view or hearing of a patient and may affect the patient's care or feeling of safety, the Board believes this conduct should be treated the same as similar conduct towards a patient as described above.

### **Petition for Reconsideration or Reinstatement of License or Certificate**

An individual who has been denied licensure or certification or whose license or certificate has been revoked has the right to petition the Board for reconsideration of the Board's decision to deny or revoke the license or certificate. The burden of proof that the individual no longer poses a risk to the health, safety and welfare remains with the petitioner. At a minimum, the petitioner must show evidence of successfully completing treatment specific to sexual misconduct and must obtain a current evaluation which addresses risk for re-offense, and includes recommendations on limitations in practice, patient population cared for, work setting and other issues related to the problem which originally brought the individual to the Board's attention. The evaluator must be a health care professional whose credentials and expertise are acceptable to the Board.

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